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Retain this issue as a
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**Indiana Administrative
Code** (See p. 2860)

PUBLIC COMMENTS REQUESTED:

*Under **HEA 1135** (P.L.215-2005),
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basis. Written comments and
suggestions concerning these
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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) Volumes 28 and 29 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:**

May 10, 2006

June 9, 2006

Publication Dates:

June 1, 2006

July 1, 2006

After July 1, 2006, publication dates will be determined on an individual document basis.

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

AGENCY		ALPHABETICAL LIST	
AGENCY	TITLE NUMBER	AGENCY	TITLE NUMBER
Accountancy, Indiana Board of	872	Housing and Community Development Authority, Indiana	930
Accounts, State Board of	20	†Human Service Programs, Interdepartmental Board for the Coordination of	490
Adjutant General	270	†Industrial Board of Indiana	630
Administration, Indiana Department of	25	Inspector General, Office of the	42
†Administrative Building Council of Indiana	660	Insurance, Department of	760
†Aeronautics Commission of Indiana	110	Labor, Department of	610
Aging, Division of	455	Land Surveyors, State Board of Registration for	865
†Aging and Community Services, Department on	450	Law Enforcement Training Board	250
†Agricultural Development Corporation, Indiana	770	Library and Historical Board, Indiana	590
†Agricultural Experiment Station	350	†Library Certification Board	595
†Agriculture, Commissioner of	340	Lieutenant Governor, Office of the	16
Agriculture, Department of	375	Local Government Finance, Department of	50
†Air Pollution Control Board	325.1	Lottery Commission, State	65
Air Pollution Control Board	326	Manufactured Home Installer Licensing Board	879
†Air Pollution Control Board of the State of Indiana	325	†Medical and Nursing Distribution Loan Fund Board of	
Alcohol and Tobacco Commission	905	Trustees, Indiana	580
Amusement Device Safety Board, Regulated	685	Medical Licensing Board of Indiana	844
Animal Health, Indiana State Board of	345	Mental Health and Addiction, Division of	440
Architects and Landscape Architects, Board of Registration for	804	Meridian Street Preservation Commission	925
Athletic Trainers Board, Indiana	898	Motor Vehicles, Bureau of	140
Attorney General for the State, Office of	10	†Natural Resources, Department of	310
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Barber Examiners, Board of	816	Nursing, Indiana State Board of	848
Boiler and Pressure Vessel Rules Board	680	Occupational Safety Standards Commission	620
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Chemist of the State of Indiana, State	355	Optometry Board, Indiana	852
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Child Services, Department of	465	†Personnel Board, State	30
Chiropractic Examiners, Board of	846	Personnel Department, State	31
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†Clemency Commission, Indiana	230	Pharmacy, Indiana Board of	856
Commerce, Department of	55	Plumbing Commission, Indiana	860
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†Developmental Disabilities Residential Facilities Council	430	Public Employees' Retirement Fund, Board of Trustees of the	35
Dietitians Certification Board, Indiana	830	Public Records, Oversight Committee on	60
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†Education, Commission on General	510	†Reciprocity Commission of Indiana	145
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†Election Board, State	15	Seed Commissioner, State	360
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†Employment and Training Services, Department of	645	†Solid Waste Management Board	320.1
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†Hazardous Waste Facility Site Approval Authority, Indiana	323	†Violent Crime Compensation Division	480
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†Highways, Department of	120	†Watch Repairing, Indiana State Board of Examiners in	892
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†Agency's rules are expired, repealed, transferred, or otherwise voided.

State Agencies

NUMERICAL LIST

TITLE NUMBER

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10	Office of Attorney General for the State
11	Consumer Protection Division of the Office of the Attorney General
†15	State Election Board
16	Office of the Lieutenant Governor
18	Indiana Election Commission
20	State Board of Accounts
25	Indiana Department of Administration
28	Office of Technology
†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
42	Office of the Inspector General
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

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105	Indiana Department of Transportation
†110	Aeronautics Commission of Indiana
†120	Department of Highways
130	Indiana Port Commission
135	Indiana 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	Division of Preparedness and Training
290	Department of Homeland Security

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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
318	Department of Environmental Management
†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	Department of Agriculture

HUMAN SERVICES

405	Office of the Secretary of Family and Social Services
407	Office of the Children's Health Insurance Program
410	Indiana State Department of Health
412	Indiana Health Facilities Council
414	Hospital Council
415	Commission on Forensic Sciences
†430	Developmental Disabilities Residential Facilities Council
431	Community Residential Facilities Council
440	Division of Mental Health and Addiction

TITLE NUMBER

†450	Department on Aging and Community Services
455	Division of Aging
460	Division of Disability, Aging, and Rehabilitative Services
465	Department of Child Services
470	Division of Family Resources
†480	Violent Crime Compensation Division
†490	Interdepartmental Board for the Coordination of Human Service Programs

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511	Indiana State Board of Education
512	Department of Education
514	Indiana School for the Deaf Board
515	Advisory Board of the Division of Professional Standards
†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

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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 and Community Development Authority

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

**TITLE 105 INDIANA DEPARTMENT OF
TRANSPORTATION**

LSA Document #05-258(F)

DIGEST

Adds 105 IAC 14 to adjust the current toll rate structure on the Indiana Toll Road. *NOTE: LSA Document #05-258, printed at 29 IR 585, was resubmitted for publication and reprinted at 29 IR 1643. Effective 30 days after filing with the Secretary of State.*

105 IAC 14

SECTION 1. 105 IAC 14 IS ADDED TO READ AS FOLLOWS:

ARTICLE 14. TOLL ROADS**Rule 1. Toll Rate Structure****105 IAC 14-1-1 Definitions**

Authority: IC 8-9.5-8-8; IC 8-15-2-14; IC 8-23-2-6

Affected: IC 8-15-2

Sec. 1. The following definitions apply throughout this article unless the context indicates another or different meaning or intent:

- (1) "Authority" means the Indiana finance authority.
- (2) "Axle" means the common axis of rotation of one (1) or more wheels:
 - (A) whether power driven or freely rotating;
 - (B) whether in one (1) or more segments; and
 - (C) regardless of the number of wheels carried thereon.
- (3) "Department" means the Indiana department of transportation.
- (4) "Emergency vehicle" means the following:
 - (A) Fire and police vehicles.
 - (B) Ambulances.
 - (C) Other vehicles authorized by the department.
- (5) "LCV double" means an LCV consisting of a:
 - (A) truck-tractor;
 - (B) semitrailer;
 - (C) converter dolly; and
 - (D) second semitrailer;complying with the requirements in 135 IAC 2-7-2.
- (6) "LCV triple" means a combination of vehicles consisting of:
 - (A) a truck-tractor;
 - (B) a semitrailer; and
 - (C) two (2) trailers;complying with the requirements in 135 IAC 2-7-2.
- (7) "Longer combination vehicle" or "LCV" means an LCV double or LCV triple combination.
- (8) "Operator" means every person who:
 - (A) drives or is in actual physical control of a vehicle upon the toll road; or

- (B) is exercising control over or steering a vehicle being towed or pushed by another vehicle.

(9) "Police officer" means all officers of the Indiana state police assigned to duty on the toll road by the superintendent of state police.

(10) "Public police officer" means a peace officer of:

- (A) the United States; or

- (B) Indiana or its political subdivisions; while in discharge of their official duties.

(11) "Toll" means the compensation to be paid to the department for the privilege of using the toll road or any portion thereof.

(12) "Toll attendant" means a toll road employee assigned to and on duty at a toll plaza for the purpose of:

- (A) collecting tolls; or

- (B) issuing toll tickets.

(13) "Toll plaza" means the portion of the toll road:

- (A) beginning where the pavement widens on the approach to the toll booths;

- (B) ending at the point where the pavement narrows to the normal width of roadway after passing the toll booths; and

- (C) including all booths and buildings located thereon.

(14) "Toll road" means all:

- (A) traffic lanes;

- (B) acceleration lanes;

- (C) deceleration lanes;

- (D) shoulders;

- (E) median strips;

- (F) bridges;

- (G) overpasses;

- (H) underpasses;

- (I) interchanges;

- (J) approaches;

- (K) entrance and exit ramps;

- (L) toll plazas;

- (M) travel plazas;

- (N) maintenance areas; and

- (O) other areas adjacent thereto;

under the control or jurisdiction of the department and comprising a part of the Indiana east-west toll road.

(15) "Toll road employee" means each person in the official employ of the department.

(16) "Vehicle" means every device (motorized or non-motorized) in, upon, or by which any person or property is or may be transported or drawn upon a highway.

(Indiana Department of Transportation; 105 IAC 14-1-1; filed May 4, 2006, 12:25 p.m.: 29 IR 2864)

105 IAC 14-1-2 Classification of vehicles

Authority: IC 8-9.5-8-8; IC 8-15-2-14; IC 8-23-2-6

Affected: IC 8-15-2

Sec. 2. For the purposes of the toll payable under the toll schedule adopted by the department for the use of the Indiana toll road, the following classifications shall apply:

- (1) Class 2. Any vehicle with two (2) axles, including motorcycles.**
- (2) Class 3. Any vehicle or combination with three (3) axles.**
- (3) Class 4. Any vehicle or combination with four (4) axles.**
- (4) Class 5. Any vehicle or combination with five (5) axles.**
- (5) Class 6. Any vehicle or combination with six (6) axles.**
- (6) Class 7. Any vehicle or combination with seven (7) or more axles and all LCVs.**
- (7) Class 8. Commuters.**

(Indiana Department of Transportation; 105 IAC 14-1-2; filed May 4, 2006, 12:25 p.m.; 29 IR 2864)

105 IAC 14-1-3 Payment of tolls

Authority: IC 8-9.5-8-8; IC 8-15-2-14; IC 8-23-2-6

Affected: IC 8-9.5-8-6; IC 8-15-2

Sec. 3. (a) Every operator of a vehicle using the toll road shall pay the toll prescribed by the department, except when the use shall have been exempted from the payment by the department.

(b) All persons driving vehicles upon the toll road, except as provided in section 6 of this rule, are required to pay the prescribed toll at each toll plaza encountered while using the toll road. Tolls may be paid by:

- (1) currency or change presented to a toll collector; or**
- (2) correct change deposited in the automatic coin machine.**

(c) In the event that a lease exists between the authority (or its successor) and the department, under IC 8-9.5-8-6, the following toll rates are effective on the toll road:

*[See following pages for Indiana Toll Road
Toll Structure and Rate Schedule.]*

Final Rules

Indiana Toll Road Toll Structure and Rate Schedule Effective through March 31, 2007 Barrier System

(Tolls will be charged as indicated below only upon entry and exit.)

		Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A Commuters	Class 8B Commuters
Plaza	Direction of Travel	Entry or Exit							
Plaza 1 West Point	WB	EXIT	\$0.50	\$1.50	\$2.25	\$2.75	\$3.25	\$0.30	\$0.35
	EB	ENTRY	0.50	1.50	2.25	2.75	3.25	0.30	0.35
Plaza 5 Calumet Ave	WB	EXIT	0.25	1.25	1.75	2.25	2.50	0.10	0.15
	EB	ENTRY	0.25	1.25	1.75	2.25	2.50	0.10	0.15
Plaza 10 Cline Ave	WB	EXIT	0.25	0.75	1.25	1.75	2.00	0.10	0.15
	EB	ENTRY	0.25	0.75	1.25	1.75	2.00	0.10	0.15
Plaza 17 I-465/Cary East	WB	ENTRY	0.15	0.50	0.75	1.25	1.25	0.05	0.05
	EB	EXIT	0.15	0.50	0.75	1.25	1.25	0.05	0.05
Plaza 21 Lake Station/I-94	WB	ENTRY	0.30	0.50	0.75	1.25	1.25	0.15	0.15
	EB	EXIT	0.30	0.50	0.75	1.25	1.25	0.15	0.15
Plaza 23 Willow Creek Rd.	WB	ENTRY	0.30	0.50	0.75	1.25	1.25	0.15	0.15
	EB	EXIT	0.30	0.50	0.75	1.25	1.25	0.15	0.15

(1) 8 A commuters pay on exit or entry, but not both; 8 B commuters pay on entry and exit or have a trip that includes an entry or exit in the tolling system.

Indiana Toll Road Toll Structure and Rate Schedule
Effective through March 31, 2007
Ticket System

Class 2 (Two Axle Vehicles and Motorcycles)

24 Portage Barrier		31 Valparaiso-Chesterton		39 Michigan City		49 LaPorte		72 South Bend-West		77 South Bend-ND		83 Mishawaka		92 Elkhart		96 Elkhart-East		101 Bristol-Goshen		107 Middlebury		121 Howe-LaGrange		144 Angola		153 East Point	
31	0.45	31	0.40	39	0.40	49	0.65	72	0.35	77	0.35	83	0.35	92	0.35	96	0.35	101	0.35	107	0.45	121	0.75	144	0.75	153	0.45
39	0.65		0.65		0.65		0.95		0.90		0.90		0.90		0.90		0.90		0.90			0.65		1.10			1.10
49	1.00		1.10		1.10		1.30		1.10		1.10		1.30		1.40		1.50		1.65			1.30		1.45			1.45
72	1.55		1.30		1.30		1.55		1.30		1.30		1.65		1.70		1.85		2.05			1.65		1.75			1.75
77	1.75		1.55		1.55		1.75		1.55		1.55		1.75		1.95		2.10		2.30			1.80		1.90			1.90
83	2.00		1.75		1.75		1.95		1.75		1.75		1.95		2.10		2.30		2.50			1.90		2.00			2.00
92	2.20		1.95		1.95		2.10		1.95		1.95		2.10		2.30		2.50		2.75			2.00		2.10			2.10
96	2.35		2.10		2.10		2.30		2.10		2.10		2.30		2.50		2.75		3.00			2.10		2.20			2.20
101	2.50		2.30		2.30		2.50		2.30		2.30		2.50		2.75		3.00		3.20			2.20		2.30			2.30
107	2.65		2.50		2.50		2.75		2.50		2.50		2.75		3.00		3.20		3.40			2.30		2.40			2.40
121	3.05		2.65		2.65		2.90		2.65		2.65		2.90		3.10		3.30		3.50			2.40		2.50			2.50
144	3.70		3.40		3.40		3.60		3.40		3.40		3.60		3.85		4.10		4.30			2.50		2.60			2.60
153	4.15		3.85		3.85		4.10		3.85		3.85		4.10		4.35		4.60		4.85			2.60		2.70			2.70

24 Portage Barrier

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Class 4 (Four Axle Vehicles or Combination)

24 Portage Barrier	31	0.75	31 Valparaiso-Chesterton	0.75	39 Michigan City	0.75	49 LaPorte	2.25	72 South Bend-West	0.75	77 South Bend-ND	0.75	83 Mishawaka	0.75	92 Elkhart	0.75	96 Elkhart-East	0.75	101 Bristol-Goshen	0.75	107 Middlebury	1.25	121 Howe-LaGrange	1.25	144 Angola	2.25	153 East Point	1.25
	39	1.25						3.00																				
	49	2.25		1.75																								
	72	4.25		3.50																								
	77	4.75		3.75				2.50																				
	83	5.00		4.25				3.00																				
	92	6.00		5.00				4.75																				
	96	6.50		5.50				4.75																				
	101	6.75		6.00				5.00																				
	107	7.25		6.50				6.00																				
	121	8.50		7.75				7.25																				
	144	10.25		9.75				8.00																				
	153	11.50		10.75				9.25																				

Class 5 (Five Axle Vehicles or Combination)

Class 7 (Seven or More Axle Vehicles or Combination)

[illegible]

Indiana Toll Road Toll Structure and Rate Schedule
Effective through March 31, 2007
Ticket System

Class 8 (Commuters)

31	0.25	24 Portage Barrier	31 Valparaiso-Chesterton	0.20	0.40	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
39	0.40		39 Michigan City	0.20	0.40	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
49	0.60		49 LaPorte	0.20	0.40	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
72	1.00		72 South Bend-West	0.40	0.55	0.70	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
77	1.10		77 South Bend-ND	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
83	1.30		83 Mishawaka	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
92	1.40		92 Elkhart	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
96	1.50		96 Elkhart-East	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
101	1.60		101 Bristol-Goshen	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
107	1.70		107 Middlebury	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
121	2.00		121 Howe-LaGrange	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85
144	2.40		144 Angola	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85	0.90	0.95	1.00	1.05
153	2.70		153 East Point	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85

Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2007 through March 31, 2008
Barrett System
(Tolls will be charged as indicated below only upon entry and exit)

		Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A ⁽¹⁾ Commuters	Class 8B ⁽¹⁾ Commuters
Phase 1	West Point								
	WB	EXIT	\$1.50	\$2.75	\$3.50	\$4.25	\$7.75	\$0.30	\$0.35
	EB	ENTRY	1.50	2.75	3.50	4.25	7.75	0.30	0.35
Phase 5	Calumet Ave								
	WB	EXIT	1.25	2.25	2.75	3.25	6.25	0.10	0.15
	EB	ENTRY	1.25	2.25	2.75	3.25	6.25	0.10	0.15
Phase 10	Clare Ave								
	WB	EXIT	1.00	1.75	2.00	2.50	4.50	0.10	0.15
	EB	ENTRY	1.00	1.75	2.00	2.50	4.50	0.10	0.15
Phase 17	I-65/Cary East								
	WB	ENTRY	0.75	1.00	1.50	1.75	3.00	0.05	0.05
	EB	EXIT	0.75	1.00	1.50	1.75	3.00	0.05	0.05
Phase 21	Lake Station/I-94								
	WB	ENTRY	0.75	1.00	1.50	1.75	3.00	0.15	0.15
	EB	EXIT	0.75	1.00	1.50	1.75	3.00	0.15	0.15
Phase 23	Willow Creek Rd.								
	WB	ENTRY	0.75	1.00	1.50	1.75	3.00	0.15	0.15
	EB	EXIT	0.75	1.00	1.50	1.75	3.00	0.15	0.15

(1) 8 A commuters pay on exit or entry, but not both; 8 B commuters pay on entry and exit or have a trip that includes an entry or exit in the tolling system.

Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2007 through March 31, 2008
Ticket System

Class 3 (Three Axle Vehicles or Combination)

24 Portage Barrier											
31	0.75	31 Valparaiso-Chesterton	0.75								
39	1.00	39 Michigan City	0.75								
49	1.50	49 LaPorte	0.75								
72	3.25	72 South Bend-West	1.50								
77	3.50	77 South Bend-ND	2.00	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
83	3.75	83 Mishawaka	2.25	0.75	1.00	1.25	1.50	2.00	2.50	3.00	3.50
92	4.00	92 Elkhart	2.75	0.75	1.00	1.25	1.50	2.00	2.50	3.00	3.50
96	4.75	96 Elkhart-East	3.25	0.75	1.00	1.25	1.50	2.00	2.50	3.00	3.50
101	5.00	101 Bristol-Goshen	3.75	0.75	1.00	1.25	1.50	2.00	2.50	3.00	3.50
107	5.25	107 Middlebury	4.50	0.75	1.00	1.25	1.50	2.00	2.50	3.00	3.50
121	6.25	121 Howe-LaGrange	5.25	1.00	1.25	1.50	2.00	2.50	3.00	3.50	4.00
144	7.50	144 Angola	6.00	2.25	2.75	3.25	3.75	4.25	4.75	5.25	5.75
153	8.50	153 East Point	7.75	3.25	3.75	4.25	4.75	5.25	5.75	6.25	6.75

**Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2007 through March 31, 2008
Ticket System**

Class 4 (Four Axle Vehicles or Combination)

24 Portage Barrier	
31	1.00
31	Valparaiso-Chesterton
39	1.75
39	Michigan City
49	2.75
49	LaPorte
72	5.50
72	South Bend-West
77	6.00
77	South Bend-NID
83	6.50
83	Mishawaka
92	7.50
92	Elkhart
96	8.25
96	Elkhart-East
101	8.75
101	Bristol-Goshen
107	9.25
107	Middlebury
121	10.75
121	Howe-LaGrange
144	13.00
144	Angola
153	14.75
153	East Point

Class 5 (Five Axle Vehicles or Combination)

24 Portage Barrier	
31	1.50
39	2.00
49	3.50
72	7.00
77	7.75
83	8.50
92	9.75
96	10.50
101	11.25
107	12.00
121	14.00
144	16.75
153	19.00
31 Valparaiso-Chesterton	1.50
39 Michigan City	1.50
49 LaPorte	1.50
72 South Bend-West	3.50
77 South Bend-ND	1.50
83 Mishawaka	1.50
92 Elkhart	1.50
96 Elkhart-East	1.50
101 Bristol-Goshen	1.50
107 Middlebury	1.50
121 Howe-LaGrange	2.00
144 Angola	3.50
153 East Point	2.00

Class 6 (Six Axle Vehicles or Combination)

24 Portage Barrier	
31	1.75
31	Valparaiso-Chesterton
39	2.50
39	Michigan City
49	4.25
49	LaPorte
72	8.25
72	South Bend-West
77	9.00
77	South Bend-ND
83	10.00
83	Mishawaka
92	11.50
92	Elkhart
96	12.50
96	Elkhart-East
101	13.25
101	Bristol-Goshen
107	14.00
107	Middlebury
121	16.50
121	Howe-LaGrange
144	19.75
144	Angola
153	22.25
153	East Point

Class 7 (Seven or More Axle Vehicles or Combination)

**Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2007 through March 31, 2008
Ticket System**

Final Rules

Indiana Toll Road Toll Structure and Rate Schedule Effective April 1, 2008 through March 31, 2009 Barrier System

(Tolls will be charged as indicated below only upon entry and exit.)

			Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A ⁽¹⁾ Commuters	Class 8B ⁽¹⁾ Commuters
Plaza 1	West Point	Direction of Travel	Entry or Exit							
		WB	EXIT	\$1.75	\$3.25	\$4.25	\$5.00	\$9.25	\$0.30	\$0.35
		EB	ENTRY	1.75	3.25	4.25	5.00	9.25	0.30	0.35
Plaza 5	Calumet Ave	WB	EXIT	1.25	2.75	3.50	4.00	7.50	0.10	0.15
		EB	ENTRY	1.25	2.75	3.50	4.00	7.50	0.10	0.15
Plaza 10	Clare Ave	WB	EXIT	1.00	2.00	2.50	3.00	5.50	0.10	0.15
		EB	ENTRY	1.00	2.00	2.50	3.00	5.50	0.10	0.15
Plaza 17	I-465/Gary Exit	WB	ENTRY	0.75	1.25	1.75	2.00	3.75	0.05	0.05
		EB	EXIT	0.75	1.25	1.75	2.00	3.75	0.05	0.05
Plaza 21	Lake Station/I-94	WB	ENTRY	0.75	1.25	1.75	2.00	3.75	0.15	0.15
		EB	EXIT	0.75	1.25	1.75	2.00	3.75	0.15	0.15
Plaza 23	Willow Creek Rd.	WB	ENTRY	0.75	1.25	1.75	2.00	3.75	0.15	0.15
		EB	EXIT	0.75	1.25	1.75	2.00	3.75	0.15	0.15

(1) 8 A commuters pay on exit or entry, but not both; 8 B commuters pay on entry and exit or have a trip that includes an entry or exit in the ticket system.

Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2008 through March 31, 2009
Ticket System

Class 2 (Two Axle Vehicles and Motorcycles)

24 Portage Barrier		31 Valparaiso-Chesterton		39 Michigan City		49 LaPorte		72 South Bend-West		77 South Bend-ND		83 Mishawaka		92 Elkhart		96 Elkhart-East		101 Bristol-Goshen		107 Middlebury		121 Howe-LaGrange		144 Angola		153 East Point	
31	0.45	0.40	0.40	0.40	0.40	0.40	0.40	0.35	0.35	0.35	0.35	0.40	0.40	0.35	0.35	0.35	0.35	0.35	0.35	0.35	0.45	0.45	0.75	0.75	1.10	1.10	0.45
39	0.65	0.65	1.10	0.95	0.95	0.65	0.65	0.90	0.45	0.55	0.60	0.50	0.50	0.35	0.40	0.75	0.75	0.35	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
49	1.00	0.65	1.10	1.10	1.10	0.95	0.95	1.10	0.70	0.70	0.75	1.30	1.30	0.40	0.55	0.90	0.90	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
72	1.55	1.30	1.30	1.30	1.30	1.10	1.10	1.30	0.90	0.90	0.90	1.30	1.30	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
77	1.75	1.30	1.30	1.30	1.30	1.10	1.10	1.30	0.90	0.90	0.90	1.30	1.30	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
83	2.00	1.55	1.55	1.30	1.30	1.10	1.10	1.30	0.90	0.90	0.90	1.30	1.30	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
92	2.20	1.75	1.75	1.65	1.65	1.30	1.30	1.65	1.30	1.30	1.30	1.65	1.65	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
96	2.35	1.95	1.95	1.70	1.70	1.40	1.40	1.70	1.40	1.40	1.40	1.70	1.70	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
101	2.50	2.10	2.10	1.85	1.85	1.50	1.50	1.85	1.50	1.50	1.50	1.85	1.85	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
107	2.65	2.30	2.30	2.05	2.05	1.65	1.65	2.05	1.65	1.65	1.65	2.05	2.05	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
121	3.05	2.65	2.65	2.50	2.50	2.10	2.10	2.50	2.10	2.10	2.10	2.50	2.50	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
144	3.70	3.40	3.40	3.20	3.20	2.75	2.75	3.20	2.75	2.75	2.75	3.20	3.20	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45
153	4.15	3.85	3.85	3.60	3.60	3.20	3.20	3.60	3.20	3.20	3.20	3.60	3.60	0.40	0.55	1.10	1.10	0.40	0.65	0.65	0.45	1.10	1.10	1.30	1.30	1.45	1.45

Class 3 (Three Axle Vehicles or Combination)

[illegible]

Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2008 through March 31, 2009
Ticket System

Class 4 (Four Axle Vehicles or Combination)

24 Portage Barrier		31 Valparaiso-Chesterton		39 Michigan City		49 LaPorte		72 South Bend-West		77 South Bend-ND		83 Mishawaka		92 Elkhart		96 Elkhart-East		101 Bristol-Goshen		107 Middlebury		121 Howe-LaGrange		144 Angola		153 East Point	
31	1.25	31	1.25	39	1.25	49	1.25	72	1.25	77	1.25	83	1.25	92	1.25	96	1.25	101	1.25	107	1.25	121	2.00	144	3.25	153	2.00
39	2.00																										
49	3.25																										
72	6.50																										
77	7.25																										
83	8.00																										
92	9.25																										
96	9.75																										
101	10.50																										
107	11.25																										
121	13.25																										
144	15.75																										
153	17.75																										

Class 5 (Five Axle Vehicles or Combination)

24 Portage Barrier									
31	1.75	31 Valparaiso-Chesterton							
39	2.50	1.75	39 Michigan City						
49	4.25	3.50	1.75	49 LaPorte					
72	8.50	6.75	6.00	4.25	72 South Bend-West				
77	9.50	7.75	6.75	5.25	1.75	77 South Bend-ND			
83	10.25	8.50	7.75	6.00	1.75	83 Mishawaka			
92	12.00	10.25	9.50	7.75	3.50	2.50	92 Elkhart		
96	12.75	11.00	9.50	7.75	4.25	3.50	1.75	96 Elkhart-East	
101	13.75	12.00	10.25	8.50	5.25	4.25	1.75	101 Bristol-Goshen	
107	14.50	12.75	12.00	10.25	6.00	5.25	2.50	1.75	107 Middlebury
121	17.00	15.50	14.50	12.75	8.50	7.75	5.25	4.25	121 Howe-LaGrange
144	20.50	19.75	18.00	16.25	12.75	12.00	8.50	8.50	144 Angola
153	23.00	21.50	20.50	18.75	14.50	13.75	11.00	10.25	153 East Point

**Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2008 through March 31, 2009
Ticket System**

[illegible]

24 Portage Barrier

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Indiana Toll Road Toll Structure and Rate Schedule
Effective April 1, 2008 through March 31, 2009
Ticket System

[illegible]

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Indiana Toll Road Toll Structure and Rate Schedule Effective April 1, 2009 Barrier System

(Tolls will be charged as indicated below only upon entry and exit.)

			Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A ⁽¹⁾ Commuters	Class 8B ⁽¹⁾ Commuters
Plaza	Direction or Travel	Entry or Exit								
Plaza 1 West Point	WB	EXIT	\$0.50	\$1.75	\$3.75	\$5.00	\$5.75	\$11.00	\$0.30	\$0.35
	EB	ENTRY	0.50	1.75	3.75	5.00	5.75	11.00	0.30	0.35
Plaza 5 Calumet Ave	WB	EXIT	0.25	1.50	3.00	4.00	4.75	8.75	0.10	0.15
	EB	ENTRY	0.25	1.50	3.00	4.00	4.75	8.75	0.10	0.15
Plaza 10 Cline Ave	WB	EXIT	0.25	1.00	2.25	3.00	3.50	6.50	0.10	0.15
	EB	ENTRY	0.25	1.00	2.25	3.00	3.50	6.50	0.10	0.15
Plaza 17 I-465/Gary East	WB	ENTRY	0.15	0.75	1.50	2.00	2.25	4.25	0.05	0.05
	EB	EXIT	0.15	0.75	1.50	2.00	2.25	4.25	0.05	0.05
Plaza 21 Lake Station/I-94	WB	ENTRY	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15
	EB	EXIT	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15
Plaza 23 Willow Creek Rd.	WB	ENTRY	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15
	EB	EXIT	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15

(1) 8 A commuters pay on entry and exit or have a trip that includes an entry or exit in the tolling system.

Indiana Toll Road Toll Structure and Rate Schedule
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Class 2 (Two Axle Vehicles and Motorcycles)

31	0.45	24 Portage Barrier	31	0.40	31 Valparaiso-Chesterton	31	0.45	153 East Point
39	0.65	39 Michigan City	39	0.65	39 Michigan City	39	0.65	144 Angola
49	1.00	49 LaPorte	49	0.65	49 LaPorte	49	0.65	121 Howe-LaGrange
72	1.55	72 South Bend-West	72	0.95	72 South Bend-West	72	0.95	107 Middlebury
77	1.75	77 South Bend-ND	77	1.10	77 South Bend-ND	77	1.10	96 Elkhart-East
83	2.00	83 Mishawaka	83	1.30	83 Mishawaka	83	1.30	101 Bristol-Goshen
92	2.20	92 Elkhart	92	1.65	92 Elkhart	92	1.65	107 Middlebury
96	2.35	96 Elkhart	96	1.70	96 Elkhart	96	1.70	121 Howe-LaGrange
101	2.50	101 Bristol-Goshen	101	1.85	101 Bristol-Goshen	101	1.85	144 Angola
107	2.65	107 Middlebury	107	2.05	107 Middlebury	107	2.05	153 East Point
121	3.05	121 Howe-LaGrange	121	2.50	121 Howe-LaGrange	121	2.50	
144	3.70	144 Angola	144	3.20	144 Angola	144	3.20	
153	4.15	153 East Point	153	3.85	153 East Point	153	3.85	

Class 3 (Three Axle Vehicles or Combination)

[illegible]

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Class 7 (Seven or More Axle Vehicles or Combination)

	31	39	49	72	77	83	92	96	101	107	121	144	153
24 Portage Barrier	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
31 Valparaiso-Chesterton	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
39 Michigan City	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
49 LaPorte	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
72 South Bend-West	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
77 South Bend-ND	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
83 Mishawaka	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
92 Elkhart	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
96 Elkhart-East	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
101 Bristol-Goshen	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
107 Middlebury	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
121 Howe-LaGrange	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
144 Angola	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75
153 East Point	4.25	6.50	11.00	21.75	24.00	26.25	30.50	32.75	35.00	37.00	43.50	52.25	58.75

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	24 Portage Barrier	31 Valparaiso-Chesterton	39 Michigan City	49 LaPorte	72 South Bend-West	77 South Bend-ND	83 Mishawaka	92 Elkhart	96 Elkhart-East	101 Bristol-Goshen	107 Middlebury	121 Howe-LaGrange	144 Angola	153 East Point
31	0.25													
39	0.40	0.20												
49	0.60	0.40	0.20											
72	1.00	0.70	0.60	0.40										
77	1.10	0.80	0.70	0.55	0.20									
83	1.30	1.00	0.80	0.70	0.25	0.20								
92	1.40	1.10	1.05	0.80	0.40	0.30	0.20							
96	1.50	1.20	1.10	0.85	0.45	0.35	0.25	0.20						
101	1.60	1.35	1.20	0.95	0.55	0.40	0.30	0.20	0.20					
107	1.70	1.50	1.30	1.05	0.70	0.60	0.45	0.30	0.20	0.20				
121	2.00	1.70	1.60	1.35	1.00	0.80	0.70	0.55	0.50	0.40	0.25			
144	2.40	2.20	2.10	1.80	1.40*	1.30	1.15	1.05	0.95	0.80	0.70	0.45		
153	2.70	2.50	2.35	2.10	1.70	1.55	1.40	1.30	1.20	1.05	0.90	0.70	0.25	

(Indiana Department of Transportation; 105 IAC 14-1-3; filed May 4, 2006, 12:25 p.m.: 29 IR 2865)

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105 IAC 14-1-4 Loss of toll ticket; excessive time on toll road

Authority: IC 8-9.5-8-8; IC 8-15-2-14; IC 8-23-2-6
Affected: IC 8-15-2

Sec. 4. The operator of any vehicle who, for any reason:
(1) does not have a toll ticket upon reaching the exit toll plaza at which he or she seeks to leave the toll road; or
(2) presents a toll ticket that was issued at entry fourteen (14) hours or more before exiting from the toll road;
shall be charged the highest toll chargeable for the applicable vehicle classification from either terminus of the toll road. (*Indiana Department of Transportation; 105 IAC 14-1-4; filed May 4, 2006, 12:25 p.m.: 29 IR 2898*)

105 IAC 14-1-5 Exit of vehicle at point of entry; disabled vehicle in tow

Authority: IC 8-9.5-8-8; IC 8-15-2-14; IC 8-23-2-6
Affected: IC 8-15-2

Sec. 5. The presentation of a toll ticket, by the operator of any vehicle, for payment at the same toll plaza at which the toll ticket was issued shall be prima facie evidence of violation of 135 IAC 2-2-4 or 135 IAC 2-2-5, or both. Therefore, the operator shall be charged the highest toll chargeable for the appropriate vehicle classification from either terminus of the toll road. A disabled vehicle in tow by an authorized emergency service vehicle on the toll road shall not be charged a toll if it is necessary, under 135 IAC 2, for the particular vehicle to leave the toll road at the same plaza at which it entered. (*Indiana Department of Transportation; 105 IAC 14-1-5; filed May 4, 2006, 12:25 p.m.: 29 IR 2898*)

105 IAC 14-1-6 Toll-free travel

Authority: IC 8-9.5-8-8; IC 8-15-2-14; IC 8-23-2-6
Affected: IC 8-15-2

Sec. 6. No free vehicular passage will be permitted over any part of the toll road except to the following:

- (1) The department's:
 - (A) members;
 - (B) officers;
 - (C) employees;
 - (D) agents; and
 - (E) representatives.
- (2) Police officers of:
 - (A) the United States; or
 - (B) Indiana or its political subdivisions;while in discharge of their official duties.
- (3) Fire or other authorized emergency vehicles entering the toll road:
 - (A) for the purpose of performing emergency services; or
 - (B) as authorized by the department.

(*Indiana Department of Transportation; 105 IAC 14-1-6; filed May 4, 2006, 12:25 p.m.: 29 IR 2898*)

LSA Document #05-258(F)

Notice of Intent Published: October 1, 2005; 29 IR 54

Proposed Rules Published: November 1, 2005; 29 IR 585 and February 1, 2006; 29 IR 1643

Hearings Held: March 23, 2006 and March 24, 2006

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Small Business Regulatory Coordinator: Chris Kiefer, 100 N. Senate Avenue, Room N751, Indianapolis, Indiana 46204, (317) 233-3601, ckiefer@indot.state.in.us

TITLE 135 INDIANA FINANCE AUTHORITY

NOTE: Under P.L.235-2005, SECTION 213, the name of the Indiana Transportation Finance Authority is changed to the Indiana Finance Authority, effective May 15, 2005.

LSA Document #05-257(F)

DIGEST

Amends 135 IAC 2 to adjust the current toll rate structure on the Indiana Toll Road, adjust the fees for special hauling permits, and modify certain terms and phrases and other provisions of the current rules to reflect current law, usage, and circumstance. *NOTE: LSA Document #05-257, printed at 29 IR 594, was resubmitted for publication and reprinted at 29 IR 1676. Effective 30 days after filing with the Secretary of State.*

135 IAC 2-1-1	135 IAC 2-7-8
135 IAC 2-2-1	135 IAC 2-7-11
135 IAC 2-2-3	135 IAC 2-7-12
135 IAC 2-2-5	135 IAC 2-7-13
135 IAC 2-2-10	135 IAC 2-7-14
135 IAC 2-2-12	135 IAC 2-7-15
135 IAC 2-3-1	135 IAC 2-7-16
135 IAC 2-3-2	135 IAC 2-7-17
135 IAC 2-4-1	135 IAC 2-7-18
135 IAC 2-4-2	135 IAC 2-7-19
135 IAC 2-4-4	135 IAC 2-7-20
135 IAC 2-5-1	135 IAC 2-7-21
135 IAC 2-5-2	135 IAC 2-7-22
135 IAC 2-5-2.1	135 IAC 2-7-23
135 IAC 2-5-3	135 IAC 2-7-24
135 IAC 2-5-5	135 IAC 2-8-1
135 IAC 2-7-1	135 IAC 2-8-3
135 IAC 2-7-2	135 IAC 2-8-5
135 IAC 2-7-3	135 IAC 2-8-7
135 IAC 2-7-5	135 IAC 2-8-11
135 IAC 2-7-6	135 IAC 2-10-1
135 IAC 2-7-7	135 IAC 2-10-2

SECTION 1. 135 IAC 2-1-1 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-1-1 Definitions

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 1. ~~As used in 135 IAC 2-1 to 135 IAC 2-10, The following words and terms shall have the following meanings; definitions apply throughout this article unless the context shall indicate indicates~~ another or different meaning or intent:

- (1) "Aircraft" means any contrivance used or designed for navigation of or flight in the air.
- (2) "Authority" means the Indiana ~~toll~~ finance authority.
- (3) "Automatic lane" means those entry or exit lanes located at toll plazas ~~which that~~ are:
 - (A) generally unattended by toll attendants; and ~~are~~
 - (B) equipped with automatic:
 - (i) ticket dispensers; or ~~automatic~~
 - (ii) coin receptacles;
- (4) "Axle" means the common axis of rotation of one (1) or more wheels:
 - (A) whether power driven or freely rotating; ~~and~~
 - (B) whether in one (1) or more segments; and
 - (C) regardless of the number of wheels carried thereon.
- (5) "Axle weight" means the total weight concentrated on one (1) or more axles spaced less than forty (40) inches from center to center.
- (6) "Bicycle" means any vehicle irrespective of the number of wheels in contact with the ground ~~which that~~ has the possibility of being foot propelled.
- (7) "Bus" means any vehicle designed for the transportation of ~~ten (10)~~ sixteen (16) or more persons.
- (8) "Control devices and signals" means all:
 - (A) signs;
 - (B) signals;
 - (C) markings; and
 - (D) devices;

placed or erected on the toll road, as ~~herein~~ defined in **this section**, for the purpose of regulating, warning, or guiding traffic.

- (9) "Converter dolly" means a one (1) or two (2) axle vehicle:
 - (A) designed to convert a semitrailer into a trailer; and
 - (B) usually coupled to a semitrailer for the purpose of making up a tandem trailer combination.
- (10) "Cross-over" means a paved area in the median strip provided for the use of authorized vehicles to cross the median strip.
- (11) "Deceleration lanes and acceleration lanes" means speed change lanes provided for vehicles entering and exiting service areas or interchanges adjacent to the outer traffic lanes.
- (12) "Department" means the Indiana department of ~~highways; toll road division;~~ **transportation.**
- (13) "Disabled vehicle" means any vehicle temporarily incapable of movement.
- (14) "Emergency vehicle" means **the following**:
 - (A) Fire and police vehicles.

(B) Ambulances. ~~and~~

(C) Other vehicles authorized by the department.

(15) "Gross weight" means the total weight of a vehicle or combination of vehicles, including the weight of the **following**:

- (A) The vehicle or vehicles.
- (B) Loads.
- (C) Drivers.
- (D) Fuel.
- (E) Spare tire. ~~etc.~~

(16) "Interchange" means that portion of the toll road:

- (A) beginning at the point where entrance and exit roads join:
 - (i) federal;
 - (ii) state;
 - (iii) county; or
 - (iv) city;

highways or streets; ~~and~~

(B) ending at the point where the toll road traffic lanes join the deceleration and acceleration lanes, as ~~herein~~ defined in **this section**; and

(C) including all:

- (i) bridges;
- (ii) underpasses;
- (iii) overpasses;
- (iv) toll plazas; or
- (v) parking areas; ~~etc.~~

located between ~~said~~ the points referenced in clauses (A) and (B).

(17) "LCV double" means an LCV consisting of a:

- (A) truck-tractor;
- (B) semitrailer;
- (C) converter dolly; and
- (D) second semitrailer;

complying with the requirements in 135 IAC 2-7-2.

(18) "LCV triple" means a combination of vehicles consisting of:

- (A) a truck-tractor;
- (B) a semitrailer; and
- (C) two (2) trailers;

complying with the requirements in 135 IAC 2-7-2.

(19) "Longer combination vehicle" or "LCV" means an LCV double or LCV triple combination.

(20) "Median strips" means the area between the inner traffic lane for westbound traffic and the inner traffic lane for eastbound traffic, including **the following**:

- (A) Concrete barriers.
- (B) Grassy areas. ~~and~~
- (C) Inner shoulders.

(21) "Michigan trains" means a combination of three (3) vehicles consisting of a:

- (A) truck-tractor;
- (B) semitrailer; and
- (C) trailer;

complying with the requirements of 135 IAC 2-8-2 hereafter, ~~which that~~ exceeds **ninety thousand** (90,000) pounds.

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(22) "Motorcycle" means every vehicle designed to travel on not more than three (3) wheels in contact with the ground.

(23) "Operator" means every person who:

(A) drives or is in actual physical control of a vehicle upon the toll road; or ~~who~~

(B) is exercising control over or steering a vehicle being towed or pushed by another vehicle.

(24) "Oversize or unusual vehicle" means those vehicles exceeding the allowable dimensions set forth in 135 IAC 2-4-1 hereafter.

(25) "Parking" means the stopping or standing of a vehicle whether occupied or not. A vehicle shall not be deemed to be parked if stopped temporarily for any of the following reasons:

~~(1)~~ (A) Because its movement is obstructed.

~~(2)~~ (B) While waiting to enter or exit a toll booth lane.

~~(3)~~ (C) In obedience to:

(i) the direction of a police officer, toll attendant, or other toll road employee assigned to traffic control work; or

(ii) an official sign, signal, marking, or device.

~~(4)~~ (D) Because it is disabled.

(26) "Pedestrian" means any natural person afoot.

(27) "Permitted company" means a company as described in 135 IAC 2-7-21.

(28) "Person" means ~~every~~ any of the following:

(A) A natural person.

(B) A firm.

(C) A copartnership.

(D) An association.

(E) A corporation. ~~or~~

(F) A legal entity.

(29) "Police officer" means all officers of the Indiana state police assigned to duty on the toll road by the superintendent of state police.

(30) "Public police officer" means peace officers of:

(A) the United States; ~~of the state of or~~

(B) Indiana or ~~of its~~ political subdivisions;

while in discharge of their official duties.

(31) "Radioactive material" means any material, or combination of materials, that spontaneously emits ionizing radiation, excepting only those specifically exempted from control by the hazardous materials regulations of the ~~U.S.~~ United States Department of Transportation, Federal Highway Administration. ~~in effect on June 1, 1980.~~

(32) "Semitrailer" means every vehicle without motive power:

(A) designed for:

(i) carrying persons or property; and ~~for~~

(ii) being drawn by another vehicle; and ~~so~~

(B) constructed so that some part of its weight and ~~that of~~ its load:

(i) rests upon; or

(ii) is carried by;

another vehicle.

"Service area" means the portion of the toll road right-of-way occupied by the restaurant buildings, service stations, parking

and seeded areas adjacent thereto, including the deceleration lanes and acceleration lanes provided for entering and exiting such areas.

(33) "Shoulders" means the paved strips adjoining the following:

(A) Traffic lanes.

(B) Acceleration and deceleration lanes. ~~and~~

(C) Interchange ramps.

(34) "Tandem axle group" means two (2) or more axles spaced:

(A) more than forty (40) inches; and

(B) less than ~~108~~ ninety-six (96) inches. ~~from center to center having at least one common point of weight suspension.~~

"Tandem trailer combination" means a combination of vehicles consisting of a truck-tractor, semi-trailer, converter dolly and second semi-trailer, complying with the requirements in 135 IAC 2-7-2.

(35) "Toll" means the compensation to be paid to the department for the privilege of using the toll road or any portion thereof.

(36) "Toll attendant" means a toll road employee assigned to and on duty at a toll plaza for the purpose of:

(A) collecting tolls; ~~and/or using or~~

(B) issuing toll tickets.

(37) "Toll plaza" means the portion of the toll road:

(A) beginning where the pavement widens on the approach to the toll booths; ~~and~~

(B) ending at the point where the pavement narrows to the normal width of roadway after passing the toll booths; and

(C) including all booths and buildings located thereon.

(38) "Toll road" means all:

(A) traffic lanes;

(B) acceleration lanes;

(C) deceleration lanes;

(D) shoulders;

(E) median strips;

(F) bridges;

(G) overpasses;

(H) underpasses;

(I) interchanges;

(J) approaches;

(K) entrance and exit ramps;

(L) toll plazas; ~~service areas;~~

(M) travel plazas;

(N) maintenance areas; and ~~any and all~~

(O) other areas adjacent thereto;

under the control or jurisdiction of the department and comprising a part of the Indiana east-west toll road.

(39) "Toll road employee" means each person in the official employ of the ~~Indiana~~ department. ~~of highways, toll road division.~~

(40) "Traffic" means vehicles, either singly or together, using any portion of the toll road for the purpose of travel.

(41) "Traffic control signal" means any device, whether:

- (A) manually;
- (B) electrically; or
- (C) mechanically;

operated, by which traffic on the toll road is regulated.

(42) "Traffic lanes" means the four (4) **or six (6)** continuous traffic lanes (each for a single line of vehicles) extending between the eastern and western termini of the toll road. These four (4) **or six (6)** traffic lanes are in two ~~pairs~~; **(2) or three (3) lanes**, which ~~pairs lanes~~ are separated by the median strip. The ~~pair which lies lanes that lie~~ generally to the north of the median strip ~~is are~~ for westbound traffic, and the ~~pair which lies lanes that lie~~ generally to the south of the median strip ~~is are~~ for eastbound traffic.

(43) "Trailer" means a vehicle without motive power designed for carrying property.

"Trailer combination" means any tandem trailer combination where the semi-trailer or trailer are over 28' 6" in length and any triple trailer combination.

"Triple trailer combination" means a combination of vehicles consisting of a truck-tractor, semi-trailer and two (2) trailers, complying with the requirements in ~~135 IAC 2-7-2~~.

(44) "Travel plaza" means the portion of the toll road right-of-way occupied by the:

- (A) restaurant buildings;
- (B) fuel stations; and
- (C) parking and seeded areas adjacent thereto;

including the deceleration lanes and acceleration lanes provided for entering and exiting the areas.

(45) "Truck-tractor" means every vehicle:

- (A) designed and used primarily for drawing other vehicles; and ~~so~~
- (B) constructed ~~so~~ as not to carry a load other than a part of the weight of the vehicle and load so drawn.

Nothing in this section prohibits the transportation of motor vehicles on part of the truck-tractor.

(46) "Vehicle" means every device (motorized or nonmotorized) in, upon, or by which any person or property is or may be transported or drawn upon a highway.

(Indiana Finance Authority; 135 IAC 2-1-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 321; errata, 7 IR 1054; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2899)

SECTION 2. 135 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-2-1 Speed regulations

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2; IC 9-21-5-11

Sec. 1. **The following are speed regulation requirements:**

(1) No person shall drive a vehicle **as follows:**

- (A) On the toll road at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing.
- ~~(+) No person shall drive any vehicle~~ (B) On the traffic

lanes of the toll road at a speed greater than that posted. At no location on the toll road shall the rate of speed of any vehicle exceed that permitted by ~~IC 9-4-1-57~~. **IC 9-21-5.**

(2) No person shall operate a vehicle at a speed in excess of **the following:**

(A) That posted on any interchange.

~~(3) No person shall operate a vehicle at a speed in excess of~~

(B) Twenty (20) miles per hour within any ~~service area~~; **travel plaza**, except on the acceleration and deceleration lanes thereof.

~~(4) (3)~~ No person shall drive a vehicle at such a low speed as to impede or block the normal and reasonable movement of traffic or at a speed lower than forty-five (45) miles per hour on the traffic lanes on the toll road, except when:

(A) a reduced speed is necessary for safe operation; ~~or when~~

(B) ordered to do so by a police officer; or ~~when~~

(C) posted at a lower speed.

~~(5) (4)~~ No operator of a vehicle shall suddenly decrease the speed of ~~his a~~ vehicle without first giving a clearly visible and conventional signal to traffic ~~immediately~~ **immediately** to the rear.

(5) In construction zones, vehicles shall comply with IC 9-21-5-11.

(Indiana Finance Authority; 135 IAC 2-2-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 323; filed Aug 5, 1987, 4:15 p.m.: 11 IR 6; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2901)

SECTION 3. 135 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-2-3 Entering traffic lanes

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 3. Upon entering a traffic lane from a ~~service area~~; **travel plaza**, interchange, shoulder, or entrance ramp, the operator of a vehicle shall **do the following:**

(1) Use the acceleration lane or shoulder. ~~and he shall~~

(2) Enter the outer traffic lane with caution so as not to interfere with or endanger traffic. ~~The operator of a vehicle entering a traffic lane shall~~

(3) Yield the right-of-way to vehicles already on the traffic lanes.

(Indiana Finance Authority; 135 IAC 2-2-3; filed Dec 6, 1983, 1:52 p.m.: 7 IR 323; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2901)

SECTION 4. 135 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-2-5 U-turns prohibited

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 5. No person operating a vehicle shall make a U-turn at

any point on the toll road, except as:

- (1) directed to do so by a police officer; **or**
- (2) **authorized by the department.**

(Indiana Finance Authority; 135 IAC 2-2-5; filed Dec 6, 1983, 1:52 p.m.: 7 IR 324; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2901)

SECTION 5. 135 IAC 2-2-10 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-2-10 Traffic control signals

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 10. All traffic approaching toll ~~booths~~ **plazas** shall comply with the signals of the lights indicating the following:

- (1) **For a toll plaza, the following:**

(A) **A green light indicates that:**

- (i) the traffic lane over which the light is displayed is open to traffic; or
- (ii) in the case of automatic lanes, ~~that such the~~ vehicle activating ~~said the~~ green light may proceed.

(B) **A red light indicates that:**

- (i) the traffic lane over which the light is displayed is closed to traffic; or
- (ii) in the case of automatic lanes, ~~that such the~~ vehicle failing to activate the green light shall not proceed.

- (2) **For a highway, a flashing yellow light indicates that all traffic shall do the following:**

(A) Reduce speed. ~~and~~

(B) Proceed with caution. ~~and in compliance~~

(C) **Comply** with all supplemental and related traffic signs.

(Indiana Finance Authority; 135 IAC 2-2-10; filed Dec 6, 1983, 1:52 p.m.: 7 IR 324; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2902)

SECTION 6. 135 IAC 2-2-12 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-2-12 Stops at toll collection facilities

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 12. (a) The operator of a vehicle shall make a complete stop at **all manual and automatic** toll collection facilities when entering and exiting the toll road if the:

- (1) procurement of a ticket; or ~~the~~
- (2) payment of a toll;

is required.

(b) **In any facility with unstaffed toll collection capabilities, the operator of a vehicle shall comply with all signs with respect to the following:**

- (1) **Operating speed.**
- (2) **Stopping of vehicles.**
- (3) **The procession subsequent to a reduction in speed or a stop.**

(Indiana Finance Authority; 135 IAC 2-2-12; filed Dec 6, 1983, 1:52 p.m.: 7 IR 325; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2902)

SECTION 7. 135 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-3-1 Pedestrians and certain vehicles prohibited

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 1. The following shall not ~~be permitted to~~ travel on the toll road under any circumstances:

- (1) Pedestrians.
- (2) Bicycles.
- (3) Motorcycles with less than **one hundred twenty-five (125) cc: cubic centimeters** displacement.
- (4) Vehicles drawn by animals.
- (5) Aircraft.
- (6) Vehicles with improperly secured loads.
- (7) Vehicles with **any of the following:**
 - (A) Metal tires.
 - (B) Solid tires. ~~or~~
 - (C) Deflated pneumatic tires. ~~and vehicles with~~
 - (D) Caterpillar treads.

- (8) Vehicles towing another vehicle ~~which do that does not~~ have **the following:**

(A) A proper tow bar. ~~and~~

(B) Safety chains.

- (9) ~~Such Vehicles as that are deemed,~~ in the opinion of a ~~department toll attendant or attendants or any police officer,~~ **are deemed to be as follows:**

(A) Unsafe. ~~or to be~~

(B) Such as to create a hazard upon the toll road.

(Indiana Finance Authority; 135 IAC 2-3-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 325; errata, 7 IR 1054; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2902)

SECTION 8. 135 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-3-2 Hitchhiking and loitering prohibited

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 2. **The following are prohibited on any portion of the toll road, including all toll plazas and travel plazas:**

- (1) The solicitation of a ride, commonly known as hitchhiking. ~~or~~
- (2) Stopping any vehicle for the purpose of picking up or discharging a hitchhiker. ~~on any portion of the toll road, including all plazas, is prohibited.~~
- (3) Loitering. ~~in or about the toll plazas or any other portion of the toll road is prohibited.~~

(Indiana Finance Authority; 135 IAC 2-3-2; filed Dec 6, 1983,

1:52 p.m.: 7 IR 325; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2902)

SECTION 9. 135 IAC 2-4-1 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-4-1 Allowable dimensions without toll attendant authorization

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 1. The following dimensions in this section shall be the maximum allowable dimensions for vehicles permitted to operate on the toll road without toll attendant authorization under ~~135 IAC 2-4-2 section 2 of this rule~~ or a permit under ~~135 IAC 2-4-4 section 4 of this rule~~, 135 IAC 2-7, or 135 IAC 2-8. Vehicles not exceeding these the following dimensions shall, for toll collection purposes, be classified by axle count and the toll assessed accordingly:

FACTOR	LIMITS
Width	8' 6"
Height	13' 6"
Length for single vehicle under own motive power (other than buses)	36' 0"
Buses	40' 0"
Semitrailer in a truck tractor-semitrailer combination	53' 0"
Provided, however, that a semitrailer longer than forty-eight (48) feet, six (6) inches (48' 6") shall not be operated on the toll road when the distance between the kingpin and the rearmost axle of the semitrailer exceeds forty (40) feet, six (6) inches. (Indiana Finance Authority; 135 IAC 2-4-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 326; filed Aug 5, 1987, 4:15 p.m.: 11 IR 6; errata, 11 IR 96; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2903)	

SECTION 10. 135 IAC 2-4-2 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-4-2 Dimensions requiring toll attendant authorization

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 2. The operator or operators of any vehicle exceeding any of the dimensions set forth in ~~135 IAC 2-4-1, section 1 of this rule~~, except where permits are required under ~~135 IAC 2-4-4, section 4 of this rule~~, 135 IAC 2-7, or 135 IAC 2-8, shall, upon entering the toll road, state to the toll attendant on duty the facts relative to any excessive dimension or dimensions. The toll attendant, so advised, may at that time permit allow the vehicle to travel on the toll road, after having classified said the vehicle as a Class 8; by axle count and the toll assessed accordingly, if it should fall within the following dimensions: as follows:

Width	*Over 8' 6" to and including 12' 0"
Height	Over 13' 6" to and including 14' 6"
Length:	

Single vehicles To 65' 0"
Buses To 65' 0"

*Vehicles exceeding 10' 0" in width are not allowed to travel during hours of darkness.

(Indiana Finance Authority; 135 IAC 2-4-2; filed Dec 6, 1983, 1:52 p.m.: 7 IR 326; errata, 7 IR 1054; filed Aug 5, 1987, 4:15 p.m.: 11 IR 6; errata, 11 IR 96; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2903)

SECTION 11. 135 IAC 2-4-4 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-4-4 Special hauling permits

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 4. ~~The department may issue (a)~~ A special hauling permit for ~~vehicles a vehicle~~ exceeding the dimensions or weights set forth in ~~135 IAC 2-4-2 sections 2 and 135 IAC 2-4-3, 3 of this rule~~, providing the load is nondivisible. ~~These permits are may be issued by the department of state revenue. The permit is issued on a one-trip basis. The permit fee is as follows:~~

- (1) Five dollars (\$5) for oversized dimension loads.
- (2) Fifty dollars (\$50) in addition to paying a rate indicator 8 toll for loads ninety thousand (90,000) to one hundred twenty thousand (120,000) pounds.
- (3) Seventy-five dollars (\$75) for loads one hundred twenty thousand one (120,001) to two hundred thousand (200,000) pounds.
- (4) One hundred dollars (\$100) for loads over two hundred thousand (200,000) pounds.

(b) The operator or operators of any vehicle exceeding said dimensions and weights set out in ~~135 IAC 2-4-2 and 135 IAC 2-4-3~~ herein shall apply to the General Manager of the Department, P.O. Box 1, Granger, Indiana 46530-0001, in writing, for an application for special hauling permit. Said application must be in compliance with all the terms thereof, and must be received at least seven (7) days prior to the time of permitted entry; should such permit be granted. Such permit, if granted, will be returned to the applicant in duplicate, properly completed and numbered; and the driver of the vehicle shall have a copy of the permit to present to the toll attendant upon entry.

Pertinent information regarding the issuance and use of special hauling permits, as well as application forms, may be obtained from the department upon request. (Indiana Finance Authority; 135 IAC 2-4-4; filed Dec 6, 1983, 1:52 p.m.: 7 IR 326; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2903)

SECTION 12. 135 IAC 2-5-1 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-5-1 Classification of vehicles

Authority: IC 8-15-2-14; IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Final Rules

Sec. 1. For ~~the~~ purposes of the toll payable under the toll schedule adopted by the authority for ~~the~~ use of the Indiana toll road, the following classifications shall apply:

- ~~(1) Class 1—Any vehicle with four tires or less.~~
- ~~(2) (1) Class 2. Any vehicle with four tires or less with trailer.~~
two (2) axles, including motorcycles.
- ~~(3) Class 3—Any vehicle with two axles and six tires.~~
- ~~(4) (2) Class 4= 3. Any vehicle or combination with three (3) axles. or two axle tractor with one axle trailer.~~
- ~~(5) (3) Class 5= 4. Any vehicle or combination with four (4) axles.~~
- ~~(6) (4) Class 6= 5. Any vehicle or combination with five (5) axles.~~
- ~~(7) (5) Class 7= 6. Any vehicle or combination with six (6) axles.~~
- ~~(8) (6) Class 8= Authorized trailer combinations, Michigan trains 7. Any vehicle or combination with seven (7) or more axles and special oversize or unusual vehicles. all LCVs.~~
- ~~(9) (7) Class 9= 8. Commuters.~~

(Indiana Finance Authority; 135 IAC 2-5-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 326; filed Mar 5, 1985, 9:10 a.m.: 8 IR 748, eff on the date of the commencement of the operation of the new combination ticket/barrier system of toll collection; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2903)

SECTION 13. 135 IAC 2-5-2.1 IS ADDED TO READ AS FOLLOWS:

135 IAC 2-5-2.1 Payment of tolls

Authority: IC 8-15-2-14; IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-9.5-8-6; IC 8-15-2

Sec. 2.1. (a) Every operator of a vehicle using the toll road shall pay the toll prescribed by the authority (unless a lease exists between the authority and the department under IC 8-9.5-8-6, in which case the tolls are fixed by the department under 105 IAC 14), except when the use shall have been exempted from the payment by the authority.

(b) All persons driving vehicles upon the toll road, except as provided in section 5 of this rule, are required to pay the prescribed toll at each toll plaza encountered while using the toll road. Tolls may be paid by:

- (1) currency or change presented to a toll attendant; or
- (2) correct change deposited in the automatic coin machine.

(c) In the event that no lease exists between the authority (or its successor) and the department under IC 8-9.5-8-6, the following toll rates are effective on the toll road:

*[See following pages for Indiana Toll Road
Toll Structure and Rate Schedule.]*

Indiana Toll Road Toll Structure and Rate Schedule Effective through March 31, 2007

Barrier System

(Tolls will be charged as indicated below only upon entry and exit.)

		Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A Commuters	Class 8B Commuters
Plaza 1	West Point								
	WB	EXIT	\$1.50	\$2.25	\$2.75	\$3.25	\$6.00	\$0.30	\$0.35
	EB	ENTRY	1.50	2.25	2.75	3.25	6.00	0.30	0.35
Plaza 5	Calumet Ave								
	WB	EXIT	1.25	1.75	2.25	2.50	5.00	0.10	0.15
	EB	ENTRY	1.25	1.75	2.25	2.50	5.00	0.10	0.15
Plaza 10	Cline Ave								
	WB	EXIT	0.75	1.25	1.75	2.00	3.75	0.10	0.15
	EB	ENTRY	0.75	1.25	1.75	2.00	3.75	0.10	0.15
Plaza 17	I-465/Cary East								
	WB	ENTRY	0.50	0.75	1.25	1.25	2.50	0.05	0.05
	EB	EXIT	0.50	0.75	1.25	1.25	2.50	0.05	0.05
Plaza 21	Lake Station/I-94								
	WB	ENTRY	0.50	0.75	1.25	1.25	2.50	0.15	0.15
	EB	EXIT	0.50	0.75	1.25	1.25	2.50	0.15	0.15
Plaza 23	Willow Creek Rd.								
	WB	ENTRY	0.50	0.75	1.25	1.25	2.50	0.15	0.15
	EB	EXIT	0.50	0.75	1.25	1.25	2.50	0.15	0.15

(1) 8 A commuters pay on exit or entry, but not both; 8 B commuters pay on entry and exit or have a trip that includes an entry or exit in the tolling system.

Indiana Toll Road Toll Structure and Rate Schedule
Effective through March 31, 2007
Ticket System

Class 2 (Two Axle Vehicles and Motorcycles)

24 Portage Barrier		31 Valparaiso-Chesterton		39 Michigan City		49 LaPorte		72 South Bend-West		77 South Bend-ND		83 Mishawaka		92 Elkhart		96 Elkhart-East		101 Bristol-Goshen		107 Middlebury		121 Howe-LaGrange		144 Angola		153 East Point	
31	0.45	31	0.40	39	0.40	49	0.65	72	0.35	77	0.35	83	0.35	92	0.35	96	0.35	101	0.35	107	0.45	121	0.75	144	0.75	153	0.45
39	0.65																										
49	1.00		0.65		0.40																						
72	1.55		1.10		0.95		0.65																				
77	1.75		1.30		1.10		0.90		0.35																		
83	2.00		1.55		1.30		1.10		0.45																		
92	2.20		1.75		1.65		1.30		0.70																		
96	2.35		1.95		1.70		1.40		0.75																		
101	2.50		2.10		1.85		1.50		0.90																		
107	2.65		2.30		2.05		1.65		1.10																		
121	3.05		2.65		2.50		2.10		1.55																		
144	3.70		3.40		3.20		2.75		2.20																		
153	4.15		3.85		3.60		3.20		2.65																		

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

Class 3 (Three Axle Vehicles or Combination)									
24 Portage Barrier									
31	0.50	31 Valparaiso-Chesterton							
39	0.75	0.50	39 Michigan City						
49	1.50	1.25	0.50	49 LaPorte					
72	3.00	2.25	2.00	1.50	72 South Bend-West				
77	3.25	2.50	2.25	1.75	0.50	77 South Bend-ND			
83	3.50	3.00	2.50	2.00	0.50	83 Mishawaka			
92	4.00	3.50	3.25	2.50	1.25	0.75	92 Elkhart		
96	4.25	3.75	3.25	2.50	1.50	1.25	0.75	96 Elkhart-East	
101	4.50	4.00	3.50	3.00	1.75	1.50	0.50	0.50	101 Bristol-Goshen
107	5.00	4.25	4.00	3.50	2.00	1.75	0.75	0.50	107 Middlebury
121	5.75	5.25	5.00	4.25	3.00	2.50	1.75	1.50	121 Howe-LaGrange
144	7.00	6.50	6.00	5.50	4.25	4.00	3.00	3.00	144 Angola
153	7.75	7.25	7.00	6.25	5.00	4.50	3.75	3.50	153 East Point

Indiana Toll Road Toll Structure and Rate Schedule
Effective through March 31, 2007
Ticket System

Class 4 (Four Axle Vehicles or Combination)

24 Portage Barrier																											
31	0.75	31 Valparaiso-Chesterton	0.75	39 Michigan City	0.75	49 LaPorte	2.25	72 South Bend-West	0.75	77 South Bend-ND	0.75	83 Mishawaka	0.75	92 Elkhart	0.75	96 Elkhart-East	0.75	101 Bristol-Goshen	0.75	107 Middlebury	1.25	121 Howe-LaGrange	2.25	144 Angola	3.00	153 East Point	1.25
39	1.25		1.75		3.00		2.50		0.75		0.75	1.25	1.25	0.75	0.75	2.25	2.25	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25
49	2.25		3.50		3.50		3.00		0.75		0.75	1.75	1.75	0.75	0.75	4.25	4.25	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25
72	4.25		3.75		3.75		3.75		0.75		0.75	3.75	3.75	0.75	0.75	5.00	5.00	0.75	0.75	2.25	2.25	4.25	4.25	4.25	4.25	4.25	1.25
77	4.75		4.25		4.75		3.75		0.75		0.75	3.75	3.75	0.75	0.75	5.00	5.00	0.75	0.75	2.25	2.25	4.25	4.25	4.25	4.25	4.25	1.25
83	5.00		5.00		5.00		3.75		0.75		0.75	3.75	3.75	0.75	0.75	5.00	5.00	0.75	0.75	2.25	2.25	4.25	4.25	4.25	4.25	4.25	1.25
92	6.00		5.00		5.00		3.75		0.75		0.75	3.75	3.75	0.75	0.75	5.00	5.00	0.75	0.75	2.25	2.25	4.25	4.25	4.25	4.25	4.25	1.25
96	6.50		5.50		5.00		3.75		0.75		0.75	3.75	3.75	0.75	0.75	5.00	5.00	0.75	0.75	2.25	2.25	4.25	4.25	4.25	4.25	4.25	1.25
101	6.75		6.00		5.00		4.25		2.50		2.25	1.75	1.75	0.75	0.75	5.00	5.00	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25
107	7.25		6.50		6.00		5.00		3.00		2.50	2.25	2.25	1.25	0.75	5.00	5.00	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25
121	8.50		7.75		7.25		6.50		4.25		3.75	3.75	3.75	2.50	0.75	5.00	5.00	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25
144	10.25		9.75		9.00		8.00		6.50		6.00	6.00	6.00	4.25	0.75	5.00	5.00	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25
153	11.50		10.75		10.25		9.25		7.25		6.75	6.50	6.50	5.50	0.75	5.00	5.00	0.75	0.75	1.75	1.25	3.00	2.25	1.44 Angola	3.00	1.53 East Point	1.25

Class 6 (Six Axle Vehicles or Combination)

Indiana Toll Road Toll Structure and Rate Schedule
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Class 8 (Commuters)

31	0.25	24 Portage Barrier	31 Valparaiso-Chesterton	0.20	0.40	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
39	0.40		39 Michigan City	0.20	0.40	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
49	0.60		49 LaPorte	0.20	0.40	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
72	1.00		72 South Bend-West	0.40	0.55	0.70	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.70
77	1.10		77 South Bend-ND	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
83	1.30		83 Mishawaka	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
92	1.40		92 Elkhart	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
96	1.50		96 Elkhart-East	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
101	1.60		101 Bristol-Goshen	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
107	1.70		107 Middlebury	0.20	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80
121	2.00		121 Howe-LaGrange	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85
144	2.40		144 Angola	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85	0.90	0.95	1.00	1.05
153	2.70		153 East Point	0.25	0.30	0.35	0.40	0.45	0.50	0.55	0.60	0.65	0.70	0.75	0.80	0.85

Indiana Toll Road Toll Structure and Rate Schedule
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Barrett System
(Tolls will be charged as indicated below only upon entry and exit)

			Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A ⁽¹⁾ Commuters	Class 8B ⁽¹⁾ Commuters
	Direction of Travel	Entry or Exit								
Phase 1	West Point	WB EXIT	\$0.50	\$1.50	\$2.75	\$3.50	\$4.25	\$7.75	\$0.30	\$0.35
		EB ENTRY	0.50	1.50	2.75	3.50	4.25	7.75	0.30	0.35
Phase 5	Calumet Ave	WB EXIT	0.25	1.25	2.25	2.75	3.25	6.25	0.10	0.15
		EB ENTRY	0.25	1.25	2.25	2.75	3.25	6.25	0.10	0.15
Phase 10	Clare Ave	WB EXIT	0.25	1.00	1.75	2.00	2.50	4.50	0.10	0.15
		EB ENTRY	0.25	1.00	1.75	2.00	2.50	4.50	0.10	0.15
Phase 17	I-65/Cory East	WB ENTRY	0.15	0.75	1.00	1.50	1.75	3.00	0.05	0.05
		EB EXIT	0.15	0.75	1.00	1.50	1.75	3.00	0.05	0.05
Phase 21	Lake Station/I-94	WB ENTRY	0.30	0.75	1.00	1.50	1.75	3.00	0.15	0.15
		EB EXIT	0.30	0.75	1.00	1.50	1.75	3.00	0.15	0.15
Phase 23	Willow Creek Rd.	WB ENTRY	0.30	0.75	1.00	1.50	1.75	3.00	0.15	0.15
		EB EXIT	0.30	0.75	1.00	1.50	1.75	3.00	0.15	0.15

⁽¹⁾ 8 A commuters pay on exit or entry, but not both; 8 B commuters pay on entry and exit or have a trip that includes an entry or exit in the ticket system.

Class 2 (Two Axle Vehicles and Motorcycles)

[illegible]

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

Class 3 (Three Axle Vehicles or Combination)

31	0.75	24 Portage Barrier	31 Valparaiso-Chesterton	0.75	72 South Bend-West	72 South Bend-ND	83 Mishawaka	92 Elkhart	96 Elkhart-East	101 Bristol-Goshen	107 Middlebury	121 Howe-LaGrange	144 Angola	153 East Point
39	1.00		39 Michigan City	0.75										
49	1.50		49 LaPorte	1.25										
72	3.25			2.50	1.50									
77	3.50			2.75	2.00	0.75	0.75	0.75	0.75	0.75	0.75	1.00	1.50	2.25
83	3.75			3.25	2.25	0.75	0.75	1.00	1.25	1.50	1.25	2.25	2.75	3.25
92	4.40			3.75	2.75	1.25	1.25	1.50	1.75	2.00	2.00	3.25	3.75	4.00
96	4.75			4.00	3.25	1.50	1.50	1.75	2.00	2.25	2.50	3.25	3.75	4.75
101	5.00			4.50	3.75	2.00	2.00	2.25	2.50	2.75	3.00	3.25	3.75	5.00
107	5.25			4.75	4.50	2.25	2.25	2.50	2.75	3.00	3.25	3.75	4.00	5.25
121	6.25			5.75	5.25	3.25	3.25	3.75	4.00	4.25	4.50	4.75	5.00	5.25
144	7.50			7.25	6.50	4.75	4.75	5.00	5.25	5.50	5.75	6.00	6.25	7.00
153	8.50			7.75	7.50	7.00	7.00	7.25	7.50	7.75	8.00	8.25	8.50	8.75

Class 4 (Four Axle Vehicles or Combination)

24 Portage Barrier	
31	31 Valparaiso-Chesterton
39	39 Michigan City
49	49 LaPorte
72	72 South Bend-West
77	77 South Bend-ND
83	83 Mishawaka
92	92 Elkhart
96	96 Elkhart-East
101	101 Bristol-Goshen
107	107 Middlebury
121	121 Howe-LaGrange
144	144 Angola
153	153 East Point

Class 6 (Six Axle Vehicles or Combination)

24 Portage Barrier	
31	1.75
31	Valparaiso-Chesterton
39	2.50
39	Michigan City
49	4.25
49	LaPorte
72	8.25
72	South Bend-West
77	9.00
77	South Bend-ND
83	10.00
83	Mishawaka
92	11.50
92	Elkhart
96	12.50
96	Elkhart-East
101	13.25
101	Bristol-Goshen
107	14.00
107	Middlebury
121	16.50
121	Howe-LaGrange
144	19.75
144	Angola
153	22.25
153	East Point

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

Class 7 (Seven or More Axle Vehicles or Combination)

24 Portage Barrier	
31	3.00
31	Valparaiso-Chesterton
39	3.00
39	Michigan City
49	6.25
49	LaPorte
72	10.75
72	South Bend-West
77	12.25
77	South Bend-ND
83	13.75
83	Mishawaka
92	17.00
92	Elkhart
96	17.00
96	Elkhart-East
101	18.50
101	Bristol-Goshen
107	21.50
107	Middlebury
121	26.25
121	Howe-LaGrange
144	32.25
144	Angola
153	37.00
153	East Point

Class 8 (Commuters)

24 Portage Barrier	
31	0.25
31	Yalparaiso-Chesterton
39	0.40
39	Michigan City
49	0.60
49	LaPorte
72	1.00
72	South Bend-West
77	1.10
77	South Bend-ND
83	1.30
83	Mishawaka
92	1.40
92	Elkhart
96	1.50
96	Elkhart-East
101	1.60
101	Bristol-Goshen
107	1.70
107	Middlebury
121	2.00
121	Howe-LaGrange
144	2.40
144	Angola
153	2.70
153	East Point

Indiana Toll Road Toll Structure and Rate Schedule
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Barrier System

(Tolls will be charged as indicated below only upon entry and exit.)

			Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A ⁽¹⁾ Commuters	Class 8B ⁽¹⁾ Commuters
Plaza	Direction of Travel	Entry or Exit								
Plaza 1 West Point	WB	EXIT	\$0.50	\$1.75	\$3.25	\$4.25	\$5.00	\$9.25	\$0.30	\$0.35
	EB	ENTRY	0.50	1.75	3.25	4.25	5.00	9.25	0.30	0.35
Plaza 5 Calumet Ave	WB	EXIT	0.25	1.25	2.75	3.50	4.00	7.50	0.10	0.15
	EB	ENTRY	0.25	1.25	2.75	3.50	4.00	7.50	0.10	0.15
Plaza 10 Cline Ave	WB	EXIT	0.25	1.00	2.00	2.50	3.00	5.50	0.10	0.15
	EB	ENTRY	0.25	1.00	2.00	2.50	3.00	5.50	0.10	0.15
Plaza 17 I-465/Gary Exit	WB	ENTRY	0.15	0.75	1.25	1.75	2.00	3.75	0.05	0.05
	EB	EXIT	0.15	0.75	1.25	1.75	2.00	3.75	0.05	0.05
Plaza 21 Lake Station/I-94	WB	ENTRY	0.30	0.75	1.25	1.75	2.00	3.75	0.15	0.15
	EB	EXIT	0.30	0.75	1.25	1.75	2.00	3.75	0.15	0.15
Plaza 23 Willow Creek Rd.	WB	ENTRY	0.30	0.75	1.25	1.75	2.00	3.75	0.15	0.15
	EB	EXIT	0.30	0.75	1.25	1.75	2.00	3.75	0.15	0.15

⁽¹⁾ 8 A commuters pay on exit or entry, but not both; 8 B commuters pay on entry and exit or have a trip that includes an entry or exit in the ticket system.

Class 2 (Two Axle Vehicles and Motorcycles)

[illegible]

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

Class 4 (Four Axle Vehicles or Combination)

24 Portage Barrier		31 Valparaiso-Chesterton		39 Michigan City		49 LaPorte		72 South Bend-West		77 South Bend-ND		83 Mishawaka		92 Elkhart		96 Elkhart-East		101 Bristol-Goshen		107 Middlebury		121 Howe-LaGrange		144 Angola		153 East Point	
31	1.25	31	1.25	39	1.25	49	1.25	72	1.25	77	1.25	83	1.25	92	1.25	96	1.25	101	1.25	107	1.25	121	2.00	144	3.25	153	2.00
39	2.00		2.75		4.50		3.25		4.00		4.50		6.00		6.00		6.50		8.00			2.75		6.00		4.50	
49	3.25		5.25		6.00		5.25		6.00		6.50		7.25		8.00		9.75		9.25			6.50		7.25		6.50	
72	6.50		7.25		8.00		7.25		8.00		8.50		9.25		10.50		11.25		12.50			8.00		8.00		8.50	
77	7.25		8.00		8.50		9.25		9.75		10.50		11.25		12.50		13.75		14.50			9.75		9.75		10.50	
83	8.00		9.25		10.50		11.25		12.50		13.75		15.00		16.50		17.75					10.50		11.25		12.50	
92	9.25		10.50		11.25		12.50		13.75		15.00		16.50		17.75							12.50		13.75		15.00	
96	9.75		11.25		12.50		13.75		15.00		16.50		17.75									14.50		15.75		17.75	
101	10.50		12.50		13.75		15.00		16.50		17.75											16.50		18.00		20.00	
107	11.25		13.25		14.50		15.75		17.00		18.25		19.50		20.75		22.00		23.25			18.00		20.00		22.00	
121	13.25		15.25		17.25		19.25		21.25		23.25		25.25		27.25		29.25		31.25			20.00		22.00		24.00	
144	15.75		17.75		19.75		21.75		23.75		25.75		27.75		29.75		31.75		33.75			22.00		24.00		26.00	
153	17.75		19.75		21.75		23.75		25.75		27.75		29.75		31.75		33.75		35.75			24.00		26.00		28.00	

Indiana Toll Road Toll Structure and Rate Schedule
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Class 5 (Five Axle Vehicles or Combination)

24 Footage Barrier		31 Valparaiso-Chesterton		39 Michigan City		49 LaPorte		72 South Bend-West		77 South Bend-ND		83 Mishawaka		92 Elkhart		96 Elkhart-East		101 Bristol-Goshen		107 Middlebury		121 Howe-LaGrange		144 Angola		153 East Point	
31	1.75	31	1.75	39	1.75	49	1.75	72	1.75	77	1.75	83	1.75	92	1.75	96	1.75	101	1.75	107	1.75	121	1.75	144	1.75	153	1.75
39	2.50																										
49	4.25																										
72	8.50																										
77	9.50																										
83	10.25																										
92	12.00																										
96	12.75																										
101	13.75																										
107	14.50																										
121	17.00																										
144	20.50																										
153	23.00																										

24. Portage Barrier	
31	2.00
39	3.00
49	5.00
72	10.00
77	11.00
83	12.00
92	14.00
96	15.00
101	16.00
107	17.00
121	20.00
144	24.00
153	27.00
31 Valparaiso-Chesterton	2.00
39 Michigan City	4.00
49 LaPorte	7.00
72 South Bend-West	5.00
77 South Bend-ND	2.00
83 Mishawaka	2.00
92 Elkhart	2.00
96 Elkhart-East	2.00
101 Bristol-Goshen	2.00
107 Middlebury	2.00
121 Howe-LaGrange	3.00
144 Angola	5.00
153 East Point	7.00

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

Class 7 (Seven or More Axle Vehicles or Combination)

24 Portage Barrier		31	3.75	31	Valparaiso-Chesterton	31	3.75	39	Michigan City	49	LaPorte	72	South Bend-West	77	South Bend-ND	83	Mishawaka	92	Elkhart	96	Elkhart-East	101	Bristol-Goshen	107	Middlebury	121	Howe-LaGrange	144	Angola	153	East Point
		31	3.75	39	3.75	39	3.75	49	3.75	49	3.75	72	3.75	77	3.75	83	3.75	92	3.75	96	3.75	101	3.75	107	3.75	121	3.75	144	3.75	153	3.75
		31	5.50	39	7.50	39	7.50	49	7.50	49	7.50	72	13.00	77	13.00	83	13.00	92	13.00	96	13.00	101	13.00	107	13.00	121	13.00	144	13.00	153	13.00
		31	9.25	39	15.00	39	15.00	49	15.00	49	15.00	72	15.00	77	15.00	83	15.00	92	15.00	96	15.00	101	15.00	107	15.00	121	15.00	144	15.00	153	15.00
		31	18.75	39	22.25	39	22.25	49	22.25	49	22.25	72	22.25	77	22.25	83	22.25	92	22.25	96	22.25	101	22.25	107	22.25	121	22.25	144	22.25	153	22.25
		31	20.50	39	16.75	39	16.75	49	16.75	49	16.75	72	16.75	77	16.75	83	16.75	92	16.75	96	16.75	101	16.75	107	16.75	121	16.75	144	16.75	153	16.75
		31	22.25	39	18.75	39	18.75	49	18.75	49	18.75	72	18.75	77	18.75	83	18.75	92	18.75	96	18.75	101	18.75	107	18.75	121	18.75	144	18.75	153	18.75
		31	26.00	39	22.25	39	22.25	49	22.25	49	22.25	72	22.25	77	22.25	83	22.25	92	22.25	96	22.25	101	22.25	107	22.25	121	22.25	144	22.25	153	22.25
		31	28.00	39	24.25	39	24.25	49	24.25	49	24.25	72	24.25	77	24.25	83	24.25	92	24.25	96	24.25	101	24.25	107	24.25	121	24.25	144	24.25	153	24.25
		31	29.75	39	26.00	39	26.00	49	26.00	49	26.00	72	26.00	77	26.00	83	26.00	92	26.00	96	26.00	101	26.00	107	26.00	121	26.00	144	26.00	153	26.00
		31	31.75	39	28.00	39	28.00	49	28.00	49	28.00	72	28.00	77	28.00	83	28.00	92	28.00	96	28.00	101	28.00	107	28.00	121	28.00	144	28.00	153	28.00
		31	37.25	39	33.50	39	33.50	49	33.50	49	33.50	72	33.50	77	33.50	83	33.50	92	33.50	96	33.50	101	33.50	107	33.50	121	33.50	144	33.50	153	33.50
		31	44.75	39	42.75	39	42.75	49	42.75	49	42.75	72	42.75	77	42.75	83	42.75	92	42.75	96	42.75	101	42.75	107	42.75	121	42.75	144	42.75	153	42.75
		31	50.25	39	46.50	39	46.50	49	46.50	49	46.50	72	46.50	77	46.50	83	46.50	92	46.50	96	46.50	101	46.50	107	46.50	121	46.50	144	46.50	153	46.50

Class 8 (Commuters)

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(Tolls will be charged as indicated below only upon entry and exit.)

			Class 2 Two Axle Vehicles and Motorcycles	Class 3 Three Axle Vehicles or Combination	Class 4 Four Axle Vehicles or Combination	Class 5 Five Axle Vehicles or Combination	Class 6 Six Axle Vehicles or Combination	Class 7 Seven or More Axle Vehicles or Combination	Class 8A ⁽¹⁾ Commuters	Class 8B ⁽¹⁾ Commuters
Plaza	Direction or Travel	Entry or Exit								
Plaza 1 West Point	WB	EXIT	\$0.50	\$1.75	\$3.75	\$5.00	\$5.75	\$11.00	\$0.30	\$0.35
	EB	ENTRY	0.50	1.75	3.75	5.00	5.75	11.00	0.30	0.35
Plaza 5 Calumet Ave	WB	EXIT	0.25	1.50	3.00	4.00	4.75	8.75	0.10	0.15
	EB	ENTRY	0.25	1.50	3.00	4.00	4.75	8.75	0.10	0.15
Plaza 10 Cline Ave	WB	EXIT	0.25	1.00	2.25	3.00	3.50	6.50	0.10	0.15
	EB	ENTRY	0.25	1.00	2.25	3.00	3.50	6.50	0.10	0.15
Plaza 17 I-465/Gary East	WB	ENTRY	0.15	0.75	1.50	2.00	2.25	4.25	0.05	0.05
	EB	EXIT	0.15	0.75	1.50	2.00	2.25	4.25	0.05	0.05
Plaza 21 Lake Station/I-94	WB	ENTRY	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15
	EB	EXIT	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15
Plaza 23 Willow Creek Rd.	WB	ENTRY	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15
	EB	EXIT	0.30	0.75	1.50	2.00	2.25	4.25	0.15	0.15

⁽¹⁾ 8 A commuters pay on entry and exit or have a trip that includes an entry or exit in the tolling system.

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

Class 2 (Two Axle Vehicles and Motorcycles)

24 Portage Barrier	31	0.45	31 Valparaiso-Chesterton	39	0.65	39 Michigan City	49	1.00	0.65	49 LaPorte	72	1.55	1.10	0.95	0.65	72 South Bend-West	77	1.75	1.30	1.10	0.90	0.35	77 South Bend-ND	83	2.00	1.55	1.30	1.10	0.85	83 Mishawaka	92	2.20	1.75	1.65	1.30	0.70	0.55	0.40	92 Elkhart	96	2.35	1.95	1.70	1.40	0.75	0.60	0.50	0.35	96 Elkhart-East	101	2.50	2.10	1.85	1.50	0.90	0.70	0.55	0.40	0.35	101 Bristol-Goshen	107	2.65	2.30	2.05	1.65	1.10	0.95	0.75	0.55	0.40	0.35	107 Middlebury	121	3.05	2.65	2.30	2.10	1.55	1.30	1.10	0.90	0.75	0.65	0.45	121 Howe-LaGrange	144	3.70	3.40	3.20	2.75	2.20	2.00	1.80	1.65	1.45	1.30	1.10	0.75	144 Angola	153	4.15	3.85	3.60	3.20	2.65	2.40	2.20	2.00	1.70	1.65	1.45	1.10	1.53 East Point
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Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

24 Portage Barrier	
31	0.75
31	Valparaiso-Chesterton
39	1.00
39	Michigan City
49	1.75
49	LaPorte
72	3.75
72	South Bend-West
77	4.00
77	South Bend-ND
83	4.50
83	Mishawaka
92	5.25
92	Elkhart
96	5.50
96	Elkhart-East
101	6.00
101	Bristol-Goshen
107	6.25
107	Middlebury
121	7.25
121	Howe-LaGrange
144	8.75
144	Angola
153	10.00
153	East Point

Class 4 (Four Axle Vehicles or Combination)

[illegible]

Indiana Toll Road Toll Structure and Rate Schedule
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Ticket System

24 Portage Barrier	
31	2.00
31	Valparaiso-Chesterton
39	3.00
39	2.00
49	5.00
49	4.00
49	Michigan City
49	2.00
49	LaPorte
72	10.00
72	8.00
72	7.00
72	5.00
72	South Bend-West
77	11.00
77	9.00
77	8.00
77	6.00
77	2.00
77	South Bend-ND
83	12.00
83	10.00
83	9.00
83	7.00
83	2.00
83	Mishawaka
92	14.00
92	12.00
92	11.00
92	9.00
92	4.00
92	3.00
92	2.00
92	Elkhart
96	15.00
96	13.00
96	11.00
96	9.00
96	5.00
96	4.00
96	2.00
96	Elkhart-East
101	16.00
101	14.00
101	12.00
101	10.00
101	6.00
101	5.00
101	4.00
101	2.00
101	Bristol-Goshen
107	17.00
107	15.00
107	14.00
107	12.00
107	7.00
107	2.00
107	Middlebury
121	20.00
121	18.00
121	17.00
121	15.00
121	10.00
121	9.00
121	6.00
121	5.00
121	3.00
121	Howe-LaGrange
144	24.00
144	23.00
144	21.00
144	19.00
144	15.00
144	14.00
144	12.00
144	10.00
144	9.00
144	7.00
144	5.00
144	Angola
153	27.00
153	25.00
153	24.00
153	22.00
153	17.00
153	16.00
153	15.00
153	13.00
153	12.00
153	11.00
153	10.00
153	7.00
153	3.00
153	East Point

Class 6 (Six Axle Vehicles or Combination)

24 Portage Barrier									
31	2.25	31 Valparaiso-Chesterton							
39	3.50	2.25	39 Michigan City						
49	5.75	4.75	2.25	49 LaPorte					
72	11.75	9.50	8.25	5.75	72 South Bend-West				
77	13.00	10.50	9.50	7.00	2.25	77 South Bend-ND			
83	14.00	11.75	10.50	8.25	2.25	83 Mishawaka			
92	16.50	14.00	13.00	10.50	4.75	3.50	92 Elkhart		
96	17.50	15.25	13.00	10.50	5.75	4.75	2.25	96 Elkhart-East	
101	18.75	16.50	14.00	11.75	7.00	5.75	2.25	2.25	101 Bristol-Goshen
107	20.00	17.50	16.50	14.00	8.25	7.00	3.50	2.25	107 Middlebury
121	23.50	21.00	20.00	17.50	11.75	10.50	7.00	5.75	121 Howe-LaGrange
144	28.25	27.00	24.50	22.25	17.50	16.50	11.75	11.75	144 Angola
153	31.75	29.25	28.25	25.75	20.00	18.75	15.25	14.00	153 East Point

Class 8 (Commuters)

(Indiana Finance Authority; 135 IAC 2-5-2.1; filed May 4, 2006, 12:55 p.m.: 29 IR 2904)

SECTION 14. 135 IAC 2-5-3 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-5-3 Loss of toll ticket; excessive time on toll road

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 3. The operator of any vehicle who, for any reason:

- (1) does not have a toll ticket upon reaching the exit toll plaza at which he ~~or she~~ seeks to leave the toll road; ~~and any operator of a vehicle who or~~
- (2) presents a toll ticket ~~which that~~ was issued at entry ~~twelve~~ **(14)** hours or more before exiting from the toll road;

shall be charged the highest toll chargeable for the applicable vehicle classification from either terminus of the toll road. (*Indiana Finance Authority; 135 IAC 2-5-3; filed Dec 6, 1983, 1:52 p.m.: 7 IR 327; errata, 7 IR 1054; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2937*)

SECTION 15. 135 IAC 2-5-5 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-5-5 Toll-free travel

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 5. No free vehicular passage will be permitted over any part of the toll road except to **the following:**

- (1) **The authority's or the department's:**
 - (A) members;
 - (B) officers;
 - (C) employees;
 - (D) agents; and
 - (E) representatives. ~~of the authority or the department,~~
- (2) Police officers of:
 - (A) the United States; ~~of the state of or~~
 - (B) Indiana or its political subdivisions;
 while in discharge of their official duties. ~~and~~
- (3) Fire or other authorized emergency vehicles entering the toll road:
 - (A) for the purpose of performing emergency services; ~~or~~
 - (B) **as authorized by the authority.**

(*Indiana Finance Authority; 135 IAC 2-5-5; filed Dec 6, 1983, 1:52 p.m.: 7 IR 327; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2937*)

SECTION 16. 135 IAC 2-7-1 IS AMENDED TO READ AS FOLLOWS:

Rule 7. Longer Combination Vehicle Operations

135 IAC 2-7-1 Permit required

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 1. ~~Trailer combinations~~ LCVs may operate on the toll road:

- (1) only under an annual ~~tandem trailer~~ permit issued by the ~~department's general manager~~ **department under section 21 of this rule;** and
- (2) subject to compliance by the ~~permittee~~ **permitted company** with ~~135 IAC 2-7-1; this rule.~~

(*Indiana Finance Authority; 135 IAC 2-7-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 327; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2937*)

SECTION 17. 135 IAC 2-7-2 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-2 Definitions; length and axle limits

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 2. (a) ~~Tandem trailers—A tandem trailer combination~~ **An LCV double** shall consist of a:

- (1) truck-tractor;
- (2) semitrailer; and
- (3) trailer.

Neither the semitrailer nor the trailer shall be longer than forty-eight (48) feet, six (6) inches in length. The permissible number of axles on ~~a tandem trailer~~ **an LCV double** combination shall be a minimum of five (5) and ~~a~~ maximum of nine (9).

(b) ~~An LCV triple trailer combinations—A triple trailer combination~~ shall consist of:

- (1) a truck-tractor;
- (2) ~~a~~ semitrailer; and
- (3) two (2) trailers.

Neither the semitrailer nor either of the two (2) trailers shall be longer than twenty-eight (28) feet, six (6) inches in length. The permissible number of axles of ~~a an LCV triple trailer~~ combination shall be a minimum of seven (7) and a maximum of nine (9). (*Indiana Finance Authority; 135 IAC 2-7-2; filed Dec 6, 1983, 1:52 p.m.: 7 IR 327; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2937*)

SECTION 18. 135 IAC 2-7-3 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-3 Weight limits

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 3. The maximum gross weight for ~~a trailer combination~~ **an LCV** shall be governed by the formula **ninety thousand** (90,000) pounds plus **one thousand seventy** (1,070) pounds per foot for each foot of combination length (front bumper to end of combination) in excess of sixty (60) feet. However, any ~~such combination of vehicles may~~ **LCV** shall not exceed a total maximum gross weight of **one hundred twenty-seven thousand four hundred** (127,400) pounds. The gross load of ~~a combination of vehicles~~ **an LCV** shall not exceed the sum of

allowable gross loads on the axles, which are as follows:

(1) **The** maximum gross weight on any one (1) axle: **twenty-two thousand four hundred** (22,400) pounds. Axles measuring less than forty (40) inches between axle centers are considered one (1) axle.

(2) **The** maximum combined axle load of any two ~~successive~~ (2) **successive** axles, spaced more than forty (40) inches apart but less than nine (9) feet apart: **thirty-six thousand** (36,000) pounds.

No ~~such combinations~~ LCV will be permitted to leave the toll road for travel as combinations upon the state highways of Indiana without a permit from the ~~Indiana~~ department of ~~highways~~ **state revenue**. The maximum gross weight and axle weight of vehicles leaving the toll road as singles to travel upon the public highways of Indiana must comply with ~~the~~ Indiana state law. (*Indiana Finance Authority; 135 IAC 2-7-3; filed Dec 6, 1983, 1:52 p.m.: 7 IR 328; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2937*)

SECTION 19. 135 IAC 2-7-5 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-5 Classification for toll collection purposes

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 5. Qualified ~~trailer combinations~~ LCVs shall be issued **charged** a rate indicator 8 7 toll ticket by the toll attendant at the point of entry and the appropriate fare charged according to that vehicle classification. (*Indiana Finance Authority; 135 IAC 2-7-5; filed Dec 6, 1983, 1:52 p.m.: 7 IR 328; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2938*)

SECTION 20. 135 IAC 2-7-6 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-6 Safety and performance requirements

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-2.1-24; IC 8-15-2

Sec. 6. A responsible officer of the applicant shall certify to the department, ~~prior to before the approval of a truck-tractor,~~ **start of operations**, that the ~~vehicle vehicles and equipment~~ proposed to be furnished and used for ~~specified gross loads~~ **LCV operations** will comply with and meet all minimum safety and performance factors ~~of the department~~. If it is determined, after the truck-tractor is engaged in the trailer operation, that the vehicle cannot meet such requirements, the truck-tractor shall not be used in a trailer combination on the toll road until corrective measures are taken to comply with the department's requirements. **required by IC 8-2.1-24.** (*Indiana Finance Authority; 135 IAC 2-7-6; filed Dec 6, 1983, 1:52 p.m.: 7 IR 328; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2938*)

SECTION 21. 135 IAC 2-7-7 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-7 Emergency equipment

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-2.1-24; IC 8-15-2; IC 9-19

Sec. 7. Each truck-tractor used in ~~trailer combinations~~ LCV operations shall be equipped at a minimum with emergency equipment as required by the ~~Indiana Acts of 1955, Chapter 170, page 415, and acts amendatory thereof, and as further provided herein: (IC 9-8-6-1 et seq.):~~ **IC 8-2.1-24.**

(1) A fire extinguisher which shall utilize an extinguishing agent which does not need protection from freezing, and which shall be properly filled and securely mounted in brackets. Such extinguisher shall have a rating of not less than 4BC as classified under the standards of Underwriters Laboratories, Inc., 333 Pfingston, Northbrook, Illinois.

(2) At least one (1) spare fuse or other overload protective device; if the devices used are not of a reset type, for each kind and size used.

(3) One (1) set of tire chains for at least one (1) axle of the truck-tractor and, in the event the truck-tractor is required by this section to have more than one (1) drive axle, chains shall be provided for the second axle, unless the truck-tractor is so equipped that the axle equipped with chains will be positively driven when the second axle is without chains. Such chains shall be carried whenever the combination of vehicles is operating during an accumulation of snow or ice on the pavement of the Indiana toll road. Stalling because of an accumulation of snow or ice and failure to be so equipped with the required chains shall subject permittee to revocation of its permit to operate tandem trailer combinations on the toll road.

(4) All wheels of the combination of vehicles shall be equipped with tires with not less than $\frac{2}{32}$ ($\frac{1}{16}$) inch tread groove or sipe depth when measured as near to the center of the tread as possible, except the steering tires which should have not less than $\frac{4}{32}$ ($\frac{1}{8}$) inch tread groove. Tread wear shall be reasonably uniform over the whole circumference of the tire.

(5) Warning devices for display in cases of disabled vehicles upon the toll road as required by Indiana Acts of 1955, Chapter 170, page 416, and acts amendatory thereof. (~~IC 9-8-6-1, et. seq.~~)

(*Indiana Finance Authority; 135 IAC 2-7-7; filed Dec 6, 1983, 1:52 p.m.: 7 IR 328; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2938*)

SECTION 22. 135 IAC 2-7-8 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-8 Structural strength

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 8. Every vehicle used for towing other vehicles in ~~trailer~~

~~combinations~~ **LCV operations** shall have sufficient structural strength to ~~insure~~ **ensure** the safe and secure attachment of any coupling device used to tow other vehicles. (*Indiana Finance Authority; 135 IAC 2-7-8; filed Dec 6, 1983, 1:52 p.m.: 7 IR 329; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2938*)

SECTION 23. 135 IAC 2-7-11 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-11 Lights and reflectors

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-2.1-24; IC 8-15-2

Sec. 11. Each unit in a ~~trailer combination~~ **an LCV** shall be equipped at a minimum with:

- (1) electric lights; and
- (2) reflectors;

mounted on the vehicle as required by ~~Indiana Acts of 1955, Chapter 170, page 416, and acts amendatory thereof. (IC 9-8-6-1, et. seq.)~~ **IC 8-2.1-24.** (*Indiana Finance Authority; 135 IAC 2-7-11; filed Dec 6, 1983, 1:52 p.m.: 7 IR 329; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2939*)

SECTION 24. 135 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-12 Coupling devices

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 12. Coupling devices shall be ~~so~~ designed, constructed, and installed and the vehicles in a ~~trailer combination~~ **an LCV** shall be ~~so~~ designed and constructed as to ~~insure~~ **ensure** that any ~~such combination~~ **LCV** traveling on a level, smooth, paved surface will follow in the path of the towing vehicle without shifting or swerving from side to side over three (3) inches to each side of the path of the towing vehicle when ~~it the towing vehicle~~ **the towing vehicle** is moving in a straight line. (*Indiana Finance Authority; 135 IAC 2-7-12; filed Dec 6, 1983, 1:52 p.m.: 7 IR 329; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2939*)

SECTION 25. 135 IAC 2-7-13 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-13 Assembly of LCVs

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 13. In the assembly of ~~trailer combinations~~ **LCVs** ~~prior to~~ **before** their operation on the Indiana toll road, the ~~permittee~~ **permitted company** shall **do the following:**

- (1) Ascertain the total gross weight of each trailer of the proposed combination. ~~The permittee shall~~
- (2) Couple them according to their gross weights with the:
 - (A) heaviest trailer coupled to the tractor; and ~~the~~

(B) lightest trailer in the rear.

(*Indiana Finance Authority; 135 IAC 2-7-13; filed Dec 6, 1983, 1:52 p.m.: 7 IR 329; errata, 7 IR 1054; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2939*)

SECTION 26. 135 IAC 2-7-14 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-14 Police inspection

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 14. ~~Trailer combinations~~ **LCVs** are subject to inspection by a police officer ~~prior to~~ **before** initial movement by any newly ~~authorized~~ **permitted** company. The inspection is designed to **do the following:**

- (1) Instruct drivers in the proper use of ~~make-up and break-up~~ **assembly** areas. ~~and to~~
- (2) Satisfy the department that the equipment meets the qualifications set forth in this section.

Spot checks of ~~trailer combinations~~ **LCVs** may be made periodically at the discretion of any police officer. (*Indiana Finance Authority; 135 IAC 2-7-14; filed Dec 6, 1983, 1:52 p.m.: 7 IR 329; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2939*)

SECTION 27. 135 IAC 2-7-15 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-15 Assembly areas

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 15. ~~Trailer combinations~~ **LCVs** shall be made up and broken up ~~on the toll road~~ only in special assembly areas designated for this purpose by the department. All movements across traffic while entering or leaving a ~~make-up/break-up~~ **an assembly** area shall be properly safeguarded. (*Indiana Finance Authority; 135 IAC 2-7-15; filed Dec 6, 1983, 1:52 p.m.: 7 IR 329; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2939*)

SECTION 28. 135 IAC 2-7-16 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-16 Speed limits

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 16. ~~Trailer combinations~~ **LCVs** shall comply with existing speed regulations. A minimum speed of forty-five (45) miles per hour must be maintained on the toll road under normal conditions, except on entry and exit ramps (135 IAC 2-2-1). (*Indiana Finance Authority; 135 IAC 2-7-16; filed Dec 6, 1983, 1:52 p.m.: 7 IR 330; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2939*)

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SECTION 29. 135 IAC 2-7-17 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-17 Minimum distances between LCVs and other vehicles

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 17. A minimum distance of five hundred (500) feet shall be maintained under normal conditions between: ~~trailer combinations~~

- (1) LCVs; and
- (2) a vehicle traveling in front of ~~it~~ the LCV in the same travel lane;

except when passing occurs. (*Indiana Finance Authority; 135 IAC 2-7-17; filed Dec 6, 1983, 1:52 p.m.: 7 IR 330; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2940*)

SECTION 30. 135 IAC 2-7-18 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-18 Passing

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 18. (a) ~~Trailer combinations~~ LCVs may pass another vehicle traveling in the same direction only if the speed differential will allow the ~~trailer combination~~ LCV to:

- (1) complete the maneuver; and
- (2) return to the normal driving lane; within a distance of one (1) mile.

(b) ~~Trailer combinations~~ LCVs shall not pass another vehicle traveling the same direction within one (1) mile of any ~~service area~~ travel plaza or interchange. (*Indiana Finance Authority; 135 IAC 2-7-18; filed Dec 6, 1983, 1:52 p.m.: 7 IR 330; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2940*)

SECTION 31. 135 IAC 2-7-19 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-19 Equipment identification

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 19. Application for permission to operate ~~trailer combinations on the toll road~~ LCVs shall be filed with the department on forms provided; including a description of each vehicle making up trailer combinations. **identified visually as follows:**

- (1) Upon approval by the department's general manager of the application for a truck-tractor to operate in trailer combination service; An identification number issued by the department shall be stenciled at a designated location on that as follows:
 - (A) In three (3) inch high block letters.
 - (B) In a contrasting color to that of the truck-tractor.

(C) On the left side of the vehicle.

(D) In a location where it can be seen by the toll attendant in the booth.

The number shall identify the company as a permitted company to operate LCVs on the toll road.

(2) In addition, upon approval of a truck-tractor, a certificate shall be issued by the department for the truck-tractor as approved. Such certificate shall be suitably protected and carried in the cab of the truck-tractor in a place where it shall be readily available for inspection.

(2) Permitted companies shall do the following:

(A) Maintain current lists of all stenciled and active truck-tractors used in LCV operations on the toll road.

(B) Provide these lists to the department upon request. (*Indiana Finance Authority; 135 IAC 2-7-19; filed Dec 6, 1983, 1:52 p.m.: 7 IR 330; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2940*)

SECTION 32. 135 IAC 2-7-20 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-20 Driver requirements

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-2.1-24; IC 8-15-2

Sec. 20. (a) Drivers shall possess the minimum qualifications as required by the state of Indiana for drivers operating vehicles within the state, and as further provided herein: **drivers must do the following:**

- (1) Comply with all applicable requirements of IC 8-2.1-24.
- (2) Possess a valid Class A commercial driver's license (CDL) with appropriate endorsements for operation of LCVs.

~~(b)~~ Drivers of ~~trailer combinations~~ LCVs on the toll road: (1) must be:

- (A) not less than twenty-six (26) years of age; and
- (B) in good health; and
- (2) shall have not less than five (5) years of provable experience in driving:
 - (A) semitrailer; or
 - (B) tandem trailer type;motor vehicles Such driving experience shall include experience throughout the four (4) seasons.

~~(2) An applicant~~ (c) A permitted company's application for a driver permit under section 21 of this rule will be rejected by the department if the driver's license has been:

- (A) his license has been (1) revoked more than once in the past ten (10) years; or
- (B) his license has been (2) suspended more than twice once in the past ten ~~(10)~~ five (5) years.
- (C) his record of major traffic violations shows more than five (5) points in the preceding two (2) years or seven (7) points in the preceding three (3) years;

~~(D) his record of chargeable (preventable) accidents shows more than two (2) in the preceding five (5) years or more than one (1) in the preceding two (2) years on the toll road; or more than two (2) in the preceding two (2) years off the toll road. In any case, the maximum total is two (2) in the preceding two (2) years.~~

(Indiana Finance Authority; 135 IAC 2-7-20; filed Dec 6, 1983, 1:52 p.m.: 7 IR 330; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2940)

SECTION 33. 135 IAC 2-7-21 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-21 Driver permits

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 21. (a) A ~~proposed driver of trailer combinations~~ **permitted company** shall make application on the ~~prescribed a form which provided by the department that~~ includes the ~~driver's applicant's~~ driving and safety record **employment history**. The application must be accompanied by the following:

- (1) An official abstract of ~~his the applicant's~~ driving record. ~~In the event of any accidents during the five years immediately preceding the application, copies of reports of all such accidents must be submitted. In addition, the driver must have a physical examination not less than every two (2) years, and~~
- (2) A ~~copy photocopy~~ of the physical examination certificate ~~must accompany his application. applicant's current CDL.~~

(b) Upon approval by the department, an identification card bearing a permit number will be issued to the ~~driver permitted company~~. The driver must carry the card with him or her at all times while operating ~~tandem trailer combinations~~ LCVs on the toll road for presentation upon request by:

- (1) toll road personnel; or
- (2) a police officer.

(c) The driver identification card is valid only for the operation of tractors:

- (1) owned by; or
- (2) under the control of;

the **permitted** company to which the **driver** permit is issued.

(d) The department does not accept driver applications from individuals. ~~Such Applications are accepted only from permitted companies. holding permits for the operation of trailer combinations on the toll road.~~ All correspondence in connection therewith shall be handled through the companies, not the drivers.

(e) The accuracy of the information in a driver application must be attested to by an officer of the company, who, in doing so, assumes sole responsibility for the representation made to the department. ~~by the driver.~~

(f) Permitted companies shall do the following:

(1) Maintain current lists of all active permitted drivers for LCV operations on the toll road.

(2) Provide these lists to the department upon request.

(Indiana Finance Authority; 135 IAC 2-7-21; filed Dec 6, 1983, 1:52 p.m.: 7 IR 330; errata, 7 IR 1054; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2941)

SECTION 34. 135 IAC 2-7-22 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-22 Temporary suspension of LCV permits

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 22. Permission to operate ~~trailer combinations~~ LCVs on the toll road may be temporarily suspended by the department at any time due to **any of the following**:

- (1) Weather conditions.
- (2) Unfavorable road conditions.
- (3) Holiday traffic. ~~and~~
- (4) Any other emergency conditions.

(Indiana Finance Authority; 135 IAC 2-7-22; filed Dec 6, 1983, 1:52 p.m.: 7 IR 331; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2941)

SECTION 35. 135 IAC 2-7-23 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-23 Insurance coverage

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 23. An applicant for ~~trailer combination~~ an LCV operating permit shall furnish to the department a certificate attesting to the fact that there has been secured by the applicant public liability insurance affording coverages of not less than **the following**:

- (1) Five hundred thousand dollars/one million dollars (\$500,000/\$1,000,000) for all damages arising from bodily injury, including death. ~~and~~
- (2) One hundred thousand dollars/five hundred thousand dollars (\$100,000/\$500,000) for property damage, including damage to toll road property and facilities.

The named insured thereon shall include the department **and** its officers, agents, and employees, and the certificate shall indicate that the policy contains an endorsement ~~reading as follows: that reads,~~ "The inclusion of the Indiana department of ~~highways, toll road division,~~ **transportation** as an additional named insured shall not exclude coverage of liability of the named insured for damage of property of the additional named insured, or for injury to or death of any person working with or for the additional named insured." ~~Such~~ **The** certificate shall also provide that the coverage under the policy may not be ~~cancelled~~ **canceled** without thirty (30) days prior notice to the department. *(Indiana Finance Authority; 135 IAC 2-7-23; filed Dec 6, 1983,*

1:52 p.m.: 7 IR 331; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2941)

SECTION 36. 135 IAC 2-7-24 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-7-24 Applicability of other rules

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 24. Except as noted herein and in the ~~trailer combination LCV operations~~ permit, all rules ~~and regulations~~ for the control and regulation of traffic on the toll road shall apply to the operation of ~~trailer combinations~~ LCVs on the toll road. (Indiana Finance Authority; 135 IAC 2-7-24; filed Dec 6, 1983, 1:52 p.m.: 7 IR 331; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2942)

SECTION 37. 135 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-8-1 Permit required

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 1. Michigan trains may operate on the toll road:

- (1) only under a Michigan train single trip permit issued by the department of ~~state revenue~~; and
- (2) subject to compliance by the permittee with ~~135 IAC 2-8-1~~ **this rule**.

(Indiana Finance Authority; 135 IAC 2-8-1; filed Dec 6, 1983, 1:52 p.m.: 7 IR 331; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2942)

SECTION 38. 135 IAC 2-8-3 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-8-3 Weight limits

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 3. (a) The maximum gross weight for a Michigan train shall be **one hundred twenty-seven thousand four hundred** (127,400) pounds. ~~maximum~~. Gross weight on any one (1) axle shall be **twenty-two thousand four hundred** (22,400) pounds. Axles measuring less than forty (40) inches between centers are considered one (1) axle.

(b) The maximum combined axle loads of any two (2) successive axles spaced more than forty (40) inches apart but less than nine (9) feet apart shall be **thirty-six thousand** (36,000) pounds. No such combination will be permitted to leave the toll road for travel upon the state highways of Indiana without a permit from the ~~Indiana department of highways~~. **state revenue**. The maximum gross weight and axle weights of vehicles leaving the toll road as singles to travel the public highways of Indiana must comply with Indiana state law. (Indiana Finance Authority; 135 IAC 2-8-3; filed Dec 6, 1983,

1:52 p.m.: 7 IR 331; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2942)

SECTION 39. 135 IAC 2-8-5 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-8-5 Permits

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-15-2

Sec. 5. Michigan train permits for specified one-way movements may be obtained from the ~~Indiana department of highways, toll road division~~. **state revenue**. The permits do not include the rate indicator ~~8 7~~ toll, which must be paid as provided in the rules. For information regarding Michigan train permits, contact the ~~Indiana department of Highways, Toll Road Division at 52551 Ash Road, P.O. Box 1, Granger, Indiana 46530-0001~~ **state revenue**. (Indiana Finance Authority; 135 IAC 2-8-5; filed Dec 6, 1983, 1:52 p.m.: 7 IR 332; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2942)

SECTION 40. 135 IAC 2-8-7 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-8-7 Emergency equipment

Authority: IC 8-15-2-17; IC 8-15-2-17.2

Affected: IC 8-2.1-24; IC 8-15-2; IC 9-19

Sec. 7. Each truck-tractor used in the Michigan train operation shall be equipped at a minimum with emergency equipment as required by the ~~Indiana Acts of 1955, Chapter 170, page 416; and acts amendatory thereof; and as further provided herein: (IC 9-8-6-1, et. seq.)~~ **IC 8-2.1-24**.

(1) A fire extinguisher which shall utilize an extinguishing agent which does not need protection from freezing, and which shall be properly filled and securely mounted in brackets. Such extinguisher shall have a rating of not less than 4BC as classified under the standards of Underwriters Laboratories, Inc., 333 Pfingston, Northbrook, Illinois.

(2) At least one (1) spare fuse or other overload protective device, if the devices used are not of a reset type, for each kind and size used.

(3) One (1) set of tire chains for at least one (1) axle of the truck-tractor and; in the event the truck-tractor is required by this section to have more than one (1) drive axle, chains shall be provided for the second axle, unless the truck-tractor is so equipped that the axle equipped with chains will be positively driven when the second axle is without chains. Such chains shall be carried whenever the combination of vehicles is operating during an accumulation of snow or ice on the pavement of the Indiana toll road. Stalling because of an accumulation of snow or ice and failure to be so equipped with the required chains shall subject permittee to revocation of its permit to operate Michigan train combinations on the toll road.

(4) All wheels of the combination of vehicles shall be equipped with tires with not less than $\frac{3}{32}$ ($\frac{7}{16}$) inch tread groove or sipe depth when measured as near to the center of the tread as possible; except the steering tires which should have not less than $\frac{4}{32}$ ($\frac{1}{8}$) inch tread groove. Tread wear shall be reasonably uniform over the whole circumference of the tire.

(5) Warning devices for display in cases of disabled vehicles upon the toll road as required by Indiana Acts of 1955, Chapter 170, page 416, and acts amendatory thereof. (IC 9-8-6-1; et seq.)

(Indiana Finance Authority; 135 IAC 2-8-7; filed Dec 6, 1983, 1:52 p.m.: 7 IR 332; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2942)

SECTION 41. 135 IAC 2-8-11 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-8-11 Lights and reflectors

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-2.1-24; IC 8-15-2; IC 9-19-6

Sec. 11. Each unit in a Michigan train combination shall be equipped at a minimum with:

- (1) electric lights; and
- (2) reflectors;

mounted on the vehicle as required by ~~Indiana Acts of 1955, Chapter 170, page 416, and acts amendatory thereof. (IC 9-8-6-1; et seq.)~~ **IC 8-2.1-24 and IC 9-19-6.** (Indiana Finance Authority; 135 IAC 2-8-11; filed Dec 6, 1983, 1:52 p.m.: 7 IR 333; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2943)

SECTION 42. 135 IAC 2-10-2 IS AMENDED TO READ AS FOLLOWS:

135 IAC 2-10-2 Severability provision

Authority: IC 8-15-2-17; IC 8-15-2-17.2
Affected: IC 8-15-2

Sec. 2. If any rule or application of any rule is held invalid or void, the invalidity or voidness affects the remainder of the ~~authority~~ **authority's** rules only to the extent that the remainder is:

- (1) so essentially and inseparately connected with, and so dependent on, the invalid or void provision or application that it cannot be presumed that the remainder would have been issued without the invalid or void provision or application; or
- (2) incomplete and incapable of being executed without the invalid or void provision or application.

(Indiana Finance Authority; 135 IAC 2-10-2; filed Dec 6, 1983, 1:52 p.m.: 7 IR 334; readopted filed Nov 6, 2002, 10:33 a.m.: 26 IR 882; filed May 4, 2006, 12:55 p.m.: 29 IR 2943)

SECTION 43. THE FOLLOWING ARE REPEALED: 135 IAC 2-5-2; 135 IAC 2-10-1.

LSA Document #05-257(F)

Notice of Intent Published: October 1, 2005; 29 IR 55

Proposed Rule Published: November 1, 2005; 29 IR 594 and February 1, 2006; 29 IR 1678

Hearings Held: March 23, 2006 and March 24, 2006

Approved by Attorney General: May 3, 2006

Approved by Governor: May 4, 2006

Filed with Secretary of State: May 4, 2006, 12:55 p.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Mr. Brad L. Moore, One North Capitol, Suite 900, Indianapolis, Indiana 46204, (317) 233-6796, bmoore@ifa.in.gov

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-262(F)

DIGEST

Adds 312 IAC 9-3-2.5 to establish a special youth deer hunting season the weekend before the start of the early archery season (October 1) to allow any youth 15 years of age or younger, accompanied by an adult of at least 18 years of age, to be able to take one antlerless deer during this special youth deer season and to require the youth hunter to possess a valid youth hunting license, to have taken a hunter education course, and to comply with all other deer hunting regulations. Effective 30 days after filing with the Secretary of State.

312 IAC 9-3-2.5

SECTION 1. 312 IAC 9-3-2.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-3-2.5 Hunting deer during special youth season

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1; IC 14-22-12-7

Sec. 2.5. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual youth who is either of the following:

- (1) Issued a license to hunt deer under IC 14-22-12-1(a)(24).

- (2) Hunting deer under IC 14-22-11-1 or IC 14-22-12-7.

As used in this section, "youth" means an individual who is fifteen (15) years of age or younger by the date of the hunt.

(b) The season for hunting deer under this section is two (2) consecutive days beginning on the Saturday immediately before October 1 or as approved annually by the director.

(c) The seasonal limit for hunting deer under this section is one (1) antlerless deer.

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- (d) A youth who hunts a deer under this section must be:
- (1) fifteen (15) years of age or younger; and
 - (2) accompanied by an adult of at least eighteen (18) years of age.

An adult accompanying the youth hunter must not possess a firearm, bow and arrow, or crossbow while in the field and shall not be required to possess a deer hunting license.

(e) A youth hunter must not hunt deer except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(f) A youth hunter must not hunt deer unless wearing hunter orange. An adult accompanying the youth hunter must wear hunter orange while in the field.

(g) A youth must not hunt a deer under this section with any type of equipment except a firearm or bow and arrow, including a crossbow. A youth must not possess more than one (1) type of equipment to take a deer while in the field.

(h) The following requirements apply to the use of firearms under this section:

(1) A shotgun:

(A) must have a gauge 10, 12, 16, 20, or .410 bore loaded with a single projectile; and

(B) may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.

(2) A muzzle loading gun must be .44 caliber or larger, loaded with a bullet at least .357 inch or larger. A muzzle loading handgun must be single shot, .50 caliber or larger, loaded with bullets at least .44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzle loading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzle loading gun must be capable of being loaded only from the muzzle, including both powder and bullet. A muzzle loading gun may be possessed in the field outside lawful shooting hours only if:

(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or

(B) for flintlock firearms, the pan is not primed.

(3) Over-and-under combination rifle-shotguns are prohibited.

(i) The following requirements apply to the use of archery equipment under this section:

(1) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.

(2) Arrows must be equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) A long bow or compound bow may be possessed in the

field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(6) No portion of the bow's riser (handle) or any:

(A) track;

(B) trough;

(C) channel;

(D) arrow rest; or

(E) other device;

that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

(j) The following requirements apply to the use of a crossbow under this section:

(1) No youth shall use a crossbow:

(A) of less than one hundred twenty-five (125) pounds pull; and

(B) that does not have a mechanical safety.

(2) A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(k) As used in this section, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device. (*Natural Resources Commission; 312 IAC 9-3-2.5; filed May 9, 2006, 2:25 p.m.: 29 IR 2943*)

LSA Document #05-262(F)

Notice of Intent Published: October 1, 2005; 29 IR 55

Proposed Rule Published: January 1, 2006; 29 IR 1249

Hearing Held: February 2, 2006

Approved by Attorney General: April 28, 2006

Approved by Governor: May 9, 2006

Filed with Secretary of State: May 9, 2006, 2:25 p.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Gregg McCollam, Assistant Director, Division of Fish and Wildlife, Department of Natural Resources, 402 W. Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-9382, gmccollam@dnr.in.gov

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-263(F)

DIGEST

Amends 312 IAC 5-7-5, which establishes special watercraft speed zones on Ohio River embayments in Switzerland County, by making the entirety of Turtle Creek Bay an idle speed zone. Effective 30 days after filing with the Secretary of State.

312 IAC 5-7-5

SECTION 1. 312 IAC 5-7-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-7-5 Ohio River embayments and tributaries; Bryant Creek and Turtle Creek in Switzerland County; watercraft speed zones

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8
Affected: IC 14

Sec. 5. A person must not operate a watercraft in excess of idle speed for the following embayments and tributaries of the Ohio River located in Switzerland County:

- (1) On Bryant Creek within two hundred (200) feet of a boat launching ramp located in the northeast quarter of the northwest quarter of the northwest quarter of section 34, township 2 north, range 1 west as designated by buoys placed by the department.
- (2) On Turtle Creek for one thousand one hundred fifty ~~(1,150)~~ feet Bay upstream from the confluence of the Ohio River and Turtle Creek.

(Natural Resources Commission; 312 IAC 5-7-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002; filed May 9, 2006, 2:25 p.m.: 29 IR 2945)

LSA Document #05-263(F)

Notice of Intent Published: October 1, 2005; 29 IR 56

Proposed Rule Published: December 1, 2005; 29 IR 839

Hearing Held: January 4, 2006

Approved by Attorney General: April 28, 2006

Approved by Governor: May 9, 2006

Filed with Secretary of State: May 9, 2006, 2:25 p.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Stephen L. Lucas, Division of Hearings, Natural Resources Commission, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, IN 46204, (317) 233-3322, slucas@nrc.in.gov

small systems. Effective 30 days after filing with the Secretary of State.

HISTORY

First Notice of Comment Period: May 1, 2004, Indiana Register (27 IR 2591).

Second Notice of Comment Period: January 1, 2005, Indiana Register (28 IR 1343).

Notice of First Hearing: January 1, 2005, Indiana Register (28 IR 1343).

Date of First Hearing: March 9, 2005.

Proposed Rule and Notice of Second Hearing: April 1, 2005, Indiana Register (28 IR 2162).

Third Comment Period: April 1, 2005, Indiana Register (28 IR 2162).

Date of Second Hearing prior to Recall: June 8, 2005.

Date of Recall: October 1, 2005 (29 IR 31).

Date of Second Hearing: January 11, 2006.

Finally Adopted: January 11, 2006.

327 IAC 8-1-1	327 IAC 8-3.4-1
327 IAC 8-1-2	327 IAC 8-3.4-2
327 IAC 8-1-3	327 IAC 8-3.4-3
327 IAC 8-1-4	327 IAC 8-3.4-4
327 IAC 8-3-1	327 IAC 8-3.4-8
327 IAC 8-3-1.1	327 IAC 8-3.4-9
327 IAC 8-3-2	327 IAC 8-3.4-9.1
327 IAC 8-3-2.1	327 IAC 8-3.4-12
327 IAC 8-3-3	327 IAC 8-3.4-13
327 IAC 8-3-8	327 IAC 8-3.4-14
327 IAC 8-3.1-1	327 IAC 8-3.4-16
327 IAC 8-3.1-2	327 IAC 8-3.4-17
327 IAC 8-3.2-1	327 IAC 8-3.4-23
327 IAC 8-3.2-2	327 IAC 8-3.4-24
327 IAC 8-3.2-4	327 IAC 8-3.4-25
327 IAC 8-3.2-8	327 IAC 8-3.4-27
327 IAC 8-3.2-11	327 IAC 8-3.5-1
327 IAC 8-3.2-17	327 IAC 8-3.5-2
327 IAC 8-3.2-18	327 IAC 8-3.5-5
327 IAC 8-3.2-20	327 IAC 8-4-1
327 IAC 8-3.3-4	327 IAC 8-4-2
327 IAC 8-3.3-5	327 IAC 8-6-1
327 IAC 8-3.3-6	

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #04-106(F)

DIGEST

Amends 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 and adds 327 IAC 8-3-2.1, 327 IAC 8-3.4-9.1, and 327 IAC 8-4-2 concerning simplification of the construction permitting requirements for small systems, which are designed to reduce the regulatory burden on those same

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2945)

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, **and** 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 demonstrated 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2946*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2947*)

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,~~ **15, 2004**, National Sanitation Foundation (NSF) International, 3475 Plymouth Road, Ann Arbor, Michigan, 48113-0140 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(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, System Components-Health Effects", November 15, 2004, National Sanitation Foundation (NSF) International, 3475 Plymouth Road, Ann Arbor, Michigan 48113-0140~~ or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

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.

(*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; errata filed Feb 6, 2006, 11:15 a.m.: 29*

IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2947)

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 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.

~~(5)~~ (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 nontransient noncommunity public water system" means a public water system that:

(A) meets the definition of a nontransient

noncommunity public water system under 327 IAC 8-2-1;

(B) serves one hundred (100) or fewer individuals; and
(C) does not utilize surface water or ground water under the influence of surface water as its water source.

(11) "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.

~~(12)~~ (12) "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.

~~(13)~~ (13) "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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2948)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2948)

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:

- (1) the plant operation;
- (2) its hydraulic design or waste products; or
- (3) 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2949)

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 and small nontransient 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 25-31-1-19

Sec. 2.1. (a) Small transient and small nontransient 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 327 IAC 8-4-2.

(b) For construction at small transient and small nontransient 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 25-31-1-19(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 and small nontransient 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2950)*

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 and small nontransient 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:

- (1) existing water supply facilities or water treatment works; or regarding
 - (2) 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2950*)

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 and Provincial 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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2951*)

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) ~~(b)~~ **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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2951*)

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: 327 IAC 8-3.3-4: Additional public water Supply and Distribution Systems; Schools and Related system quantity requirement standards for school buildings and related facilities.~~
- (6) ~~327 IAC 8-8: 327 IAC 8-3.3-5: Additional public water Supply and Distribution Systems; system quantity requirement standards for mobile home parks.~~
- (7) ~~327 IAC 8-9: 327 IAC 8-3.3-6: Additional public water Supply and Distribution Systems; 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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

**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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2951*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2952)

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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(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 Quality, Indiana Government Center-North, 100 North Senate

Avenue, Room N1255, Indianapolis, Indiana 46204.

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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2953)~~

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2953)*

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) ~~C104/A21.4-95~~ **C104/A21.4-03** American National Standard for Cement-Mortar Lining for Ductile-Iron Pipe and Fittings for Water.

(B) ~~C105/A21.5-93~~ **C105/A21.5-99** American National Standard for Polyethylene Encasement for Ductile-Iron Pipe Systems.

(C) ~~C110/A21.10-93~~ **C110/A21.10-03** 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) ~~C111/A21.50-90~~ **C111/A21.11-00** American National Standard for Rubber-Gasket Joints for Ductile-Iron Pressure Pipe and Fittings.
- (E) ~~C115/A21.15-94~~ **C115/A21.15-99** American National Standard for Flanged Ductile-Iron Pipe **with Ductile-Iron** or Gray-Iron Threaded Flanges.
- (F) ~~C150/A21.50-91~~ **American National Standard for the C150/A21.50-02** Thickness Design of Ductile-Iron Pipe.
- (G) ~~C151/A21.51-91~~ **C151/A21.51-02** American National Standard for Ductile-Iron Pipe, Centrifugally Cast, for Water. **or Other Liquids.**
- (H) ~~C153/A-21.53-94~~ **C153/A21.53-00** 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) ~~C200-91~~ **C200-97** AWWA Standard for Steel Water Pipe-6 In. (150 mm) and Larger.
- (B) ~~C203-91~~ **C203-02** AWWA Standard for Coal-Tar Protective Coatings and Linings for Steel Water Pipelines-Enamel and Tape-Hot Applied.
- (C) ~~C205-89~~ **C205-00** AWWA Standard for Cement-Mortar Protective Lining and Coating for Steel Water Pipe-4 In. **(100 mm)** and Larger-Shop Applied.
- (D) ~~C206-91~~ **C206-97** AWWA Standard for Field Welding of Steel Water Pipe.
- (E) ~~C207-94~~ **C207-01** AWWA Standard for Steel Pipe Flanges for Waterworks Service-Sizes 4 In. through 144 In. (100 mm through 3,600 mm).
- (F) ~~C208-83(R89)~~ **C208-01** AWWA Standard for Dimensions for Fabricated Steel Water Pipe Fittings.
- (G) ~~C209-90~~ **C209-00** AWWA Standard for Cold-Applied Tape Coatings for the Exterior of Special Sections, Connections, and Fittings for Steel Water Pipelines.
- (H) ~~C210-92~~ **AWWA Standard for C210-03** Liquid-Epoxy Coating Systems for the Interior and Exterior of Steel Water Pipelines.
- (I) ~~C213-91~~ **C213-01** AWWA Standard for Fusion-Bonded Epoxy Coating for the Interior and Exterior of Steel Water Pipelines.
- (J) ~~C214-89~~ **C214-00** AWWA Standard for Tape Coating Systems for the Exterior of Steel Water Pipelines. **(includes addendum C214a-91).**
- (K) ~~C215-94~~ **AWWA Standard for C215-04** Extruded Polyolefin Coatings for the Exterior of Steel Water Pipelines.
- (L) ~~C216-94~~ **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) ~~C217-90~~ **AWWA Standard for C217-04** Cold-Applied Petrolatum ~~Tape~~ and Petroleum Wax Tape Coatings for the Exterior of ~~Special Sections,~~ Connections and Fittings for ~~Buried~~ Steel Water Pipelines.
- (N) ~~C218-91~~ **C218-02** AWWA Standard for Coating the Exterior of Aboveground Steel Water Pipelines and Fittings.
- (O) ~~C219-91~~ **C219-01** AWWA Standard for Bolted, Sleeve-Type Couplings for Plain-End Pipe.
- (P) ~~C220-92~~ **C220-98** AWWA Standard for Stainless-Steel Pipe, 4 In. (100 mm) and Larger.
- (3) For concrete pipe, the following standards apply:
- (A) ~~C300-89~~ **AWWA Standard for C300-04** Reinforced Concrete Pressure Pipe, Steel-Cylinder Type. **for Water and Other Liquids (includes addendum C300a-93).**
- (B) ~~C301-92~~ **C301-99** AWWA Standard for Prestressed Concrete Pressure Pipe, Steel-Cylinder Type. **for Water and Other Liquids.**
- (C) ~~C302-95~~ **AWWA Standard for C302-04** Reinforced Concrete Pressure Pipe, Noncylinder Type.
- (D) ~~C303-95~~ **AWWA Standard for C303-02** Concrete Pressure Pipe, Bar-Wrapped, Steel-Cylinder Type.
- (E) ~~C304-92~~ **C304-99** AWWA Standard for Design of Prestressed Concrete Cylinder Pipe.
- (4) For asbestos-cement pipe, the following standards apply:
- (A) ~~C400-93~~ **AWWA Standard for C400-03** Asbestos-Cement Pressure Pipe, 4 In. through 16 In. (100 mm through 400 mm), for Water Distribution Systems.
- (B) ~~C401-93~~ **AWWA Standard for C401-03** The Selection of Asbestos-Cement Pressure Pipe, 4 In. through 16 In. (100 mm through 400 mm), for Water Distribution Systems.
- (C) ~~C402-89~~ **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 Service.**
- (D) ~~C403-89~~ **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), **for Water Supply Service.**
- (5) For valves and hydrants, the following standards apply:
- (A) ~~C500-93~~ **AWWA Standard for C500-02** Metal-Seated Gate Valves for Water Supply Service. **(includes addendum C500a-95).**
- ~~(B) C501-92 AWWA Standard for Cast-Iron Sluice Gates.~~
- ~~(C) C502-94 AWWA Standard for Dry-Barrel Fire Hydrants (includes addendum C502a-95).~~
- ~~(D) C503-88~~ (C) **C503-97** AWWA Standard for Wet-Barrel Fire Hydrants.
- ~~(E) C504-94~~ (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. **(50 mm through 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 AWWA Standard for (J) C512-04~~ Air Release, Air/Vacuum, and Combination Air Valves for Waterworks Service.

~~(L) C540-93 AWWA Standard for (K) C540-02~~ Power-Actuating Devices for Valves and ~~Slide~~ **Slide** Gates for **Waterworks Service**.

~~(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 **and Fabricated Fittings**, 4 In. through 12 In. **(100 mm through 300 mm)**, for Water Distribution. ~~(includes addendum C900a-92).~~

(B) ~~C901-88 C901-96~~ AWWA Standard for Polyethylene (PE) Pressure Pipe and Tubing, ½ In. **(13 mm)** through 3 In. **(76 mm)**, for Water Service.

(C) ~~C905-88 C905-97~~ AWWA Standard for Polyvinyl Chloride (PVC) ~~Water Transmission Pressure Pipe Nominal Diameters and Fabricated Fittings~~, 14 In. through 36 In. **(350 mm through 1,200 mm)**, for **Water Transmission and Distribution**.

(D) ~~C906-90 C906-99~~ AWWA Standard for Polyethylene (PE) Pressure Pipe and Fittings, 4 In. **(100 mm)** through 63 In. **(1,575 mm)**, 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 Polyethylene (PE) Plastic Pipe (SDR-PR) (SIDR-PN) Based on Controlled Inside Diameter**.

(G) ASTM ~~D2241-96A~~ **Specifications D2241-04b Standard Specification for Polyvinyl Chloride (PVC) Plastic Pressure-Rated Pipe (SDR-PR) (SDR Series)**.

(H) ASTM ~~D3350-96~~ **Specifications D3350-04 Standard Specification 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2953*)

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) **pounds per square inch** (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) psi 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2955*)

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 ~~€600-93~~, ~~€602-89~~, ~~€603-90~~, 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 ~~€606-87~~: AWWA Standard for Underground Installation of Polyvinyl Chloride (PVC) Pressure Pipe and Fittings for Water.

(5) C606-04 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 ~~€600-93~~, **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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2956*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2957*)

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) An~~ **(c) Continued operation of the** approved alternative to a technical standard shall be in effect for one (1) year from the commissioner's approval of that **require no renewal if the alternative technical standard is operated in the manner approved by the commissioner.**

~~(c) (d)~~ **(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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2957*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2958)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2958*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2959*)

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:
 - (A) exterior of a well casing; and the
 - (B) 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 grout-

ing or plugging bentonite ~~which that~~ contains high concentrations of solids. The term does not include sodium bentonite products ~~which that~~:

(A) contain low solid concentration; or ~~which~~

(B) 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:~~

~~(A) serves at least fifteen (15) service connections used by year-round residents; or~~

~~(B) 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 (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:~~

- (i) left the treatment facilities; and
- (ii) entered the water distribution system.
- (B) For public water systems that do not utilize water treatment facilities, the point at which the water has:**
 - (i) left the supply facilities; and
 - (ii) 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:
 - (i) treatment;
 - (ii) storage;
 - (iii) transmission; and
 - (iv) distribution;
- ~~(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.**
- ~~(14)~~ **(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.
- ~~(15)~~ **(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.
- ~~(16)~~ **(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~~ **persons** at least six (6) months per year.
- ~~(17)~~ **(18)** “Normal operating pressure” means the water pressure maintained in a system regardless of public service load in the absence of extenuating circumstances.
- ~~(18)~~ **(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:**

- (A) will permit water to pass through the wall of the well casing or extension thereof; and
- (B) 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.
- ~~(19)~~ **(21)** “Primary pump” means a pump used to deliver drinking water to a **water** distribution system.
- ~~(20)~~ **(22)** “Production well” or “well” means a well that provides water for human consumption within the applicability of section 2 of this rule.
- ~~(21)~~ **(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.
- ~~(22)~~ **(24)** “Pumping test” means a test that is conducted to determine well performance or aquifer characteristics.
- ~~(23)~~ **(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.
- ~~(24)~~ **(26)** “Regulatory flood” has the meaning ~~as~~ set forth in ~~310 IAC 6-1-3; 312 IAC 10-2-35.~~
- (27) “Sanitary setback” means an isolation area.**
- ~~(25)~~ **(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:
 - (A) permissible operating pressure; ~~of the pipe and to the~~
 - (B) 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 nontransient noncommunity public water system” means a public water system that:**
 - (A) **meets the definition of a nontransient noncommunity public water system under 327 IAC 8-2-1;**
 - (B) **serves one hundred (100) or fewer individuals; and**
 - (C) **does not utilize surface water or ground water under the influence of surface water as its water source.**
- (30) “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.**
- ~~(26)~~ **(31)** “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.

(27) (32) "Static water level" means the level of water (including seasonal fluctuations) in the production well that is not influenced by pumping.

(28) (33) "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) (34) "Unconsolidated formations" means geologic materials overlying bedrock, such as sand, gravel, and clay.

(30) (35) "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.

(36) "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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2959)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2961)

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 25-31-1-19

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 or small nontransient 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 25-31-1-19(a), a well design on 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 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2961)

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 25-31-1-19

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 or small nontransient noncommunity public water system:**

(A) a dated signature and seal of a professional engineer; or

(B) a dated signature and license number of a licensed:

(i) well driller; or

(ii) professional geologist.

Where a professional engineer is required under IC 25-31-1-19(a), each sheet of the plans at a small transient or small nontransient 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2961)

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 publications:~~

~~(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;

(e) (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.

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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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2962)

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	Well Subjected to Automatic Disinfection*	Favorable Hydrogeologic Conditions are Present**
	Sanitary Setback Radius		
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:**

(A) 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

(B) 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 nontransient noncommunity public water system or 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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2963*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2965*)

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** 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2965*)

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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2965)

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~~ **conform with** 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 American National Standards Institute (ANSI), The American Society of Mechanical Engineers (ASME), National Sanitation Foundation (NSF International), or Underwriter's Laboratories, Inc. (UL). The applicant must submit information showing that the tank used is properly certified.

~~(c)~~ **(d)** Hydropneumatic tank storage of water shall not be designated for fire protection purposes.

~~(d)~~ **(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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2966)

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:
 - (i) stored or staged petroleum products; or
 - (ii) 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 Specification 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 Specification 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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2966*)

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:

(A) 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; and

(2) ~~A pitless unit shall be~~ (B) installed on the well casing using one (1) of the following types of joints:

(A) (i) Welded, ~~with either mechanical or chemical weld~~.

~~(B)~~ (ii) Flanged.

~~(C)~~ (iii) Threaded.

~~(3)~~ (2) The discharge connection of a pitless unit shall be pressurized at all times.

~~(4)~~ (3) A pitless unit shall:

(A) be designed so that the pump can be removed for servicing and maintenance without disturbing the underground discharge piping; **and**

~~(5) A pitless unit shall~~ (B) have an inside diameter greater than or equal to the casing diameter if the casing diameter is less than twelve (12) inches.

~~(6)~~ (4) At least one (1) check valve shall be installed inside the well casing if a submersible pump is used.

~~(7)~~ (5) A compression joint shall not be used for the installation of a pitless unit.

~~(8)~~ (6) A buried suction line is not permitted.

~~(9)~~ (7) 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2967)

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 Quality, Indiana

Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

****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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2968)**

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)~~ 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)~~ 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)**.

The following table demonstrates the amount of chemical compound needed for chlorination of wells:

Table 24-1

Amount of Chemical Compound Needed for Chlorination of Wells

Well-Hole or Well-Casing Diameter (in.)	Volume per 100 Feet of Water Depth (gal)	Calcium Hypochlorite* (65 percent 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

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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 U.S. 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2969)

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.**

(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 ~~310 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2970)*

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.

~~(b)~~ **(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.

~~(c)~~ **(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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2970*)

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; t 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2971*)

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

Final Rules

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 AWWA Standard C700-90: C700-02 Cold-Water Meters - Displacement Type, Bronze Main Case.~~
- (2) ~~The American Water Works Association AWWA Standard C701-88: C701-02 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 Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

Notwithstanding language to the contrary in the primarily incorporated documents, the 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. (*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; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2971*)

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~~ **an** 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 ~~C700-90 C700-02~~, AWWA ~~C701-88 C701-02~~, AWWA ~~C702-92 C702-01~~, or AWWA ~~C703-96 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2972*)

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:

- (1) city;
- (2) town;
- (3) county;
- (4) public institution;
- (5) firm;
- (6) corporation; ~~or~~
- (7) officer or employee thereof; or

(8) 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 or small nontransient noncommunity public water systems that 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:

- (1) location;
- (2) plans;
- (3) construction; or
- (4) operation;

of ~~any such the~~ system or works may be made without first submitting to the commissioner a detailed statement of ~~such the~~ proposed changes and receiving its approval.

(c) ~~Said The:~~

- (1) plans;
- (2) specifications;
- (3) reports; and
- (4) other information;

shall be submitted ~~of such in 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 or small nontransient 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2973*)

SECTION 44. 327 IAC 8-4-2 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-4-2 Construction requirements at noncommunity public water systems serving 250 or fewer individuals

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 noncommunity public water system serving two hundred fifty (250) or fewer individuals 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, 327 IAC 8-2.5, or 327 IAC 8-2.6, are not required to obtain a permit:

- (1) Ion exchange softeners.
- (2) Ultraviolet treatment.
- (3) Cartridge filters.
- (4) Reverse osmosis.
- (5) Other items similar in function or purpose to those listed in subdivisions (1) through (4), determined by the commissioner to not require a permit. The commissioner may make such a determination if the items are installed to alter characteristics or properties of water not regulated under 327 IAC 8-2, 327 IAC 8-2.5, or 327 IAC 8-2.6, including hardness or other aesthetic properties.

(c) A noncommunity water system serving two hundred fifty (250) or fewer individuals 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 noncommunity water system serving two hundred fifty (250) or fewer individuals 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2974*)

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:

(1) 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

(2) 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; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2974*)

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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-112(F)

DIGEST

Adds 405 IAC 1-14.5-27 to reduce Medicaid rate increases for HIV nursing facilities. Amends 405 IAC 1-14.6-2 to add a definition for "nursing home report card score". Amends 405

IAC 1-14.6-5 to describe the method for calculating the nursing facility quality assessment and Medicaid rate add-on for new providers. Amends 405 IAC 1-14.6-7 to increase Medicaid reimbursement based on the nursing home report card score and to increase reimbursement to certain nursing facilities that provide specialized care to residents with Alzheimer's disease or dementia. Amends 405 IAC 1-14.6-9 to change the profit add-on calculation. Amends 405 IAC 1-14.6-18 to change the limitation applied to owner, related party, and management compensation. Adds 405 IAC 1-14.6-23 to reduce Medicaid rate increases for nursing facilities. Adds 405 IAC 1-14.6-24 to establish a nursing facility quality assessment as required by P.L.186-2005. Adds 405 IAC 1-14.6-25 to allow a nursing facility to apply for additional Medicaid reimbursement if the facility is closed or converted to another use. *NOTE: Under IC 4-22-2-29(a)(2), LSA Document #05-114, printed at 29 IR 1269, was consolidated with this document. SECTION 8 of this document is jointly promulgated with the Department of State Revenue. See LSA Document #05-359, printed at 29 IR 1596. Effective 30 days after filing with the Secretary of State.*

405 IAC 1-14.5-27	405 IAC 1-14.6-18
405 IAC 1-14.6-2	405 IAC 1-14.6-23
405 IAC 1-14.6-5	405 IAC 1-14.6-24
405 IAC 1-14.6-7	405 IAC 1-14.6-25
405 IAC 1-14.6-9	

SECTION 1. 405 IAC 1-14.5-27 IS ADDED TO READ AS FOLLOWS:

405 IAC 1-14.5-27 Limitation to Medicaid rate increases for HIV nursing facilities

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 27. Notwithstanding all other provisions of this rule, for the period January 1, 2006, through June 30, 2007, HIV nursing facility rates that have been calculated under this rule shall be reduced by five dollars (\$5) per resident per day. (Office of the Secretary of Family and Social Services; 405 IAC 1-14.5-27; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2975)

SECTION 2. 405 IAC 1-14.6-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-2 Definitions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 2. (a) As used in this rule, "administrative component" means the portion of the Medicaid rate that shall reimburse providers for allowable administrative services and supplies, including prorated employee benefits based on salaries and wages. Administrative services and supplies include the following:

(1) Administrator and co-administrators, owners' compensa-

tion (including director's fees) for patient-related services.

(2) Services and supplies of a home office that are:

(A) allowable and patient-related; and ~~are~~

(B) appropriately allocated to the nursing facility.

(3) Office and clerical staff.

(4) Legal and accounting fees.

(5) Advertising.

(6) Travel.

(7) Telephone.

(8) License dues and subscriptions.

(9) Office supplies.

(10) Working capital interest.

(11) State gross receipts taxes.

(12) Utilization review costs.

(13) Liability insurance.

(14) Management and other consultant fees.

(15) Qualified mental retardation professional (QMRP).

(b) As used in this rule, "allowable per patient day cost" means a ratio between allowable variable cost and patient days using each provider's actual occupancy from the most recently completed desk reviewed annual financial report, plus a ratio between allowable fixed costs and patient days using the greater of:

(1) the minimum occupancy requirements as contained in this rule; or

(2) each provider's actual occupancy rate from the most recently completed desk reviewed annual financial report.

(c) As used in this rule, "annual financial report" refers to a presentation of financial data, including appropriate supplemental data and accompanying notes, derived from accounting records and intended to communicate the provider's economic resources or obligations at a point in time, or changes therein for a period of time in compliance with the reporting requirements of this rule.

(d) As used in this rule, "average allowable cost of the median patient day" means the allowable per patient day cost (including any applicable inflation adjustment) of the median patient day from all providers when ranked in numerical order based on average allowable cost. The average allowable variable cost (including any applicable inflation adjustment) shall be computed on a statewide basis using each provider's actual occupancy from the most recently completed desk reviewed annual financial report. The average allowable fixed costs (including any applicable inflation adjustment) shall be computed on a statewide basis using an occupancy rate equal to the greater of:

(1) the minimum occupancy requirements as contained in this rule; or

(2) each provider's actual occupancy rate from the most recently completed desk reviewed annual financial report.

The average allowable cost of the median patient day shall be maintained by the office with revisions made four (4) times per year effective January 1, April 1, July 1, and October 1.

(e) As used in this rule, “average historical cost of property of the median bed” means the allowable patient-related property per bed for facilities that are not acquired through an operating lease arrangement, when ranked in numerical order based on the allowable patient-related historical property cost per bed that shall be updated each calendar quarter. Property shall be considered allowable if it satisfies the conditions of section 14(a) of this rule.

(f) As used in this rule, “calendar quarter” means a three (3) month period beginning January 1, April 1, July 1, or October 1.

(g) As used in this rule, “capital component” means the portion of the Medicaid rate that shall reimburse providers for the use of allowable capital-related items. Such capital-related items include the following:

- (1) The fair rental value allowance.
- (2) Property taxes.
- (3) Property insurance.

(h) As used in this rule, “case mix index” or “CMI” means a numerical value score that describes the relative resource use for each resident within the groups under the resource utilization group (RUG-III) classification system prescribed by the office based on an assessment of each resident. The facility CMI shall be based on the resident CMI, calculated on a facility-average, time-weighted basis for the following:

- (1) Medicaid residents.
- (2) All residents.

(i) As used in this rule, “cost center” means a cost category delineated by cost reporting forms prescribed by the office.

(j) As used in this rule, “children’s nursing facility” means a nursing facility that has:

- (1) twenty-five percent (25%) or more of its residents who are under the chronological age of twenty-one (21) years; and ~~has~~
- (2) received written approval from the office to be designated as a children’s nursing facility.

(k) As used in this rule, “cost center” means a cost category delineated by cost reporting forms prescribed by the office.

(l) As used in this rule, “delinquent MDS resident assessment” means an assessment that is greater than one hundred thirteen (113) days old, as measured by the R2b date field on the MDS. This determination is made on the fifteenth day of the second month following the end of a calendar quarter.

(m) As used in this rule, “desk review” means a review and application of these regulations to a provider submitted annual financial report including accompanying notes and supplemental information.

(n) As used in this rule, “direct care component” means the

portion of the Medicaid rate that shall reimburse providers for allowable direct patient care services and supplies, including prorated employee benefits based on salaries and wages. Direct care services and supplies include all of the following:

- (1) Nursing and nursing aide services.
- (2) Nurse consulting services.
- (3) Pharmacy consultants.
- (4) Medical director services.
- (5) Nurse aide training.
- (6) Medical supplies.
- (7) Oxygen. ~~and~~
- (8) Medical records costs.

(o) As used in this rule, “fair rental value allowance” means a methodology for reimbursing nursing facilities for the use of allowable facilities and equipment, based on establishing a rental valuation on a per bed basis of such facilities and equipment, and a rental rate.

(p) As used in this rule, “field audit” means a formal official verification and methodical examination and review, including the final written report of the examination of original books of accounts and resident assessment data and its supporting documentation by auditors.

(q) As used in this rule, “fixed costs” means the portion of each rate component that shall be subjected to the minimum occupancy requirements as contained in this rule. The following percentages shall be multiplied by total allowable costs to determine allowable fixed costs for each rate component:

Rate Component	Fixed Cost Percentage
Direct Care	25%
Indirect Care	37%
Administrative	84%
Capital	100%

(r) As used in this rule, “forms prescribed by the office” means either of the following:

- (1) Cost reporting forms provided by the office. ~~or~~
- (2) Substitute forms that have received prior written approval by the office.

(s) As used in this rule, “general line personnel” means management personnel above the department head level who perform a policymaking or supervisory function impacting directly on the operation of the facility.

(t) As used in this rule, “generally accepted accounting principles” or “GAAP” means those accounting principles as established by the American Institute of Certified Public Accountants.

(u) As used in this rule, “incomplete MDS resident assessment” means an assessment that is not printed by the nursing facility provider upon request by the office or its contractor.

(v) As used in this rule, “indirect care component” means the

portion of the Medicaid rate that shall reimburse providers for allowable indirect patient care services and supplies, including prorated employee benefits based on salaries and wages. Indirect care services and supplies include the following:

- (1) ~~Allowable~~ Dietary services and supplies.
- (2) Raw food.
- (3) Patient laundry services and supplies.
- (4) Patient housekeeping services and supplies.
- (5) Plant operations services and supplies.
- (6) Utilities.
- (7) Social services.
- (8) Activities supplies and services.
- (9) Recreational supplies and services.
- (10) Repairs and maintenance.

(v) As used in this rule, “medical and nonmedical supplies and equipment” includes those items generally required to assure adequate medical care and personal hygiene of patients.

~~(v)~~ **(w)** As used in this rule, “minimum data set” or “MDS” means a core set of screening and assessment elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in the Medicaid program. The items in the MDS standardize communication about resident problems, strengths, and conditions within facilities, between facilities, and between facilities and outside agencies. Version 2.0 (1/30/98) is the most current form to the minimum data set (MDS 2.0). The Indiana system will employ the MDS 2.0 or subsequent revisions as approved by the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration.

~~(w)~~ As used in this rule, “medical and nonmedical supplies and equipment” include those items generally required to assure adequate medical care and personal hygiene of patients.

(x) As used in this rule, “normalized allowable cost” means total allowable direct patient care costs for each facility divided by that facility’s average ~~case mix index~~ CMI for all residents.

(y) As used in this rule, “nursing home report card score” means a numerical score developed and published by the Indiana state department of health (ISDH) that quantifies each facility’s key survey results.

~~(y)~~ **(z)** As used in this rule, “office” means the office of Medicaid policy and planning.

~~(z)~~ **(aa)** As used in this rule, “ordinary patient-related costs” means costs of allowable services and supplies that are necessary in delivery of patient care by similar providers within the state.

~~(aa)~~ **(bb)** As used in this rule, “patient/recipient care” means

those Medicaid program services delivered to a Medicaid enrolled recipient by a certified Medicaid provider.

~~(bb)~~ **(cc)** As used in this rule, “reasonable allowable costs” means the price a prudent, cost-conscious buyer would pay a willing seller for goods or services in an arm’s-length transaction, not to exceed the limitations set out in this rule.

~~(cc)~~ **(dd)** As used in this rule, “related party/organization” means that the provider:

- (1)** is associated or affiliated with; or
- (2)** has the ability to control or be controlled by; the organization furnishing the service, facilities, or supplies, whether or not such control is actually exercised.

~~(dd)~~ **(ee)** As used in this rule, “RUG-III resident classification system” means the resource utilization group used to classify residents. When a resident classifies into more than one (1) RUG III group, the RUG III group with the greatest CMI will be utilized to calculate the facility-average CMI and facility-average CMI for Medicaid residents.

~~(ee)~~ **(ff)** As used in this rule, “therapy component” means the portion of each facility’s direct costs for therapy services, including any employee benefits prorated based on total salaries and wages, rendered to Medicaid residents that are not reimbursed by other payors, as determined by this rule.

~~(ff)~~ **(gg)** As used in this rule, “unit of service” means all patient care included in the established per diem rate required for the care of an inpatient for one (1) day (twenty-four (24) hours).

~~(gg)~~ **(hh)** As used in this rule, “unsupported MDS resident assessment” means an assessment where one (1) or more data items that are required to classify a resident pursuant to the RUG-III resident classification system:

- (1)** are not supported according to the MDS supporting documentation guidelines as set forth in 405 IAC 1-15; and ~~such data items~~
- (2)** result in the assessment being classified into a different RUG-III category.

~~(hh)~~ **(ii)** As used in this rule, “untimely MDS resident assessment” means **either of the following:**

- (1)** A significant change MDS assessment, as defined by CMS’ Resident Assessment Instrument (RAI) Manual, that is not completed within fourteen (14) days of determining that a nursing facility resident’s condition has changed significantly. ~~or~~
- (2)** A full or quarterly MDS assessment that is not completed as required by ~~405 IAC 1-15-6(a)~~ **405 IAC 1-15-6** following the conclusion of all:
 - (A)** physical therapy;
 - (B)** speech therapy; and
 - (C)** occupational therapy.

(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-2; filed Aug 12, 1998, 2:27 p.m.: 22 IR 69, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2238; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2462; filed Oct 10, 2002, 10:47 a.m.: 26 IR 707; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3869; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2975)

SECTION 3. 405 IAC 1-14.6-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-5 New provider; initial financial report to office; criteria for establishing initial interim rates

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 5. (a) Rate requests to establish an initial interim rate for a new operation shall be filed by submitting an initial rate request to the office on or before thirty (30) days after notification of the certification date. Initial interim rates will be set at the sum of the average allowable cost of the median patient day for the direct care, therapy, indirect care, administrative, and eighty percent (80%) of the capital component. ~~Prior to~~ **Before** the provider's first annual rate review, the direct care component of the Medicaid initial interim rate will be adjusted retroactively to reflect changes, occurring in the first and second calendar quarters of operation, in the provider's ~~case mix index CMI~~ **case mix index CMI** for Medicaid residents and adjusted prospectively after the second calendar quarter to reflect changes in the provider's ~~case mix index CMI~~ **case mix index CMI** for Medicaid residents. Initial interim rates shall be effective on the:

(1) certification date; or ~~the~~

(2) date that a service is established;

whichever is later. In determining the initial rate, limitations and restrictions otherwise outlined in this rule shall apply.

(b) ~~Prior to~~ **Before** the first annual rate review, the rate will be adjusted effective on each calendar quarter ~~pursuant to~~ **under** section 6(d) of this rule to account for changes in the provider's ~~case mix index CMI~~ **case mix index CMI** for Medicaid residents. A provider will not receive a change in the medians for calculating its reimbursement rate until its first annual rate review, which shall coincide with the provider's first fiscal year end that occurs after the initial interim rate effective date in which the provider has a minimum of six (6) months of actual historical data.

(c) **In conjunction with establishing an initial interim rate, a new operation shall submit a Nursing Facility Quality Assessment Form that contains projected patient census data from the first day of operation through the provider's first fiscal year end with a minimum of six (6) months of actual historical data. Following completion of the provider's first fiscal year end with a minimum of six (6) months of actual historical data, the provider shall submit a Nursing Facility Quality Assessment Form reporting**

actual patient census data covering the period from the first day of operation until the provider's first fiscal year end with a minimum of six (6) months of actual historical data. This form shall be submitted to the office not later than the last day of the fifth calendar month after the close of the provider's reporting year. Failure to submit a Nursing Facility Quality Assessment Form shall result in the actions specified at section 4(e) of this rule. This form will not be required after the quality assessment expires.

(~~e~~) (d) In the event of a change in nursing facility provider ownership, ownership structure (including mergers, exchange of stock, etc.), provider, operator, lessor/lessee, or any change in control, a completed Checklist of Management Representations Concerning Change in Ownership shall be submitted to the office or its contractor. The completed checklist shall include all supporting documentation. No Medicaid rate adjustments for the nursing facility shall be performed until the completed checklist is submitted to the office or its contractor.

(e) **For a new operation, the interim quality assessment and Medicaid rate add-on shall be based on projected patient days. A retroactive settlement of the quality assessment and Medicaid rate add-on will be determined, based on actual patient days, for the time period from the first day of operation until the first annual rate effective date associated with the provider's first fiscal year end with a minimum of six (6) months of actual historical data.** (Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-5; filed Aug 12, 1998, 2:27 p.m.: 22 IR 73, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2242; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2467; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2978)

SECTION 4. 405 IAC 1-14.6-7 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-7 Inflation adjustment; minimum occupancy level; case mix indices

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15-13-6

Sec. 7. (a) For purposes of determining the average allowable cost of the median patient day and a provider's annual rate review, each provider's cost from the most recent completed year will be adjusted for inflation by the office using the methodology in this subsection. All allowable costs of the provider, except for mortgage interest on facilities and equipment, depreciation on facilities and equipment, rent or lease costs for facilities and equipment, and working capital interest shall be adjusted for inflation using the CMS Nursing Home without Capital Market Basket index as published by DRI/WEFA. The inflation adjustment shall apply from the midpoint of the annual financial report period to the midpoint prescribed as follows:

Effective Date	Midpoint Quarter
January 1, Year 1	July 1, Year 1
April 1, Year 1	October 1, Year 1
July 1, Year 1	January 1, Year 2
October 1, Year 1	April 1, Year 2

(b) Notwithstanding subsection (a), beginning ~~on the effective date of this rule through September 30, 2005;~~ **July 1, 2007**, the inflation adjustment determined as prescribed in subsection (a) shall be reduced by an inflation reduction factor equal to three and three-tenths percent (3.3%). The resulting inflation adjustment shall not be less than zero (0). ~~Prior to September 30, 2005, the office may reduce or eliminate the inflation reduction factor to increase aggregate expenditures up to levels appropriated by the Indiana general assembly.~~ Any reduction or elimination of the inflation reduction factor shall be made effective no earlier than permitted under IC 12-15-13-6(a).

(c) In determining prospective allowable costs for a new provider that has undergone a change of provider ownership or control through an arm's-length transaction between unrelated parties, when the first fiscal year end following the change of provider ownership or control is less than six (6) full calendar months, the previous provider's most recently completed annual financial report used to establish a Medicaid rate for the previous provider shall be utilized to calculate the new provider's first annual rate review. The inflation adjustment for the new provider's first annual rate review shall be applied from the midpoint of the previous provider's most recently completed annual financial report period to the midpoint prescribed under subsection (a).

(d) Allowable fixed costs per patient day for direct care, indirect care, and administrative costs shall be computed based on an occupancy rate equal to the greater of eighty-five percent (85%), or the provider's actual occupancy rate from the most recently completed historical period.

(e) Notwithstanding subsection (d), the office or its contractor shall reestablish a provider's Medicaid rate effective on the first day of the quarter following the date that the conditions specified in this subsection are met, by applying all provisions of this rule, except for the eighty-five percent (85%) minimum occupancy requirement, if both of the following conditions can be established to the satisfaction of the office:

- (1) The provider demonstrates that its current resident census has:
 - (A) increased to eighty-five percent (85%) or greater since the facility's fiscal year end of the most recently completed and desk reviewed cost report utilizing total nursing facility licensed beds as of the most recently completed desk reviewed cost report period; and ~~the provider's census has~~ (B) remained at such level for ~~no less not fewer~~ than ninety (90) days. ~~and~~
- (2) The provider demonstrates that its resident census has:
 - (A) increased by a minimum of fifteen percent (15%) since the facility's fiscal year end of the most recently completed and desk reviewed cost report; and ~~has~~

(B) remained at such level for ~~no less not fewer~~ than ninety (90) days.

(f) Allowable fixed costs per patient day for capital-related costs shall be computed based on an occupancy rate equal to the greater of ninety-five percent (95%) or the provider's actual occupancy rate from the most recently completed historical period.

(g) The ~~case mix indices~~ CMI's contained in this subsection shall be used for purposes of determining each resident's CMI used to calculate the facility-average CMI for all residents and the facility-average CMI for Medicaid residents.

RUG-III Group	RUG-III Code	CMI Table
Rehabilitation	RAD	2.02
Rehabilitation	RAC	1.69
Rehabilitation	RAB	1.50
Rehabilitation	RAA	1.24
Extensive Services	SE3	2.69
Extensive Services	SE2	2.23
Extensive Services	SE1	1.85
Special Care	SSC	1.75
Special Care	SSB	1.60
Special Care	SSA	1.51
Clinically Complex	CC2	1.33
Clinically Complex	CC1	1.27
Clinically Complex	CB2	1.14
Clinically Complex	CB1	1.07
Clinically Complex	CA2	0.95
Clinically Complex	CA1	0.87
Impaired Cognition	IB2	0.93
Impaired Cognition	IB1	0.82
Impaired Cognition	IA2	0.68
Impaired Cognition	IA1	0.62
Behavior Problems	BB2	0.89
Behavior Problems	BB1	0.77
Behavior Problems	BA2	0.67
Behavior Problems	BA1	0.54
Reduced Physical Functions	PE2	1.06
Reduced Physical Functions	PE1	0.96
Reduced Physical Functions	PD2	0.97
Reduced Physical Functions	PD1	0.87
Reduced Physical Functions	PC2	0.83
Reduced Physical Functions	PC1	0.76
Reduced Physical Functions	PB2	0.73
Reduced Physical Functions	PB1	0.66
Reduced Physical Functions	PA2	0.56
Reduced Physical Functions	PA1	0.50
Unclassifiable	BC1	0.48
Delinquent	BC2	0.48

(h) The office or its contractor shall provide each nursing facility with the following:

- (1) Two (2) preliminary CMI reports. These preliminary CMI reports:
 - (A) serve as confirmation of the MDS assessments transmitted by the nursing facility; and

(B) provide an opportunity for the nursing facility to correct and transmit any missing or incorrect MDS assessments.

The first preliminary report will be provided by the seventh day of the first month following the end of a calendar quarter. The second preliminary report will be provided by the seventh day of the second month following the end of a calendar quarter.

(2) Final CMI reports utilizing MDS assessments received by the fifteenth day of the second month following the end of a calendar quarter. These assessments received by the fifteenth day of the second month following the end of a calendar quarter will be utilized to establish the facility-average CMI and facility-average CMI for Medicaid residents utilized in establishing the nursing facility's Medicaid rate.

(i) The office may increase Medicaid reimbursement to nursing facilities that provide inpatient services to more than eight (8) ventilator-dependent residents. Additional reimbursement shall be made to ~~such~~ the facilities at a rate of eight dollars and seventy-nine cents (\$8.79) per Medicaid resident day. ~~Such~~ The additional reimbursement shall:

(1) be effective on the day the nursing facility provides inpatient services to more than eight (8) ventilator-dependent residents; and ~~shall~~

(2) remain in effect until the first day of the calendar quarter following the date the nursing facility provides inpatient services to eight (8) or fewer ventilator-dependent residents.

(j) Beginning July 1, 2003, through June 30, 2007, the office will increase Medicaid reimbursement to nursing facilities to encourage improved quality of care to residents based on the nursing home report card score as of July 4, 2003. Medicaid reimbursement increases shall be determined according to the following:

Nursing Home Report Card Score as of July 4, 2003	Per Medicaid Patient Day Rate Add-On
0 – 50	\$3.00
51 – 105	\$2.50
106 – 200	\$2.00
201 and higher	\$1.50

Facilities that did not have a nursing home report card score published as of July 4, 2003, may receive a per patient day rate add-on equal to two dollars (\$2).

(k) Beginning effective July 1, 2003, through June 30, 2007, the office will increase Medicaid reimbursement to nursing facilities that provide specialized care to residents with Alzheimer's disease or dementia, and operate a special care unit (SCU) for such residents as demonstrated by resident assessment data as of June 30, 2003. The additional Medicaid reimbursement shall equal ten dollars and eighty cents (\$10.80) per Medicaid resident day in their SCU. Only

facilities with a SCU for Alzheimer's disease or dementia as demonstrated by resident assessment data as of June 30, 2003, shall be eligible to receive the additional reimbursement. (Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-7; filed Aug 12, 1998, 2:27 p.m.: 22 IR 74, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2243; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2468; filed Oct 10, 2002, 10:47 a.m.: 26 IR 712; errata filed Feb 27, 2003, 11:33 a.m.: 26 IR 2375; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3873; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2978)

SECTION 5. 405 IAC 1-14.6-9 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-9 Rate components; rate limitations; profit add-on

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15-13-6

Sec. 9. (a) The Medicaid reimbursement system is based on recognition of the provider's allowable costs for the direct care, therapy, indirect care, administrative, and capital components, plus a potential profit add-on payment. The direct care, therapy, indirect care, administrative, and capital rate components are calculated as follows:

(1) The indirect care, administrative, and capital components are equal to the provider's allowable per patient day costs for each component, plus the allowed profit add-on payment as determined by the methodology in subsection (b).

(2) The therapy component is equal to the provider's allowable per patient day direct therapy costs.

(3) The direct care component is equal to the provider's normalized allowable per patient day direct care costs times the facility-average ~~case mix index~~ CMI for Medicaid residents, plus the allowed profit add-on payment as determined by the methodology in subsection (b).

(b) The profit add-on payment will be calculated as follows:

(1) For nursing facilities designated by the office as children's nursing facilities, the direct care component profit add-on is equal to ~~fifty-two percent (52%)~~ of the profit add-on percentage contained in Table 1, times the difference (if greater than zero (0)) ~~of~~ between:

(A) the normalized average allowable cost of the median patient day for direct care costs times the facility average ~~case mix index~~ CMI for Medicaid residents times ~~one hundred five percent (105%)~~; the profit ceiling percentage contained in Table 1; minus

(B) the provider's normalized allowable per patient day costs times the facility average ~~case mix index~~ CMI for Medicaid residents.

Table 1
Children's Nursing Facilities

Effective Date	Direct Care Profit Add-on Percentage		Direct Care Profit Ceiling Percentage	
	July 1, 2003, through June 30, 2007	July 1, 2007, and after	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	30%	52%	110%	105%

(2) ~~Beginning on the effective date of this rule through June 30, 2006; For nursing facilities that are not designated by the office as children's nursing facilities, the direct care component profit add-on is equal to zero (0). Beginning July 1, 2006; the direct care component profit add-on is equal to fifty-two percent (52%) of percentage contained in Table 2, times the difference (if greater than zero (0)) of between:~~

(A) the normalized average allowable cost of the median patient day for direct care costs times the facility average ~~case mix index CMI~~ for Medicaid residents times ~~one hundred five percent (105%); the profit ceiling percentage contained in Table 2; minus~~

(B) the provider's normalized allowable per patient day costs times the facility average ~~case mix index CMI~~ for Medicaid residents.

Table 2
Non-Children's Nursing Facilities

Effective Date	Direct Care Profit Add-on Percentage		Direct Care Profit Ceiling Percentage	
	July 1, 2003, through June 30, 2007	July 1, 2007, and after	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	30%	0%	110%	105%

(3) ~~The indirect care component profit add-on is equal to fifty-two percent (52%) of the profit add-on percentage contained in Table 3, times the difference (if greater than zero (0)) of between:~~

(A) the average allowable cost of the median patient day times ~~one hundred percent (100%); the profit ceiling percentage contained in Table 3; minus~~

(B) a provider's allowable per patient day cost.

Table 3

Effective Date	Indirect Care Profit Add-on Percentage		Indirect Care Profit Ceiling Percentage	
	July 1, 2003, through June 30, 2007	July 1, 2007, and after	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	60%	52%	105%	100%

(4) ~~The administrative component profit add-on is equal to sixty percent (60%) of times the difference (if greater than zero (0)) of between:~~

(A) the average allowable cost of the median patient day times ~~one hundred percent (100%); the profit ceiling percentage contained in Table 4; minus~~

(B) a provider's allowable per patient day cost.

Table 4
Administrative Component Profit Ceiling Percentage

Effective Date	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	105%	100%

(5) ~~The capital component profit add-on is equal to sixty percent (60%) of times the difference (if greater than zero (0)) of between:~~

(A) the average allowable cost of the median patient day times ~~eighty percent (80%); the profit ceiling percentage contained in Table 5; minus~~

(B) a provider's allowable per patient day cost.

Table 5
Capital Component Profit Ceiling Percentage

Effective Date	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	100%	80%

(6) The therapy component profit add-on is equal to zero (0).

(c) Notwithstanding subsections (a) and (b), in no instance shall a rate component exceed the overall rate ~~component limit ceiling~~ defined as follows:

(1) The normalized average allowable cost of the median patient day for direct care costs times the facility-average ~~case mix index CMI~~ for Medicaid residents times ~~one hundred ten percent (110%); the overall rate ceiling percentage in Table 6.~~

Table 6

Direct Care Component Overall Rate Ceiling Percentage

Effective Date	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	120%	110%

(2) The average allowable cost of the median patient day for indirect care costs times ~~one hundred percent (100%)~~: the overall rate ceiling percentage in Table 7.

Table 7

Indirect Care Component Overall Rate Ceiling Percentage

Effective Date	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	115%	100%

(3) The average allowable cost of the median patient day for administrative costs times ~~one hundred percent (100%)~~: the overall rate ceiling percentage in Table 8.

Table 8

Administrative Component Overall Rate Ceiling Percentage

Effective Date	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	105%	100%

(4) The average allowable cost of the median patient day for capital-related costs times ~~eighty percent (80%)~~: the overall rate ceiling percentage in Table 9.

Table 9

Capital Component Overall Rate Ceiling Percentage

Effective Date	July 1, 2003, through June 30, 2007	July 1, 2007, and after
Percentage	100%	80%

(5) For the therapy component, no overall rate component limit shall apply.

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

(d) In order to determine the normalized allowable direct care costs from each facility's Financial Report for Nursing Facilities, the office or its contractor shall determine each facility's CMI for all residents on a time-weighted basis.

(e) The office shall publish guidelines for use in determining the time-weighted CMI. These guidelines:

- (1) shall be published as a provider bulletin; and
- (2) may be updated by the office as needed.

Any such updates shall be made effective no earlier than permitted under IC 12-15-13-6(a). (*Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-9; filed Aug 12, 1998, 2:27 p.m.: 22 IR 75, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2244; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2470; filed Oct 10, 2002, 10:47 a.m.: 26 IR 714; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3874; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2980*)

SECTION 6. 405 IAC 1-14.6-18 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-18 Allowable costs; calculation of allowable owner or related party compensation; wages; salaries; fees

Sec. 18. (a) Compensation for:

- (1) owner, related party, management, general line personnel, and consultants who perform management functions; or
- (2) any individual or entity rendering services above the department head level;

shall be subject to the annual limitations described in this section. All compensation received by the parties as described in this subsection shall be reported and separately identified on the financial report form even though such payment may exceed the limitations. This compensation is allowed to cover costs for all administrative, policymaking, decision making, and other management functions above the department head level. **This Beginning effective July 1, 2003, through June 30, 2007, compensation subject to this limitation** includes wages, salaries, and fees for owner, administrator, assistant administrator, management, contractors, and consultants who actually perform management functions as well as any other individual or entity performing such tasks. **Beginning effective July 1, 2007, and thereafter, wages, salaries, and fees paid for owner, administrator, assistant administrator, management, contractors, and consultants who actually perform management functions as well as any other individual or entity performing such tasks are subject to this limitation.**

(b) Beginning effective July 1, 2003, through June 30,

2007, the maximum allowable amount for owner, related party, and management compensation shall be the average allowable cost of the median patient day for owner, related party, and management compensation subject to this limitation as defined in subsection (a). The average allowable cost of the median patient day shall be updated four (4) times per year effective January 1, April 1, July 1, and October 1.

~~(b)~~ **(c)** Beginning effective July 1, 2007, the maximum amount of owner, related party, and management compensation for the parties identified in subsection (a) shall be the lesser of the amount:

- (1) under subsection ~~(c)~~, (d), as updated by the office on July 1 of each year based on the average rate of change of the most recent twelve (12) quarters of the Gross National Product Implicit Price Deflator; or ~~the amount~~
- (2) of patient-related wages, salaries, or fees actually paid or withdrawn that were properly reported to the federal Internal Revenue Service as wages, salaries, fringe benefits, or fees. If liabilities are established, they shall be paid within seventy-five (75) days after the end of the accounting period or ~~such~~ the costs shall be disallowed.

~~(c)~~ **(d)** The owner, related party, and management compensation limitation per operation effective July 1, 1995, shall be as follows:

Owner and Management Compensation	
Beds	Allowance
10	\$21,542
20	\$28,741
30	\$35,915
40	\$43,081
50	\$50,281
60	\$54,590
70	\$58,904
80	\$63,211
90	\$67,507
100	\$71,818
110	\$77,594
120	\$83,330
130	\$89,103
140	\$94,822
150	\$100,578
160	\$106,311
170	\$112,068
180	\$117,807
190	\$123,562
200	\$129,298

200 and over \$129,298 + \$262/bed over 200

This subsection applies to each provider of a Medicaid-certified operation. The unused portions of the allowance for one (1) operation shall not be carried over to other operations. (*Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-18; filed Aug 12, 1998, 2:27 p.m.: 22 IR 80, eff Oct 1, 1998; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Apr*

24, 2006, 3:30 p.m.: 29 IR 2982)

SECTION 7. 405 IAC 1-14.6-23 IS ADDED TO READ AS FOLLOWS:

405 IAC 1-14.6-23 Limitation to Medicaid rate increases for nursing facilities

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 23. Notwithstanding all other provisions of this rule, for the period January 1, 2006, through June 30, 2007, nursing facility rates that have been calculated under this rule shall be reduced by five dollars (\$5) per resident per day. (*Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-23; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2983)*

SECTION 8. 405 IAC 1-14.6-24 IS ADDED TO READ AS FOLLOWS:

405 IAC 1-14.6-24 Nursing facility quality assessment

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 4-21.5-3; IC 12-13-7-3; IC 12-15-21-3; IC 16-21; IC 16-28; IC 23-2-4

Sec. 24. (a) Effective August 1, 2003 through June 30, 2007, the office shall collect a quality assessment from each nursing facility licensed under IC 16-28 as a comprehensive care facility as follows:

- (1) If the total annual nursing facility census days are fewer than seventy thousand (70,000), ten dollars (\$10) per non-Medicare day.
- (2) If the total annual nursing facility census days are equal to or greater than seventy thousand (70,000), two dollars and fifty cents (\$2.50) per non-Medicare day.
- (3) If the nursing facility is nonstate government owned or operated, two dollars and fifty cents (\$2.50) per non-Medicare day.

(b) The following nursing facilities shall be exempt from the quality assessment described in subsection (a):

- (1) A continuing care retirement community registered with the securities commissioner of the office of the secretary of state under IC 23-2-4.
- (2) A hospital-based nursing facility licensed under IC 16-21.
- (3) The Indiana Veterans' Home.

(c) For nursing facilities certified for participation in the Medicaid program under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.), the quality assessment shall be an allowable cost for cost reporting and auditing purposes. The quality assessment shall be included in Medicaid reimbursement as an add-on to the Medicaid rate. The add-on is determined by dividing the product of the assessment rate times total non-Medicare patient days by total patient days from the most recently completed desk reviewed annual financial report.

(d) For nursing facilities that are not certified for participation in the Medicaid program under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.), the department of state revenue shall collect the quality assessment under 45 IAC 20.

(e) The office or its contractor shall notify each nursing facility of the amount of the facility's assessment after the amount of the assessment has been computed. If the facility disagrees with the computation of the assessment, the facility shall request an administrative reconsideration by the Medicaid rate-setting contractor. The reconsideration request shall be as follows:

- (1) In writing.
- (2) Contain the following:
 - (A) Specific issues to be reconsidered.
 - (B) The rationale for the facility's position.
- (3) Signed by the authorized representative of the facility and must be received by the contractor within forty-five (45) days after the notice of the assessment is mailed.

Upon receipt of the request for reconsideration, the Medicaid rate-setting contractor shall evaluate the data. After review, the Medicaid rate-setting contractor may amend the assessment or affirm the original decision. The Medicaid rate-setting contractor shall thereafter notify the facility of its final decision in writing, within forty-five (45) days of the Medicaid rate-setting contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the rate-setting contractor to the facility's reconsideration request, the request shall be deemed denied and the provider may initiate an appeal under IC 4-21.5-3.

(f) The assessment shall be calculated on an annual basis with equal monthly amounts due on or before the tenth day of each calendar month.

(g) A facility may file a request to pay the quality assessment on an installment plan. The request shall be as follows:

- (1) In writing setting forth the facility's rationale for the request.
- (2) Submitted to the office or its designee.

An installment plan established under this section shall not exceed a period of six (6) months from the date of execution of the agreement. The agreement shall set forth the amount of the assessment that shall be paid in installments and include provisions for the collection of interest. The interest shall not exceed the percentage set out in IC 12-15-21-3(6)(A).

(h) A facility that fails to pay the quality assessment due under this section within ten (10) days after the date the payment is due shall pay interest on the quality assessment at the same rate as determined under IC 12-15-21-3(6)(A).

(i) The office may withhold Medicaid payments to a facility that fails to pay an assessment within thirty (30) days

after the due date. The amount withheld may not exceed the amount of the assessment and any interest due under subsection (h).

(j) Not later than one hundred twenty (120) days after payment of the quality assessment was due, the office shall report each facility that has failed to pay the quality assessment by the due date to the state department of health to initiate license revocation proceedings. (*Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-24; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2983*)

SECTION 9. 405 IAC 1-14.6-25 IS ADDED TO READ AS FOLLOWS:

**405 IAC 1-14.6-25 Additional reimbursement for closing
or converting nursing facilities**

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 25. (a) Beginning effective July 1, 2003, and continuing through June 30, 2007, nursing facility operators that were licensed and certified to participate in the Medicaid program under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.) as of July 1, 2003, may be eligible to receive additional Medicaid reimbursement if they:

- (1) close their nursing facility; or
- (2) convert their nursing facility to alternative uses.

(b) The amount of additional reimbursement available under this section shall be determined by the office taking into consideration the following factors:

- (1) The location of the nursing facility.
- (2) The number of beds proposed to be closed or converted.
- (3) The current and historical census of the facility.
- (4) The financial condition of the nursing facility operator.
- (5) The proposed time frame for closing or converting the facility.
- (6) The availability of other facilities and services to meet the needs of residents.

(c) In order to receive additional reimbursement available under this section, the nursing facility provider shall submit a proposal to the office or its designee that fully describes the operator's proposed plan to close or convert the nursing facility. The office or its designee shall specify procedures and time frames that facilities shall follow in preparing and submitting proposals.

(d) The office shall review all proposals submitted under subsection (c) and shall notify the proposing nursing facility provider in writing of its response to their proposal. Based on its review of any proposal, the office may, in its sole discretion, do any of the following:

- (1) Accept and approve the proposal for additional reimbursement as submitted.

- (2) Request additional information it deems necessary to complete its review.
- (3) Request modifications of the proposal as submitted.
- (4) Accept and approve the proposal for additional reimbursement as revised.
- (5) Reject and disapprove the proposal for additional reimbursement with or without requesting additional information or modifications from the proposing nursing facility provider.

(e) In the event the office accepts and approves a proposal for additional reimbursement, the office and nursing facility provider shall negotiate in good faith to execute a written agreement that specifies all terms and conditions that shall govern the proposing nursing facility provider's efforts to close or convert the nursing facility. The agreement between the office and the nursing facility provider shall be finalized and executed by all appropriate parties before any additional reimbursement available under this section shall be paid.

(f) The office shall pay any additional reimbursement available under this section into an escrow account, which will be established for the sole purpose to retain and disburse these funds. The funds shall be disbursed to the provider following the provider's successful completion of all conditions specified in the agreement referenced in subsection (e).

(g) The additional reimbursement available under this section shall:

- (1) consist of an enhanced capital reimbursement rate add-on; and
- (2) be used to fund debt service termination and related closing costs as delineated in the agreement referenced in subsection (e).

The enhanced capital reimbursement rate add-on shall be computed by dividing the total amount determined in subsection (b) by the facility's actual occupancy from the most recently completed desk reviewed annual financial report and shall be reimbursed for a period not to exceed twelve (12) months. (*Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-25; filed Apr 24, 2006, 3:30 p.m.: 29 IR 2984*)

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TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-19(F)

DIGEST

Adds 410 IAC 3.6 to establish an authorization and reauthorization process for food vendors and to establish a system of civil penalties and other sanctions for a WIC vendor contract under the WIC program or federal regulations under 7 CFR 246. Effective 30 days after filing with the Secretary of State.

410 IAC 3.6

SECTION 1. 410 IAC 3.6 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3.6. WOMEN, INFANTS, AND CHILDREN PROGRAM RULES, PENALTIES, AND SANCTIONS FOR WIC VENDORS

Rule 1. Definitions

410 IAC 3.6-1-1 Applicability

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana State Department of Health; 410 IAC 3.6-1-1; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2985*)

410 IAC 3.6-1-2 "Authorization" defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 2. "Authorization" means the process by which the department:

- (1) assesses;
- (2) selects; and
- (3) enters into;

agreements with stores that apply or subsequently reapply to be authorized as WIC vendors. (*Indiana State Department of Health; 410 IAC 3.6-1-2; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2985*)

410 IAC 3.6-1-3 "Commodity supplemental food program" or "CSFP" defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 3. "Commodity supplemental food program" or "CSFP" means a program of the United States Department of Agriculture that works to improve the health of low-income:

- (1) pregnant and breastfeeding women;
- (2) new mothers up to one (1) year postpartum;
- (3) infants;

(4) children up to six (6) years of age; and
(5) elderly people at least sixty (60) years of age;
by supplementing their diets with nutritious USDA commodity foods. The CSFP provides food and administrative funds to states to supplement the diets of these groups. (*Indiana State Department of Health; 410 IAC 3.6-1-3; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2985*)

410 IAC 3.6-1-4 “Conflict of interest” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. “Conflict of interest” means a situation in which a private financial interest of:

(1) an officer;
(2) an employee; or
(3) the spouse or unemancipated child;
of a vendor coincides with the private financial interest of a local agency or department employee. (*Indiana State Department of Health; 410 IAC 3.6-1-4; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-5 “Contract brand infant formula” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 5. “Contract brand infant formula” means all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract. If under a single solicitation the manufacturer subcontracts for soy-based infant formula, then all soy-based infant formulas covered by the subcontract are also considered contract brand infant formulas (see 7 CFR 246.16a(c)(1)(i)). If a state agency elects to solicit separate bids for milk-based and soy-based infant formulas, all infant formulas issued under each contract are considered the contract brand infant formula (see 7 CFR 246.16a(c)(1)(ii)). For example, the term includes the following:

- (1) All of the milk-based infant formulas issued by a state agency that are produced by the manufacturer that was awarded the milk-based contract.
- (2) All of the soy-based infant formulas issued by a state agency that are produced by the manufacturer that was awarded the soy-based contract.

The term also includes all infant formulas (except exempt infant formulas) introduced after the contract is awarded. (*Indiana State Department of Health; 410 IAC 3.6-1-5; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-6 “Controlled substances” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. “Controlled substances” means material of a particular kind that is regulated for limited distribution or use. (*Indiana State Department of Health; 410 IAC 3.6-1-6;*

filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986)

410 IAC 3.6-1-7 “Department” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 7. “Department” means the Indiana state department of health. (*Indiana State Department of Health; 410 IAC 3.6-1-7; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-8 “Disqualification” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 8. “Disqualification” means the act of ending the WIC program participation of an authorized vendor. (*Indiana State Department of Health; 410 IAC 3.6-1-8; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-9 “Food instrument” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 9. “Food instrument” means:

- (1) a voucher;
 - (2) a check; or
 - (3) an electronic transfer benefits (EBT) card;
- issued by a local agency that specifies the quantity, size, and type of authorized foods available to a WIC participant within a designated time frame to be used at a WIC vendor. (*Indiana State Department of Health; 410 IAC 3.6-1-9; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-10 “Local agency” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 10. “Local agency” means a:

- (1) public or private;
 - (2) nonprofit; and
 - (3) health or human;
- service agency that provides health services through a contract with the department in accordance with 7 CFR 246.5. (*Indiana State Department of Health; 410 IAC 3.6-1-10; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-11 “Overcharge” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 11. “Overcharge” means a charge of more than one dollar (\$1) over the shelf price at the time of the use of the food instrument in question. (*Indiana State Department of Health; 410 IAC 3.6-1-11; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-12 “Participant” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 12. “Participant” means:

- (1) a woman who is:
 - (A) pregnant;
 - (B) breastfeeding; or
 - (C) postpartum;
- (2) an infant; or
- (3) a child;

enrolled in the WIC program. (*Indiana State Department of Health; 410 IAC 3.6-1-12; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2986*)

410 IAC 3.6-1-13 “Price comparison analysis” or “PCA” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 13. “Price comparison analysis” or “PCA” means an analysis using the prices of a selection of WIC foods submitted by the store or vendor to determine the relative costs of the store or vendor for comparison purposes. (*Indiana State Department of Health; 410 IAC 3.6-1-13; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-14 “Proxy” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5-6

Sec. 14. “Proxy” means any person designated by a:

- (1) woman participant; or
- (2) parent or caretaker of an infant or child participant; to obtain and transact food instruments or to obtain supplemental foods on behalf of a participant. (*Indiana State Department of Health; 410 IAC 3.6-1-14; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-15 “Routine monitoring visit” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 15. “Routine monitoring visit” means overt, onsite monitoring during which WIC program representatives identify themselves to vendor personnel. (*Indiana State Department of Health; 410 IAC 3.6-1-15; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-16 “Reassessment” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 16. “Reassessment” means a nonroutine review of the WIC vendor’s compliance with the selection criteria in 410 IAC 3.6-3-4 and 410 IAC 3.6-3-5. (*Indiana State Department of Health; 410 IAC 3.6-1-16; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-17 “Supplemental foods” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 17. “Supplemental foods” means those foods containing nutrients determined to be beneficial for:

- (1) women who are:
 - (A) pregnant;
 - (B) breastfeeding; or
 - (C) postpartum;
- (2) infants; and
- (3) children;

as prescribed by 7 CFR 246.10. (*Indiana State Department of Health; 410 IAC 3.6-1-17; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-18 “Vendor” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 18. “Vendor” means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one (1) or more stores authorized by the state agency to provide authorized supplemental foods to participants under a retail food delivery system. Each store operated by a business entity:

- (1) constitutes a separate vendor; and
- (2) must:
 - (A) be authorized separately from other stores operated by the business entity; and
 - (B) have a single, fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the state agency’s state plan in accordance with 7 CFR 246.4(a)(14)(xiv).

(*Indiana State Department of Health; 410 IAC 3.6-1-18; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-19 “Vendor agreement” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 19. “Vendor agreement” means a legally binding contract, complying with 7 CFR 246.12(h), between the following:

- (1) An authorized vendor.
- (2) The WIC program.

The agreement describes the terms and conditions the two (2) parties must follow for the vendor to redeem WIC food instruments. (*Indiana State Department of Health; 410 IAC 3.6-1-19; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-20 “Vendor violation” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 20. “Vendor violation” means any intentional or unintentional action or omission of a vendor’s current:

- (1) owners;
- (2) officers;
- (3) managers;
- (4) agents; or
- (5) employees;

with or without the knowledge of management, that violates the federal or state statutes, rules, or regulations governing the WIC program. (*Indiana State Department of Health; 410 IAC 3.6-1-20; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2987*)

410 IAC 3.6-1-21 “WIC program” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 21. “WIC program” means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966. (*Indiana State Department of Health; 410 IAC 3.6-1-21; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

410 IAC 3.6-1-22 “WIC service area” defined

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 22. “WIC service area” means an area where local WIC participants could conveniently shop alternative vendors. The term may include a county or marketing area, whichever is determined more appropriate by the department after considering factors including, but not limited to, the following:

- (1) Geographic, population, and demographic information.
- (2) Information submitted by the store or vendor.

In counties with a population less than seventy-seven thousand (77,000), the service area would generally be the county. In counties with a population greater than seventy-seven thousand (77,000), the service area would generally be an area within five (5) miles of the applicant. (*Indiana State Department of Health; 410 IAC 3.6-1-22; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

Rule 2. General Provisions

410 IAC 3.6-2-1 Application of rules

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. This article shall apply to the following:

- (1) All stores that apply for participation as vendors in the WIC program.
- (2) All vendors contracting with the department or its designees.
- (3) Any:
 - (A) individual;
 - (B) business entity; or
 - (C) commercial enterprise;

that accepts or receives food instruments or credit or payment for food instruments, or both.

Any authorization issued before the effective date of this article shall remain valid and shall be subject to this article. (*Indiana State Department of Health; 410 IAC 3.6-2-1; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

410 IAC 3.6-2-2 Vendor selection

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. The WIC program must authorize an appropriate number and distribution of vendors in order to ensure the following:

- (1) Adequate participant access to supplemental foods.
 - (2) Effective WIC program:
 - (A) management;
 - (B) oversight; and
 - (C) review;
- of its authorized vendors.**

In order to accomplish this, vendors and store applicants shall be subject to the vendor selection criteria in 410 IAC 3.6-3-4 and 410 IAC 3.6-3-5. (*Indiana State Department of Health; 410 IAC 3.6-2-2; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

410 IAC 3.6-2-3 Vendor reassessment

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 3. Using the current vendor selection criteria, the department may reassess the vendor at any time during the agreement period. The department must terminate the vendor agreement if the vendor fails to meet the current vendor selection criteria. (*Indiana State Department of Health; 410 IAC 3.6-2-3; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

410 IAC 3.6-2-4 Vendor preauthorization visit

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. Vendor applicants who have failed a preauthorization visit shall not receive a subsequent preauthorization visit until after they have advised in writing that they can comply with the vendor selection criteria. (*Indiana State Department of Health; 410 IAC 3.6-2-4; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

410 IAC 3.6-2-5 Expiration of vendor agreement

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 5. If the vendor wishes to continue to be authorized beyond the period of its current vendor agreement, the vendor must apply for reauthorization. (*Indiana State Department of Health; 410 IAC 3.6-2-5; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988*)

410 IAC 3.6-2-6 Vendor agreement

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. All stores authorized as a vendor by the department shall do the following:

- (1) Sign a vendor agreement prescribed by the department in accordance with 7 CFR 246.12(h).

(2) Agree to comply with all applicable federal and state laws and rules, including, but not limited to, 42 U.S.C. 1786 and 7 CFR 246.

(Indiana State Department of Health; 410 IAC 3.6-2-6; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2988)

410 IAC 3.6-2-7 Assignment or transfer

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 7. (a) A vendor shall not sell, assign, or transfer the following in any manner:

- (1) Its authorization.
- (2) The vendor:
 - (A) agreement;
 - (B) stamp; or
 - (C) number.

Any actual or attempted sale, assignment, or transfer of the authorization, vendor agreement, vendor stamp, or vendor number shall result in termination of the vendor agreement. Relocation of less than three (3) miles is not a violation of this section.

(b) At least fifteen (15) calendar days in advance, the vendor shall notify the department of the following:

- (1) Any:
 - (A) sale;
 - (B) lease;
 - (C) bankruptcy; or
 - (D) cessation;
 of the vendor's business entity.
- (2) Any sale of a majority interest in the vendor's:
 - (A) corporation;
 - (B) partnership;
 - (C) sole proprietorship; or
 - (D) business entity.

The notification shall be sent by certified mail and in writing to the director of the Indiana state WIC program, Indiana state department of health. (Indiana State Department of Health; 410 IAC 3.6-2-7; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2989)

410 IAC 3.6-2-8 Voluntary withdrawal from the WIC program

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 4-21.5; IC 16-35-1.5

Sec. 8. A vendor may voluntarily withdraw from participation in the WIC program. The department, however, shall not accept voluntary withdrawal as an alternative to an order of disqualification for which no appeal is pending under IC 4-21.5. If, at the time of the withdrawal, the vendor owes:

- (1) a fine assessment; or
 - (2) any other monies resulting from a sanction;
- the fine assessment and any other monies due shall be paid in full. (Indiana State Department of Health; 410 IAC 3.6-2-8;

filed Apr 24, 2006, 3:00 p.m.: 29 IR 2989)

Rule 3. Selection of Vendors

410 IAC 3.6-3-1 Authorization of vendors

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 1. (a) A store becomes a vendor when authorized in accordance with this rule.

(b) Once every three (3) years, the department shall conduct an open authorization period to select vendors. The open authorization period shall:

- (1) begin April 12; and
- (2) end May 11.

The contract for vendors authorized during this open authorization period begins on October 1.

(c) The WIC program shall send an application for authorization to a store's representative who has contacted the department in writing to request an application for authorization. The store seeking authorization as a vendor shall do the following:

- (1) Complete the application for authorization.
- (2) Return it to the WIC program before the end of the open authorization period.

Current vendors will receive an application from the WIC program in order to apply for reauthorization. Incomplete applications will be returned to the store's representative and must be returned within fifteen (15) days from the end of the open enrollment period to be considered timely.

(d) A store wishing to become a vendor outside the open authorization period must meet the requirements of section 10 of this rule, unless the store can demonstrate it was not open for business and able to apply during the open authorization period. Stores not open for business and able to apply during the open authorization period shall be allowed to submit a WIC food vendor application outside the open authorization period, and notwithstanding the date of submission, such applications shall be reviewed in accordance with section 2 of this rule. (Indiana State Department of Health; 410 IAC 3.6-3-1; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2989)

410 IAC 3.6-3-2 Authorization process for stores not currently authorized

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 2. (a) A store must submit a WIC food vendor application to be considered for authorization.

(b) Applications received during the open authorization period, or received from a store meeting the exception in section 1(d) of this rule, shall be reviewed using the selection criteria in section 3 of this rule. Applications that:

(1) meet all criteria in section 4 of this rule; and
(2) successfully pass the preauthorization visit;
will be offered a vendor agreement. (*Indiana State Department of Health; 410 IAC 3.6-3-2; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2989*)

410 IAC 3.6-3-3 Reauthorization process for currently authorized vendors

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 3. (a) A vendor must submit a WIC food vendor application to be considered for reauthorization.

(b) Applications received during the open authorization period shall be reviewed using the selection criteria in sections 4 and 5 of this rule. Currently authorized vendors:

- (1) that meet all criteria in sections 4 and 5 of this rule will be offered a vendor agreement; and
- (2) shall not receive a preauthorization visit.

(*Indiana State Department of Health; 410 IAC 3.6-3-3; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2990*)

410 IAC 3.6-3-4 Selection criteria for initial authorization

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 4. Only stores meeting all of the following criteria, and having a total number of points assigned, under section 6 of this rule, greater than or equal to the lowest point total of vendors applying in the same WIC service area, will be selected for a preauthorization visit:

- (1) The store shall be as follows:
 - (A) Located:
 - (i) within this state; or
 - (ii) in a county contiguous to the Indiana border.
 - (B) Open for business and able to serve WIC participants at least eight (8) hours per day, six (6) days per week.
 - (C) Located in a permanent, fixed location where participants may purchase allowable foods with their food instruments.
- (2) The store may not be currently disqualified from either of the following:
 - (A) Participation in the food stamp program or have been assessed a civil money penalty in lieu of a disqualification from the food stamp program that, had it been imposed, would not yet have expired.
 - (B) The WIC program.

The disqualifications in this subdivision must be final with no appeal pending.

- (3) None of the store's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for the following conduct demonstrating a lack of business integrity:
 - (A) Fraud.

- (B) Antitrust violations.
- (C) Embezzlement.
- (D) Theft.
- (E) Forgery.
- (F) Bribery.
- (G) Falsification or destruction of records.
- (H) Making false statements.
- (I) Receiving stolen property.
- (J) Making false claims.
- (K) Obstruction of justice.

(4) The store shall:

- (A) meet the minimum stock requirements of section 8 of this rule; and

- (B) not have redeemed or attempted to redeem food instruments without being authorized as a WIC vendor.

(5) Pharmacies or vendors with a pharmacy must be able to provide any WIC prescribed formula within two (2) working days of the request by a WIC participant unless the failure to provide the WIC prescribed formula is the result of circumstances beyond the control of the vendor such as:

- (A) a natural disaster;
- (B) actions or decrees of governmental bodies; or
- (C) a communication line failure.

(6) The store must purchase WIC formula from a source on the:

- (A) department's list; or
- (B) list of another state WIC agency; pursuant to Section 203(e)(8) of the Child Nutrition and WIC Reauthorization Act of 2004, P.L.108-265.

(7) No conflict of interest shall exist between:

- (A) the store; and
- (B) any local agency or department employee.

(8) The store:

- (A) shall not have attempted to circumvent disqualification from the WIC program through ownership change; and
- (B) must:
 - (i) participate in the food stamp program; and
 - (ii) have a food stamp number;unless the store is a pharmacy only.

(9) The store shall not expect to obtain more than fifty percent (50%) of its annual revenue from the sale of food items through WIC food instruments. Failure of a store to provide documentation requested by the WIC program to verify this criterion shall result in denial of the application.

(*Indiana State Department of Health; 410 IAC 3.6-3-4; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2990*)

410 IAC 3.6-3-5 Selection criteria for reauthorization

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 5. In addition to the criteria in section 4 of this rule, a vendor seeking reauthorization must also meet the follow-

ing criteria and have been assigned at least two (2) points under section 6 of this rule:

- (1) The vendor shall:
 - (A) redeem at least:
 - (i) forty (40) food instruments per month and a minimum of one percent (1%) of the food instruments in the county; or
 - (ii) one hundred fifty (150) food instruments per month for the immediately preceding six (6) months of food instrument redemption data;
 - (B) have implemented all required corrective actions resulting from monitoring by the department, including reimbursement of any overcharges or overpayments; and
 - (C) be in compliance with the applicable federal and state regulations.

(2) The store shall not have provided refunds, or permit exchanges for foods purchased with food instruments, except for exchanges of an identical authorized food item when the original food item:

- (A) is defective;
 - (B) is spoiled; or
 - (C) has exceeded:
 - (i) its "sell by" date;
 - (ii) its "best if used by" date; or
 - (iii) another date;
- limiting the sale or use of the item.

"Identical food item" means the exact brand and size of the original food item purchased. Participants may only exchange WIC items with a receipt.

(Indiana State Department of Health; 410 IAC 3.6-3-5; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2990)

410 IAC 3.6-3-6 Application points

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 6. The department will assign points for the categories listed in this section as part of the authorization process. Points will be assigned to applications as follows:

- (1) Low price comparison average (PCA). A store that has a PCA that is one percent (1%) to ten percent (10%) below the average price of vendors in the same WIC service area is awarded one (1) point. Any store that has a PCA more than ten percent (10%) below the average is awarded two (2) points.
- (2) A store with a pharmacy will be awarded one (1) point if the WIC service area is without a WIC authorized pharmacy.
- (3) A store that has at least fifty percent (50%) sales from food sales will be awarded one (1) point.
- (4) Current authorized vendors who have:
 - (A) not received a second education/warning letter; or
 - (B) been required to attend a conference;
 under 410 IAC 3.6-5-2(c)(3) in the last two (2) years will be awarded one (1) point.

(5) A store that has not accumulated enough points to be authorized, but is needed to avoid inadequate participant access under section 9 of this rule, will be awarded one (1) point.

(Indiana State Department of Health; 410 IAC 3.6-3-6; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2991)

410 IAC 3.6-3-7 Preauthorization visit

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 7. (a) If the store's application for authorization meets all criteria in section 4 of this rule, the local agency shall conduct a preauthorization visit of the store to determine compliance with the following:

- (1) All WIC food prices are marked on or near the foods.
- (2) WIC food prices submitted on the application match the store's shelf prices.
- (3) Minimum stocking requirements of section 8 of this rule are met.
- (4) WIC foods on the shelves available for sale are within their fresh date.
- (5) WIC foods are stored and refrigerated in compliance with 410 IAC 7-24.

(b) The local agency shall do the following:

- (1) Conduct the preauthorization visit.
- (2) Forward the results to the department to do the following:
 - (A) Complete the review.
 - (B) Render a decision on the store's application.

(Indiana State Department of Health; 410 IAC 3.6-3-7; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2991)

410 IAC 3.6-3-8 Minimum stock

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 8. (a) In order to ensure adequate participant access to supplemental foods, the following minimum stock shall be available on the shelf or in stock:

- (1) Contract brand infant formula as follows:
 - (A) Thirty-two (32) thirteen (13) ounce cans of each of the following:
 - (i) Enfamil LIPIL with iron concentrate.
 - (ii) Enfamil Prosobee LIPIL iron fortified concentrate.
 - (B) Twenty (20) twelve and nine-tenths (12.9) ounce cans of Enfamil LIPIL with iron powder.
 - (C) Ten (10) twelve and nine-tenths (12.9) ounce cans of Enfamil Prosobee LIPIL iron fortified powder.
- (2) One hundred percent (100%) dairy milk: fifteen (15) gallons total of:
 - (A) whole;
 - (B) low fat; and
 - (C) skim;
 milk in gallons.
- (3) Cheese:

(A) three (3) kinds; and

(B) five (5) pounds;

of domestic prepackaged blocks or sliced cheese.

(4) Eggs: five (5) dozen large white eggs in one (1) dozen containers.

(5) One hundred percent (100%) juice:

(A) thirty (30) forty-six (46) ounce containers, at least four (4) kinds; and

(B) thirty (30) cans of eleven and five-tenths (11.5) or twelve (12) ounce frozen juice or shelf stable concentrate, or both, at least two (2) kinds.

(6) Cereal:

(A) six (6) kinds of dry; and

(B) one (1) kind of cooked;

cereal, for a total of twenty (20) boxes.

(7) Peanut butter: five (5) eighteen (18) ounce jars.

(8) Dried beans, peas, and lentils: three (3) kinds for a total of five (5) pounds in one (1) pound bags.

(9) Infant cereal:

(A) fifteen (15) boxes; and

(B) three (3) kinds;

of eight (8) ounce dry infant cereal without fruit.

(10) One hundred percent (100%) infant juice: six (6), thirty-two (32) ounce bottles.

(b) Noncompliance with this section will not result in an enforcement action if the vendor can demonstrate that any failure to meet the requirements of subsection (a) was the result of circumstances beyond the control of the vendor such as:

(1) a natural disaster;

(2) actions or decrees of governmental bodies; or

(3) a communication line failure.

(c) The department will provide at least one (1) month written notice of any change in the contract brand infant formula. (*Indiana State Department of Health; 410 IAC 3.6-3-8; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2991*)

410 IAC 3.6-3-9 Inadequate participant access

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-19-3-5

Sec. 9. (a) The department may consider whether there is inadequate participant access when considering whether to grant or deny authorization or reauthorization.

(b) The department shall also consider whether there is inadequate participant access when deciding whether to impose a civil money penalty in lieu of disqualification under 410 IAC 3.6-4.

(c) There is inadequate participant access if:

(1) a vendor:

(A) has closed, withdrawn, or relocated farther than three (3) miles from its authorized location; and

(B) was redeeming more than forty (40) food instru-

ments per month and one percent (1%) of the county's food instruments or one hundred fifty (150) food instruments per month with no minimum percentage;

(2) a pharmacy vendor has closed, withdrawn, or relocated farther than three (3) miles from its authorized location;

(3) a vendor:

(A) has been disqualified for at least one (1) year in the WIC service area; and

(B) was redeeming more than forty (40) food instruments per month and one percent (1%) of the county's food instruments or one hundred fifty (150) food instruments per month with no minimum percentage;

(4) the number of food instruments redeemed in the WIC service area has increased by ten percent (10%) in the preceding quarter; or

(5) there is a hardship for a significant WIC population in an area that is not served by an authorized vendor.

(*Indiana State Department of Health; 410 IAC 3.6-3-9; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2992*)

410 IAC 3.6-3-10 Store application outside the open authorization period

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-19-3-5

Sec. 10. (a) A store must submit a WIC food vendor application to be considered for authorization.

(b) Applications received outside the open authorization period, except those received from a store meeting the exception in section 1(d) of this rule, shall be reviewed to determine if there is inadequate participant access.

(c) If the department determines that there is not inadequate participant access:

(1) the store will be notified in writing of that determination; and

(2) the application will be denied.

(d) If the department determines that there is inadequate participant access, the following will occur:

(1) The application will be reviewed using the selection criteria in section 5 of this rule.

(2) If the application:

(A) meets all criteria in section 4 of this rule; and

(B) successfully passes the preauthorization visit;

the store will be offered a vendor agreement.

(*Indiana State Department of Health; 410 IAC 3.6-3-10; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2992*)

410 IAC 3.6-3-11 Denial of authorization

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 4-21.5; IC 16-19-3-5

Sec. 11. (a) The department shall deny the application of a store or vendor if the selection criteria in either section 4 or 5 of this rule, or both, are not met unless the department

determines there is inadequate participant access. The department will do the following:

- (1) Notify the vendor in writing of the denial.
- (2) Inform them of their appeal rights under IC 4-21.5.

(b) The department shall deny reauthorization if the vendor is not meeting the minimum food instrument redemption criteria in section 6(1) of this rule unless the department determines there is inadequate participant access.

(c) The department shall deny the application of a store or vendor if it contains false information.

(d) The department shall deny authorization for either of the following reasons:

- (1) If:
 - (A) the vendor has been disqualified from the WIC program; and
 - (B) no appeals are pending.
- (2) If the department determines that the store:
 - (A) relocated; or
 - (B) effected a change of ownership;
 to avoid a disqualification.

(Indiana State Department of Health; 410 IAC 3.6-3-11; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2992)

410 IAC 3.6-3-12 Termination of authorized WIC vendors

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-19-3-5

Sec. 12. The department shall terminate a WIC vendor's authorization if any of the following occur:

- (1) The store has been disqualified under 410 IAC 3.6-4 or 410 IAC 3.6-5.
- (2) The WIC vendor supplied false information in their application for authorization or reauthorization.
- (3) The store is not redeeming at least forty (40) food instruments per month by the sixth month of their authorization or reauthorization, unless the department determines that termination of the WIC vendor would cause inadequate participant access as described in section 9 of this rule.
- (4) Ownership of the store changes.
- (5) The store closes for more than three (3) consecutive business days and does not notify the department, unless the department determines that termination of the WIC vendor would cause inadequate participant access as described in section 9 of this rule.
- (6) The store makes more than fifty percent (50%) of its annual revenue from the sale of food items through WIC food instruments.

(Indiana State Department of Health; 410 IAC 3.6-3-12; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2993)

Rule 4. Federally-Mandated WIC Vendor Sanctions

410 IAC 3.6-4-1 Permanent disqualifications

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. (a) The department shall permanently disqualify a WIC vendor convicted of either of the following:

- (1) Trafficking in food instruments.
- (2) Selling:
 - (A) firearms;
 - (B) ammunition;
 - (C) explosives; or
 - (D) controlled substances, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802);
 in exchange for food instruments.

(b) A WIC vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(c) The department may impose a civil money penalty in lieu of a disqualification for this violation when the department determines that:

- (1) disqualification of the WIC vendor would result in inadequate participant access; or
- (2) the WIC vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking, and the ownership of the WIC vendor:
 - (A) was not aware of;
 - (B) did not approve of; and
 - (C) was not involved in;
 the conduct of the violation.

(Indiana State Department of Health; 410 IAC 3.6-4-1; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2993)

410 IAC 3.6-4-2 Six-year disqualifications

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. The department shall disqualify a WIC vendor for six (6) years for one (1) incidence of either of the following:

- (1) Buying or selling food instruments for cash (trafficking).
- (2) Selling:
 - (A) firearms;
 - (B) ammunition;
 - (C) explosives; or
 - (D) controlled substances, as defined in 21 U.S.C. 802;
 in exchange for food instruments.

(Indiana State Department of Health; 410 IAC 3.6-4-2; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2993)

410 IAC 3.6-4-3 Three-year disqualifications

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 3. The department shall disqualify a WIC vendor for three (3) years for any of the following reasons:

- (1) One (1) incidence of the sale of:
 - (A) alcohol;

- (B) alcoholic beverages; or
- (C) tobacco products;

in exchange for food instruments.

(2) A pattern of any of the following:

(A) Two (2) or more claims for reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item within a twenty-four (24) month period.

(B) Three (3) or more vendor overcharges within a twenty-four (24) month period.

(C) Two (2) or more instances of any combination of receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person, or both, within a twenty-four (24) month period.

(D) Three (3) or more charges for supplemental food not received by the participant within a twenty-four (24) month period.

(E) Two (2) or more instances of providing credit or nonfood items, other than:

- (i) alcohol;
- (ii) alcoholic beverages;
- (iii) tobacco products;
- (iv) cash;
- (v) firearms;
- (vi) ammunition;
- (vii) explosives; or
- (viii) controlled substances, as defined in 21 U.S.C. 802;

in exchange for food instruments within a twenty-four (24) month period.

(Indiana State Department of Health; 410 IAC 3.6-4-3; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2993)

410 IAC 3.6-4-4 One-year disqualifications

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 4. The department shall disqualify a vendor for one (1) year for a pattern of two (2) or more instances, within a twenty-four (24) month period, of providing unauthorized food items in exchange for food instruments, including charging for supplemental foods provided in excess of those listed on the food instrument. *(Indiana State Department of Health; 410 IAC 3.6-4-4; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2994)*

410 IAC 3.6-4-5 Second mandatory sanctions

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 5. When a vendor, who previously has been assessed a sanction for a:

- (1) six-year;
- (2) three-year; or
- (3) one-year;

disqualification, receives another sanction for any of these violations, the department shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under 7 CFR 246.12(l)(2)(i). *(Indiana State Department of Health; 410 IAC 3.6-4-5; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2994)*

410 IAC 3.6-4-6 Third or subsequent mandatory sanction

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 6. When a WIC vendor, who previously has been assessed two (2) or more sanctions for a:

- (1) six-year;
- (2) three-year; or
- (3) one-year;

disqualification, receives another sanction for any of these violations, the department shall double the third sanction and all subsequent sanctions. The department shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed for a six-year disqualification, three-year disqualification, or one-year disqualification. *(Indiana State Department of Health; 410 IAC 3.6-4-6; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2994)*

410 IAC 3.6-4-7 Disqualification based on another food program disqualification

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 7. The department shall disqualify a WIC vendor who has been disqualified from the food stamp program. The disqualification:

- (1) shall be for the same length of time as the food stamp program disqualification;
- (2) may begin at a later date than the food stamp program disqualification; and
- (3) shall not be subject to administrative or judicial review under the WIC program.

(Indiana State Department of Health; 410 IAC 3.6-4-7; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2994)

410 IAC 3.6-4-8 Inadequate participant access determinations for federally-mandated vendor disqualification

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 8. Before disqualifying a vendor for a food stamp program disqualification or for any of the violations listed for a federally-mandated six-year disqualification, three-year disqualification, or one-year disqualification, the department shall determine if disqualification of the WIC vendor would result in inadequate participant access. If the department determines that disqualification of the WIC vendor would result in inadequate participant access, the department shall impose a civil money penalty in lieu of

disqualification. However, the department shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations listed for a:

- (1) six-year;
- (2) three-year; or
- (3) one-year;

disqualification. (*Indiana State Department of Health; 410 IAC 3.6-4-8; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2994*)

410 IAC 3.6-4-9 Civil money penalty formula

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 9. (a) For each violation subject to a federally-mandated sanction, the department shall take the following steps to calculate a civil money penalty imposed in lieu of disqualification:

- (1) Determine the vendor's average monthly redemption of food instruments for the six (6) month period ending with the month immediately preceding the month during which the notice of adverse action is dated.
- (2) Multiply the average monthly redemption amount determined in subdivision (1) by ten percent (10%).
- (3) Multiply the product from subdivisions (1) and (2) by the number of months for which the vendor would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed the limits set forth in 7 CFR 246.12(l)(2)(i). For a violation that warrants permanent disqualification, the amount of the civil money penalty shall not exceed the limits set forth in 7 CFR 246.12(l)(2)(i). When during the course of an investigation the department determines a vendor has committed multiple violations, the department shall impose a civil money penalty for each violation.

(b) The total amount of civil money penalties imposed for violations investigated as part of a single investigation may not exceed the limits set in 7 CFR 246.12(l)(2)(i). (*Indiana State Department of Health; 410 IAC 3.6-4-9; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2995*)

410 IAC 3.6-4-10 Multiple violations during an investigation

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 10. When during the course of an investigation the department determines a vendor has committed multiple violations of this rule, the department shall disqualify the vendor for the period corresponding to the most serious violation of this rule. However, the department shall include all violations in the notice of adverse action. (*Indiana State Department of Health; 410 IAC 3.6-4-10; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2995*)

Rule 5. Department Sanctions

410 IAC 3.6-5-1 Compliance

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 1. The purpose of the WIC program is to provide the following:

- (1) Supplemental foods containing nutrients determined beneficial for:
 - (A) pregnant, breastfeeding, and postpartum women;
 - (B) infants; and
 - (C) children;
 who are at nutritional risk.
- (2) Nutritional education to eligible persons.

The WIC vendor is an important part of the WIC program. The primary focus of the WIC program is not to sanction WIC vendors. The department is required to conduct routine monitoring visits to assess vendor compliance. Sanctions will be imposed when required. (*Indiana State Department of Health; 410 IAC 3.6-5-1; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2995*)

410 IAC 3.6-5-2 Major and minor violations

Authority: IC 16-19-3-5; IC 16-35-1.5-6
Affected: IC 16-35-1.5

Sec. 2. (a) Major violations are violations that could result in harm to WIC participants or the WIC program. The following are major violations:

- (1) Claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the vendor's documented inventory of that supplemental food item for a specific period of time.
- (2) Submission of false information:
 - (A) on the retail vendor price survey; or
 - (B) during the course of inspections of the vendor site.
- (3) Receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person, or both.
- (4) Charging for a supplemental food not received by the participant.
- (5) Providing credit or nonfood items, other than:
 - (A) alcohol;
 - (B) alcoholic beverages;
 - (C) tobacco products;
 - (D) cash;
 - (E) firearms;
 - (F) ammunition;
 - (G) explosives; or
 - (H) controlled substances, as defined in 21 U.S.C. 802;
 in exchange for food instruments.
- (6) Failure to attend a required training.
- (7) Failure to maintain:
 - (A) inventory records; or
 - (B) other records;
 the department requires of the vendor.
- (8) Providing change when redeeming a food instrument.
- (9) Failure to provide authorized WIC program personnel access to the following:

- (A) The business premises.
- (B) Any redeemed food instruments on hand.
- (C) Any other records pertaining to vendor participation.
- (10) Alteration of a food instrument other than a legitimate price or “date used” correction.
- (11) Home delivery of WIC purchases.
- (12) Failure to accept a valid food instrument when accompanied by a valid WIC identification folder.
- (13) Recovery or attempted recovery of funds or food from WIC participants.
- (14) Failure of a vendor pharmacy to provide special formulas as required by 410 IAC 3.6-3-4(a)(9) [*sic.*, 410 IAC 3.6-3-4(5)].
- (15) Failure to compare the signature on the food instrument with the signature on the WIC program identification card.
- (16) Not allowing WIC participants to participate in sales promotions or manufacturer’s specials or refusal to accept coupons when allowed for other customers.
- (17) Denial of the purchase of up to the full amount of WIC foods authorized on a food instrument if requested by a WIC participant.
- (18) Selling expired infant formula to participants.
- (19) Failure to reimburse the department, within thirty (30) days of written request, for amounts paid by the department to the vendor on improperly redeemed food instruments.
- (20) Including sales tax or container deposits as part of the actual cost of the authorized food listed on the food instrument or requiring the participant to pay the sales tax or container deposit.
- (21) Requiring cash purchases in order to redeem food instruments.
- (22) Accepting the return of items purchased with a food instrument for cash or credit towards other purchases or exchanges, with the exception of exchanges of an identical authorized food item when the original food item:
 - (A) is defective;
 - (B) is spoiled; or
 - (C) has exceeded its:
 - (i) “sell by” date;
 - (ii) “best if used by” date; or
 - (iii) another date;limiting the sale or use of the item.
- (23) Threatening or verbally abusing WIC participants or authorized WIC program personnel.

(b) Minor violations are violations that may impose less harm to participants or the program. The following are minor violations:

- (1) Failure to supply a timely retail vendor price survey to the department.
- (2) Requiring WIC participants to show identification other than WIC identification folders, except in cases when the WIC identification folder is not signed.
- (3) Issuing rain checks for specific WIC food types, brand,

or quantities listed on the food instrument not available or not received by the participant at the time a food instrument is redeemed.

- (4) Failure to maintain the minimum required:

- (A) quantity;
- (B) size;
- (C) type; and
- (D) variety;

of WIC-approved foods as set forth in 410 IAC 3.6-3-8.

- (5) Requiring a participant to select a specific type or brand of WIC-approved foods when the food instrument or the food list, or both, does not require the purchase of that specific type or brand.

- (6) The:

- (A) possession;
- (B) display on the shelf in the vendor site;
- (C) attempted sale; or
- (D) actual sale;

of food products that originated from the Commodity Supplemental Food Program.

- (7) Acceptance of food instruments that are signed by a participant or a proxy before the vendor fills in the total actual cost.

- (8) Failure to remove out-of-date WIC foods from customer areas.

- (9) Failure of the WIC foods identification test by store personnel or scanner system.

- (10) Failure to do any of the following:

- (A) Maintain WIC food prices within fifteen percent (15%) of other authorized WIC vendors in the WIC service area.
- (B) Accurately show the price of WIC foods on the food:
 - (i) package;
 - (ii) container;
 - (iii) shelf; or
 - (iv) sign.

- (C) Offer WIC participants the same courtesies and services offered to the general public.

- (11) Using a cash register without a current WIC-approved food list at the cash register.

- (12) Failure to allow the purchase of a WIC authorized food.

- (13) Accepting a food instrument:

- (A) before the “first day to use”; or
- (B) after the “last day to use”.

- (14) Accepting an altered food instrument, other than a legitimate price or “date used” correction.

- (15) Failure to provide a WIC participant with a cash register receipt for foods purchased with a food instrument.

- (16) Retaining WIC identification or any information that identifies a person as a WIC participant or proxy or disclosing information regarding a participant of the WIC program to any person without a valid court order, other than to the department, its designee, or a federal WIC program official.

- (c) Sanctions will be imposed as follows:

(1) For the first major violation the vendor shall receive a warning letter indicating the following:

- (A) The violation.
- (B) How to remedy the violation.

(2) For the second major violation within a twenty-four (24) month period, a vendor may be sanctioned as follows:

(A) A fine up to the lesser of one thousand dollars (\$1,000) or ten percent (10%) of the vendor's monthly average redemptions for:

- (i) the greater of the twelve (12) months preceding the date of the sanction notice; or
- (ii) a lesser number of months the vendor has been authorized.

(B) Disqualification from the WIC program for up to one (1) year.

(3) For the first minor violation within a twenty-four (24) month period, the vendor shall receive a warning letter indicating the following:

- (A) The violation.
- (B) How to remedy the violation.

(4) For a vendor's second minor violation within a twenty-four (24) month period, a vendor shall either:

- (A) receive a second warning letter; or
- (B) be required to participate in a conference with the department and local agency about the violation, either in person or by telephone;
- (C) both.

After the letter or conference, the vendor shall submit written documentation of the corrective action that will be taken.

(5) For a vendor's third minor violation within a twenty-four (24) month period, a vendor may be fined up to the lesser of three hundred dollars (\$300) or three percent (3%) of the vendor's monthly average redemptions for the greater of the following:

- (A) The twelve (12) months preceding the date of the imposition of the sanction.
- (B) A lesser number of months the vendor has been authorized.

(6) For any subsequent minor violations within a twenty-four (24) month period, a vendor may be fined up to the lesser of five hundred dollars (\$500) or five percent (5%) of the vendor's monthly average redemptions for the greater of the following:

- (A) The twelve (12) months preceding the date of the sanction notice.
- (B) A lesser number of months the vendor has been authorized.

(7) Multiple violations found may result in a cumulative penalty assessment based upon this subsection.

(8) The maximum fine and maximum disqualification term shall be not more than the limits set forth in 7 CFR 246.12(l)(2)(i).

(9) For the fourth violation of subsection (b)(4) within a twenty-four (24) month period, the sanction will be disqualification from the WIC program for up to one (1) year.

(d) A vendor remaining in the program after an imposed sanction shall provide the following:

(1) Certification that the situation giving rise to the sanction has been corrected.

(2) Documentation regarding the correction as requested by the department.

(Indiana State Department of Health; 410 IAC 3.6-5-2; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2995)

410 IAC 3.6-5-3 Prior warning

Authority: IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 3. The department does not have to provide the vendor with a prior warning that violations were occurring before imposing any of the sanctions in this article, with the exception of section 2(c) of this rule. *(Indiana State Department of Health; 410 IAC 3.6-5-3; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2997)*

410 IAC 3.6-5-4 General requirements

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 4. The total period of disqualification imposed for department sanctions investigated as part of a single investigation may not exceed one (1) year. A civil money penalty or fine may not exceed eleven thousand dollars (\$11,000) for each violation. The total amount of civil money penalties and administrative fines imposed for violations investigated as part of an investigation may not exceed the limits set forth in 7 CFR 246.12(l)(2)(i). *(Indiana State Department of Health; 410 IAC 3.6-5-4; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2997)*

410 IAC 3.6-5-5 Administrative reviews

Authority: IC 16-19-3-4; IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 4-21.5; IC 16-19-3; IC 16-35-1.5

Sec. 5. The department shall provide administrative review to the extent required by IC 4-21.5, except that administrative review will not be provided for certain department actions as indicated in 7 CFR 246.18(a)(1)(iii). *(Indiana State Department of Health; 410 IAC 3.6-5-5; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2997)*

410 IAC 3.6-5-6 Termination of agreement

Authority: IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 6. When the department disqualifies a vendor, the department shall also terminate the vendor agreement. *(Indiana State Department of Health; 410 IAC 3.6-5-6; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2997)*

Rule 6. Incorporation by Reference

410 IAC 3.6-6-1 Incorporation by reference

Authority: IC 16-19-3-5; IC 16-35-1.5-6

Affected: IC 16-35-1.5

Sec. 1. (a) When used in this article, references to the following publications shall mean the version of that publication listed in this subsection. The following publications are hereby incorporated by reference:

- (1) 7 CFR 246.12 (January 1, 2005).
- (2) 42 U.S.C. 1786.
- (3) 7 CFR 246.10 (January 1, 2005).
- (4) 7 CFR 246.18 (January 1, 2005).
- (5) 21 U.S.C. 802.

(b) Federal rules that have been incorporated by reference do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. (Indiana State Department of Health; 410 IAC 3.6-6-1; filed Apr 24, 2006, 3:00 p.m.: 29 IR 2997)

LSA Document #05-19(F)
Notice of Intent Published: March 1, 2005; 28 IR 1713
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IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 7 CFR 246.10 (January 1, 2005); 7 CFR 246.12 (January 1, 2005); 7 CFR 246.18 (January 1, 2005); 21 U.S.C. 802; 42 U.S.C. 1786

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #05-82(F)

DIGEST

Amends 865 IAC 1-1 to revise the definitions and board meeting scheduling. Amends 865 IAC 1-2 to revise the minimum education and experience requirements established under IC 25-21.5-5-2 for admission to the land surveyor and land-surveyor-in-training examination. Amends 865 IAC 1-3-2 concerning students enrolled in an approved land surveying curriculum submitting the SIT examination application to a board designee on the student's campus. Amends 865 IAC 1-4 to update and clarify requirements concerning examinations. Amends 865 IAC 1-5 to revise the standards for comity registration. Amends 865 IAC 1-7 to revise the design, application, and use of the land surveyor seal and to establish the definitions, standards, and requirements for the use of electronic or digital signatures. Amends 865 IAC 1-8-1 to clarify language regarding the payment of renewal fees. Amends 865 IAC 1-9-1 to require a registrant to identify the address of all the offices that the registrant is in responsible charge of land surveying work and to

require a registrant to notify the board of any change in the registrant's address and office address. Amends 865 IAC 1-10-2 to bring the agreement to abide by the acts and rules into conformity with the changes to the definitions. Revises 865 IAC 1-10-12 to update the disclosure of conflicts of interest. Adds 865 IAC 1-10-25 concerning revocation or suspension of license in another jurisdiction. Amends 865 IAC 1-11-1 to bring the fees charged by the board into conformity with the changes to the definitions. Amends 865 IAC 1-12 to revise the standards for the competent practice of land surveying. Amends 865 IAC 1-13 to revise the continuing education requirements for registered land surveyors. Amends 865 IAC 1-14 to revise the requirements for land surveyor continuing education providers. Repeals 865 IAC 1-4-9, 865 IAC 1-10-11, 865 IAC 1-12-8, 865 IAC 1-12-15, 865 IAC 1-12-16, 865 IAC 1-12-17, 865 IAC 1-12-19, and 865 IAC 1-12-26. Partially effective 30 days after filing with the Secretary of State and partially effective August 1, 2006.

865 IAC 1-1-1	865 IAC 1-12-12
865 IAC 1-1-2	865 IAC 1-12-13
865 IAC 1-2-1	865 IAC 1-12-14
865 IAC 1-2-2	865 IAC 1-12-15
865 IAC 1-3-2	865 IAC 1-12-16
865 IAC 1-4-3	865 IAC 1-12-17
865 IAC 1-4-6	865 IAC 1-12-18
865 IAC 1-4-7	865 IAC 1-12-19
865 IAC 1-4-8	865 IAC 1-12-20
865 IAC 1-4-9	865 IAC 1-12-21
865 IAC 1-5-1	865 IAC 1-12-22
865 IAC 1-5-2	865 IAC 1-12-23
865 IAC 1-7-1	865 IAC 1-12-24
865 IAC 1-7-2	865 IAC 1-12-25
865 IAC 1-7-3	865 IAC 1-12-26
865 IAC 1-7-4	865 IAC 1-12-27
865 IAC 1-8-1	865 IAC 1-12-28
865 IAC 1-9-1	865 IAC 1-12-29
865 IAC 1-10-2	865 IAC 1-12-30
865 IAC 1-10-11	865 IAC 1-13-2
865 IAC 1-10-12	865 IAC 1-13-5
865 IAC 1-10-25	865 IAC 1-13-7
865 IAC 1-11-1	865 IAC 1-13-8
865 IAC 1-12-2	865 IAC 1-13-10
865 IAC 1-12-3	865 IAC 1-13-11
865 IAC 1-12-4	865 IAC 1-13-19
865 IAC 1-12-5	865 IAC 1-14-2
865 IAC 1-12-7	865 IAC 1-14-13
865 IAC 1-12-8	865 IAC 1-14-14
865 IAC 1-12-9	865 IAC 1-14-15
865 IAC 1-12-10	865 IAC 1-14-16

SECTION 1. 865 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-1-1 Definitions; abbreviations

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5-1-5; IC 25-21.5-5-2; IC 25-21.5-7-4

Sec. 1. (a) The definitions in IC 25-21.5-1 and the following definitions apply throughout this title:

- (1) ~~“The act” means the Registration Act, IC 25-21-5, creating a board to regulate the practice of land surveying in Indiana.~~
- (1) **“Applicant” means any individual whose application has been received by the board for consideration to be registered as a land surveyor or for enrollment as a SIT in the state of Indiana.**
- (2) **“Approved land surveying curriculum”, when used relative to a land surveyor or SIT applicant, means a four (4) year or more curriculum leading to a bachelor’s degree in land surveying that is approved by the board.**
- (3) **“Board” means state board of registration for land surveyors.**
- (4) **“Comity” means a principle by which the board, under IC 25-21.5-7-4, licenses persons to practice land surveying on the basis of land surveying licenses issued by other states.**
- (5) **“Date of registration” means the date of the certificate that was assigned by the board.**
- (2) (6) ~~“Land surveyor” means one and the same as a registered land surveyor.~~
- (3) (7) ~~“Registrant” means an individual land surveyor to whom a certificate of registration has been granted under the act. IC 25-21.5.~~
- (4) (8) ~~“SIT” means an enrolled land-surveyor-in-training as defined in IC 25-21.5-1-5.~~
- (5) ~~“Applicant” means any individual whose application has been received by the board for consideration to be registered as a land surveyor or for enrollment as a SIT in the state of Indiana.~~
- (6) ~~“Approved land surveying curriculum”, when used relative to a land surveyor or SIT applicant, means a four (4) year or more curriculum leading to a bachelor’s degree in land surveying which is approved by the board.~~
- (9) **“Valid enrollment”, when used relative to SIT, means that the certificate of enrollment held by the individual is current and not suspended or revoked.**
- (7) (10) ~~“Work experience”, when used relative to a land surveyor, means acceptable experience in land surveying work which that conforms to the provisions of IC 25-21.5-5-2.~~
- (8) ~~“Valid enrollment”, when used relative to SIT, means that the certificate of enrollment held by the individual is current and not suspended or revoked.~~
- (9) ~~“Date of registration” means the date of the certificate which was assigned by the board.~~
- (10) ~~“Comity” means a principle by which the board licenses persons to practice land surveying on the basis land surveying licenses issued by other states.~~
- (11) ~~“FE” means the applicable fundamental examination portion of the registration examination for land surveyors; otherwise described as Part I of the respective examinations; IC 25-21.5-6-1.~~

(b) The terms defined in IC 25-21.5-1 shall have the same definitions when used in this title: *(State Board of Registration*

for Land Surveyors; Rule 1, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 626; filed Oct 17, 1986, 2:20 p.m.: 10 IR 434; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3904; filed Oct 13, 1992, 5:00 p.m.: 16 IR 873; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 2998) NOTE: 864 IAC 1.1-1-1 was renumbered by Legislative Services Agency as 865 IAC 1-1-1.

SECTION 2. 865 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-1-2 Meetings of board

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-2-11

Sec. 2. In order to establish the regular meetings provided for in IC 25-21.5-2-11 and provide for special meetings of the board, the board adopts the following:

- (1) One (1) of the regular meetings of the board shall be held as soon as practicable after the start of the calendar year, at which meeting the board shall elect a ~~chairman~~ **chairperson** and a vice ~~chairman~~ **chairperson** from among its members. ~~Such officers~~ **The chairperson and vice chairperson** may also be elected ~~also~~ at any other meeting when a vacancy exists.
- (2) ~~Another regular meeting shall be held as near as practicable to the middle of the calendar year.~~
- (3) (2) The ~~chairman~~ **chairperson** or any three (3) members may call a special meeting by presenting a request to the **Indiana** professional licensing agency.
- (4) (3) The **Indiana** professional licensing agency shall give a notice to all board members of each meeting:
 - (A) setting out the time and place of the meeting; and
 - (B) including a proposed agenda of the major items for action at the meeting;
 not less than ten (10) days ~~prior to~~ **before** the meeting, unless ~~such the~~ notice has been waived by the ~~chairman~~ **chairperson**.

(State Board of Registration for Land Surveyors; Rule 1, Sec 3; filed Feb 29, 1980, 3:40 p.m.: 3 IR 627; filed Oct 17, 1986, 2:20 p.m.: 10 IR 435; filed Oct 13, 1992, 5:00 p.m.: 16 IR 874; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 2999) NOTE: 864 IAC 1.1-1-3 was renumbered by Legislative Services Agency as 865 IAC 1-1-2.

SECTION 3. 865 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-2-1 Land surveyors; education and work experience

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-1-7; IC 25-21.5-5-2

Sec. 1. (a) This section establishes the minimum education and experience requirements under IC 25-21.5-5-2 for admission to the land surveyor examination.

- (b) **Prior to January 3, 2009**, the table in this subsection

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establishes provisions for evaluating combined education and experience to determine if it is sufficient to satisfy minimum registration requirements under IC 25-21.5-5-2 for land surveyor registration applicants. For all levels of education stated, except for no degree, the required experience must be obtained following receipt of a bachelor's degree. However, experience obtained either before or after graduation may be counted in which case the total amount of experience for each educational level stated in the table, except no degree, shall be increased by one (1) year in addition to the amount stated for the particular education level. The requirements are as follows:

Education	Minimum Years of Work Experience
Doctorate in land surveying discipline following bachelor's degree in a board-approved land surveying curriculum	2
Master's degree in land surveying discipline following bachelor's degree in a board-approved land surveying curriculum	3
Bachelor's degree in a board-approved land surveying curriculum	4
Doctorate in land surveying following a bachelor's degree that is not in a board-approved land surveying curriculum	3
Master's degree in land surveying following bachelor's degree that is not in a board-approved land surveying curriculum	4
Bachelor's degree that is not in a board-approved land surveying curriculum	5
No degree but meets the college course requirements stated in subsection (c) (d)	6

(c) After January 2, 2009, the table in this subsection establishes provisions for evaluating combined education and experience to determine if it is sufficient to satisfy minimum registration requirements under IC 25-21.5-5-2 for land surveyor registration applicants. For all levels of education stated, a minimum of one-half (½) of the required experience must be obtained following receipt of the first degree obtained. The requirements are as follows:

Education	Minimum Years of Work Experience
Doctorate in land surveying discipline following bachelor's degree in a board-approved land surveying curriculum	2
Master's degree in land surveying discipline following bachelor's degree in a board-approved land surveying curriculum	3
Bachelor's degree in a board-approved land surveying curriculum	4

Doctorate in land surveying following a bachelor's degree that is not in a board-approved land surveying curriculum	3
Master's degree in land surveying following bachelor's degree that is not in a board-approved land surveying curriculum	4
Bachelor's degree that is not in a board-approved land surveying curriculum	5
Associate degree and meets the college course requirements stated in subsection (d)	6

(c) (d) The education of all applicants must include the following minimum level of education:

(1) Twelve (12) semester credit hours in college level mathematics, including at least ~~four (4)~~ **a three (3)** semester credit hour course in calculus or differential equations.

(2) ~~Six (6)~~ **Five (5)** semester credit hours in college level physics.

(3) Six (6) semester credit hours in any of the following college level ~~physical~~ science subjects:

- (A) Chemistry.
- (B) Astronomy.
- (C) Physics.
- (D) Geology.
- (E) Botany.
- (F) Dendrology.

(4) Twenty-seven (27) semester credit hours in college level land surveying courses consisting of the following:

(A) ~~At least eighteen (18) semester credit hours in~~ Courses in each of the following six (6) subjects **totaling at least eighteen (18) semester credit hours:**

- (i) Land survey systems.
- (ii) Property surveys.
- (iii) Property descriptions, writing, and analysis.
- (iv) Surveying law.
- (v) Surveying calculations, including mensuration statistics.
- (vi) Subdivision planning and design.

(B) ~~At least nine (9) semester credit hours in~~ Courses in at least three (3) of the following subjects **totaling at least nine (9) semester credit hours:**

- (i) Topographic surveying.
- (ii) Photogrammetric surveying.
- (iii) Route surveying.
- (iv) Construction surveying.
- (v) Control surveying.

One (1) basic engineering course related to roads, storm drainage, and sanitary sewer extensions may be counted toward ~~this requirement.~~ **the requirements of this clause.**

(d) (e) No degree requirement under this section will be satisfied by obtaining an honorary or correspondence degree.

(e) (f) College courses with a substantial duplication of content may be counted only one (1) time toward the education requirements in this section.

~~(g)~~ (g) Applicants for land surveyor registration or land-surveyor-in-training certification may be required to submit detailed course descriptions of any courses for which credit is claimed.

~~(g)~~ (h) Notwithstanding other provisions of this section, applicants who hold a valid land-surveyor-in-training certificate do not need any additional education beyond that ~~which was~~ required for admission to the land-surveyor-in-training examination, so long as they apply for admission to the land surveyor examination ~~no not~~ later than ~~January 2, 2003~~, or five (5) years after the first examination application deadline (as provided for in 865 IAC 1-3-3) subsequent to the date the applicant passed the land-surveyor-in-training examination that was the basis for issuance of the land-surveyor-in-training certification. ~~whichever is later:~~

~~(h)~~ (i) The board may require an evaluation of foreign education to allow the board to compare an applicant's courses with the board's course requirements.

~~(j)~~ (j) All land surveying experience required by subsection (b) ~~or subsection (c)~~ [subsection (b) or (c)] must be acquired under the supervision of:

- (1) a ~~registered~~ land surveyor **registered by the state of Indiana;**
- (2) **a land surveyor registered or licensed by another state or territory of the United States;** or
- (3) the foreign equivalent to a registered land surveyor; **appropriate to** where the experience was obtained.

~~(k)~~ (k) No experience obtained ~~prior to before~~ the applicant's eighteenth birthday shall qualify under this section.

~~(l)~~ (l) At least ~~half one-half~~ (½) of the required land surveying experience must be acquired in a state or territory in the United States under the supervision of a land surveyor registered in that state or territory.

~~(m)~~ (m) The land surveying experience must:

- (1) be progressive in nature; and
- (2) show that the applicant has demonstrated the ability to assume continuously increasing levels of responsibility and sophistication in the land surveying activities listed in 865 IAC 1-12-3(a).

~~(n)~~ ~~Not less than~~ (n) **At least** sixty percent (60%) of an applicant's land surveying experience **required under subsection (b) or subsection (c)** [subsection (b) or (c)] must be in the activities listed in **the following:**

- (1) IC 25-21.5-1-7(a)(1). ~~and~~
- (2) IC 25-21.5-1-7(a)(3) through IC 25-21.5-1-7(a)(5).

~~(o)~~ (o) The board may require an applicant to provide additional information relating to the applicant's land surveying experience. (*State Board of Registration for Land Surveyors;*

Rule 2, Sec 3; filed Feb 29, 1980, 3:40 p.m.: 3 IR 628; filed Oct 17, 1986, 2:20 p.m.: 10 IR 436; errata filed Mar 8, 1990, 5:00 p.m.: 13 IR 1189 voided by the attorney general filed Apr 18, 1990: 13 IR 1863; errata filed Dec 20, 1990, 5:00 p.m.: 14 IR 1071; filed Oct 13, 1992, 5:00 p.m.: 16 IR 874; filed Jun 17, 1999, 1:57 p.m.: 22 IR 3415, eff Jan 3, 2003; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 2999) NOTE: 864 IAC 1.1-2-3 was renumbered by Legislative Services Agency as 865 IAC 1-2-1.

SECTION 4. 865 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-2-2 Land-surveyors-in-training; education and work experience

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5-5-3

Sec. 2. (a) The education and experience requirements of section 1 of this rule for land surveyor applicants apply for land-surveyor-in-training applicants, except that **applicants with:**

- (1) ~~applicants who do not have a an associate (or no degree prior to January 3, 2009)~~ degree **but meet and meeting** the education requirements of section ~~1(e)~~ **1(d)** of this rule shall be required to obtain ~~only~~ two (2) years of work experience;
- (2) ~~applicants with~~ a bachelor's degree that is not in a board approved land surveying curriculum **but meet and meeting** the education requirements of section ~~1(e)~~ **1(d)** of this rule shall be required to obtain ~~only~~ one (1) year of work experience; and
- (3) ~~applicants with~~ the other degrees listed in section 1(b) ~~or 1(c)~~ of this rule shall not be required to obtain any work experience.

(b) An applicant who is enrolled as a senior in a land surveying curriculum in a college or university that has an approved land surveying curriculum may take the last land-surveyor-in-training examination offered on the individual's campus ~~prior to before~~ the applicant's scheduled graduation. This subsection does not apply to any applicant enrolled in any other bachelor's degree program. (*State Board of Registration for Land Surveyors; Rule 2, Sec 5; filed Feb 29, 1980, 3:40 p.m.: 3 IR 628; filed Oct 17, 1986, 2:20 p.m.: 10 IR 438; errata filed Mar 8, 1990, 5:00 p.m.: 13 IR 1189 voided by the attorney general filed Apr 18, 1990: 13 IR 1863; errata filed Dec 20, 1990, 5:00 p.m.: 14 IR 1071; filed Oct 13, 1992, 5:00 p.m.: 16 IR 875; filed Jun 17, 1999, 1:57 p.m.: 22 IR 3417, eff Jan 3, 2003; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3001) NOTE: 864 IAC 1.1-2-5 was renumbered by Legislative Services Agency as 865 IAC 1-2-2.*

SECTION 5. 865 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-3-2 Land-surveyor-in-training; application

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 2. (a) A student enrolled in an approved land surveying curriculum ~~shall~~ **may** submit the application to sit for the ~~SFF~~ **land-surveyor-in-training** examination to the designee of the board, **if any**, located on the student's campus.

(b) All other applicants shall submit their applications to the board's office. (*State Board of Registration for Land Surveyors; Rule 3, Sec 3; filed Feb 29, 1980, 3:40 p.m.: 3 IR 630; filed Oct 17, 1986, 2:20 p.m.: 10 IR 439; filed Oct 13, 1992, 5:00 p.m.: 16 IR 875; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3001*) **NOTE: 864 IAC 1.1-3-3 was renumbered by Legislative Services Agency as 865 IAC 1-3-2.**

SECTION 6. 865 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-4-3 Content of land surveying examinations; scheduling of examinations

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5-6-1

Sec. 3. (a) The examination for registration as a land surveyor shall consist of two (2) parts as described in IC 25-21.5-6-1. Part I shall be known as the **basic disciplines** (fundamentals of land surveying) examination. Part II shall be:

(1) known as the principles and practice examination; and ~~shall be~~

(2) divided into two (2) sections.

Section A shall consist of matters concerning principles and practice except for laws applicable to land surveying specific to Indiana. Section B shall concern laws applicable to land surveying specific to Indiana. In order to be granted registration as a land surveyor, the applicant must pass Part I, Part IIA, and Part IIB.

(b) The examination for certification as a land-surveyor-in-training shall be the ~~fundamentals~~ **basic disciplines** examination described in subsection (a).

(c) Regularly scheduled examinations will be held in April and October each year. (*State Board of Registration for Land Surveyors; 865 IAC 1-4-3; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3906; filed Jul 24, 1989, 5:00 p.m.: 12 IR 2284; filed Oct 13, 1992, 5:00 p.m.: 16 IR 876; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3002*) **NOTE: 864 IAC 1.1-4.1-4 was renumbered by Legislative Services Agency as 865 IAC 1-4-3.**

SECTION 7. 865 IAC 1-4-6 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-4-6 Examination attempts for registration as a land surveyor

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 6. (a) This section and section 7 of this rule apply to the examination for registration as a land surveyor.

(b) An applicant who does not pass the entire examination in the first attempt shall be entitled to take it two (2) additional times provided that both of the applicant's additional examinations are taken no later than the fourth regularly scheduled examination after the failure of the first examination.

~~(c) Notwithstanding subsection (b), an applicant who has two (2) or more examination attempts remaining prior to July 1, 2001, shall only have two (2) additional examination attempts remaining after June 30, 2001. Both of those examination attempts must be used prior to June 30, 2003.~~

~~(d) Notwithstanding subsection (b), an applicant who has one (1) examination attempt remaining prior to July 1, 2001, shall only have one (1) additional examination attempt remaining after June 30, 2001. The examination attempt must be used prior to June 30, 2002.~~

~~(e)~~ (c) An applicant who passes one (1) or two (2) parts of the land surveyor examination:

(1) Part I;

(2) Part IIA; or

(3) Part IIB;

in any prior taking of the examination allowed under subsection (b), shall not be required to again take and pass that part or those parts in the remaining examination attempts allowed by subsection (b).

~~(f)~~ (d) Upon exhaustion of all of the examination attempts allowed under subsection (b), the application shall be deemed terminated. (*State Board of Registration for Land Surveyors; 865 IAC 1-4-6; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3906; filed Jul 24, 1989, 5:00 p.m.: 12 IR 2284; filed Oct 13, 1992, 5:00 p.m.: 16 IR 877; filed May 4, 2001, 11:10 a.m.: 24 IR 2696, eff Jul 1, 2001; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3002*) **NOTE: 864 IAC 1.1-4.1-7 was renumbered by Legislative Services Agency as 865 IAC 1-4-6.**

SECTION 8. 865 IAC 1-4-7 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-4-7 Terminated applications; reapplication for admission, qualifications

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5-5-2

Sec. 7. (a) An individual whose application has been deemed terminated under ~~section 6(f)~~ **section 6(d)** of this rule may reapply for admission to the examination.

(b) In order for readmission to be granted, the applicant must have completed the following:

(1) Since the termination of the application, nine (9) or more semester hours credit (or its equivalent) of college level courses in land surveying.

(2) Appropriate experience of the type required under IC 25-21.5-5-2 for the period of at least three (3) years ~~immediately preceding after termination but before~~ the filing of the reapplication.

(c) An applicant who is readmitted to an examination under this section shall be treated as if the applicant had not previously taken the examination for all purposes under sections 4 and 6 of this rule. However, if the applicant has previously passed Part I of ~~this~~ the land surveyor examination, the applicant shall not be required to retake Part I. ~~as long as the applicant's second examination was taken at either of the next two (2) regularly scheduled examinations after the failure of the first examination.~~ (State Board of Registration for Land Surveyors; 865 IAC 1-4-7; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3907; errata filed Feb 5, 1990, 4:15 p.m.: 13 IR 1066; filed Nov 15, 1990, 1:35 p.m.: 14 IR 757; filed Oct 13, 1992, 5:00 p.m.: 16 IR 877; filed May 4, 2001, 11:10 a.m.: 24 IR 2696, eff Jul 1, 2001; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3002) NOTE: 864 IAC 1.1-4.1-8 was renumbered by Legislative Services Agency as 865 IAC 1-4-7.

SECTION 9. 865 IAC 1-4-8 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-4-8 Examination attempts for certification as a land-surveyor-in-training

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 8. (a) This section applies to the examination for certification as a land-surveyor-in-training.

(b) An applicant who does not pass the **entire** examination **may in the first attempt shall be entitled to** take it two (2) additional times provided that **both of** the applicant applies for the second and third examination within two (2) years of applicant's additional examinations are taken no later than the date fourth regularly scheduled examination after the failure of the first examination. ~~Any individual who took the examination the first time after January 1, 2002, shall be entitled to the third attempt.~~ (State Board of Registration for Land Surveyors; 865 IAC 1-4-8; filed Jun 21, 1988, 4:00 p.m.: 11 IR 3907; filed Oct 13, 1992, 5:00 p.m.: 16 IR 878; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 15, 2002, 3:33 p.m.: 26 IR 1105; filed May 4, 2006, 1:25 p.m.: 29 IR 3003) NOTE: 864 IAC 1.1-4.1-9 was renumbered by Legislative Services Agency as 865 IAC 1-4-8.

SECTION 10. 865 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-5-1 Comity registration standards

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-7-4

Sec. 1. In order to define "a standard not lower than that specified in the applicable registration act in effect in the state at the time such certificate (in other state) was issued" IC 25-21.5-7-4, the board adopts the following:

(+) An applicant for comity registration shall have a valid certificate as a land surveyor in another state.

~~(2) When the basis of registration in who meets the other state of registration was at a standard lower than current Indiana at the time the original license was secured, the board will assign to the applicant those parts of the examination registration requirements as are needed, found in the board's judgment, IC 25-21.5 and this title shall be deemed to meet the standards, requirements of IC 25-21.5-7-4.~~

(State Board of Registration for Land Surveyors; Rule 5, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 630; filed Oct 13, 1992, 5:00 p.m.: 16 IR 878; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3003) NOTE: 864 IAC 1.1-5-1 was renumbered by Legislative Services Agency as 865 IAC 1-5-1.

SECTION 11. 865 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-5-2 Land surveyor applicant

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 2. (a) A land surveyor:

- (1) registered in another state;
- (2) making application for registration in Indiana; and who is
- (3) otherwise qualified;

shall be assigned Part IIB of the land surveyor examination as described in 865 IAC 1-4-3.

(b) Subject to passing the examination set out in subsection (a); registration may be granted to an applicant having education and acceptable work experience which meets one (1) of the following conditions:

- (1) Passed a sixteen (16) hour written examination in land surveying which included eight (8) hours in land surveying fundamentals and had four (4) years of work experience.
- (2) Originally registered between July 10, 1961, and August 17, 1969, inclusive; passed a sixteen (16) hour written examination in land surveying; and had one (1) year of work experience.
- (3) Originally registered between January 1, 1950, and July 9, 1961, inclusive; passed the complete written examination given at that time in the state of registration but not less than eight (8) hours; and had one (1) year of work experience.
- (4) Originally registered between July 1, 1935, and December 31, 1949, inclusive; graduated from an approved land surveying curriculum; and had two (2) years of work experience.
- (5) Originally registered prior to June 30, 1935.

(State Board of Registration for Land Surveyors; Rule 5, Sec 3; filed Feb 29, 1980, 3:40 p.m.: 3 IR 631; filed Jul 24, 1989, 5:00 p.m.: 12 IR 2285; filed Oct 13, 1992, 5:00 p.m.: 16 IR 878; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3003) NOTE: 864 IAC 1.1-5-3 was renumbered by Legislative Services Agency as 865 IAC 1-5-2.

SECTION 12. 865 IAC 1-7-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-7-1 Design and contents of seal

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 1. (a) The land surveyor seal shall be not less than one and five-eighths (1 $\frac{5}{8}$) inches or more than one and seven-eighths (1 $\frac{7}{8}$) inches in outside diameter, using the following design:



(b) The seal may:

(1) be:

(A) embossed;

(B) stamped; or

(C) electronically applied; by a rubber stamp

in conformance with the design as shown in subsection (a);
The seal may and

(2) have:

(A) a milled edge, as shown in subsection (a); or

(B) two (2) concentric circles with the outer and inner circles corresponding with the respective edges of the milling.

(c) The name and registration number of the registrant inscribed on the seal shall correspond to the name and certificate number inscribed on the certificate of registration. (*State Board of Registration for Land Surveyors; Rule 7, Sec 2; filed Feb 29, 1980, 3:40 p.m.: 3 IR 632; filed Oct 17, 1986, 2:20 p.m.: 10 IR 441; filed Oct 13, 1992, 5:00 p.m.: 16 IR 878; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3004*) NOTE: 864 IAC 1.1-7-2 was renumbered by Legislative Services Agency as 865 IAC 1-7-1.

SECTION 13. 865 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-7-2 Application of seal; signature

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 2. (a) The seal shall be affixed to documents and instruments only:

(1) during the time the certificate of registration:

(A) is current; and

(B) has not been suspended or revoked; and then only

(2) on such documents and instruments which that have been created by the:

(A) registrant; or by the

(B) regularly employed and directly supervised subordinates of the registrant.

The registrant shall be responsible for seeing that the seal, however affixed, shall be legible on the document.

(b) Whenever a registrant affixes the seal, ~~it the document~~ shall have the:

(1) ~~the~~ registrant's signature; and

(2) ~~the~~ date the seal is being affixed;

directly adjacent to ~~the seal~~, but not across, the seal.

(c) As an alternative to placing the items required by subsection (b) directly adjacent to the seal, the items may be at another location on the sheet provided the sheet is inscribed as "This document is otherwise properly certified. by _____".

(d) When a registrant is in responsible charge of land surveying work for which one (1) or more:

(1) specifications;

(2) plans; and

(3) drawings;

are required to be submitted for review by ~~the state building commissioner or other~~ a governmental body, the registrant shall apply the seal in the full manner required by this section on each page of all drawings or plans and on the title page of all specifications.

(e) A registrant who is not in responsible charge of the entire work, but assumes responsibility for portions of the work included on any page of:

(1) specifications;

(2) plans; or

(3) drawings;

shall affix the seal in the manner required by this section on all title pages and on all pages on which the registrant's work appears.

(f) When affixing the seal under the requirements of subsection (e), the registrant shall denote the registrant's part of the work by inserting below the registrant's signature and date, the following:

COVERING _____ DESIGN.

(*State Board of Registration for Land Surveyors; Rule 7, Sec 3; filed Feb 29, 1980, 3:40 p.m.: 3 IR 632; filed Oct 17, 1986, 2:20 p.m.: 10 IR 441; filed Jun 8, 1989, 4:45 p.m.: 12 IR 1903; filed Oct 13, 1992, 5:00 p.m.: 16 IR 879; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3004*) NOTE: 864 IAC 1.1-7-3 was renumbered by Legislative Services Agency as 865 IAC 1-7-2.

SECTION 14. 865 IAC 1-7-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-7-3 Use of seal and signature; acceptance of full responsibility

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 3. (a) The seal and signature of a registrant on any

drawings, documents, or instruments signifies the registrant's acceptance of full responsibility for the professional work represented thereon, except as another registrant shall have assumed a limited responsibility for portions of the work in accordance with section 2(e) of this rule.

(b) A registrant may include in the registrant's plans certain products that have become established as acceptable for the proposed use when ~~such~~ the items:

- (1) meet standards established by nonprofit trade organizations;
- (2) meet the requirements for the proposed use as indicated by tests performed by a competent, unbiased testing agency;
- (3) are mechanical or other types of machinery or systems guaranteed by a reputable manufacturer; or
- (4) do not affect the structural safety of the project.

(State Board of Registration for Land Surveyors; Rule 7, Sec 4; filed Feb 29, 1980, 3:40 p.m.: 3 IR 633; filed Oct 13, 1992, 5:00 p.m.: 16 IR 879; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1882; filed May 4, 2006, 1:25 p.m.: 29 IR 3004) NOTE: 864 IAC 1.1-7-4 was renumbered by Legislative Services Agency as 865 IAC 1-7-3.

SECTION 15. 865 IAC 1-7-4 IS ADDED TO READ AS FOLLOWS:

865 IAC 1-7-4 Use of electronic or digital signatures

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 4. (a) This section establishes the requirements for the use of seals and signatures in electronic transactions.

(b) The following definitions apply throughout this section:

- (1) "Document" means a:
 - (A) report;
 - (B) specification;
 - (C) drawing;
 - (D) plan; or
 - (E) plat;

in physical form pertaining to land surveying that requires certification by a registered land surveyor by application of a seal or stamp, a signature, and a date.

- (2) "Electronic document" means an electronic data file that is capable of being:

- (A) viewed by use of a computer and video monitor; or
- (B) converted into a document by use of a computer and printer or plotter.

- (3) "Electronic seal" means a digital facsimile of an original seal.

- (4) "Electronic signature" means a digital signature associated with an electronic document that shall carry the same:

- (A) weight;
- (B) authority; and

(C) effect;

as an original signature.

(5) "Electronic transmission" means the transmission of electronic data files from one (1) computer to another. The term includes the manual delivery of electronic data storage media from one (1) person or entity to another.

- (6) "Original seal" means a:

- (A) rubber stamp;
- (B) electronic stamp; or
- (C) embossing seal;

meeting the design requirements set out in section 1 of this rule.

(7) "Original signature" means the signature of a registrant affixed to a document in accordance with section 2 of this rule.

(8) "Registrant" has the meaning set forth in 865 IAC 1-1-1(7).

- (9) "Signature" means either:

- (A) original; or
- (B) electronic; signature.

(c) An electronic signature and seal shall be permitted in place of an original seal and signature when the following criteria are met:

- (1) The electronic signature and seal are as follows:

- (A) The unique identification of the registrant.
- (B) Verifiable.
- (C) Attached to or associated with the electronic document in such a manner that is clear to the recipient that they represent the signature and seal of the registered land surveyor.

- (2) The electronic signature is under the registrant's direct control.

- (3) The registrant maintains a permanent digital copy of the electronically transmitted document for future verification purposes.

(d) A registrant may electronically transmit an electronic document without affixing an electronic signature provided there is inserted the following language instead of an image of a seal, signature, and date:

- (1) "Not a Certified Document"; or
- (2) "Pro Forma Survey";

as appropriate. This language shall not be required for documents electronically transmitted to a commercial printer or blueprint service for the purpose of reproducing documents or to the registrant's own employer or employees. (State Board of Registration for Land Surveyors; 865 IAC 1-7-4; filed May 4, 2006, 1:25 p.m.: 29 IR 3005)

SECTION 16. 865 IAC 1-8-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-8-1 Renewal

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 1. (a) The board has adopted the following to clarify and implement the payment of renewal fees on a biennial basis:

(1) For purposes of biennial renewal, the postmark on the envelope containing the remittance will be considered the date of payment.

(2) When any required fees are not paid on time:

(A) the certificate of registration becomes invalid;

(B) the individual cannot lawfully practice or offer to practice land surveying; and

(C) the individual's name will be deleted from future rosters;

until the renewal fee and required delinquent fee ~~is~~ **are** paid.

(b) A registered land surveyor applying for license renewal shall certify on the application that the registered land surveyor has complied with the continuing education requirements under 865 IAC 1-13.

(c) The board may require **the following**:

(1) Verification of any information submitted by the registered land surveyor. ~~and may require~~

(2) The registered land surveyor to submit evidence supporting the course credit claimed.

(State Board of Registration for Land Surveyors; Rule 8, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 633; filed Oct 17, 1986, 2:20 p.m.: 10 IR 422; filed Oct 13, 1992, 5:00 p.m.: 16 IR 880; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1024; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3005) NOTE: 864 IAC 1.1-8-1 was renumbered by Legislative Services Agency as 865 IAC 1-8-1.

SECTION 17. 865 IAC 1-9-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-9-1 Publication and contents of rosters

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 1. In order to establish the time of publication of rosters in conjunction with the biennial collection of renewal fees, the board adopts the following:

(1) As soon as practicable after the completion of the biennial renewals in each even-numbered year, the board will publish a roster showing the names and addresses of land surveyors who are valid registrants until the date shown in the roster.

(2) It shall be the responsibility of each registrant to ~~keep~~ **notify** the board ~~advised of any change in~~ the registrant's ~~latest address or addresses and such any~~ supplementary roster information ~~if any, which that~~ is to be included in the roster. **The registrant shall maintain proof of the notification.**

(3) All land surveyors engaging in the practice of land surveying in the state of Indiana must identify on a form specified by the board the address of all offices at which the land surveyor is practicing land surveying.

(State Board of Registration for Land Surveyors; Rule 9, Sec 1;

filed Feb 29, 1980, 3:40 p.m.: 3 IR 634; filed Oct 17, 1986, 2:20 p.m.: 10 IR 442; filed Oct 13, 1992, 5:00 p.m.: 16 IR 880; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3006) NOTE: 864 IAC 1.1-9-1 was renumbered by Legislative Services Agency as 865 IAC 1-9-1.

SECTION 18. 865 IAC 1-10-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-10-2 Agreement to abide by IC 25-21.5 and rules

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5-5

Sec. 2. Each applicant shall certify on the application that he has read and agrees to abide by ~~the Act~~ **IC 25-21.5** and the rules of the board in force at the time. *(State Board of Registration for Land Surveyors; Rule 11, Sec 2; filed Feb 29, 1980, 3:40 p.m.: 3 IR 634; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3006) NOTE: 864 IAC 1.1-11-2 was renumbered by Legislative Services Agency as 865 IAC 1-10-2.*

SECTION 19. 865 IAC 1-10-12 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-10-12 Disclosure of conflict of interest

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 12. The land surveyor shall:

(1) avoid all known conflicts of interest with an employer or client; ~~and shall or~~

(2) promptly inform the employer or client of any business association, interest, or circumstances ~~which that~~ could influence judgment or quality of services.

(State Board of Registration for Land Surveyors; Rule 11, Sec 13; filed Feb 29, 1980, 3:40 p.m.: 3 IR 636; filed Oct 13, 1992, 5:00 p.m.: 16 IR 882; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3006) NOTE: 864 IAC 1.1-11-13 was renumbered by Legislative Services Agency as 865 IAC 1-10-12.

SECTION 20. 865 IAC 1-10-25 IS ADDED TO READ AS FOLLOWS:

865 IAC 1-10-25 Revocation or suspension of license in another jurisdiction; effect

Authority: IC 25-1-11; IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 25. The land surveyor shall notify the board, in writing, within thirty (30) days of any disciplinary action taken against the:

(1) land surveyor; or

(2) the land surveyor's license or registration;

in any other state or jurisdiction. *(State Board of Registration for Land Surveyors; 865 IAC 1-10-25; filed May 4, 2006, 1:25 p.m.: 29 IR 3006)*

SECTION 21. 865 IAC 1-11-1, AS AMENDED AT 28 IR 2390, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-11-1 Fees charged by board

Authority: IC 25-1-8-2; IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 1. The board shall charge and collect the following fees, which shall all be nonrefundable and nontransferable:

- (1) For review of an application for examination for certification and enrollment as a land surveyor-in-training, one hundred dollars (\$100).
- (2) For review of an application for examination for registration as a land surveyor, three hundred dollars (\$300).
- (3) The fee for the examination or reexamination of any applicant under ~~the Act~~ **IC 25-21.5** is the payment of the applicant's cost of purchasing the examination, payable to the examination service.
- (4) For the processing and review of qualifications for registration as a land surveyor by comity, five hundred dollars (\$500).
- (5) For issuance of the original certificate to practice as a registered land surveyor following passage of the examination or approval for registration on the basis of comity when the certificate is dated between August 1 of an:
 - (A) odd-numbered year and July 31 of the following even-numbered year, inclusive, fifty dollars (\$50); or
 - (B) even-numbered year and July 31 of the following odd-numbered year, inclusive, one hundred dollars (\$100).
- (6) For biennial renewal of the certificate to practice as a registered land surveyor, a renewal fee of one hundred dollars (\$100) and a fee of two dollars (\$2) for each hour of continuing education required both payable no later than July 31 of each even-numbered year. No fee shall be required to renew a certificate in inactive status under 865 IAC 1-13-13.
- (7) For renewal of an expired certificate to practice as a registered land surveyor, one hundred dollars (\$100), plus all unpaid renewal fees for the four (4) years of delinquency. A certificate may not be renewed after four (4) years of delinquency.
- (8) For a duplicate or replacement certificate to practice as a registered land surveyor, twenty-five dollars (\$25).
- (9) For a replacement pocket card to practice as a registered land surveyor, ten dollars (\$10).
- (10) The fee shall be one hundred dollars (\$100) for the proctoring of examinations taken in this state for purposes of registration in other states. This fee shall be in addition to the examination fee.

(State Board of Registration for Land Surveyors; Rule 12, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 637; filed Oct 14, 1981, 1:30 p.m.: 4 IR 2459; filed Oct 17, 1986, 2:20 p.m.: 10 IR 442; errata, 10 IR 445; filed Oct 13, 1992, 5:00 p.m.: 16 IR 884; filed Jun 14, 1996, 3:00 p.m.: 19 IR 3110; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1025; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jul 17, 2002, 3:36 p.m.: 25 IR 4110; filed Sep 16, 2004, 9:00 a.m.: 28 IR 605, eff Nov 1, 2004; filed

Apr 6, 2005, 4:00 p.m.: 28 IR 2390; filed May 4, 2006, 1:25 p.m.: 29 IR 3007) NOTE: 864 IAC 1.1-12-1 was renumbered by Legislative Services Agency as 865 IAC 1-11-1.

SECTION 22. 865 IAC 1-12-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-2 Definitions; abbreviations

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-4-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) “ALTA/ACSM Land Title Survey” refers to an original or retracement survey conducted in accordance with the “Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys” as the requirements are adopted by the:

- (1) American Land Title Association;**
- (2) National Society of Professional Surveyors; or**
- (3) American Congress on Surveying and Mapping.**

~~(b)~~ **(c) “Controlling monument” means any undisturbed artificial, physical, or record monument called for in a record plat or land title description and controls any combination of the:**

- (1) location;**
 - (2) dimensions; and or**
 - (3) configuration;**
- of the described tract.

~~(c)~~ **(d) “EDM” refers to electronic distance measurements.**

~~(d)~~ **(e) “Land surveyor” means either of the following:**

- (1) A registered land surveyor. or**
- (2) An individual who is as follows:**
 - (A) An employee or subordinate of a registered land surveyor. and**
 - (B) Exempt from licensure under IC 25-21.5-4-2.**

~~(e)~~ **(f) “Original survey” means a survey that is executed for the purpose of locating and describing real property that has not been previously described in documents conveying an interest in said the real property.**

~~(f)~~ **(g) “Registered land surveyor” means an individual who has been registered by the board in the profession of land surveying under IC 25-21.5.**

(h) “Relative positional accuracy” means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the ninety-five percent (95%) confidence level.

~~(g)~~ **(i) “Retracement survey” means a survey of real property**

that has been previously described in documents conveying an interest in ~~said~~ **the** real property.

~~(h)~~ **(j)** “Right-of-way” means ~~that~~ land taken by either:

- (1) easements; or
- (2) fee simple title;

for the linear routes identified in subsection ~~(i)~~: **(k)**.

~~(i)~~ **(k)** “Route survey” refers to surveys executed for the purpose of acquiring an interest in the tracts of land required for **the following**:

- (1) Highways.
- (2) Railroads.
- (3) Waterways.
- (4) Pipelines.
- (5) Electric lines. ~~or~~
- (6) Any other linear transportation or utility route.

~~It~~ **The term** does not include surveys executed for acquisition parcels that are of even width and immediately adjacent to an existing title, easement, or right-of-way line and do not require a property survey in order to prepare an accurate legal description for the parcel. Route surveys are not considered either original surveys or retracement surveys.

~~(j)~~ **(l)** “Subdivision plat” means a plat of subdivision of land prepared in accordance with **either or both of the following**:

- (1) State plat statutes. ~~or~~
- (2) Local subdivision regulations, or both.

~~(k)~~ “~~Theoretical uncertainty~~” ~~refers to theoretical uncertainty of measurements.~~

~~(i)~~ “~~Theoretical uncertainty of measurements~~” means ~~the radius of a circle, which circumscribes an area, that contains the probable true location of a specified point.~~

(m) “Theory of location” means applying:

- (1) federal laws, including 43 U.S.C. 751 through 43 U.S.C. 775;
- (2) state and local laws; ~~together with and~~
- (3) court precedent;

to establish the position of real property corners.

~~(n)~~ “~~tu~~” ~~refers to theoretical uncertainty.~~ *(State Board of Registration for Land Surveyors; 865 IAC 1-12-2; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3909; errata filed Feb 5, 1990, 4:15 p.m.: 13 IR 1189; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2240; filed Oct 13, 1992, 5:00 p.m.: 16 IR 885; filed Oct 14, 1993, 5:00 p.m.: 17 IR 408; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1882; filed May 4, 2006, 1:25 p.m.: 29 IR 3007) NOTE: 864 IAC 1.1-13-2 was renumbered by Legislative Services Agency as 865 IAC 1-12-2.*

SECTION 23. 865 IAC 1-12-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-3 Surveyor responsibility

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5-4-2; IC 25-21.5-7-3

Sec. 3. (a) A registered land surveyor shall be personally responsible for planning and supervising the training, procedures, and daily activities of the nonregistered employees or subordinates involved in the surveys who are acting as exempt persons under IC 25-21.5-4-2. These activities will include, but not necessarily be limited to, the following:

- (1) Client contact.
- (2) Research.
- (3) Collection of field data.
- (4) Note reduction.
- (5) Computation.
- (6) Office analysis.
- (7) Drafting.
- (8) Preparation of certificates and reports.

(b) The daily activities by nonregistered employees or subordinates referred to in subsection (a) may not continue during any extended absences of the responsible registered land surveyor unless another registered land surveyor is in responsible charge during the land surveyor’s absence.

(c) The procedures followed and the decisions made by persons under the registered land surveyor’s supervision shall be regularly and systematically reviewed and approved by the registered land surveyor ~~prior to~~ **before** signing the survey plat.

(d) “Supervision”, as used in this section, shall be deemed to require **the following**:

(1) Such control by the registered land surveyor, that the registered land surveyor can certify that he or she:

- (A) is knowledgeable of; and
- (B) has reviewed and approved;

all actions pertaining to the surveys by persons not licensed who have participated in the survey. ~~and~~

(2) That all persons participating in the survey shall be regular employees of:

- (A) the registered land surveyor;
- (B) the registered land surveyor’s employer; or
- (C) another registered land surveyor.

(e) In addition to the requirements in IC 25-21.5-7-3, each office of a firm, partnership, or corporation offering to perform land surveys must have a registered land surveyor in charge of the operations. ~~and that The~~ **The** registered land surveyor ~~who~~ must:

(1) be a full-time employee ~~or of the firm, partnership, or corporation and~~:

- (A) a principal of the partnership or firm; or
- (B) an officer of the corporation; ~~must~~

(2) have full responsible control of the survey operations; ~~This registered land surveyor must and~~

(3) maintain regular hours at that office: ~~adequate~~

- (A) **convenient** for client contact; and

(B) **adequate** for employee supervision as defined in subsection (d).

(f) For purposes of this rule, an individual practices as a principal by being **as follows**:

- (1) A registered land surveyor. ~~and~~
- (2) The individual in charge of the organization's land surveying practice, either:
 - (A) alone; or
 - (B) with other registered land surveyors.

(g) A registered land surveyor shall not affix his or her seal on any surveying work unless **the**:

- (1) ~~the~~ registered land surveyor personally did the surveying work;
- (2) ~~the~~ surveying work was performed by:
 - (A) a nonregistered employee or subordinate following the requirements of subsection (a); or ~~by~~
 - (B) the employees of another registered land surveyor as allowed by subsection (d); or
- (3) ~~the~~ registered land surveyor is certifying additional survey work based on a survey:
 - (A) executed according to this rule; and
 - (B) certified by a registered land surveyor working on the same project.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-3; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3909; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2240; filed Oct 13, 1992, 5:00 p.m.: 16 IR 886; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1883; filed May 4, 2006, 1:25 p.m.: 29 IR 3008) NOTE: 864 IAC 1.1-13-3 was renumbered by Legislative Services Agency as 865 IAC 1-12-3.

SECTION 24. 865 IAC 1-12-4 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-4 Land surveyor duty to accumulate, preserve, and share data

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 4. A registered land surveyor shall do the following:

- (1) Accumulate, through experience and research, information on the historical development of surveys in the geographical area in which the land surveyor practices.
- (2) Accumulate:
 - (A) survey records;
 - (B) field notes;
 - (C) plats; and
 - (D) other data;
 pertinent to the area of practice.
- (3) Properly file and index for future reference those:
 - (A) field notes;
 - (B) computations;
 - (C) maps;
 - (D) plats;
 - (E) photographs; and
 - (F) other data;

accumulated during the survey.

(4) Provide for the long term preservation (maintenance) of the survey data. Filing of public records will partially meet this obligation. If possible, a registered land surveyor should make arrangements for the transfer of the land surveyor's records upon retirement or death.

(5) **If possible**, discuss the land surveyor's survey work confidentially with other registered land surveyors in the event of **substantive** conflicts or discrepancies revealed by the survey. These discussions must:

(A) not violate the registered land surveyor-client confidence; ~~but must and~~

(B) be sufficient to discharge the registered land surveyor's obligations to the public and the profession.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-4; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3910; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2241; filed Oct 13, 1992, 5:00 p.m.: 16 IR 887; filed Mar 6, 1995, 4:00 p.m.: 18 IR 1834; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3009) NOTE: 864 IAC 1.1-13-4 was renumbered by Legislative Services Agency as 865 IAC 1-12-4.

SECTION 25. 865 IAC 1-12-5 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-5 Property surveys affected

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 5. **All** retracement surveys and original surveys, **including all ALTA/ACSM Land Title Surveys**, and all updates or **recertifications** of previously completed surveys must fully comply with this rule except the following:

- (1) Surveyor location reports as provided for in sections 27 through 29 of this rule are only subject to sections 1 through 4, 6, and 27 through 29 of this rule.
- (2) Construction surveys made for the purpose of marking the limits of existing easements or rights-of-way for the construction of improvements within the easement or rights-of-way must be executed by a registered land surveyor but are only subject to the provisions of sections 1 through 4 and 6 of this rule.
- (3) Delineation or demarcation and placement of ~~stakes any monument~~ or markers, **for example, wood stakes, flags, and rebar**, for the purpose of constructing:

- (A) fences;
- (B) buildings;
- (C) walls; or
- (D) other improvements;

on or in close proximity to a land boundary ~~except for property corner monumentation~~; **must be executed by a registered land surveyor**, but are only subject to sections 1 through 4 and 6 of this rule provided the land surveyor has found acceptable evidence of the boundary location in accordance with this rule. **Any survey monuments or markers set in conjunction with a retracement or original survey must comply with all provisions of this rule.**

(State Board of Registration for Land Surveyors; 865 IAC 1-12-5; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; filed Oct 13, 1992, 5:00 p.m.: 16 IR 887; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1884; filed May 4, 2006, 1:25 p.m.: 29 IR 3009) NOTE: 864 IAC 1.1-13-5.1 was renumbered by Legislative Services Agency as 865 IAC 1-12-5.

SECTION 26. 865 IAC 1-12-7 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-7 Measurements for retracement surveys, original surveys, and route surveys

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 7. (a) ~~When~~ The purpose of this section is to prescribe precision and accuracy standards to be used by a land surveyor in conducting a ~~original and retracement survey or an original survey~~; the land surveyor shall be responsible to use the minimum standards of measurement provided for in this section. However, when platting laws set forth technical minimums for original surveys and route surveys, more stringent than those stated in this section, the more stringent standards shall be followed to the extent of the difference.

(b) Measurements generally The land surveyor shall be:

- (1) obtained with a precision compatible with the type of survey involved and with the size and shape of the parcel involved;
- (2) taken with a precision that is consistent with that required by the agreement with the client but may not be less precise than defined select the appropriate equipment and methods and use trained personnel to assure that the acceptable relative positional accuracy specified in this section and is not exceeded.

(3) shown on the plat with a number of significant figures representative of the precision of the work.

(c) The measurement specifications contained in subsection (d) will apply for all retracement surveys and original surveys.

(c) The degree of precision and accuracy necessary for a survey shall be based upon the intended use of the real estate. If the client does not provide information regarding the intended use, the classification of the survey shall be based on the current use of the real estate.

(d) The following specifications shall be used for the location of property boundaries with respect to the referenced controlling corners:

Class of Survey	Theoretical Uncertainty (tu)
A	plus or minus .10 feet
B	plus or minus .25 feet
C	plus or minus .50 feet
D	plus or minus 1.00 feet
E	
all other surveys	to be negotiated with the client

(e) The classes (d) Classifications of surveys listed in subsection (d) shall fall into the following sizes are as follows:

(1) Class A - Small area wherein dense monument controls exist, as in a downtown commercial area. Lots are typically fifty (50) feet by one hundred (100) feet. Periphery and beginning distance is less than four hundred (400) feet.

(2) Class B - Longest side is typically under two hundred fifty (250) feet and periphery and beginning distance is less than one thousand (1,000) feet.

(3) Class C - Longest side is typically under one thousand (1,000) feet and periphery and beginning distance is less than five thousand (5,000) feet.

(4) Class D - All sides are typically over one thousand (1,000) feet and periphery and beginning distance is less than twelve thousand (12,000) feet.

(5) Class E - The precision of larger surveys shall be negotiated with the client and shall be clearly stated on the plat of survey.

(1) Urban surveys. Urban surveys are performed on land lying within or contiguous with a city or town, except for single family residential lots. Urban surveys also include:

- (A) commercial and industrial properties;
- (B) condominiums;
- (C) townhouses;
- (D) apartments; and
- (E) other multiunit developments;

regardless of geographic location.

(2) Suburban surveys. Suburban surveys are performed on residential subdivisions lots. Surveys of single family residential lots shall be suburban surveys even if the lot is located in an urban or a rural area.

(3) Rural surveys. Rural surveys are performed on real estate lying in rural areas that does not otherwise meet the definition of an urban or suburban survey.

(e) The acceptable relative positional accuracies for each classification of survey are as follows:

(1) Urban surveys: 0.07 feet (21 millimeters) plus 50 parts per million.

(2) Suburban surveys: 0.13 feet (40 millimeters) plus 100 parts per million.

(3) Rural surveys: 0.26 feet (79 millimeters) plus 200 parts per million.

(f) Relative positional accuracy may be tested by:

- (1) comparing the relative location of points in a survey as measured by an independent survey of higher accuracy; or
- (2) the results of a minimally constrained, correctly weighted least square adjustment of the survey.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-7; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3910; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1884; filed May 4, 2006, 1:25 p.m.: 29 IR 3010) NOTE: 864 IAC 1.1-13-7 was renumbered by Legislative Services Agency as 865 IAC 1-12-7.

SECTION 27. 865 IAC 1-12-9 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-9 Preliminary research and investigation on retracement surveys

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 9. When conducting a retracement survey, a land surveyor shall ~~do~~ **obtain** the following:

- (1) ~~Obtain~~ The record description of the:
 - (A) parcel to be surveyed; ~~as well as the record description of the and~~
 - (B) adjoining properties;
 to reveal any gaps or overlaps with the adjoining properties.
- (2) ~~Obtain~~ Copies of any recorded:
 - (A) subdivision plats; ~~and~~
 - (B) surveys;
 that relate to the survey.
- (3) ~~Obtain~~ From public offices, copies of any:
 - (A) maps;
 - (B) documents; and
 - (C) field notes;
 that relate to the survey.
- (4) ~~Obtain~~ Copies of data that relate to the survey that are available from known private sources.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-9; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2244; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1885; filed May 4, 2006, 1:25 p.m.: 29 IR 3011) NOTE: 864 IAC 1.1-13-9 was renumbered by Legislative Services Agency as 865 IAC 1-12-9.

SECTION 28. 865 IAC 1-12-10 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-10 Field work for retracement and original surveys

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 10. When conducting a retracement ~~or original~~ survey, a land surveyor shall do the following:

- (1) Search for controlling physical monuments and, when found, weigh their reliability.
- (2) Search for and locate ~~monuments that:~~ **the following:**
 - (A) **Monuments that** reference missing control monuments. ~~and~~
 - (B) **Monuments that** substantiate control monuments that have been obliterated.
 - ~~(3) Search for and locate~~ (C) Other monuments and real evidence that are necessary to the survey.
- ~~(4) (3) If necessary:~~
 - (A) investigate possible parol evidence supporting the positions of obliterated control monuments; and
 - (B) obtain the necessary affidavit or affidavits from individuals involved.

~~(5) (4) Obtain the following:~~

(A) Necessary measurements to correlate all found evidence, including the relationship to adjoining properties.

~~(6) Obtain~~ (B) Sufficient check measurements to satisfactorily verify the work.

~~(7) (5) Locate physical evidence of possession between~~ **make comments on possible age of possession;** and **verify identify age of possession, for example,** by parol evidence, if possible.

~~(8) (6) Survey field notes shall be in the form required by section 6 of this rule.~~

(7) Any controlling corners that are original public land survey corners or other government corners such as land grants shall be:

(A) evaluated;

(B) perpetuated; and

(C) documented;

in accordance with section 30 of this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-10; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2244; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1885; filed May 4, 2006, 1:25 p.m.: 29 IR 3011) NOTE: 864 IAC 1.1-13-10 was renumbered by Legislative Services Agency as 865 IAC 1-12-10.

SECTION 29. 865 IAC 1-12-12 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-12 Publication of retracement and original survey results

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 12. (a) When conducting a retracement survey or an original survey, a registered land surveyor shall do the following:

(1) Furnish the client with a written surveyor's report that, in addition to other pertinent data, **identifies the type of survey**, explains the theory of location applied in establishing or retracing the lines and corners of the surveyed parcel, and gives the registered land surveyor's professional opinion of the cause and the amount of uncertainty in those lines and corners because of the following:

(A) Availability and condition of reference monuments.

(B) Occupation or possession lines.

(C) Clarity or ambiguity of the record description used **and of adjoiners' descriptions or both, and the relationship of the lines of the subject tract with adjoiners' lines.**

(D) The ~~theoretical uncertainty~~ **relative positional accuracy** of the measurements.

(2) Record the plat of survey and the associated surveyor's report in the county recorder's office in the county where the property is located when:

(A) a new tax parcel will be created based on the survey;

(B) a survey of:

- (i) an unsubdivided tract; or
 - (ii) a portion of a subdivided lot;
- has not been previously recorded;
- (C) if, in the registered land surveyor's opinion, a survey of a whole subdivided lot or lots is substantially at variance with:
- (i) the subdivision plat;
 - (ii) previously recorded surveys;
 - (iii) monuments; or
 - (iv) evidence of possession;
- (D) if, in the registered land surveyor's opinion, the:
- (i) monuments;
 - (ii) monument witnesses;
 - (iii) evidence of possession; or
 - (iv) description; ~~is~~
- are** not consistent with the last recorded survey of the parcel;
- (E) it is required by law; or
- (F) the plat of survey contains **land for** a new subdivision plat that will subsequently be recorded. ~~and The subsequent subdivision plat~~ must be cross-referenced to the previously recorded survey plat.

(b) Notwithstanding subsection (a)(2)(C), an original, platting surveyor setting monuments in a new subdivision in accordance with section 18 of this rule does not need to prepare or record a plat of survey or surveyor's report unless the survey reveals substantial variance with the:

- (1) subdivision plat;**
- (2) existing monuments; or**
- (3) evidence of possession.**

~~(b)~~ **(c)** The recorded plat of survey shall:

- (1) show the name of the owner of the property on the recorded plat of survey according to the county tax records at the time the survey is recorded was certified; and shall**
- (2) be cross-referenced to the latest record plat of survey of the property, if any is found.**

~~(c)~~ **(d)** The plat of survey and the associated surveyor's report shall be recorded **in the case:**

- (1) in the case of** an original or retracement survey (not previously recorded) that contains a proposed new subdivision plat, **prior to before** recording the new subdivision plat; or
- (2) in the case of** retracement or original surveys not described in subdivision (1) **within:**
 - (A) within** three (3) months of the survey certification date; or
 - (B) within** three (3) years and three (3) months of the survey certification date in those instances where the client signs an objection, which must contain the following statement:
I, the undersigned, hereby request that the following identified survey, certified to me:
(Indicate one (1) or both of the following:)
(i) Shall not be recorded for a period of three (3) years and three (3) months from the date of certification.

- (ii) Shall not contain the name of the undersigned client on the survey recorded.

Signed: _____

Date: _____

Certifying Surveyor:

Certificate Date:

Job Number:

Brief Description:

A copy of the signed statement shall be kept with the land surveyor's file.

~~(d)~~ **(e)** Nothing ~~contained~~ in this rule shall:

(1) require the registered land surveyor to:

(A) furnish any survey documents to the client; or

(B) record them;

unless the client has satisfied the terms of the surveying engagement; **or**

~~(c)~~ **Nothing contained in this rule shall (2) prevent the registered land surveyor from furnishing a pro forma copy of the survey to the client for use until the certified survey is requested provided the survey is clearly marked PRO FORMA SURVEY.**

(f) Any drawings or plats prepared by a registered land surveyor, such as:

- (1) plot plans;**
- (2) deed plots;**
- (3) topographic maps;**
- (4) site plans; or**
- (5) construction plans;**

that are not intended to be retracement or original surveys, route surveys, or surveyor location reports, shall contain a note stating "This drawing is not intended to be represented as a retracement or original boundary survey, a route survey, or a Surveyor Location Report.". Any drawing or plat showing set monumentation is considered to be an original, retracement, or route survey and as such is subject to the applicable sections of this rule. (State Board of Registration for Land Surveyors; 865 IAC 1-12-12; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2245; filed Oct 13, 1992, 5:00 p.m.: 16 IR 889; errata, 16 IR 1188; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1886; filed May 4, 2006, 1:25 p.m.: 29 IR 3011) NOTE: 864 IAC 1.1-13-12 was renumbered by Legislative Services Agency as 865 IAC 1-12-12.

SECTION 30. 865 IAC 1-12-13 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-13 Retracement and original survey plats

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5; IC 32-19

Sec. 13. (a) When conducting a retracement **or original** survey, a registered land surveyor shall furnish the client with the surveyor's report and a copy of the plat of survey of the

premises drawn to an appropriate scale in such a manner that the data shown will be clearly legible when the plat is reduced to sheets suitable for recording ~~that are no larger than eleven (11) inches by seventeen (17) inches and no smaller than eight and one-half (8 ½) inches by eleven (11) inches: in the county in which the survey was conducted.~~

(b) The plat of survey, **together with the accompanying surveyor's report**, shall show **or otherwise contain** the following information at a minimum:

(1) The:

- (A) client's name;
- (B) date of the **last** fieldwork;
- (C) surveyor's file number; and
- (D) the:
 - (i) name;
 - (ii) address;
 - (iii) signature; and
 - (iv) registration number;

of the surveyor responsible for the work.

(2) **For retracement surveys:**

- (A) **the** record document description **or recording information** of the parcel surveyed; and
- (B) any new, modified, or consolidation description with an explanation in the surveyor's report as to why the new description was ~~done~~; **prepared**, together with a statement regarding the location of the new description relative to the record description. ~~If necessary to define the location, a vicinity map shall be provided.~~

For original surveys, a metes and bounds description with appropriate controlling calls and calling for and accurately describing controlling physical monuments, marked in accordance with section 18 of this rule, except, however, that a metes and bounds description is not required for individual, platted subdivision lots.

(3) North arrow, area, and scale, including a graphic scale.

(4) Angles or bearings. When bearings are shown, their basis shall be indicated.

(5) All pertinent dimensions. On dimensions other than those measured, sufficient notations shall be used to identify their source, such as the following:

- (A) Recorded measurement (Rec).
- (B) Calculated from record values (Calc. Rec.).

(6) All pertinent monuments, with a notation indicating which were found and which were set, including those required to be set by section 18 of this rule, identified as to:

- (A) their character;
- (B) **their** size; ~~and~~
- (C) **their** location including their location relative to the surface of the ground; **and**
- (D) **whether or not they were held as control on the survey.**

Found monuments shall be accompanied by a reference to their origin when it is known. Where there is no available documented ~~reference~~, **origin**, it shall be ~~so~~ noted on the plat.

(7) The location of all monuments and physical evidence of possession on or beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent. **This includes monuments on all controlling corners or lines appropriate to the description of the tract being surveyed, but in no case shall the survey show fewer than two (2) monumented corners regardless of the description of the tract. The Indiana state plane coordinate system may be used as the basis for a survey in accordance with IC 32-19; however, such use does not relieve the registered land surveyor of applying proper theory of location.**

(8) Any physical evidence of possession appurtenant to either the surveyed premises or the adjoining property that is on, near, or across any exterior boundary of the premises. ~~or depicted interior. Show the location of such evidence by the distance to such boundary. Show any~~ setback or easement line on the premises that may have been a factor in the location of ~~such a boundary line. Show the location by the shortest distance to such line.~~ Failure to show any such evidence will be taken to indicate that there was none.

(9) Any:

- (A) lakes;
- (B) streams;
- (C) known regulated drains; or
- (D) regulated drain rights-of-way;

on or within seventy-five (75) feet of the surveyed premises. A detailed location, based on applicable statutes and rules, is required when a boundary or easement is determined thereby.

(10) Any evidence of use of the surveyed premises by others.

(11) Adjoining parcels identified by title description or record reference. ~~Map delineation must be such that~~ Contiguity, gaps, and overlaps with adjoining parcels ~~are shall be~~ clearly shown **and dimensioned**. Show only the portion of adjoining tracts relevant to the location of the surveyed tract. ~~Gaps and overlaps on the perimeter of the survey shall be dimensioned.~~

Gaps and overlaps interior to the surveyed parcel shall be depicted but must be dimensioned only if the client requests.

(12) Any easements or setback lines affecting the survey that were created by a subdivision plat. ~~unless they are omitted at the request of the client. It must be noted on the plat of survey if they are omitted for this reason.~~

(13) Any other easements or setback lines affecting the survey, as required and when documentation is furnished by the client.

(14) **If requested by the client**, show zoning ordinance classification references. ~~according to documentation provided by the client.~~ Any other zoning use certifications shall be limited to those facts that can be counted or measured.

(15) **The following:**

- (A) Sufficient data to clearly indicate the theory of location applied in finalizing the locations of the corners.
- (B) Any data at variance with this theory of location. ~~and~~
- (C) Sufficient data to allow the retracement without difficulty of all pertinent lines and corners shown on the plat.

Detail that cannot be legibly depicted on the survey plat shall be otherwise explained in the surveyor's report.

(16) A certificate stating that the survey was performed wholly or in part (state which part) by or under the direction of the registered land surveyor, and to the best of the registered land surveyor's knowledge and belief was executed according to survey requirements in this rule. This certificate shall bear the:

- (A) signature;
- (B) registration number; and
- (C) seal;

of the registered land surveyor and date of the certificate.

(17) If necessary to define the location, a vicinity map shall be provided.

(c) Notwithstanding the requirements of this rule, except for section 18 of this rule, any new subdivision plat may show only the information required by the applicable subdivision control ordinance or other regulation.

(d) Any new subdivision plat recorded must be cross-referenced to a previously recorded survey, which conforms to this rule, of the tract that contains it.

(e) The certificate for a new subdivision must state that there has been no change from the matters of survey revealed by the cross-referenced survey, or any prior subdivision plats contained therein, on any lines that are common with the new subdivision. A new survey, which conforms to this rule, must be executed and recorded if there have been changes in matters of survey from those revealed by the prior recorded survey or any subdivision plats therein on any lines common with a new subdivision. *(State Board of Registration for Land Surveyors; 865 IAC 1-12-13; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3913; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2246; filed Oct 13, 1992, 5:00 p.m.: 16 IR 889; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1887; filed May 4, 2006, 1:25 p.m.: 29 IR 3012) NOTE: 864 IAC 1.1-13-13 was renumbered by Legislative Services Agency as 865 IAC 1-12-13.*

SECTION 31. 865 IAC 1-12-14 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-14 Original survey preliminary research

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 14. When conducting an original survey, a land surveyor shall do the following:

(1) Obtain or prepare the documents establishing the intended position of the lines to be created by the original survey, such as **any of the following:**

- (A) **The** client's ~~approved~~ sketch.
- (B) Instructions defining the lines. ~~and~~
- (C) **A** tentative subdivision map.

(2) Obtain copies of the laws regulating division of property that govern in the **area jurisdiction** in which the property is located.

(3) Survey **that portion of the parent tract required to define the lines of the parcel upon which being created by the original survey. is to be based, or such portion thereof as is relevant to the proposed work.** This work must be in accordance with ~~section 13~~ of this rule. Any conflicts or gaps between the lines of the retracement survey and the ~~adjoiners~~ **adjoiners'** lines that affect newly created tracts must be clearly depicted on the original survey, showing which of the new tracts are affected and to what extent.

(4) Conduct field surveys to determine the location of planimetric or topographic features, **if any**, that are to control the intended position of the lines being created.

(5) In the case of new subdivisions or original surveys, the registered land surveyor shall inform the client of any conflicts between the following:

- (A) The requested position of the lot lines to be created.**
- (B) The position required by any applicable ordinances or regulations.**

These conflicts must be resolved before certifying the survey or, if they are not, the conflicts shall be noted on the face of the plat or in the surveyor's report.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-14; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3914; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2247; filed Oct 13, 1992, 5:00 p.m.: 16 IR 890; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1888; filed May 4, 2006, 1:25 p.m.: 29 IR 3014) NOTE: 864 IAC 1.1-13-15 was renumbered by Legislative Services Agency as 865 IAC 1-12-14.

SECTION 32. 865 IAC 1-12-18 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-18 Original and retracement survey monumentation

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 18. (a) When conducting a retracement survey or an original survey, a registered land surveyor shall be responsible to set monuments in accordance with ~~the following:~~ **this section.**

~~(b)~~ **(h)** Except as provided in subsection ~~(a)(7)~~ **(h)** a monument, as defined in subsections ~~(a)(2)~~ **(c)** through ~~(a)(6); (g),~~ shall be set at every lot or parcel corner being surveyed, including the interior lots of a subdivision. Corners to be set include the beginning and end of curves and the intersection of lines except where the setting of a monument near another monument would cause confusion. Further, a monument is not required to be set if there is an existing monument at the corner that is within the limits of ~~theoretical uncertainty~~ **the relative positional accuracy** for the class of survey being performed.

~~(2) (c)~~ **(2) (c)** Monuments set in unpaved **or other nonimpervious** locations shall be five-eighths ($\frac{5}{8}$) inch diameter or larger iron or steel rods, reinforcement bars, or galvanized pipes weighing a minimum of one (1) pound per foot and being at least twenty-

four (24) inches long and set with not less than eighteen (18) inches below grade. Other monuments may be used if they:

- (1) are made of material of similar or greater durability, size, and character; and
- (2) can be found by a device capable of detecting ferrous or magnetic objects.

~~(3)~~ (d) Where practical, monuments in pavement **or other impervious areas** shall be set according to the requirements contained in subsection ~~(a)(2)~~ (c). However, when it is not practical to set a monument in accordance with subsection ~~(a)(2)~~ (c), then a two (2) inch or longer, one-fourth (1/4) inch or larger diameter, magnetic concrete nail, or similar magnetic monument, shall be set, **if possible**.

(4) (e) Monuments set under subsection ~~(a)(2)~~ (c) or ~~(a)(3)~~ (d) shall have a substantial plastic or metal tag or cap permanently affixed showing the registered land surveyor's surname and professional license number or board-issued firm/agency identification number.

~~(5)~~ (f) Where monuments as defined in subsection ~~(a)(2)~~ (c) or ~~(a)(3)~~ (d) cannot be set, the survey points must be:

- (1) marked by:
 - (A) a drill hole;
 - (B) a cut cross;
 - (C) a notch; or
 - (D) other similar permanent mark; and
- (2) referenced to any nearby witness monuments or permanent objects, such as:
 - (A) building foundations; or
 - (B) concrete head walls.

(6) (g) Monuments required by local ordinances shall be set provided they meet or exceed the requirements in subsections ~~(a)(2)~~ (c) and ~~(a)(3)~~ (d).

~~(7) Except at interior lot corners not adjoining a street right-of-way line;~~ (h) Where it is not possible or practical to set a monument at the survey point: ~~then~~

- (1) a monument shall be offset; and
- (2) the location shall be selected so that the monument lies on a:
 - (A) line of the survey; or ~~on a~~
 - (B) prolongation of ~~such the~~ line.

However, offset monuments are not required at interior lot corners not adjoining a street right-of-way. Offset monuments shall be identified as such on the plat and, if possible, in the field. However, if existing monuments fall within the **theoretical uncertainty acceptable relative positional accuracy** of the survey, a monument will not be required to be set.

(8) (i) If recovery of the monument would be difficult due to the topography or other features of the land, the monuments shall be witnessed or referenced in such a manner that will facilitate their recovery.

~~(9)~~ (j) **At the time they are set**, monuments shall be marked, such as **with** ribbon, paint, or lath, to facilitate the recovery of the monument by the client.

~~(10)~~ (k) It shall be the responsibility of the land surveyor certifying the subdivision plat to set all monuments required by this section in a new subdivision.

~~(b)~~ (l) Monuments shall be set ~~prior to before~~ providing the client with the survey documents required by this rule. However, in the case of new subdivisions where, in the opinion of the surveyor, it is probable the individual lot monuments will be disturbed by construction, only the perimeter of the subdivision, or section thereof, must be monumented **prior to before** recordation. In this situation, the setting of the individual lot monuments may be delayed until no later than:

- (1) after construction is complete (including buildings); or
- (2) two (2) years after recordation of the subdivision plat or, if the subdivision is platted by sections, after recordation of each section;

whichever occurs first. In new subdivisions, if monuments are to be set **prior to before** recording, then the placement of monuments shall be shown on the subdivision plat. If monuments are to be set after construction is complete, the surveyor shall record an affidavit, cross-referenced to the recorded plat, showing which monuments were set and which were found, the dates the monuments were set or found, together with a certification that states to the best of the surveyor's knowledge and belief the information contained in the affidavit is true and correct. Nothing in this subsection shall be construed to require the surveyor to wait until construction is completed to place monuments.

~~(c)~~ (m) A surveyor is not required to replace or restore any monument that the surveyor has set that has been:

- (1) moved;
- (2) disturbed; or
- (3) destroyed;

after its original placement for the current survey.

~~(d)~~ (n) Identification numbers, other than registered land surveyor's registration numbers, used by a land surveying firm or government agency under subsection ~~(a)(2)~~ (c) or ~~(a)(3)~~ (d) must be assigned and authorized for use by the ~~state board of registration for land surveyors upon written request~~. Request for firm or agency numbers must be in writing on forms provided by the board. (*State Board of Registration for Land Surveyors; 865 IAC 1-12-18; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3914; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2248; filed Oct 13, 1992, 5:00 p.m.: 16 IR 891; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jan 26, 2004, 11:00 a.m.: 27 IR 1888; filed May 4, 2006, 1:25 p.m.: 29 IR 3014*) *NOTE: 864 IAC 1.1-13-19 was renumbered by Legislative Services Agency as 865 IAC 1-12-18.*

SECTION 33. 865 IAC 1-12-20 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-20 Route survey preliminary research

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 20. (a) When conducting a route survey, a registered land surveyor shall do the following:

(1) Obtain or prepare the documents establishing the intended position of the lines to be created by the survey, for example, **the following:**

(A) The client's approved sketch. ~~and~~

(B) Instructions defining the lines.

(2) Obtain **the following:**

(A) Copies of the laws that affect route surveys in the area in which the property is located.

~~(3) Obtain~~ (B) From:

(i) the client, or other sources, the record description of the affected parcel or parcels;

~~(4) Obtain from~~ (ii) the county recorder's office, copies of any **recorded subdivision plats and surveys** affected by **or relating to** the survey; **and**

~~(5) Obtain from~~ (iii) other public offices, copies of any maps, documents, and field notes that relate to the survey.

(b) Client specifications may set forth technical minimums for route surveys more stringent than those stated in this section. *(State Board of Registration for Land Surveyors; 865 IAC 1-12-20; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2250; filed Oct 13, 1992, 5:00 p.m.: 16 IR 893; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3016) NOTE: 864 IAC 1.1-13-35 was renumbered by Legislative Services Agency as 865 IAC 1-12-20.*

SECTION 34. 865 IAC 1-12-21 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-21 Route survey fieldwork

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 21. When conducting a route survey, a land surveyor shall do the following:

(1) Establish **the location of the control survey points** upon which ~~the all subsequent work is will be based so that they can be retraced and are recoverable by other surveyors without difficulty during and after construction.~~

(2) Determine the location of ~~planimetric or topographic features that are to control the intended position of the survey control and parcel acquisition lines being created; the location of following:~~

(A) Any lines ~~and/or~~ **or** corners, **or both**, necessary to ~~locate said~~ **describe any** acquisition parcels. ~~and the location of~~

(B) Any United States Public Land Survey subdivision corners that are **available from the county surveyor or** reasonably accessible ~~on both sides of and relevant to the route survey control line or acquisition parcels, or both.~~

(3) Set any final monuments required by section 24 of this

rule, ~~plus~~ **and** those required by the client.

(4) Take sufficient check measurements to satisfactorily verify the work.

(5) Keep survey field notes showing all pertinent information, measurements, and observations made in the field during the course of a survey in a manner that is clear to other land surveyors who may use the information so recorded.

(6) Make necessary computations to substantiate correctness of field measurements.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-21; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2250; filed Oct 13, 1992, 5:00 p.m.: 16 IR 893; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3016) NOTE: 864 IAC 1.1-13-36 was renumbered by Legislative Services Agency as 865 IAC 1-12-21.

SECTION 35. 865 IAC 1-12-22 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-22 Measurements for route surveys

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 22. (a) When conducting a route survey, the land surveyor shall be responsible to use the minimum standards of measurement **for urban surveys** provided for in ~~this section~~ **Laws affecting route surveys or client specifications may set forth technical minimums for section 7 of this rule, except that relative positional accuracy may not exceed five-tenths (0.5) feet for a route surveys more stringent than those stated in this section: survey.**

(b) Measurements generally shall be shown on the route survey plat with a number of significant figures representative of the precision of the work.

(c) The measurements specifications ~~contained in subsection~~ **(d) outlined in this section** will apply to all of the following items shown on a route survey:

(1) The ~~controlling control~~ **survey line: points.**

(2) Survey ties to **either of the following:**

(A) The nearest United States Public Land Survey subdivision corners that are reasonably accessible on both sides of the controlling survey line. ~~or~~

(B) Monuments with established state plane coordinates.

(3) All monuments **and** reference monuments, and any ties thereto, that are set relative to the controlling survey line.

(d) The following measurement specifications shall apply to all route surveys:

~~(1) All angles shall be based upon the mean of two (2) direct and two (2) reverse position readings of the instrument telescope:~~

~~(2) The instrument must have a direct (not estimated) angular reading capability as follows:~~

~~(A) Twenty (20) seconds of arc for micrometer reading theodolites:~~

- (B) One (1) minute of arc for scale reading theodolites.
- (C) Ten (10) seconds of arc for electronic theodolites.
- (3) The instrument must have the capability of allowing an estimated reading as follows:
 - (A) Ten (10) seconds of arc for micrometer reading theodolites.
 - (B) One-tenth (0.1) of a minute of arc for scale reading theodolites. N.A. for electronic theodolites.
- (4) Any angle which exceeds the mean by more than the following amount must be rejected and the set of angles remeasured:
 - (A) Ten (10) seconds of arc for micrometer reading theodolites.
 - (B) Two-tenths (0.2) of a minute of arc for scale reading theodolites.
 - (C) Ten (10) seconds of arc for electronic theodolites.
- (5) All distance measurements must be made with a properly calibrated EDM or steel tape, applying atmospheric, temperature, sag, tension, slope, scale factor, and sea level corrections, as necessary.
- (6) Distance measurements to be used in computing accuracy or closure for those items in subsection (c) cannot be less than the following amounts:
 - (A) Fifty-four (54) meters for an EDM having an error of five (5) millimeters per manufacturer's specifications independent of distance.
 - (B) One hundred two (102) meters of an EDM having an error of ten (10) millimeters per manufacturer's specifications independent of distance.
 - (C) Fourteen (14) meters for calibrated steel tape.
- (7) If a closed loop is run, the angular and linear closures must comply with the following requirements:
 - (A) Fifteen (15) seconds of arc times for maximum angular closure error, where N is the number of stations.
 - (B) 1:10,000 for minimum linear error of closure precision ratio after angles are balanced and closure is calculated.
- (e) The use of a more precise instrument does not change any of the specifications contained in subsection (d); such as number of angles turned.
- (d) If the route survey references or is based on state plane coordinates or utilizes the Global Positioning System (GPS), the written surveyor's report shall identify the following:
 - (1) The datum and projection.
 - (2) The year of applicable datum adjustment.
 - (3) The originating or controlling monuments.
 - (4) The GPS base stations or positioning software used, for example, the Online Positioning User Service (OPUS).
 - (5) The source and format of the corrections if real time kinematic GPS was used.
 - (6) The Geoid model used, if applicable.
 - (7) The scale, elevation, and combination factors used in the coordinate calculations.
 - (8) Information on any translation to or from a local system.

(9) The collection processes and methodology of final positioning.

(10) Whether the distances shown are grid or ground.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-22; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2250; filed Oct 13, 1992, 5:00 p.m.: 16 IR 893; errata, 21 IR 4537; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3016) NOTE: 864 IAC 1.1-13-37 was renumbered by Legislative Services Agency as 865 IAC 1-12-22.

SECTION 36. 865 IAC 1-12-23 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-23 Publication of route survey results

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 23. (a) When conducting a route survey, a registered land surveyor shall do the following:

(1) Furnish the client with the following:

(A) Copies of the route survey plats.

(2) ~~Furnish the client with~~ (B) A written surveyor's report which, in addition to other pertinent data, gives the registered land surveyor's professional opinion of the cause and the amount of uncertainty in the lines and corners found or established by the survey because of any of the following:

(A) (i) Availability and condition of referenced monuments.

(B) (ii) Occupation or possession lines.

(3) (2) Record the route survey plat and any subsequent revisions as defined in section 25 of this rule, together with the associated surveyor's report defined in this subsection, in the files of the county recorder's office in the county where the property is located on or before the date of acquisition of any tracts relative to the plat.

(b) An accurate description for all parcels to be acquired shall be furnished to the client. ~~The description~~ Descriptions may be by metes and bounds but, in any case, shall be controlled by a call for all that part of the owner's land which that lies within the total acquisition tract. The acquisition tract or tracts shall be depicted on, or described relative by reference to:

(1) the recorded plat of route survey; or

(2) any subsequent recorded revisions of the recorded plat of route survey; ~~which~~

that contain said the land. The lines of the acquisition tracts and any proposed right-of-way lines shall be tied to the initial control survey points. (State Board of Registration for Land Surveyors; 865 IAC 1-12-23; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2251; filed Oct 13, 1992, 5:00 p.m.: 16 IR 894; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3017) NOTE: 864 IAC 1.1-13-38 was renumbered by Legislative Services Agency as 865 IAC 1-12-23.

SECTION 37. 865 IAC 1-12-24 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-24 Route survey monumentation

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 24. (a) When conducting a route survey, a registered land surveyor shall be responsible to set monuments in accordance with the following:

(1) ~~Controlling Control~~ survey lines ~~which points that~~ are to be shown on the route survey plat shall be monumented at:

(A) each angle point; and at

(B) intervals that typically do not exceed one ~~thousand~~ (1,000) feet: **quarter (¼) mile.**

(2) ~~The monuments shall be of a type and character, and set in a manner providing a degree or permanency, consistent with the terrain, physical features, intended use, and character of the point being marked.~~

(2) Section 18(c) through 18(f) of this rule.

(3) ~~Monuments set in unpaved locations shall be five-eighths (5/8) inch diameter or larger iron or steel rebars or pipes weighing a minimum of one (1) pound per foot and being at least twenty-four (24) inches long. Other monuments may be used if they are made of material of similar durability which includes an element that can be found by a device capable of detecting ferrous or magnetic objects. Such monuments shall have a substantial plastic or metal cap permanently affixed thereto showing the registered land surveyor's professional license number and/or the name or identification number of the land surveying firm or government agency.~~

(4) ~~Where practical, monuments in paved locations shall be set according to the requirements contained in subdivision (3).~~

(5) ~~Survey points, where monuments as defined in subdivision (3) or (4) cannot readily be set, must be marked by a drill hole; cut cross; notch; railroad spike; or similar permanent mark and referenced to any nearby witness monuments or permanent objects such as building foundations or concrete head walls.~~

(6) ~~(3) Any comparable or better monuments required by more stringent local ordinances shall be set.~~

(7) ~~(4) Monuments shall be referenced in such a manner that will facilitate recovery of the monuments. A minimum of three (3) permanent points referencing each controlling survey line monument shall be established, preferably at locations outside the planned construction area.~~

(8) ~~(5) All monuments shown on the recorded route survey plat that are reset by an Indiana land surveyor must be reset according to the rules used for the original monuments. A survey plat of this resurvey shall be:~~

(A) recorded in the office of the county recorder where the resurvey was done within ninety (90) days of survey certification; and ~~shall be~~

(B) cross-referenced to the original route survey plat.

~~(9) (6) At the time they are set, monuments shall be marked, for example, with:~~

(A) ribbon;

(B) paint; or

(C) lath;

to facilitate the recovery of the monuments by the client.

~~(b) Subsection (a)(3) through (a)(4) shall apply only to monuments set after December 31, 1991.~~

~~(c) (b) Any identification numbers, other than the registration number of the registered land surveyor, used by a land surveying firm or government agency under subsection (a)(3) section 18(d) or (a)(4) 18(e) of this rule must be assigned and authorized for use by the state board of registration for land surveyors upon written request. (State Board of Registration for Land Surveyors; 865 IAC 1-12-24; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2252; filed Oct 13, 1992, 5:00 p.m.: 16 IR 894; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3018) NOTE: 864 IAC 1.1-13-39 was renumbered by Legislative Services Agency as 865 IAC 1-12-24.~~

SECTION 38. 865 IAC 1-12-25 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-25 Route survey plats

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 25. When conducting a route survey, a land surveyor shall prepare a route survey plat as follows:

(1) Draw the route survey plat to scale and in such a manner that the data shown ~~will be for the relevant parcel or parcels is~~ clearly legible when the plat is reduced to sheets suitable for recording **in the county in which are no larger than eleven (11) inches by seventeen (17) inches and no smaller than eight and one-half (8.5) inches by eleven (11) inches: the survey was conducted.**

(2) **Show the following:**

(A) The north arrow and scale, including a graphic scale.

~~(3) Show (B)~~ A vicinity map ~~if needed~~ to define the location of the project.

~~(4) Show (C)~~ All pertinent dimensions. Dimensions not measured shall be noted as to their origin or that they were calculated.

~~(5) Show (D)~~ Sufficient data to allow the retracement, without difficulty, of all the created lines and points.

~~(6) Show (E)~~ All:

(i) survey line;

(ii) centerline;

(iii) reference;

(iv) right-of-way;

(v) property;

(vi) government; or

(vii) other pertinent;

monuments ~~which that~~ were set or found, and any reference ties thereto.

~~(7) (3)~~ Identify all monuments indicating which were set and which were found and their character, size, and location relative to the surface of the ground. Found monuments shall be accompanied by a:

(A) reference to their origin when it is known; or a

(B) notation that there is no available documented reference of the origin.

- (8) (4) Locate all monuments using an accepted practice such as:
- (A) Indiana state ~~plan~~ **plane** coordinates;
 - (B) station and offset;
 - (C) course and distance; or
 - (D) local coordinates;

including the basis for the system used.

- (9) (5) Show and locate any right-of-way points, lines, or tracts ~~which that~~ have been created or proposed relative to the **initial control survey line: points.**

- (10) (6) Show **the following:**

(A) The owners' names at the time of the survey (as determined by the county tax records or if later information is known by that information). ~~and~~

(B) The approximate location of any property lines ~~which that~~ may be:

- (i) coincident with;
- (ii) intersect with; or ~~may be~~ enclosed by, any proposed or depicted right-of-way lines.

(11) ~~Show~~ (C) The name of the client or government agency. Include their project or file number if known, and the surveyor's file number.

- (12) (7) Include a certification ~~which that:~~

(A) states that, to the best of the registered land surveyor's knowledge and belief, the route survey is executed according to the provisions of this rule; and

(B) defines the scope of responsibility for each certifying registered land surveyor, if needed for clarity **in accordance with section 23(a)(2) of this rule;** and ~~which~~

(C) bears the:

- (i) name, address, registration number, signature, and seal of each registered land surveyor; ~~the~~
- (ii) date of the fieldwork; and ~~the~~
- (iii) date of the certification.

(8) **Nothing in this section shall prevent a complete route survey plat from being the composite of the work of one (1) or more surveyors preparing separate plats of their work as long as the following requirements are met:**

(A) **All of the information required under this section and in sections 21, 22, 24, and 25 of this rule is reflected in the composite of the separate plats, and the data on each of the separate plats is tied to the initial controlling survey line.**

(B) **The separate plats are all recorded.**

(C) **Any plats related to the route survey that are subsequently recorded are cross-referenced to any previously recorded plats related to the same route survey.**

(D) **The work is conducted in accordance with the requirements of section 3 of this rule.**

(State Board of Registration for Land Surveyors; 865 IAC 1-12-25; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2252; filed Oct 13, 1992, 5:00 p.m.: 16 IR 895; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3018)
NOTE: 864 IAC 1.1-13-40 was renumbered by Legislative Services Agency as 865 IAC 1-12-25.

SECTION 39. 865 IAC 1-12-27 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-27 Surveyor location reports; purpose; scope

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 27. (a) Surveyor location reports are designed for use by a title insurance company with loan policies on small tracts containing a one (1) to four (4) family house even if now used for commercial purposes. **A surveyor location report shall not be used for nonresidential tracts greater than two (2) acres.**

(b) A registered land surveyor does not assume responsibility regarding the location or existence of any underground use except that indicated by readily visible surface evidence. The client shall be responsible for providing any title documents other than recorded plats that are required for the report.

(c) The report must be done according to its record description, if any. No corner monuments are required to be set. The uncertainty of location for the report shall not exceed plus or minus:

- (1) one (1) foot on tracts in ~~platted~~ **recorded** subdivisions; or
 - (2) two (2) feet for ~~small unplatted~~ **other** tracts;
- unless otherwise specified and explained on the drawing.

(d) House locations more than one hundred (100) feet from an exterior boundary:

- (1) may be estimated; and
- (2) need not comply with subsection (c).

(e) Obtaining accurate and complete data on or near the perimeter of larger tracts is beyond the scope of the report. Therefore, on larger tracts:

- (1) location data for items more than one hundred (100) feet from the house may be estimated and need not comply with subsection (c); and ~~on such larger tracts;~~
- (2) the data required by section 28(1) through 28(5) of this rule may be incomplete.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-27; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2253; filed Oct 13, 1992, 5:00 p.m.: 16 IR 896; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3019)
NOTE: 864 IAC 1.1-13-42 was renumbered by Legislative Services Agency as 865 IAC 1-12-27.

SECTION 40. 865 IAC 1-12-28 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-28 Surveyor location reports; requirements

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 28. When conducting a surveyor location report, a registered land surveyor shall do the following:

(1) Briefly describe and show the location of visible evidence of possession. ~~including, but not limited to, the following:~~

~~(A) Buildings;~~

~~(B) Fences;~~

~~(C) Hedgerows;~~

~~(D) Other improvements appurtenant to either the surveyed property or the adjoining property.~~

Show the location of this evidence by the shortest dimension to:

(A) the nearest adjacent boundary line; or

(B) any depicted easement line;

in order to reveal the extent of any possible encroachment. The statement "No visible evidence of possession found" must be noted along record boundary lines when applicable. (For this purpose, monuments found do not constitute evidence of possession.)

(2) Show the location, dimensions, and a brief description of all buildings or structures on the property including, but not limited to, the following:

(A) Driveways.

(B) Parking lots.

(C) ~~Such~~ Personal property, **such** as aboveground swimming pools or yard barns.

Show the location of ~~such~~ buildings adjacent to the boundary lines by the shortest distance thereto, and dimension any violation of a depicted easement or building setback line. Identify any buildings that appear to have no foundation and may be readily moveable. Show the name of the occupant, if easily available, and any client identification data requested.

(3) Show the location of and briefly describe any visible evidence of use by others, such as for:

(A) roadways;

(B) utility lines; ~~or~~

(C) driveways; or

(D) possible joint use of driveways (do not label as "joint" or "common"); ~~which~~

that may affect the surveyed tract. Note the name of the user, if marked (for example, joint use by electric, telephone, and cable television companies on poles marked with electric company tags). With respect to any railroad on or adjoining the property, note if the tracks have been removed. If that is the case, note any visible evidence of construction, trenching, or other use observed on or along ~~said~~ **the** railroad.

(4) Show the location and recording data for any easements or setback lines on the tract as determined from:

(A) recorded documents provided by the client; or ~~from~~

(B) a recorded plat.

(5) Show the location of the perimeter of any visible evidence of cemeteries found on the surveyed tract.

(6) Show the approximate size, location, and brief description of any lakes, ditches, ~~or~~ streams on the tract or any known ~~legal~~ **regulated** drains on or within seventy-five (75) feet of the property. Detailed locations are required when:

(A) a boundary is determined thereby; or ~~when~~

(B) buildings or other improvements are located within a

legal drain easement.

(7) Show the **name and** location of any road, street, alley, or other public way abutting or on the surveyed property with the:

(A) width of the ~~travelled~~ **traveled** way;

(B) known right-of-way lines; ~~name, location, and~~

(C) source of any known ~~name or~~ right-of-way information indicated. If not known, note which records, if any, were searched.

(8) Physical access to the property, or lack thereof, must be shown.

~~(8)~~ (9) Show the:

(A) Drawing scale.

(B) A north arrow.

(C) Property description and address.

(D) Surveyor's:

(i) job number;

(ii) company name;

(iii) certificate;

(iv) signature; and

(v) seal.

(E) Client name. ~~and the~~

(F) Names of those to whom the report is certified.

~~(9)~~ **Show (G)** A report/certificate date less than thirty (30) days from the date of delivery.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-28; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2253; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 15, 2002, 3:33 p.m.: 26 IR 1105; filed May 4, 2006, 1:25 p.m.: 29 IR 3019) NOTE: 864 IAC 1.1-13-43 was renumbered by Legislative Services Agency as 865 IAC 1-12-28.

SECTION 41. 865 IAC 1-12-29 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-29 Surveyor location reports; certificate

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5

Sec. 29. (a) The surveyor location report format shall be substantially the same as that contained in subsection (b), and the minimum acceptable registered land surveyor's certificate to be prepared for a surveyor location report shall be the same as that contained in subsection (b). The content and format of the certificate shall be as shown, but the type size and spacing may be altered to suit so long as the finished form is neat and clearly legible. The size of the sheet or sheets for the reports shall be: ~~no~~

(1) **not** less than eight and one-half (8½) inches by eleven (11) inches; and ~~no~~

(2) **not** greater than ~~eleven (11)~~ **eighteen (18)** inches by ~~seventeen (17)~~ **twenty-four (24)** inches.

The surveyor's firm name, address, and phone number may be shown at the top or bottom margin.

(b) The surveyor's certificate described in subsection (a) shall

be as follows:

SURVEYOR LOCATION REPORT

THIS REPORT IS DESIGNED FOR USE BY A TITLE INSURANCE COMPANY WITH RESIDENTIAL LOAN POLICIES. NO CORNER MARKERS WERE SET AND THE LOCATION DATA HEREIN IS BASED ON LIMITED ACCURACY MEASUREMENTS. THEREFORE, NO LIABILITY WILL BE ASSUMED FOR ANY USE OF THE DATA FOR CONSTRUCTION OF NEW IMPROVEMENTS OR FENCES.

PROPERTY ADDRESS:

PROPERTY DESCRIPTION:

CLIENT I.D. NO.:

(HERE INSERT LOCATION REPORT DRAWING)

TITLE CO.:

I HEREBY CERTIFY TO THE PARTIES NAMED ABOVE THAT THE REAL ESTATE DESCRIBED HEREIN WAS INSPECTED UNDER MY SUPERVISION ON THE DATE INDICATED AND THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS REPORT CONFORMS WITH THE REQUIREMENTS CONTAINED IN SECTIONS 27 THROUGH 29 OF 865 IAC 1-12 FOR A SURVEYOR LOCATION REPORT. THE ACCURACY OF ANY FLOOD HAZARD STATEMENT SHOWN ON THIS REPORT IS SUBJECT TO MAP SCALE UNCERTAINTY AND TO ANY OTHER UNCERTAINTY IN LOCATION OR ELEVATION ON THE REFERENCED FLOOD INSURANCE RATE MAP.

DATE OF SURVEY:

REGISTERED LAND SURVEYOR'S SIGNATURE:

(REGISTERED LAND SURVEYOR'S NAME
AND INDIANA REGISTRATION NO.)

REPORT JOB NUMBER:

SEAL

PROPOSED BUYER:

PROPOSED LENDER:

(State Board of Registration for Land Surveyors; 865 IAC 1-12-29; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2254; filed Oct 13, 1992, 5:00 p.m.: 16 IR 896; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 268; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3020) NOTE: 864 IAC 1.1-13-44 was renumbered by Legislative Services Agency as 865 IAC 1-12-29.

SECTION 42. 865 IAC 1-12-30 IS ADDED TO READ AS FOLLOWS:

865 IAC 1-12-30 Section corner perpetuation

Authority: IC 25-21.5-2-14

Affected: IC 25-21.5; IC 36-2-12

Sec. 30. (a) This section outlines the procedures and requirements for registered land surveyors when perpetuating the location of original public land survey or grant corners. As used in this section, "grant" means a subdivision, parcel, or tract of land that existed, or the parent tract

of which existed, prior to the commencement of the United States Public Land Survey adjoining such subdivision, parcel, or tract.

(b) The purported location of an original public land survey or grant corner as referenced by the county surveyor of the county in which the corner exists is prima facie evidence of that corner's location. The registered land surveyor's responsibility with regard to the use of or need for original public land survey corners or grant corners in association with an original or retracement survey is not met by merely contacting the county surveyor.

(c) If the:

(1) location of an original public land survey or grant corner is not monumented and referenced by the county surveyor in accordance with Indiana Code 36-2-12; or

(2) registered land surveyor discovers evidence, or otherwise has reason to believe, that a monument purporting to mark the location of an original public land survey or grant corner is not in the proper location;

and if that corner is necessary for purposes of conducting an original, retracement, or route survey as defined in this rule, the registered land surveyor shall contact the county surveyor and perpetuate that corner's location in accordance with this section if the county surveyor is unable to perpetuate the corner in the time frame required by the registered land surveyor.

(d) A registered land surveyor shall perpetuate the location of an original public land survey or grant corner by gathering evidence that may assist in determining the original location of that corner. This evidence includes, but is not limited to, the following:

(1) Copies of:

(A) The original public land survey field notes and plat or transcribed copies of same.

(B) Deeds and plats that reference the location of the corner.

(C) Historic survey records, road, street, highway, and bridge plans, corner records, recorded surveys and other relevant information from the county surveyor, county recorder or other county, state and municipal offices.

(D) Current or historic aerial photographs.

(E) Records from private surveyors who practice or used to practice in the vicinity of the corner.

(2) Parol evidence from knowledgeable landowners or others who may have information relating to the corner.

(3) The field location of:

(A) Fences.

(B) Walls.

(C) Roadways.

(D) Survey markers.

(E) Tree lines.

(F) Other lines of possession.

(G) Interrelated or nearby section corners, quarter section corners, quarter-quarter corners, or other aliquot corner of a section, and corners of common report.

(e) After evaluating and weighing the evidence outlined in subsection (d), the registered land surveyor shall do the following:

(1) Apply appropriate theory of location to determine the probable locations of the corner.

(2) Excavate or otherwise determine if there is a subsurface monument in those locations unless, in the registered land surveyor's opinion, there is no substantial possibility of:

(A) a corner stone; or

(B) other historical survey monument;

being found in those locations. Examples of such situations include, but are not limited to, corner locations that fall in concrete highways, in areas where other excavations have previously taken place, such as, for culverts or sewers, or in areas of substantial cut or fill, such as, for interstate highway overpasses or underpasses.

Before excavating, the registered land surveyor shall notify the appropriate jurisdictional agencies.

(f) If, as a result of the corner investigation:

(1) a corner stone;

(2) historical survey monument; or

(3) other evidence;

is found marking the corner, the registered land surveyor shall remonument and reference the corner if necessary to facilitate its recovery by other surveyors.

(g) If, after excavating or otherwise conducting subsurface investigations of the probable locations outlined in subsection (e), a corner stone, historical survey monument, or other evidence of the corner is not found, the registered land surveyor shall do the following:

(1) Establish the location of the corner:

(A) based on the best available evidence; and

(B) in accordance with procedures for lost or obliterated corners outlined in or authorized by the United States Code in 43 U.S.C. 751, 43 U.S.C. 752, and 43 U.S.C. 753, which are hereby incorporated by reference.

(2) Monument that location.

(h) If the corner was perpetuated for use on an original, retracement, or route survey, the registered land surveyor shall do the following:

(1) Describe and reference the monument in such a manner that facilitates its recovery by other surveyors.

(2) Document the following:

(A) The chain of history of the corner to the best of his or her knowledge.

(B) The evidence found and weighed.

(C) The search area or areas.

(D) The theory of location applied in re-establishing the corner.

(E) Other relevant information regarding the perpetuation of the corner in the surveyor's report or on the plat of survey, or both.

(3) Provide a copy of the surveyor's report and plat of survey to the county surveyor.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-30; filed May 4, 2006, 1:25 p.m.: 29 IR 3021)

SECTION 43. 865 IAC 1-13-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-2 Continuing education requirements

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 2. (a) Registered land surveyors must complete twenty-four (24) hours of continuing education in order to qualify for renewal of an active license.

(b) Continuing education is first required for the July 31, 2002, renewal. However, notwithstanding subsection (a), only twenty-one (21) hours of continuing education, including six (6) mandatory hours under section 6 of this rule and fifteen (15) elective hours under section 7 of this rule, will be required for the July 31, 2002, renewal. No credit will be given for courses completed prior to August 1, 2000.

(c) No credit will be given for courses completed prior to August 1, 2000. Courses taken or taught between August 1, 2000, and the effective date of this rule and of 865 IAC 1-14 may receive credit under section 5(b) of this rule. The limitation in section 5(b) of this rule to submit course material within three (3) months after taking the course shall not apply to courses taken in this time period so long as the course material is submitted no later than April 1, 2001. (State Board of Registration for Land Surveyors; 865 IAC 1-13-2; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1025; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3022)

SECTION 44. 865 IAC 1-13-5 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-5 Courses from approved and unapproved providers

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-1-11; IC 25-21.5

Sec. 5. (a) Hours of continuing education will be granted to registered land surveyors who have successfully completed:

(1) courses offered by land surveyor continuing education providers approved under 865 IAC 1-14; or

(2) specific courses from ~~nonapproved~~ **unapproved** providers that:

(A) the board has approved under subsections (b) and (c); or ~~that~~

(B) qualify under subsections (d) through (f).

(b) It is the obligation of the registered land surveyor to submit course material from unapproved providers either not more than six (6) months after taking the course or three (3) months before the end of the renewal cycle, whichever comes first. The required information must include the following:

- (1) The course outline or description.
- (2) A certified statement signed by the registered land surveyor stating that the entire course was completed.
- (3) The information required in 865 IAC 1-14-13.
- (4) The name and professional biography of the instructor.

(c) To qualify under subsection (b):

(1) courses must be on the subject matter listed in section 6 or 7 of this rule; ~~and~~

(2) instructors must meet the requirements of 865 IAC 1-14-9; ~~and~~

(3) course content, instructor qualifications, and provider qualifications must meet the requirements provided in 865 IAC 1-14.

If the submitted information does not meet the requirements for approval, the course may be rejected and credit denied.

(d) As an alternative to the procedures described in subsections (b) and (c), specific courses obtained from nonapproved providers shall qualify as the appropriate number of hours of continuing education as an elective topic under section 7 of this rule as long as the following requirements are met:

- (1) The course has been approved by the land surveyor registration board of another state that requires land surveyors to obtain continuing education.
- (2) The other state defines an hour of continuing education as at least fifty (50) minutes of instruction time.
- (3) The course must cover one (1) or more of the elective topics listed in section 7(a)(1) through 7(a)(14) of this rule.
- (4) The course is not self-study, correspondence, or other unmonitored course where:

(A) college credit is not awarded for successful completion; or ~~where such~~

(B) the course was not provided by an accredited college or university as defined in ~~this rule~~; **865 IAC 1-14-2(b)**.

(5) The subject matter is not specific to a particular state, such as "boundary law of Ohio" or "the Michigan plat act".

(e) The registered land surveyor claiming credit under subsection (d) is responsible for the following:

- (1) That the requirements of subsection (d) are met.
- (2) For an audit under section 19 of this rule, making available information, such as a course content:

(A) outline; and ~~a course~~

(B) objective;

to establish that the requirements of subsection (d) are met.

(3) Obtaining and retaining for five (5) years from the date of the course, a certification of course completion that substantially complies with 865 IAC 1-14-13.

(f) As it does regarding any other continuing education issue, section 19 of this rule regarding:

(1) audits of continuing education; and

(2) the possible imposition of sanctions under IC 25-1-11; applies to continuing education credit claimed under subsection (d). (*State Board of Registration for Land Surveyors; 865 IAC 1-13-5; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jul 17, 2002, 3:36 p.m.: 25 IR 4111; filed Apr 26, 2004, 2:15 p.m.: 27 IR 2732; errata filed Apr 27, 2004, 2:00 p.m.: 27 IR 2744; errata filed May 7, 2004, 1:35 p.m.: 27 IR 2744; filed May 4, 2006, 1:25 p.m.: 29 IR 3022*)

SECTION 45. 865 IAC 1-13-7 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-7 Elective topics

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 7. (a) To qualify for renewal, a registered land surveyor must complete eighteen (18) hours of continuing education in any of the following elective topics:

- (1) College level mathematics.
- (2) College level physical sciences.
- (3) Federal and state laws, rules, regulations, and practices pertaining to **the following**:

(A) The establishment or reestablishment of land boundaries. ~~and~~

(B) The practice of land surveying in Indiana.

(4) Preparation and analysis of legal descriptions of interests in land.

(5) The design, planning, and platting of subdivisions.

(6) Preparation of plans and profiles for:

(A) roads;

(B) storm drainage; and

(C) sanitary sewer extensions;

for subdivisions.

(7) The ethical, economic, and legal principles that pertain to the practice of land surveying.

(8) Distance and direction measurements, including statistical analysis.

(9) Topographic and hydrographic surveying.

(10) Photogrammetry.

(11) Surveying applications, such as **the following**:

(A) GIS.

(B) LIS.

(C) GPS.

(12) Advanced surveying procedures and equipment.

(13) Computer applications for land surveyors.

(14) ~~College level~~ Communication, such as **the following**:

(A) Public speaking. ~~and~~

(B) Technical writing.

(15) The topics listed in section 6 of this rule.

(b) No single elective course may count for more than twelve

(12) hours of continuing education. **Hours in excess of twelve (12) granted for any single elective course shall not be applied to the hours of continuing education required in the next renewal period as otherwise allowed under section 10 of this rule.** (*State Board of Registration for Land Surveyors; 865 IAC 1-13-7; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 875; filed May 4, 2006, 1:25 p.m.: 29 IR 3023, eff Aug 1, 2006*)

SECTION 46. 865 IAC 1-13-8 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-8 Continuing education credit not given

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 8. Credit will not be given for any of the following:

- (1) Any education obtained ~~prior to before~~ licensure.
- (2) Self-study courses, correspondence courses, or any other unmonitored course where:

(A) college credit ~~are is~~ not awarded for successful completion; or ~~where such~~

(B) the course was not provided by an accredited college or university as defined in ~~this rule~~. **865 IAC 1-14-2(b).**

- (3) Meetings conducted during eating periods.
- (4) Motivational classes or seminars.
- (5) Meetings of the ~~state board of registration for land surveyors~~.
- (6) Business, social, or other noneducational meetings of professional groups, or subgroups, such as the Indiana Society of Professional Land Surveyors.
- (7) Committee work with local, state, or national professional organizations.
- (8) Staff meetings.
- (9) Courses taken for a second or subsequent time during a renewal period.

~~(10) Courses or seminars not completed. Partial credit may not be given.~~

~~(11)~~ **(10)** Courses not completed due to dismissal by the provider for disruption of the course, such as **the following:**

(A) Reading newspapers.

(B) Talking on mobile telephones. ~~or~~

(C) Anything other than paying attention during the course.

(*State Board of Registration for Land Surveyors; 865 IAC 1-13-8; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3024*)

SECTION 47. 865 IAC 1-13-10 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-10 Hours used in later renewal cycles

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 10. (a) **Up to four (4)** hours of **elective** continuing

education **topics earned, but not used,** in one (1) renewal period may ~~not be used~~ **applied to the hours required in a subsequent the next** renewal period. **Proper documentation of any such hours shall be submitted as required by the board.**

(b) The applying of hours from a previous renewal period under subsection (a) shall not be allowed until the 2010 renewal for continuing education hours obtained between August 1, 2006, and July 31, 2008. (*State Board of Registration for Land Surveyors; 865 IAC 1-13-10; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1027; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3024*)

SECTION 48. 865 IAC 1-13-11 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-11 College courses as continuing education

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 11. College courses taken after licensure that qualify for continuing education credit under section 6 or 7 of this rule will be counted as follows:

(1) Ten (10) hours of continuing education credit per credit hour taken in a quarter system.

(2) Fifteen (15) hours of continuing education credit per credit hour taken in a semester system.

However, college credit earned under this section and applied as elective continuing education hours must comply with the requirements of section 7 of this rule. (*State Board of Registration for Land Surveyors; 865 IAC 1-13-11; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1027; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3024*)

SECTION 49. 865 IAC 1-13-19 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-19 Audits of continuing education compliance

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-1-11; IC 25-21.5-8-7

Sec. 19. (a) The board may conduct audits of registered land surveyors and providers for continuing education compliance. **In conducting an audit, the board may request information from a registered land surveyor or provider, in which case the registered land surveyor or provider shall respond within thirty (30) days.** For every purpose of this section, the board may designate a board member or staff member to act on behalf of or in name of the board.

(b) If, as the result of an audit or other review, the board determines that hours of continuing education a registered land surveyor has claimed do not meet the requirements of IC 25-21.5-8-7 and this article, the board shall notify the registered land surveyor of that determination.

(c) A registered land surveyor, who has been notified under subsection (b), may, within thirty (30) days, submit information to the board giving all the substantive reasons in support of the registered land surveyor's position that an adequate number of hours of continuing education have been completed.

(d) A registered land surveyor who submits false information shall be subject to the sanctions provided for under IC 25-1-11.

(e) Registered land surveyors who are found not to be in compliance will be subject to discipline under IC 25-1-11. (*State Board of Registration for Land Surveyors; 865 IAC 1-13-19; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1028; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3024*)

SECTION 50. 865 IAC 1-14-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-2 Continuing education course providers

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 2. (a) The board, upon application, may grant continuing education course provider approval to applicants who apply under this rule.

(b) Colleges and universities ~~who are~~ accredited by the following accrediting entities are deemed by the board to be approved continuing education providers and need not apply for approval **as providers, but must apply for approval of individual continuing education courses as outlined in section 4 of this rule:**

- (1) Middle States Association of Colleges and Schools/Commission on Higher Education.
- (2) New England Association of Schools and Colleges.
- (3) North Central Association of Schools and Colleges.
- (4) Northwest Association of Schools and Colleges.
- (5) Southern Association of Colleges and Schools/Commission on Colleges.
- (6) Western Association of Schools and Colleges/Accrediting Commission for Senior Colleges.

(*State Board of Registration for Land Surveyors; 865 IAC 1-14-2; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1029; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3025*)

SECTION 51. 865 IAC 1-14-13 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-13 Certifications of completion

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 13. (a) Course providers shall provide the registered land surveyor who successfully completes an approved course a certification of course completion that must include the following information:

- (1) Name, telephone number, and address of the provider.
- (2) Name and license number of the participant.
- (3) Title of the course.
- (4) Course location.
- (5) Date of the course.
- (6) Number of approved course hours.
- (7) Name ~~and~~ address ~~and~~ signature of the instructor.

(b) The course provider must complete the ~~certification~~ **certificate** of completion in its entirety, **except that participants may fill in their own license numbers.**

(c) ~~In lieu~~ **Instead** of a certification, the board may accept documentation that provides the information that is contained in subsection (a).

(d) The board may accept a college transcript ~~in lieu~~ **instead** of a certification of course completion. (*State Board of Registration for Land Surveyors; 865 IAC 1-14-13; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 876; filed May 4, 2006, 1:25 p.m.: 29 IR 3025*)

SECTION 52. 865 IAC 1-14-14 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-14 Courses not completed

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 14. (a) Course providers, at their discretion, may grant **the following** to registered land surveyors:

- (1) Partial credit in proportion to the amount of time that a registered land surveyor attended the continuing education course.
- (2) After one (1) hour of instruction, ~~course providers may grant registered land surveyors~~ credit in one-half (½) hour increments.

(b) To receive full credit for a course, a registered land surveyor must:

- (1) be present for the entire course; **or**
- (2) **in the case of continuing education obtained by college or university courses, receive full credit for the course from that college or university.**

(*State Board of Registration for Land Surveyors; 865 IAC 1-14-14; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 876; filed May 4, 2006, 1:25 p.m.: 29 IR 3025*)

SECTION 53. 865 IAC 1-14-15 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-15 Reporting attendance to the board

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 15. ~~(a)~~ Course providers shall, not more than thirty (30) days

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after a course is presented, submit the following to the board:

- (1) An alphabetical list of all registered land surveyors who attended the course **with the registration number of each registrant.**
- (2) A certified statement of the hours of continuing education to be credited to each registrant.
- ~~(b) Course providers may submit~~ (3) The list required in ~~subsection (a)~~ **subdivision (1)** electronically **as specified by the board.**

(State Board of Registration for Land Surveyors; 865 IAC 1-14-15; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Nov 7, 2003, 11:45 a.m.: 27 IR 876; filed May 4, 2006, 1:25 p.m.: 29 IR 3025)

SECTION 54. 865 IAC 1-14-16 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-14-16 Auditing courses by the board

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7

Affected: IC 25-21.5

Sec. 16. The board reserves the right to send a representative to evaluate a course and related aspects, such as the:

- (1) facilities;
- (2) course outline;
- (3) handouts;
- (4) instructor; and
- (5) presentation;

at no cost to the board or its representative. The representative may record all or part of any presentations. Board representatives who attend continuing education courses without paying the full fee charged by the course provider are ineligible to receive continuing education credit **for those courses.** *(State Board of Registration for Land Surveyors; 865 IAC 1-14-16; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1030; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed May 4, 2006, 1:25 p.m.: 29 IR 3026)*

SECTION 55. THE FOLLOWING ARE REPEALED: 865 IAC 1-4-9; 865 IAC 1-10-11; 865 IAC 1-12-8; 865 IAC 1-12-15; 865 IAC 1-12-16; 865 IAC 1-12-17; 865 IAC 1-12-19; 865 IAC 1-12-26.

SECTION 56. SECTION 45 of this document takes effect August 1, 2006.

LSA Document #05-82(F)

Notice of Intent Published: May 1, 2005; 28 IR 2409

Proposed Rule Published: November 1, 2005; 29 IR 659

Hearing Held: February 10, 2006

Approved by Attorney General: April 19, 2006

Approved by Governor: May 4, 2006

Filed with Secretary of State: May 4, 2006, 1:25 p.m.

IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #03-129(PC)

Under IC 4-22-8-4(c), corrects the following typographical, clerical, or spelling errors in LSA Document #03-129(F), printed at 28 IR 2046:

In 327 IAC 2-1-6(a)(3), on page 7 of the original document (28 IR 2051), delete Table 6-2 and insert the following:

Table 6-2
Surface Water Quality Criteria for Specific Substances

Substances	AAC (Maximum) (µg/l)	AAC Conversion Factors	CAC (4-Day Average) (µg/l)	CAC Conversion Factors
Metals (dissolved) ^[1]				
Arsenic (III)	WER[2](360)	1.000	WER[2](190)	1.000
Cadmium	WER[2]($e^{(1.128 [\ln(\text{hardness})]-3.828)}$)	$1.136672-[(\ln \text{hardness})(0.041838)]$	WER[2]($e^{(0.7852 [\ln(\text{hardness})]-3.490)}$)	$1.101672-[(\ln \text{hardness})(0.041838)]$
Chromium (III)	WER[2]($e^{(0.819 [\ln(\text{hardness})]+3.688)}$)	0.316	WER[2]($e^{(0.8190 [\ln(\text{hardness})]+1.561)}$)	0.860
Chromium (VI)	WER[2](16)	0.982	WER[2](11)	0.962
Copper	WER[2]($e^{(0.9422 [\ln(\text{hardness})]-1.464)}$)	0.960	WER ^[2] ($e^{(0.8545 [\ln(\text{hardness})]-1.465)}$)	0.960
Lead	WER[2]($e^{(1.273 [\ln(\text{hardness})]-1.460)}$)	$1.46203-[(\ln \text{hardness})(0.145712)]$	WER[2]($e^{(1.273 [\ln(\text{hardness})]-4.705)}$)	$1.46203-[(\ln \text{hardness})(0.145712)]$
Nickel	WER ^[2] ($e^{(0.8460 [\ln(\text{hardness})]+3.3612)}$)	0.998	WER ^[2] ($e^{(0.8460 [\ln(\text{hardness})]+1.1645)}$)	0.997
Silver	WER ^[2] ($e^{(1.72 [\ln(\text{hardness})]-6.52)/2}$) ^[3]	0.85		
Zinc	WER ^[2] ($e^{(0.8473 [\ln(\text{hardness})]+0.8604)}$)	0.978	WER ^[2] ($e^{(0.8473 [\ln(\text{hardness})]+0.7614)}$)	0.986

^[1] The AAC and CAC columns of this table contain total recoverable metals criteria (numeric and hardness-based). The criterion for the dissolved metal is calculated by multiplying the appropriate conversion factor by the AAC or CAC. This dissolved AAC or CAC shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent limitations (WQBELs).

^[2] A value of one (1) shall be used for the water-effect ratio (WER) unless an alternate value is established under section 8.9 of this rule.

^[3] One-half (½) of the final acute value (FAV) as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

Retroactively effective to the same date and time as LSA Document #03-129(F).

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-214

Under IC 4-22-2-40, LSA Document #05-214, printed at 29 IR 616, is recalled.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-274

Under IC 4-22-2-40, LSA Document #05-274, printed at 29 IR 1251, is recalled.

**TITLE 410 INDIANA STATE DEPARTMENT OF
HEALTH**

LSA Document #05-256

Under IC 4-22-2-40, LSA Document #05-256, printed at 29 IR 1751, is recalled.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-133

Under IC 4-22-2-40, LSA Document #05-133, printed at 29 IR 1363, is recalled.

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-139

Under IC 4-22-2-40, LSA Document #05-139, printed at 29 IR 138, is recalled.

TITLE 868 STATE PSYCHOLOGY BOARD

LSA Document #06-43

LSA Document #06-43, printed at 29 IR 1970, is withdrawn.

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TITLE 65 STATE LOTTERY COMMISSION

LSA Document #06-127(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 806. Effective April 12, 2006.

SECTION 1. The name of the scratch-off game is "Scratch-Off Game Number 806, Double It".

SECTION 2. Scratch-off tickets in scratch-off game number 806 shall sell for one dollar (\$1) per ticket.

SECTION 3. Play Symbols: A scratch-off ticket in Scratch-Off Ticket Game Number 806, Double It shall contain a total of twelve (12) play spots. These are included in two independent games with six (6) play spots located under area labeled "Game 1" and six (6) play spots in area labeled "Game 2". The play symbol captions that appear in scratch-off game number 806 shall consist of the following possible play/prize symbols and play/prize symbol captions:

GAME 1 & GAME 2 Play/Prize Symbols:

\$1.00	\$2.00	\$3.00	\$4.00	\$5.00	\$10.00
ONE	TWO	THREE	FOUR	FIVE	TEN
\$20.00	\$40.00	\$50.00	\$100	\$1,000	★
TWENTY	FORTY	FIFTY	ONE HUN	ONE THOU	DOUBLE

SECTION 4. Retailer Validation Codes: The retailer validation code verifies instant winners of "\$1", "\$2", "\$4", "\$5", "\$10", "\$20", "\$40", and "\$100". The retailer validation code which corresponds with and verifies each of these winners is as follows:

\$1 = ONE
\$2 = TWO
\$4 = FOR
\$5 = FIV
\$10 = TEN
\$20 = TWY
\$40 = FRY
\$100 = HUN

SECTION 5. How to Win: A prize winner in Scratch-Off Game Number 806, Double It is determined by removing the entire scratch-off material from the play area on the front of the ticket to reveal six (6) play spots located under area labeled "Game 1" and six (6) play spots in area labeled "Game 2". Each game is played separately. Neither the retailer validation code (nor any portion thereof), the pack-ticket number (or any portion thereof), nor the validation number (or any portion thereof) are play symbols or prize symbols and are not usable or playable as such. If three (3) identical amounts are revealed in either Game 1 or Game 2, respectfully [*sic., respectively*], the holder is entitled to the amount shown. If two (2) identical amounts and a "★" (star) are revealed in either Game 1 or Game 2, respectfully [*sic., respectively*], the holder is entitled to win DOUBLE the amount shown.

SECTION 6. Prize Structure: The possible winning prize combinations are as follows:

Get	Prize Amount	Estimated Number of Prizes in Game*
1 - \$1	\$1 (one dollar)	504,000 prizes
1 - \$1 (Star)	\$2 (two dollars)	252,000 prizes
1 - \$2	\$2 (two dollars)	84,000 prizes
1 - \$4	\$4 (four dollars)	33,600 prizes
1 - \$2 (Star)	\$4 (four dollars)	67,200 prizes
1 - \$2 + 1 - \$3	\$5 (five dollars)	25,200 prizes
1 - \$5	\$5 (five dollars)	8,400 prizes
1 - \$5 (Star)	\$10 (ten dollars)	8,400 prizes
2 - \$5	\$10 (ten dollars)	33,600 prizes
1 - \$10	\$10 (ten dollars)	8,400 prizes
2 - \$10	\$20 (twenty dollars)	12,600 prizes
1 - \$20	\$20 (twenty dollars)	4,200 prizes
2 - \$20	\$40 (forty dollars)	3,150 prizes
1 - \$20 (Star)	\$40 (forty dollars)	1,680 prizes
1 - \$40	\$40 (forty dollars)	1,680 prizes
1 - \$50 (Star)	\$100 (one hundred dollars)	840 prizes
1 - \$100	\$100 (one hundred dollars)	840 prizes
1 - \$1,000	\$1,000 (one thousand dollars)	21 prizes

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Star “” = Double

Total value of all prizes*: \$3,036,600

Prize payout: 60.25%

Overall odds: 1 in 4.80

*The number and total value of prizes in this game are based on a print quantity of approximately five million (5,000,000) tickets. Should the print quantity be changed for production of this game or subsequent reorders, the ratio of prizes and total value of all prizes to print quantity will be proportionately maintained and the overall odds and prize payout percentage will remain the same.

Prizes subject to prior sales.

SECTION 7. Applicable Rules: Indiana Administrative Code: 65 IAC 4-205 Validation of Tickets.

SECTION 8. The last day to claim a prize in Scratch-Off Game Number 806, Double It is April 30, 2007.

SECTION 9. This document shall expire May 31, 2007.

LSA Document #06-127(E)

Filed with Secretary of State: April 12, 2006, 1:30 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #06-136(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 076. Effective April 27, 2006.

SECTION 1. The name of the pull-tab game is “Pull-Tab Game Number 076, Cherry Master”.

SECTION 2. Pull-tab tickets in pull-tab game number 076 shall sell for one dollar (\$1) per ticket.

SECTION 3. Play Symbols: A pull-tab ticket in pull-tab game number 076 shall contain fifteen (15) play spots arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered with a tab. The play symbol captions in pull-tab game number 076 shall consist of the following possible play symbols:

WINNING Symbols



NON-WINNING Symbols



SECTION 4. How to Win: A prize winner in the Pull-Tab Game Number 076, Cherry Master is determined by opening five (5) tabs located on the back of pull-tab ticket. Match three (3) in a row the play symbols: cherries, bar bars, sevens, bells, stars, or bars, bisected by a red arrow, and the player is entitled to the prize amount as it appears in red ink on a yellow box on the left side of the winning row(s). The prize structure and winning combinations are as follows:

Get	Win		Estimated No. of Prizes in Game*
3 – Cherry	\$200	=	5,358
3 – Bar Bar	\$50	=	5,358
3 – Sevens	\$5	=	42,864
3 – Bell	\$25	=	5,358
3 – Star	\$2	=	96,444
3 – Bar	\$1	=	455,430

Total value of all prizes*: \$2,336,088

Prize payout: 64.88%

Overall odds: 1 in 5.89

*The number and total value of prizes in this game are based on a print quantity of approximately three million six hundred thousand (3,600,000) tickets. Should the print quantity be changed for production of this game or subsequent reorders, the ratio of prizes and total value of all prizes to print quantity will be proportionately maintained and the overall odds and prize payout percentage will remain the same.

SECTION 5. Applicable Rules: Indiana Administrative Code: 65 IAC 4-205 Validation of Tickets.

SECTION 6. The last day to claim prizes in pull-tab game number 076 shall be one (1) year after the end of the game.

LSA Document #06-136(E)

Filed with Secretary of State: April 27, 2006, 2:20 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #06-137(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 075. Effective April 27, 2006.

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SECTION 1. The name of the pull-tab game is "Pull-Tab Game Number 075, Sapphires & 7's".

SECTION 2. Pull-tab tickets in pull-tab game number 075 shall sell for fifty cents (\$0.50) per ticket.

SECTION 3. Play Symbols: A pull-tab ticket in pull-tab game number 075 shall contain fifteen (15) play spots arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered with a tab. The play symbol captions in pull-tab game number 075 shall consist of the following possible play symbols:

WINNING Symbols



NON-WINNING Symbols



SECTION 4. How to Win: A prize winner in the Pull-Tab Game Number 075, Sapphires & 7's is determined by opening five (5) tabs located on the back of pull-tab ticket. If the following combinations are shown in a row, vertically, diagonally, or horizontally (indicated by red arrow): three (3) sevens or two (2) sevens with either a sapphire, amethyst, emerald, or ruby heart, the player is entitled to the prize amount as it appears in red ink on a yellow box on the left side of the winning row(s). The prize structure and winning combinations are as follows:

Get	Win	Estimated No. of Prizes in Game*
3 - Sevens	\$100 =	2,977
2 - Sevens & 1 - Sapphire	\$7 =	20,839
2 - Sevens & 1 - Amethyst	\$3 =	2,977
2 - Sevens & 1 - Emerald	\$1 =	98,241
2 - Sevens & 1 - Ruby Heart	\$.50 =	196,482
Total value of all prizes*: \$648,986		
Prize payout: 64.88%		
Overall odds: 1 in 6.22		

*The number and total value of prizes in this game are based on a print quantity of approximately two million (2,000,000) tickets. Should the print quantity be changed for production of this game or subsequent reorders, the ratio of prizes and total value of all prizes to print quantity will be

proportionately maintained and the overall odds and prize payout percentage will remain the same.

SECTION 5. Applicable Rules: Indiana Administrative Code: 65 IAC 4-205 Validation of Tickets.

SECTION 6. The last day to claim prizes in pull-tab game number 075 shall be one (1) year after the end of the game.

LSA Document #06-137(E)

Filed with Secretary of State: April 27, 2006, 2:20 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #06-133(E)

DIGEST

Amends 71 IAC 4-4-10 and 71 IAC 4.5-4-10 concerning the "In Today" program. Amends 71 IAC 5-3-3.1 and 71 IAC 5.5-3-3.1 concerning "In Today" responsibilities. Amends 71 IAC 7.5-8-2 concerning race objections. Amends 71 IAC 8-5-12 and 71 IAC 8.5-4-12 concerning contact with entered horses. Amends 71 IAC 14.5-3-1 concerning owner awards. Amends 71 IAC 14.5-5-1 concerning Indiana bred, owned, or foaled preference. Repeals 71 IAC 14.5-1-3. Effective April 24, 2006.

71 IAC 4-4-10	71 IAC 8-5-12
71 IAC 4.5-4-10	71 IAC 8.5-4-12
71 IAC 5-3-3.1	71 IAC 14.5-1-3
71 IAC 5.5-3-3.1	71 IAC 14.5-3-1
71 IAC 7.5-8-2	71 IAC 14.5-5-1

SECTION 1. 71 IAC 4-4-10, AS ADDED AT 29 IR 2210, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-4-10 "In Today" program

Authority: IC 4-31-3-9; IC 4-31-12-1; IC 4-31-13-4

Affected: IC 4-31

Sec. 10. (a) The association shall post "In Today" signs in a visible location next to the entrance of the stall of each horse stabled at the track on the day the horse is scheduled to race:

(b) (a) The association shall, along with the assistance of the trainer or his or her licensed designee, identify each horse prior to posting the "In Today" sign:

(c) The deadline for the posting of the "In Today" signs shall be 9:00 a.m. on the day of the scheduled race.

(d) The "In Today" signs shall be a minimum of two (2) feet by two (2) feet and shall contain the words "In Today".

(e) (b) The association shall provide security personnel to

patrol the stable area on race day in order to deter violations of commission rules, to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public.

(f) (c) The association shall establish track rules for the implementation of the “In Today” program that shall be subject to the approval of the commission or its executive director. *(Indiana Horse Racing Commission; 71 IAC 4-4-10; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2210; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3032)*

SECTION 2. 71 IAC 4.5-4-10, AS ADDED AT 29 IR 2210, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

71 IAC 4.5-4-10 “In Today” program

Authority: IC 4-31-3-9; IC 4-31-12-1; IC 4-31-13-4
Affected: IC 4-31

Sec. 10. (a) ~~The association shall post “In Today” signs in a visible location next to the entrance of the stall of each horse stabled at the track on the day the horse is scheduled to race.~~

(b) (a) The association shall, along with the assistance of the trainer or his or her licensed designee, identify each horse prior to ~~posting the “In Today” sign.~~

(c) ~~The deadline for the posting of the “In Today” signs shall be 9:00 a.m. on the day of the scheduled race.~~

(d) ~~The “In Today” signs shall be a minimum of two (2) feet by two (2) feet and shall contain the words “In Today”.~~

(e) (b) The association shall provide security personnel to patrol the stable area on race day in order to deter violations of commission rules, to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public.

(f) (c) The association shall establish track rules for the implementation of the “In Today” program that shall be subject to the approval of the commission or its executive director. *(Indiana Horse Racing Commission; 71 IAC 4.5-4-10; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2210; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3033)*

SECTION 3. 71 IAC 5-3-3.1, AS ADDED AT 29 IR 2213, SECTION 8, IS AMENDED TO READ AS FOLLOWS:

71 IAC 5-3-3.1 “In Today” responsibilities

Authority: IC 4-31-3-9; IC 4-31-12-1; IC 4-31-13-4
Affected: IC 4-31

Sec. 3.1. (a) A trainer or his or her licensed designee shall be available to assist with the identification of his or her horse on the day of its scheduled race during the time period set forth in the track rules established by the association and approved by

the commission or its executive director.

(b) A horse may not be moved to any other stall after the association employee ~~posts the “In Today” sign on its stall.~~ **identifies the horse the morning of its scheduled race.**

(c) After the ~~“In Today” sign is posted on association employee identifies a horse the morning of its stall;~~ **a scheduled race,** the horse may not be removed from its stall with the exception of walking, bathing, shoeing, training, or emergency situations. *(Indiana Horse Racing Commission; 71 IAC 5-3-3.1; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2213; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3033)*

SECTION 4. 71 IAC 5.5-3-3.1, AS ADDED AT 29 IR 2215, SECTION 12, IS AMENDED TO READ AS FOLLOWS:

71 IAC 5.5-3-3.1 “In Today” responsibilities

Authority: IC 4-31-3-9; IC 4-31-12-1; IC 4-31-13-4
Affected: IC 4-31

Sec. 3.1. (a) A trainer or his or her licensed designee shall be available to assist with the identification of his or her horse on the day of its scheduled race during the time period set forth in the track rules established by the association and approved by the commission or its executive director.

(b) A horse may not be moved to any other stall after the association employee ~~posts the “In Today” sign on its stall.~~ **identifies the horse the morning of its scheduled race.**

(c) After the ~~“In Today” sign is posted on its stall;~~ **a association employee identifies a horse the morning of its scheduled race,** the horse may not be removed from its stall with the exception of walking, bathing, shoeing, training, or emergency situations. *(Indiana Horse Racing Commission; 71 IAC 5.5-3-3.1; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2215; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3033)*

SECTION 5. 71 IAC 7.5-8-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-8-2 Race objections

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the ~~clerk of scales;~~ **out rider,** the stewards, or their designees by the owner, the authorized agent of the owner, the trainer, or the jockey of a horse engaged in the same race. Any objection by a jockey must be lodged with the ~~clerk of scales~~ **out rider** or the steward’s designee before the jockey dismounts the horse.

(b) An objection following the running of any race must be

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filed before the race is declared official.

(c) The stewards shall:

- (1) make all findings of fact as to all matters occurring during and incident to the running of a race;
- (2) determine all objections and inquiries; and
- (3) determine the extent of disqualification, if any, of horses in the race.

Such findings of fact and determinations shall be final.

(d) An outrider shall be equipped with a two-way radio for communication with the stewards and be stationed in the first turn. Jockeys wishing to file an objection for any reason will so communicate to the outrider. If for any reason the outrider is unable to communicate to the stewards, there will be no official for that race until jockeys have been weighed in. (*Indiana Horse Racing Commission; 71 IAC 7.5-8-2; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2875, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3033*)

SECTION 6. 71 IAC 8-5-12, AS ADDED AT 29 IR 2220, SECTION 23, IS AMENDED TO READ AS FOLLOWS:

71 IAC 8-5-12 Contact with entered horses

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 12. (a) Practicing veterinarians and their helpers are prohibited from having contact with a horse within twenty-four (24) hours of its scheduled race except during the administration of furosemide under the guidelines set forth in 71 IAC 8.5-1-5(6) and 71 IAC 8.5-1-5(7) or unless prior approval has been given by the judges or by the official veterinarian.

~~(b) Practicing veterinarians and their helpers shall not enter a stall designated with an "In Today" sign prior to a horse's race except for the administration of furosemide under the guidelines set forth in 71 IAC 8.5-1-5(6) and 71 IAC 8.5-1-5(7) or unless prior written approval has been given by the judges or by the official veterinarian.~~

~~(c) (b)~~ Notwithstanding provisions [*sic.*] (a) ~~and (b)~~ above [*subsection (a)*], in the case of an emergency a practicing veterinarian may have contact with a horse within twenty-four (24) hours of its scheduled race. If this occurs, the practicing veterinarian shall immediately report such contact and the reasons necessitating the contact to the judges or in their absence to commission or track security. (*Indiana Horse Racing Commission; 71 IAC 8-5-12; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2220; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3034*)

SECTION 7. 71 IAC 8.5-4-12, AS ADDED AT 29 IR 2225, SECTION 37, IS AMENDED TO READ AS FOLLOWS:

71 IAC 8.5-4-12 Contact with entered horses

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 12. (a) Practicing veterinarians and their helpers are prohibited from having contact with a horse within twenty-four (24) hours of its scheduled race except during the administration of furosemide under the guidelines set forth in 71 IAC 8.5-1-5(6) and 71 IAC 8.5-1-5(7) or unless prior approval has been given by the stewards or by the official veterinarian.

~~(b) Practicing veterinarians and their helpers shall not enter a stall designated with an "In Today" sign prior to a horse's race except for the administration of furosemide under the guidelines set forth in 71 IAC 8.5-1-5(6) and 71 IAC 8.5-1-5(7) or unless prior written approval has been given by the stewards or by the official veterinarian.~~

~~(c) (b)~~ Notwithstanding provisions [*sic.*] (a) ~~and (b)~~ above [*subsection (a)*], in the case of an emergency a practicing veterinarian may have contact with a horse within twenty-four (24) hours of its scheduled race. If this occurs, the practicing veterinarian shall immediately report such contact and the reasons necessitating the contact to the stewards or in their absence to commission or track security. (*Indiana Horse Racing Commission; 71 IAC 8.5-4-12; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2225; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3034*)

SECTION 8. 71 IAC 14.5-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 14.5-3-1 Owner awards

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 1. An owner award is the award paid to the owner of a registered Indiana bred ~~owned~~, or foaled quarter horse which places first, second, or third in any race except claiming races when entered for a claiming price of less than five thousand dollars (\$5,000) or any speed index race, at a licensed pari-mutuel race track in Indiana. The amount of the award is twelve and one-half percent (12.5%) of the gross purse, distribution is:

- (1) fifty percent (50%) is awarded to the winner;
- (2) thirty percent (30%) is awarded to second place; and
- (3) twenty percent (20%) is awarded to third place.

Awards will be paid by the commission. The combination of owner/breeder/stallion awards shall be limited to a single race award not to exceed ten thousand dollars (\$10,000). (*Indiana Horse Racing Commission 71 IAC 14.5-3-1; emergency rule filed Nov 15, 2000, 11:40 a.m.: 24 IR 1037; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3034*)

SECTION 9. 71 IAC 14.5-5-1 IS AMENDED TO READ AS FOLLOWS:

Rule 5. Indiana Bred or Foaled Preference**71 IAC 14.5-5-1 Indiana bred or foaled preference**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 1. A registered Indiana bred ~~owned~~, or foaled that receives a R-date or an E-date will receive starter preference over a non-Indiana bred ~~owned~~, or foaled with an equal R-date or E-date. Such preference shall apply in all races not restricted to Indiana bred ~~owned~~, or foaled stake races excepted. Indiana bred ~~owned~~, or foaled will not receive starter preference over non-Indiana bred ~~owned~~, or foaled with better R-dates, E-dates, or zero-dates. (*Indiana Horse Racing Commission; 71 IAC 14.5-5-1; emergency rule filed Nov 15, 2000, 11:40 a.m.: 24 IR 1038; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Apr 24, 2006, 11:11 a.m.: 29 IR 3035*)

SECTION 10. 71 IAC 14.5-1-3 IS REPEALED.

*LSA Document #06-133(E)**Filed with Secretary of State: April 24, 2006, 11:11 a.m.*

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #06-131(E)

DIGEST

Temporarily amends 312 IAC 9-4-11, governing the taking and possessing of wild turkeys, to address the tagging of a turkey carcass during the spring hunting season and provide for tagging of the carcass of a wild turkey taken under the “automated point of sale licensing system” authorized by IC 14-22-12-7.5. Effective April 20, 2006.

SECTION 1. (a) This SECTION of this document is supplemental to 312 IAC 9-4-11.

(b) This subsection supersedes 312 IAC 9-4-11(j). Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless possessing a completed and signed license bearing the person’s name. A person must not hunt with a wild turkey license issued to another person.

(c) This subsection supersedes 312 IAC 9-4-11(k). The paper described in subsection (d) must, immediately after taking a wild turkey, be marked as to the month and day of the taking and attached to a leg of the turkey directly above the spur. A person who takes a turkey must cause delivery of the turkey to an official turkey checking station within forty-eight (48) hours of taking for registration. After the checking station operator records the permanent seal number on the log, the person is provided with that seal. The

person must immediately and firmly affix the seal to the leg of the turkey directly above the paper. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

(d) A person who takes a wild turkey, pursuant to a license issued under IC 14-22-12-7.5, must tag the carcass immediately after taking with a paper that states the name and address of the individual and the date the turkey was taken.

SECTION 2. SECTION 1 of this document expires May 15, 2006.

*LSA Document #06-131(E)**Filed with Secretary of State: April 18, 2006, 9:40 a.m.*

Notice of Rule Adoption

TITLE 465 DEPARTMENT OF CHILD SERVICES

LSA Document #04-316

LSA Document #04-316, printed at 29 IR 2007, amending 465 IAC 2-9-31, 465 IAC 2-9-32, 465 IAC 2-9-57, 465 IAC 2-9-58, 465 IAC 2-9-59, 465 IAC 2-10-31, 465 IAC 2-10-32, 465 IAC 2-10-57, 465 IAC 2-10-58, 465 IAC 2-10-59, 465 IAC 2-12-57, and 465 IAC 2-13-57, of the residential licensing rules was adopted by the director of the Department of Child Services on April 27, 2006. The rule that was adopted is a different version than the proposed rule that was published in the Indiana Register on March 1, 2006.

**TITLE 326 AIR POLLUTION CONTROL
BOARD**

LSA Document #05-118(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #05-118(APCB), printed at 28 IR 3672, 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, and IC 13-14-9, notice is hereby given that on **June 7, 2006**, 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 7-4-2.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027, press 0, and ask for ext. 3-5697 (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
Indianapolis, Indiana 46204*

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

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

**TITLE 326 AIR POLLUTION CONTROL
BOARD**

LSA Document #05-165(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #05-165, printed at 29 IR 1013, 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, and IC 13-14-9, notice is hereby given that on **June 7, 2006**, 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 8-3-1 and 326 IAC 8-3-8.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027, press 0, and ask for ext. 2-8229 (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 46204-2251*

or call (317) 233-0855 or TDD: (317) 232-3088 (V). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service (711) or 1-800-743-3333. Please provide a minimum of 72 hours notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

Change in Notice of Public Hearing

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #05-218(WPCB)

The Water Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of LSA Document #05-218(WPCB), printed at 29 IR 2688, has been rescheduled. The hearing for preliminary adoption of amendments to rules and a new rule concerning the establishment of a CSO wet weather limited use subcategory and the use of permit compliance schedules for combined sewer overflow communities will be held at the regularly scheduled meeting of the Water Pollution Control Board on August 9, 2006, at 1:30 p.m., in a location yet to be determined. When the location is determined, it will be noticed in the Indiana Register. 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. 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).

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 the Water Pollution Control Board will hold a public hearing on **August 9, 2006**, at 1:30 p.m., in a location yet to be determined that will be published in a subsequent Indiana Register. This hearing is regarding preliminary adoption of amendments to rules and a new rule concerning the establishment of a CSO wet weather limited use subcategory and the use of permit compliance schedules for combined sewer overflow communities.*

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
Indianapolis, Indiana 46204-2251*

or call (317) 233-1785 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 N1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruno Pigott
Assistant Commissioner
Office of Water Quality

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-193

The Indiana State Department of Health gives notice that the date of the public hearing for LSA Document #05-193, printed at 29 IR 1746, 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 **June 22, 2006** at 9:00 a.m., at the Indiana State Department of Health, 2 North Meridian Street, Myers Conference Room, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on a proposed rule to add 410 IAC 15-1.4-2.2 to include serious adverse event reporting to the requirements for a hospital's quality assessment and improvement program. In addition, it adds various definitions.*

These rules are added to meet the Governor's Executive Order 05-10 requiring the Indiana State Department of Health to develop and implement a medical errors reporting system. Requirements for reporting are based on the National Quality Forum's 27 serious reportable events.

Copies of these rules are now on file with the Health Care Regulatory Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.

Sue Uhl
Deputy State Health Commissioner
Indiana State Department of Health

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-256

The Indiana State Department of Health gives notice that the date of the public hearing for LSA Document #05-256, printed at 29 IR 1751, 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 **June 23, 2006** at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on a proposed rule to amend 410 IAC 21-3 to add audiologists as persons required to report to the registry and add hearing loss conditions to those birth problems that*

must be reported.

This rule amendment does not impose additional requirements that are not expressly allowed by the enabling statute for the birth problems registry.

Copies of these rules are now on file with the Community and Family Health Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana, and are open for public inspection.

Sue Uhl
Deputy State Health Commissioner
Indiana State Department of Health

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

LSA Document #05-50

The Fire Prevention and Building Safety Commission gives notice that the dates of the public hearings for consideration of final adoption of LSA Document #05-50, printed at 29 IR 2333, have 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 **August 1, 2006**, at 10:00 a.m., at the Indiana Government-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana, the Fire Prevention and Building Safety Commission will hold a public hearing on the proposed amendments to 675 IAC 21, to amend 675 IAC 21, the safety code for elevators, escalators, manlifts, and hoists, to make substantive and technical changes, including changes to reference updated standards, to adopt ASME A17.1, 2004 edition, Safety Code for Elevators and Escalators, to adopt ASME A17.3, 2002 edition, Safety for Existing Elevators and Escalators, to adopt ASME QE1-1, 2004 Edition, Standard for Qualification of Elevator Inspectors, to adopt ASCE 21, Part 1, 1996; Part 2, 1998; and Part 3, 2000, Standard for Automated People Movers, to adopt ANSI/ASME A18.1, 2003 edition, Safety Standard for Platform and Stairway Chairlifts, to adopt ANSI A10.4, 2004 edition, Safety Requirements for Personnel Hoist and Employee Elevators American National Standard for Construction and Demolition Operations, and to adopt ASME A90.1, 2003 edition, Safety Standard for Belt Manlifts.*

The Fire Prevention and Building Safety Commission has the authority to adopt the proposed amendments under IC 22-13-2-2 and IC 22-13-2-13. The amendments will help small business by providing for the use of updated editions of the relevant standards and such updated editions are required to be adopted under IC 22-13-2-2.

Copies of these rules are now on file at the Indiana Govern-

ment Center-South, 302 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David Hannum
Chairman
Fire Prevention and Building Safety Commission

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

LSA Document #05-58

The Fire Prevention and Building Safety Commission gives notice that the dates of the public hearings for consideration of final adoption of LSA Document #05-58, printed at 29 IR 2014, have been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on **July 6, 2006** 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 a proposed new rule to adopt by reference and amend the International Energy Conservation Code, 2004 Supplement Edition. All interested persons are invited to submit written comments to the Indiana Department of Homeland Security, Code Services Section, Attn.: Mara Snyder, Indiana Government Center-South, 302 West Washington Street, Room E243, Indianapolis, Indiana 46204.*

This rule will not impose additional requirements or costs upon regulated entities under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David Hannum
Chairman
Fire Prevention and Building Safety Commission

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

LSA Document #05-348

The Fire Prevention and Building Safety Commission gives notice that the dates of the public hearings for consideration of final adoption of LSA Document #05-348, printed at 29 IR

Change in Notice of Public Hearing

2043, have been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on **July 6, 2006** 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 a proposed amendment to 675 IAC 14-4.3, the 2005 Indiana Residential Code, Section R602.10.5, to clarify the intent and interpretation of that section. Public comments are invited and may be directed to the Indiana Department of Homeland Security, Code Services Section, Attn: Mara Snyder, Indiana Government Center-South, 302 West Washington Street, Room E243, Indianapolis, Indiana 46204.*

The Fire Prevention and Building Safety Commission has authority to adopt these rules under IC 22-13-2. This amendment is for purposes of clarification only and should not have any economic impact beyond what is already imposed by the existing rules.

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David Hannum
Chairman
Fire Prevention and Building Safety Commission

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-133

The Department of Insurance gives notice that the date of the public hearing for LSA Document #05-133, printed at 29 IR 1363, 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 **June 22, 2006**, at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed rule to set standards for prelicensing and continuing education for bail agents and recovery agents and to otherwise implement IC 27-10-3.*

The Department is directed by statute to establish standards and an approval process for prelicensing and continuing education classes for bail and recovery agents. The proposed rule affects small employers that will offer courses or be instructors. The providers will develop classes and pay an

annual filing fee to the Department. Comments of the Indiana Economic Development Corporation will be available at the hearing and on the Department of Insurance Web site at www.state.in.us/idoi.

Copies of these rules are now on file at 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.

Jim Atterholt
Commissioner
Department of Insurance

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-138

The Indiana Board of Pharmacy gives notice that the date of the public hearing for LSA Document #05-138, printed at 29 IR 658, 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 **June 22, 2006** at **8:00 a.m.**, at the Indiana Professional Licensing Agency, Indiana Government Center-South, 402 West Washington Street, Room W072, Gerald H. Quigley Conference Room, Indianapolis, Indiana the Indiana Board of Pharmacy will hold a public hearing on proposed new rules to implement rules based on House Enrolled Act 1098 (P.L.212-2005) to establish standards and procedures to ensure that a pharmacist has entered into a contract that accepts the return of expired drugs with or is subject to a policy that accepts the return of expired drugs of a wholesaler, manufacturer, or agent of a wholesaler or manufacturer.*

The Indiana Board of Pharmacy has the authority to promulgate rules establishing the standards and procedures for the return of expired drugs by an individual or entity to a wholesaler, manufacturer, or agent of a wholesaler or manufacturer. This proposed rule establishes those standards and policies. This proposed rule will have no costs to regulated entities. In fact, this proposed rule when implemented will make it easier for independent pharmacies to return expired drugs for credit or replacement. The Board has not relied upon any data, studies, or analyses in determining the imposition of requirement or cost.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-139

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

The Indiana Board of Pharmacy gives notice that the date of the public hearing for LSA Document #05-139, printed at 29 IR 658, 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 **June 22, 2006 at 8:05 a.m.**, at the Indiana Professional Licensing Agency, Indiana Government Center-South, 402 West Washington Street, Room W072, Gerald H. Quigley Conference Room, Indianapolis, Indiana the Indiana Board of Pharmacy will hold a public hearing on proposed new rules to implement rules based on Senate Enrolled Act 206 (P.L.122-2005) to establish the definitions, requirements for the licensure of home medical equipment services providers, license renewal requirements, fees including fees for the application, issuance, and renewal of license, and standards regarding the safety and quality of home medical equipment services.*

The Indiana Board of Pharmacy has the authority to promulgate rules in accordance with the requirements of SEA 206 (P.L.122-2005), including specifying which home medical equipment is to be regulated; setting standards for licensure of providers; specifying the governing safety and quality of home medical equipment services that are to be provided to customers; specifying the amount of insurance coverage; and setting reasonable fees for the application, issuance, and renewal of a license. The proposed rule is needed as a matter of consumer protection to assure that the citizens of Indiana are receiving Home Medical Equipment Services from qualified, established providers. The technological advances in HME services demand there be some method for the state to verify that providers of such service are competent and available for education, service, and repair. This will also provide another avenue for the government to control fraud and abuse. This proposed rule will have the following cost on the regulated entities: There are approximately 300 home medical equipment service providers \times \$150 issuance fee = \$45,000. There are approximately 300 of home medical equipment service providers \times \$200 renewal = \$60,000. The cost of insurance coverage home medical equipment service providers are required to obtain and maintain = \$300,000. However, this is a requirement for Medicare, not specifically for this rule. The Board is incorporating the Medicare requirements into our rule. The Board has not relied upon any data, studies, or analyses in determining the imposition of requirement or cost.

Notice of Intent to Adopt a Rule

TITLE 31 STATE PERSONNEL DEPARTMENT

LSA Document #06-148

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

OVERVIEW: To amend personnel rules applicable to state employees. Amendments are intended to eliminate redundancies, streamline procedures, and update the description of current practices. Public comments are invited and may be directed to Keith Beesley. Statutory authority: IC 4-15-1.8-6.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Keith Beesley
Indiana Government Center-South
402 West Washington Street, Room W161
Indianapolis, IN 46204
(317) 232-3062
kbeesley@spd.in.gov

TITLE 40 STATE ETHICS COMMISSION

LSA Document #06-140

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

OVERVIEW: Amends substantive ethics rules and makes changes to procedural rules. Statutory authority: IC 4-2-6-4.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Denise C. Young
150 West Market Street, Suite 414
Indianapolis, IN 46204
(317) 232-3850
dyoung@ethics.in.gov

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #06-134

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

OVERVIEW: Amends 312 IAC 18-3-12, which governs standards for the control of larger pine shoot beetles, by adding Dearborn County to the state quarantine for larger pine shoot beetles. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, IN 46204; (317) 232-0156; jkane@nrc.in.gov. Statutory

authority: IC 14-10-2-4; IC 14-24-3.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Stephen L. Lucas
Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, IN 46204
(317) 233-3322
slucas@nrc.in.gov

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #06-153

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: Repeals 405 IAC 6. Amends 405 IAC 8 provisions affecting eligibility and benefits under the Indiana prescription drug program, and amends the definition of benefits for enrollees. Questions or comments on the proposed rule may be directed to: Indiana Prescription Drug Program, Attn: Renee Pryor, Indiana Government Center-South, 402 West Washington Street, Room W374, Indianapolis, IN 46204 or via e-mail at renee.pryor@fssa.in.gov. Statutory authority: IC 12-10-16-5.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Renee Pryor
Indiana Prescription Drug Program
Indiana Government Center-South
402 West Washington Street, Room W374
Indianapolis, Indiana 46204
(317) 234-1629
renee.pryor@fssa.in.gov

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #06-157

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 1-12 to revise the Medicaid reimbursement methodology for nonstate owned intermediate care facilities for the mentally retarded (ICFs/MR) and commu-

Notice of Intent to Adopt a Rule

nity residential facilities for the developmentally disabled (CRFs/DD) to permit reimbursement for residences for adults with extensive support needs. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Karen Smith Filler
Manager
Long Term Care Reimbursement and Level of Care
Indiana Family and Social Services Administration
Office of Medicaid Policy and Planning
402 W. Washington Street
Indianapolis, IN 46204
(317) 232-4650
Karen.Filler@fssa.in.gov

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #06-158

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

OVERVIEW: Adds provisions setting forth services covered by Medicaid in a state-owned nursing facility. Amends 405 IAC 1-17 to revise Medicaid reimbursement methodology for Medicaid-enrolled state-owned intermediate facilities for the mentally retarded (ICFs/MR) to include a Medicaid-enrolled state-owned nursing facility. Makes other conforming changes to Title 405. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Karen Smith Filler
Manager
Long Term Care Reimbursement and Level of Care
Indiana Family and Social Services Administration
Office of Medicaid Policy and Planning
402 W. Washington Street
Indianapolis, IN 46204
(317) 232-4650
Karen.Filler@fssa.in.gov

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #06-139

Under IC 4-22-2-23, the Indiana State Department of Health

intends to adopt a rule concerning the following:

OVERVIEW: The rule will establish reporting requirements of any death, serious side effect, or major complication, and the circumstances in which the death, serious side effect, or major complication occurred for a patient of a physician who performs a surgical treatment for the treatment of morbid obesity. Written comments may be submitted to the Indiana State Department of Health, Public Health Surveillance and Preparedness, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-40-3-5.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Joe Hunt
Indiana State Department of Health
2 North Meridian Street, 5A
Indianapolis, Indiana 46204
(317) 233-7524
jhunt@isdh.state.in.us

TITLE 431 COMMUNITY RESIDENTIAL FACILITIES COUNCIL

LSA Document #06-141

Under IC 4-22-2-23, the Community Residential Facilities Council intends to adopt a rule concerning the following:

OVERVIEW: Amends 431 IAC 1.1 to add and define a new category of community residential facilities for persons with developmental disabilities that will serve the needs of adults with extensive behavior support needs. Effective 30 days after filing with the Secretary of State. Statutory authority: IC 12-28-5-19.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Juman Bruce
BDDS Central Office
Indiana Government Center-South
402 West Washington Street, W453
Indianapolis, IN 46204
(317) 232-7820
Juman.Bruce@fssa.in.gov

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #06-146

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

Notice of Intent to Adopt a Rule

OVERVIEW: Amends 511 IAC 6-7.1 to add new definitions for transferable college credits and certification in a career-technical program and make technical changes. Statutory authority: IC 20-19-2-8; IC 20-30-10-2.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Jeffery P. Zaring, State Board Administrator
Indiana Department of Education
Room 229, State House
Indianapolis, IN 46204
(317) 232-6622
jzaring@doe.state.in.us

TITLE 515 ADVISORY BOARD OF THE DIVISION OF PROFESSIONAL STANDARDS

NOTE: Under P.L.246-2005, SECTION 234, the name of the Professional Standards Board is changed to the Advisory Board of the Division of Professional Standards, effective July 1, 2005.

LSA Document #06-132

Under IC 4-22-2-23, the Advisory Board of the Division of Professional Standards intends to adopt a rule concerning the following:

OVERVIEW: Amends 515 IAC 5-1 to reflect that the responsibility for teacher licensing has been transferred to the Department of Education and to establish a cyclical review process for substitute teaching plans. Repeals 515 IAC 1-2-17. Statutory authority: IC 20-28-2-6

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Shawn Sriver, Director, Division of Professional Standards
Indiana Department of Education
Room 229, State House
Indianapolis, IN 46204
(317) 232-9014
ssriver@doe.state.in.us

TITLE 610 DEPARTMENT OF LABOR

LSA Document #06-159

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

OVERVIEW: This rulemaking action will repeal existing 610 IAC 4 and add new articles to 610 IAC concerning wage and hour investigations, common construction wage hearings, common construction wage audit procedures, discrimination

against employees exercising their rights under the Indiana Occupational Safety and Health Act (IC 22-8-1), occupational safety education and training, occupational safety and health compliance, inspection, and penalties, and child labor. The purpose of this rulemaking action is to codify and clarify existing Department of Labor policies. Statutory authority: IC 22-1-1-2; IC 22-1-1-8; IC 22-1-1-11; IC 22-8-1.1-48.1.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Tim Grogg
Special Assistant Commissioner
Indiana Department of Labor
402 West Washington St., Room W195
Indianapolis, IN 46204
(317) 233-3605
tgrogg@dol.in.gov

TITLE 710 SECURITIES DIVISION

LSA Document #06-135

Under IC 4-22-2-23, the Securities Division intends to adopt a rule concerning the following:

OVERVIEW: Amends 710 IAC 1-14-4 to remove the requirement that reports of financial condition be filed annually. The reports of financial condition still must be prepared and made available to the Securities Division upon request. Public comments are invited and should be directed to the Securities Division, Indiana Government Center-South, 302 West Washington Street, Room E111, Indianapolis, Indiana. Statutory authority: IC 23-2-1-15(f).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Jeffrey Bush
Enforcement Attorney
Indiana Secretary of State, Todd Rokita
Securities Division
Indiana Government Center-South
302 West Washington Street, Room E111
Indianapolis, IN 46204
(317) 232-6681
jabush@sos.in.gov

TITLE 816 BOARD OF BARBER EXAMINERS

LSA Document #06-152

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

OVERVIEW: Amends 816 IAC 1-2-11 concerning the use

of instructors. Amends 816 IAC 1-3-4 concerning reexamination requirements. Amends 816 IAC 1-3-6 concerning the barber examination. Amends 816 IAC 1-4-1 concerning barber instructors. Adds 816 IAC 1-5 to establish fees for application, issuance, or renewal of barber licenses, barber school licenses, barber instructor licenses, or barber shop licenses; to establish fees for examinations for licensure to practice as a barber instructor or barber; to establish fees for temporary permits; to establish fees for temporary work permits; to establish fees for verification of license status to another state or jurisdiction; and to establish fees for duplicate licenses. Repeals 816 IAC 1-3-1. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Board of Barber Examiners, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla12@pla.in.gov. Statutory authority: IC 25-1-8-2; IC 25-1-8-6 (as amended by SEA 333, P.L.157-2006); IC 25-7-5-14; IC 25-7-5-15.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Tracy Hicks
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3052
thicks@pla.in.gov

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #06-151

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

OVERVIEW: Amends 820 IAC 5-1-20 concerning license application requirements for tanning facilities. Adds 820 IAC 7-1-1, 820 IAC 7-1-3, 820 IAC 7-1-4, 820 IAC 7-1-5, and 820 IAC 7-1-6 to establish fees for application, issuance and renewal of cosmetology school licenses, cosmetology instructor licenses, esthetics instructor licenses, electrology instructor licenses, cosmetology salon licenses, electrology salon licenses, esthetic salon licenses, manicurist salon licenses, cosmetologist licenses, electrologist licenses, esthetician licenses, manicurist licenses, and tanning facility licenses; to establish fees for examinations for licensure to practice as a cosmetology instructor, esthetics instructor, electrology instructor, cosmetologist, electrologist, esthetician, manicurist; to establish fees for temporary permits; to establish fees for verification of license status to another state or jurisdiction; and to establish fees for duplicate licenses. Repeals 820 IAC 2-2-2. Questions or comments concerning the proposed rules may be directed to:

Indiana Professional Licensing Agency, Attn.: Board Director, State Board of Cosmetology Examiners, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla12@pla.in.gov. Statutory authority: IC 25-1-8-2; IC 25-1-8-6 (as amended by SEA 333, P.L.157-2006); IC 25-8.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Tracy Hicks
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3052
thicks@pla.in.gov

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #06-155

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

OVERVIEW: Adds 828 IAC 0.5-1-3.5 concerning the definition of “agency”. Amends 828 IAC 0.5-1-5 concerning the definition of “board”. Amends 828 IAC 1-5-1, 828 IAC 1-5-1.5, 828 IAC 1-5-2, 828 IAC 1-5-2.5, 828 IAC 1-5-3, 828 IAC 1-5-4, 828 IAC 1-5-5, 828 IAC 1-5-6, and 828 IAC 1-6-1 concerning continuing education requirements for dentists and dental hygienists, including study club sponsor approval and renewal; organization or individual approval or renewal; verification of attendance; civil penalties for dental hygienists and dentists; ethics and professional responsibility; and basic life support certification. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, State Board of Dentistry, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla7@pla.in.gov. Statutory authority: IC 25-1-4-8 (as amended by SEA 333, P.L.157-2006); IC 25-1-8-2; IC 25-1-8-6 (as amended by SEA 333, P.L.157-2006); IC 25-13-1-5; IC 25-13-2-10; IC 25-14-1-3; IC 25-14-3-12.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Shelly L. Mazo
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-2007
smazo@pla.in.gov

Notice of Intent to Adopt a Rule

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #06-154

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

OVERVIEW: Amends 844 IAC 4-4.5 to include as an additional permit type a temporary medical permit for postgraduate training as a participant in the residency pilot program and to include application, issuance, renewal, and discipline requirements for the temporary medical permit for postgraduate training as a participant in a residency pilot program. Public comments are invited and may be directed to the Medical Licensing Board of Indiana, Attention: Michael Rinebold, Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204 or by e-mail to mrinebold@pla.in.gov. Statutory authority: IC 25-22.5-2-7.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Michael Rinebold
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-2011
mrinebold@pla.in.gov

tory Coordinator for this rule is:

Valerie Jones
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-2064
vjones@pla.in.gov

TITLE 898 INDIANA ATHLETIC TRAINERS BOARD

LSA Document #06-142

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

OVERVIEW: Amends 898 IAC 1-1 to revise the definitions applicable to athletic trainers and to add the definitions of “BOC” and “CAATE”. Amends 898 IAC 1-2 to revise the educational and licensure requirements for athletic trainers. Amends 898 IAC 1-4-1 to clarify the requirements for supervision by athletic trainers. Amends 898 IAC 1-6-1 to revise the continuing education requirements to bring the requirements into conformity definition applicable to athletic trainers. Repeals 898 IAC 1-1-3.1 concerning the definition of “CAAHEP” and 898 IAC 1-1-7 concerning the definition of “NATABOC”. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Valerie Jones, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204 or by electronic mail at vjones@pla.in.gov. Statutory authority: IC 25-5.1-2-6.

For purposes of IC 4-22-2-28.1, the Small Business Regula-

**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION****Proposed Rule**
LSA Document #05-318**DIGEST**

Amends 25 IAC 2 to include changes to the duties of the public works division, a designer's bidding duty, the threshold for prequalification, application for prequalification approval, criteria for bidding, the bidding process, nonpayment of subcontractors, the Certification Board and purposes of the Certification Board, prequalification procedures and requirements, bid acceptance, application of foreign corporations, application of designers, and qualifications for certification in architecture, professional engineering, and nonlicensed fields. Adds 25 IAC 2-16-9 regarding fees for submission, renewal, extension, and reconsideration of an application for prequalification certification. Makes technical and clarifying corrections. *NOTE: LSA Document #05-318, printed at 29 IR 1586, was resubmitted for publication. Effective 30 days after filing with the Secretary of State.*

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small
Businesses**

The proposed amendments will impose requirements or costs on small businesses under IC 4-22-2.1-5.

Impact Statement for Proposed Rule Changes

The Public Works Division of the Department of Administration was established by law under IC 4-13.6 and empowered to adopt rules under IC 4-13.6-3-1.

Rules for PWD procedures were adopted in 1973 with minor modifications made in 1982 and 1992. The primary purpose of the rule changes is to update the rule in accordance with current law, procedures and policies. (25 IAC 2)

Public Works Division (PWD) administers building and infrastructure construction and preventative maintenance contracts for approximately 15 state agencies and institutions. Funding for these projects is appropriated by the Legislature as part of the general budget. The average annual expenditure for these contracts is 65 million dollars. (IC 4-13.6-2)

PWD law provides for the prequalification of all private architectural and engineering designers and for those construction contractors who wish to provide services to the state on construction projects exceeding \$150,000. (IC 4-13.6-4)

IC 4-13.6 and 25 IAC 2 establish PWD methods for administering design and construction contracts and for the prequalification of designers and contractors. The law, rules, policies, and procedures for PWD closely parallel those of the private construction industry. It is in the best interest of the state to follow the construction industry standards as a principal incentive for private companies to do business with the state.

1. Estimate of the Number of Small Businesses Subject to the Rule

PWD has no historical data to support an accurate estimate of small businesses subject to the rule. Construction projects less

than \$150,000 have no requirement for prequalification, therefore any business that deems itself capable of completing the work may submit a bid. The only restrictions are those that involve the submission of a bid. Under these circumstances, all who bid are subject to the rule, but PWD records include only the information necessary to execute a proper contract with the successful low bidder.

2. Estimate of Annual Administrative Cost

For businesses participating on contracts below \$150,000, the administrative cost for a state construction cost would not be any more than for a similar nonstate contract since the rule does not add any requirements that would not be expected on any construction project.

Construction businesses that wish to participate above \$150,000 and all design businesses must first be prequalified by PWD. The process includes submission of an application and substantiation of corporate good standing. The cost of preparation and submission of the application is minimal and similar to any private sector prequalification requirement.

In the construction industry, it is common practice to include in a bid proposal most of the administrative costs of the contract. Thus, if an owner includes additional or unusual requirements in a solicitation, the anticipated additional cost is included in the contractor's proposal and paid by the owner. Therefore, it is the opinion of PWD that most, if not all, of the annual administrative costs are being paid by the state.

**3. Estimate of Total Annual Economic Impact on All Small
Businesses Subject to the Rule**

As indicated previously it is not possible for PWD to estimate the economic impact to businesses subject to the rule due to insufficient data. However, it is the opinion of PWD that most, if not all, of the cost of compliance with the rule is included in the proposals submitted to the state and therefore paid by the state.

**4. Justification of Cost Imposed by the Rule but Not Required
by Statute**

The only cost imposed by the rule not required by statute is the fee for prequalification. The basic fee is \$100 and the prequalification period is two years, thus a cost of \$50 per year per application. This rule change is proposed by the Public Works Certification Board under its law (IC 4-13.6 -3-3 and IC 4-13.6-4). The cost of administering the prequalification process has been paid by the state, even though the benefit of prequalification accrues to the contractor. Over time, the number of applicants has increased along with the cost of processing. The proposed fee will be used to offset the direct cost of the application process (paper and printing, postage, long distance phone calls and faxes, etc.) and some, but not all, of the indirect cost (Certification Board Members and Board Secretary and clerical assistance) although no remuneration is proposed.

Currently, there are approximately 900 prequalified designers and contractors. The period of prequalification is two years, and the proposed basic fee is \$100. This would generate approximately \$45,000 per year for the Certification Board.

5. Analysis of Less Costly Alternative Methods of Achieving

Proposed Rules

Purpose of Proposed Rule

PWD considered methods of minimizing the economic impact of the proposed rule on small businesses as outlined in IC 4-22-2.1-5(5). Because PWD absorbs the majority of administrative duties and costs, it is PWD's opinion that no less costly alternative exists. For those who apply for precertification and pay the fee, the cost is nominal. For PWD, the reduction in budget is significant. To reiterate, the basic fee is \$100 and the prequalification period is two years, thus a cost of \$50 per year per application. The cost of administering the prequalification process has been paid by the state, even though the benefit of prequalification accrues to the contractor.

The proposed fee is to defray the cost of processing a prequalification application for contractors who wish to provide construction services on Public Works projects exceeding \$150,000. There is no prequalification or fee for contractors below that amount. The proposed fee for prequalification review would be imposed on a small percentage of business

25 IAC 2-1-1	25 IAC 2-14-2
25 IAC 2-1-2	25 IAC 2-14-3
25 IAC 2-2-1	25 IAC 2-15-1
25 IAC 2-3-1	25 IAC 2-15-2
25 IAC 2-3-3	25 IAC 2-15-3
25 IAC 2-3-4	25 IAC 2-15-4
25 IAC 2-3-6	25 IAC 2-15-5
25 IAC 2-4-1	25 IAC 2-16-1
25 IAC 2-4-2	25 IAC 2-16-2
25 IAC 2-4-3	25 IAC 2-16-3
25 IAC 2-5-1	25 IAC 2-16-4
25 IAC 2-5-2	25 IAC 2-16-5
25 IAC 2-5-3	25 IAC 2-16-7
25 IAC 2-6-2	25 IAC 2-16-9
25 IAC 2-6-3	25 IAC 2-17-1
25 IAC 2-6-5	25 IAC 2-17-2
25 IAC 2-8-1	25 IAC 2-17-3
25 IAC 2-9-3	25 IAC 2-17-4
25 IAC 2-9-4	25 IAC 2-17-5
25 IAC 2-10-1	25 IAC 2-17-6
25 IAC 2-12-1	25 IAC 2-17-7
25 IAC 2-13-1	25 IAC 2-18-1
25 IAC 2-13-3	25 IAC 2-18-2
25 IAC 2-13-4	25 IAC 2-18-3
25 IAC 2-13-5	25 IAC 2-18-4
25 IAC 2-14-1	

SECTION 1. 25 IAC 2-1-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-1-1 New construction requisitions; public works division's duties

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3; IC 4-13-1-4

Sec. 1. The ~~Public Works~~ division is responsible for the approval and processing of all requisitions and project requests

for all new construction by the state and some field control over ~~such the~~ construction as needed. ~~Such The~~ control shall not extend to the Indiana department of ~~Highways and Division of~~ transportation, facilities under the jurisdiction of the state fair board, the state armory board, and other commissions or boards created by law to operate separately or the facilities at the state-supported colleges and universities. These duties include ~~the~~ **following**:

- (1) Making on-site investigations to ascertain **the following**:
 - (A) The physical need for the proposed project. ~~as well as~~
 - (B) The judgment of its economic justification.
- (2) Making recommendations for the selection of architects and engineers ~~to do for~~ the design of projects where the project is too large or complicated to be performed by the state.
- (3) Designing and writing the specifications for projects.
- (4) Supervising the advertising and bidding of contracts for construction.
- (5) Analyzing the bids and making a ~~bid report with recommendations~~ **recommendation** as to ~~the~~ award of contracts.
- (6) Composing and administering **design and construction** contracts with the successful contractors.
- (7) Making periodic visits to ~~the major~~ construction projects and conferring with the designer regarding progress and approval of construction.
- (8) Approving all payments to **designers and** contractors.
- (9) Making a final inspection of the construction. ~~and~~
- (10) Accepting the construction on behalf of the state.

(Indiana Department of Administration; Public Works Division Sec A,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 1; filed Feb 3, 1982, 1:05 p.m.: 5 IR 508; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 2. 25 IAC 2-1-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-1-2 Public works division duties; building rehabilitation, alteration, repair; preventive maintenance program

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3; IC 4-13-1-4

Sec. 2. **In addition to the duties described in section 1 of this rule**, the division ~~also~~ performs the technical engineering tasks involved in the rehabilitation, alterations, and repair of buildings owned by the state, except those structures exempted under section 1 ~~above~~, **of this rule**, acting in a staff function in furnishing technical advice to the several institutions ~~in for~~ this work. Whenever such rehabilitation, alteration, demolition, or repair ~~require the~~ **requires** services of ~~outside designers and contractors; for design or construction~~, the division performs the necessary functions ~~of for~~ obtaining ~~outside Designer the~~ services as set out in ~~the preceding~~ section (25 IAC 2-1-1). ~~It also 1 of this rule. The division:~~

- (1) is ~~also~~ responsible for the administration of a continuing preventive maintenance program for all state-owned ~~buildings~~

facilities except those structures exempted under section 1 above, of this rule; and

(2) has the authority to:

- (A) authorize emergency parts and supplies;
- (B) initiate remedial programs of construction; or
- (C) service contracts;

whenever needed to ensure an adequate preventive maintenance program.

The division is not intimately involved with, but will be available to aid the **department of natural resources**, ~~Department~~, the ~~Indiana~~ state police **department**, and the **Indiana** department of **Highway transportation** in the implementing and administering of their respective preventive maintenance programs. (*Indiana Department of Administration; Public Works Division Sec A,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 1; filed Feb. 3, 1982, 1:05 p.m.: 5 IR 508; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 3. 25 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-2-1 Definitions

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3; IC 4-13-1-4; IC 4-13.6-3-3

Sec. 1. The following words and phrases, as used in these rules and regulations shall have the following meaning: **definitions apply throughout this article:**

(a) "Department" means the Indiana Department of Administration created by IC 4-13-1.

(b) "Commissioner" means the Commissioner of the Department of Administration.

(c) "Division" means the Division of Public Works, Indiana Department of Administration.

(d) "Operating Department" means the unit of government that will be responsible for the operation, maintenance and use of structure, equipment or apparatus being contracted for.

(e) "Director" means the Director of Public Works Division of the Department of Administration.

(f) "Bid Officer" means the representative of the Division in responsible charge of the bid opening.

(1) "Approved bidder" means a bidder who is prequalified with the department in accordance with the rules and regulations as promulgated by the certification board.

(g) (2) "Bid" means a sealed proposal to construct or perform services as set out in the information to bidders.

(h) (3) "Bidder" means a supplier or contractor who submits offers to construct or perform services for the department.

(i) "Approved Bidder" means a bidder who is certified with the Department in accord with the rules and regulations as promulgated by the prequalification Certification Board.

(4) "Bid officer" means the representative of the division in responsible charge of the bid opening.

(j) (5) "Certification board" means the prequalification certification board as established by ~~IC 4-13-7~~ **IC 4-13.6-3-3**.

(6) "Commissioner" means the commissioner of the department.

~~(k)~~ (7) "Contract designer" means any architect, engineer, or other professional under contract with the state to perform certain consultant or design services for the state.

~~(l)~~ "State Designer" means any Architect, Engineer or other professional or technician performing certain design services for the State while within the employ of the State.

~~(m)~~ (8) "Contractor" means any firm supplying construction or other services to the state under a direct contract with the state.

~~(n)~~ "Subcontractor" means any firm supplying construction or other services to the Contractor under a contract with said Contractor.

~~(o)~~ "Inspector" means an employee of the Division having the responsibility of inspecting State Construction Projects.

(9) "Department" means the Indiana department of administration created under IC 4-13-1.

~~(p)~~ (10) "Designer" means any architect, engineer, surveyor, or other professional who:

(A) by formal training ~~and/or~~ or registration, or both, are otherwise legally authorized to perform services and design work for the state; and

(B) may be either a contract or state designer.

(11) "Director" means the director of the division.

(12) "Division" means the division of public works of the department.

(13) "Executive secretary" means the secretary for the certification board.

(14) "Inspector" means an employee of the division having the responsibility for review of progress on state construction projects.

(15) "Operating department" means the unit of government that will be responsible for the operation, maintenance, and use of structure, equipment, or apparatus being contracted for.

~~(q)~~ (16) "Professional Contractual contractual service" means a professional firm who by formal training, registration, or are otherwise legally authorized by the manufacturer or supplier to perform maintenance or repair services on complicated or specialized equipment or controlled systems.

~~(r)~~ (17) "Project manager" means Public Work's a division professional assigned to coordinate projects.

~~(s)~~ "Executive Secretary" means secretary for Certification Board.

(18) "State designer" means any architect, engineer, or other professional or technician performing certain design services for the state while within the employ of the state.

(19) "Subcontractor" means any firm supplying construction or other services to the contractor under a contract with the contractor.

(*Indiana Department of Administration; Public Works Division Sec B; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.2; filed Feb 3, 1982, 1:05 p.m.: 5 IR 509; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Proposed Rules

SECTION 4. 25 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-3-1 List of prequalified designers

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 1. The division shall maintain a list of prequalified designers, composed of:

- (1) architects;
- (2) engineers;
- (3) surveyors; and
- (4) other professionals;

who by an application to the certification board have expressed an interest in furnishing their services for proposed state work. (*Indiana Department of Administration; Public Works Division Sec C, 1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.2; filed Feb 3, 1982, 1:05 p.m.: 5 IR 509; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 5. 25 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-3-3 Selection procedure for contract designers; qualifications; limitations on subcontractors

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. For any project ~~for~~ which the director determines ~~that~~ the assignment of a contract designer is required: ~~the head of the interested facility requesting the project shall be asked to submit his recommendations to the Director and~~

- (1) the director shall recommend at least three (3) who:
 - (A) qualify in ~~the particular~~ classification of work; and
 - (B) are currently in good standing with the ~~State~~ certification board; and
- (2) the commissioner shall select a contract designer for ~~the purpose of~~ negotiating a contract for the proposed design work.

~~Such~~ **The** negotiations will be predicated upon a showing that ~~his the designer's~~ personnel availability and work in progress will warrant that the work contemplated can be done in a timely manner. The contract designer shall not subcontract any of the contracted design work, considered to be part of the prime contract work, except those functions normally subcontracted in similar circumstances, and ~~such the~~ proposed subcontract professionals shall be subject to the same prequalifications as the contract designer and must be approved for ~~such the~~ subcontract design work by the director ~~prior to~~ **before** use. Approval of a contract design firm shall only be considered where a sufficient number of the personnel of ~~said the~~ firm shall have valid professional qualification and requisites to ensure intimate, competent control over all facets of the design work under consideration as evidenced by professional registration. (*Indiana Department of Administration; Public Works Division Sec C,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973,*

p.3; filed Feb 3, 1982, 1:05 p.m.: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 6. 25 IAC 2-3-4 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-3-4 Fee proposals for design work; selection procedure for alternate contract designer

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-11.1

Sec. 4. ~~The~~ director shall recommend to the commissioner the fee proposed for the professional work. In making ~~his the~~ fee proposal for this design work, the director shall consider the project as a whole, ~~considering~~ **including** its location, complexity, need for expediency, and ~~the~~ aid to be given by the state in the design and control of construction. The various points considered in reaching the fee, be it a percentage of eventual cost or as a ~~firm figure~~, **fixed amount**, shall be reflected in the design contract itself. If, after a review of the project and negotiations as to scope and fee, an agreement is not reached, then:

- (1) the director shall report ~~such the~~ circumstances to the commissioner; and ~~he~~
- (2) ~~the commissioner~~ shall decide whether to continue the negotiations or contact another designer from the recommendation list.

(*Indiana Department of Administration; Public Works Division Sec C,4; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.3; filed Feb 3, 1982, 1:05 p.m.: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 7. 25 IAC 2-3-6 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-3-6 Designer's duty to assure a bid within budget

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 6. ~~The~~ designer shall make every effort possible to ensure that the scope and cost of the project remains within the budget allocation. Where bids ~~are over received exceed the~~ allocated funds **by more than ten percent (10%)** and additional funds are not available:

- (1) the designer shall redesign ~~the work~~, at no additional cost to the state, to ~~bid a cost~~ within ~~the~~ allocation; or
- (2) the project shall be abandoned;

at the option of the state. (*Indiana Department of Administration; Public Works Division Sec C,6; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.3; filed Feb 3, 1982, 1:05 p.m.: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 8. 25 IAC 2-4-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-4-1 List of prequalified contractors

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. The division shall maintain a list of prequalified contractors who, by an application to the certification board, ~~of the Division~~ have expressed an interest in contracting with the state to perform construction work within the ~~financial and experience~~ limits of their prequalification as set out in their current certificate. (*Indiana Department of Administration; Public Works Division Sec D,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 3; filed Feb 3, 1982, 1:05 p.m.: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 9. 25 IAC 2-4-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-4-2 Application for prequalification approval as precondition to bidding

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. A contractor desiring to so perform construction work for the division must, as an act ~~prior to before~~ being allowed to bid on projects with a valuation exceeding ~~\$50,000; one hundred fifty thousand dollars (\$150,000)~~:

- (1) apply to the ~~State~~ certification board supplying all of the pertinent information required by ~~that the certification board~~; and
 - (2) obtain their prequalification approval;
- as set out in ~~these rules and regulations of the Public Works Division; this article.~~ A contractor shall not be considered to have legally received plans on a particular project having a valuation exceeding ~~\$50,000; one hundred fifty thousand dollars (\$150,000)~~ without being ~~currently qualified~~ prequalified by ~~said the certification board. both in the classification of work involved and having the financial availability to do the work; said financial position being based on the criteria and formula as also set out in these rules and regulations.~~ (*Indiana Department of Administration; Public Works Division Sec D,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 4; filed Feb 3, 1982, 1:05 p.m.: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 10. 25 IAC 2-4-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-4-3 Subcontractors' prequalification as precondition to starting work

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. Any subcontractor proposing to do work ~~which that~~ has a valuation in excess of ~~\$50,000; one hundred fifty thousand dollars (\$150,000)~~ shall also be prequalified as set out in section 2 ~~above of this rule~~ before the ~~prime contractor can start subcontractor begins~~ any work on the site. (*Indiana Department of Administration; Public Works Division Sec D,3;*

filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 p.m.: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 11. 25 IAC 2-5-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-5-1 Projects less than \$75,000; criteria for bid exemption

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. (a) When the estimated cost of construction is less than ~~five hundred seventy-five thousand dollars (\$500); (\$75,000)~~, contracts may be issued without taking competitive bids upon receipt of ~~two or more offers at least one (1) offer~~ from firms ~~contractors~~ interested in the subject project.

(b) Competitive bids shall not be required for professional ~~contractual~~ ~~contractual~~ services where:

- (1) no competition ~~exist exists~~, such as:
 - (A) manufacturer representatives' ~~special expertise expert~~ service on specialized equipment; and ~~where~~
 - (B) rates or prices are fixed by law or ordinance; or ~~where~~
- (2) purchases are made from the United States government. ~~or any agency; division or instrumentality thereof.~~

Competitive bids shall not be required for repair parts for machinery or equipment ~~which that~~ can only be procured from the manufacturer of ~~such the~~ machinery or equipment. (*Indiana Department of Administration; Public Works Division Sec E,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 p.m.: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 12. 25 IAC 2-5-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-5-2 Projects between \$75,000 and \$150,000; criteria for bidding

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6-5-8; IC 5-16-1-3

Sec. 2. When the estimated cost of construction exceeds ~~five hundred seventy-five thousand dollars (\$500); (\$75,000)~~ but less than ~~five one hundred fifty thousand dollars (\$5,000); (\$150,000)~~, sealed bids shall be solicited by ~~posting a notice on the bulletin board in the office of the Commissioner and in office of Director at least seven working days preceding the date set for the opening of bids.~~ The Division shall also contact contractors in the immediate area of the work involving them to consider bidding the project. ~~accordance with IC 4-13.6-5-8.~~ (*Indiana Department of Administration; Public Works Division Sec E,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 p.m.: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 13. 25 IAC 2-5-3 IS AMENDED TO READ AS FOLLOWS:

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25 IAC 2-5-3 Projects over \$150,000; criteria for bidding; wage determination

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6-5; IC 5-16-1-3; IC 5-16-7-2

Sec. 3. When required under IC 4-13.6-5, sealed bids will be solicited by:

(1) posting on a public bulletin board in the office of the director seven (7) days before the final date for submitting bids; and

(2) public notice ~~shall be~~ inserted at least once each week for two (2) successive weeks before the final date of submitting bids in:

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

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

A project may be listed ~~with one (1) or more private bid service organizations; using electronic access.~~ A ~~prevailing common construction wage scale determination~~ shall be secured and ~~such~~ the rates incorporated in every project, except those under 25 IAC 2-11 when time will not permit. The contractor shall post rates to be paid on the job on state premises and file with the Department of Administration, Public Works Division, Indiana Government Center-South, 402 West Washington Street, Room W467, Indianapolis, Indiana 46204-2743. (*Indiana Department of Administration; Public Works Division Sec E,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 4; filed Feb 3, 1982, 1:05 p.m.: 5 IR 512; filed May 4, 1992, 9:30 a.m.: 15 IR 1906; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 14. 25 IAC 2-6-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-6-2 Bid preparation and submittal requirements

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-3

Sec. 2. Bids shall be contained in a sealed envelope:

(1) with ~~attached blue label as supplied by the Division or marked as specified and/or supplied by the Designer. It shall be bidder's name and address clearly shown; and~~

(2) plainly marked as a bid with job and time identification ~~clearly~~ stated.

(*Indiana Department of Administration; Public Works Division Sec F,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 p.m.: 5 IR 512; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 15. 25 IAC 2-6-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-6-3 Bidder's prequalification review by executive secretary; bid acceptance conditions

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. The executive secretary of the certification board or his ~~or~~ her designate shall, immediately ~~prior to~~ **before** the designated time for acceptance of bids for projects estimated to exceed ~~\$50,000; one hundred fifty thousand dollars (\$150,000)~~, review the prequalification of all bidders submitting bids. If:

(1) a bid packet is received; and

(2) the bidder is not currently ~~qualified~~ **prequalified** with ~~said the certification board; or his financial availability is not approved at the time; then this fact shall be brought to the attention of the Director or in his absence the Commissioner~~ and

the bid shall ~~not be opened until receiving a decision as to the acceptability of the bid. The Director may solicit the aid of the Attorney General in making such a decision.~~ **rejected.** (*Indiana Department of Administration; Public Works Division Sec F,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 p.m.: 5 IR 512; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 16. 25 IAC 2-6-5 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-6-5 Contract bid award criteria; rejection or waiver of nonconforming bids

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 5. All bids shall conform to all applicable requirements of the specifications including the instructions to bidders, general conditions, and special conditions. The bid officer shall:

(1) tentatively reject any bid failing to adhere to or conform to such; ~~and shall~~

(2) inform the director or in his ~~or her~~ absence the commissioner of this fact; and

(3) await a decision as to the acceptability of the bid. ~~It is~~ The intent of the department ~~is to not waive technicalities of the bidding procedure. The award of such a contract shall be made on the basis of the lowest~~ **qualified responsible and responsive** bid. ~~deemed to be the best bid.~~ (*Indiana Department of Administration; Public Works Division Sec F,5; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 p.m.: 5 IR 513; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 17. 25 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-8-1 Construction inspection duties; designer's rights to approve design changes and interpretation

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 1. The division has the responsibility for the inspection of all construction ~~which that~~ has been designed by the division. The division shall also make periodic reviews of all construction

~~which that~~ has been designed by contract designers; however, ~~such the~~ designers by their contract are held responsible for the primary inspection. ~~Such~~ Periodic inspection review by the state does not relieve the designer of the responsibility for the primary inspection, control, and coordination of the project. ~~The inspectors for the Division have for their primary purpose ensuring that such functions are properly carried out by the Contract Designer and secondarily to aid in the resolution of problems arising between the Contract Designer, the Institution personnel and the Contractor.~~ On projects designed by a contract designer, the inspectors or institutional employees shall not give instructions to any contractor or subcontractor directly, except in an emergency, instead bringing the facts to the attention of the contract designer for resolution. Any:

- (1) change in the methods or performing an item of work;
- (2) substitution of material;
- (3) revision to schedule;
- (4) extra work orders;
- (5) extension of completion time; or
- (6) interpretation of the plans and specifications;

shall originate with the designer and be approved by ~~Public Works the~~ division. (*Indiana Department of Administration; Public Works Division Sec H,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.7; filed Feb 3, 1982, 1:05 p.m.: 5 IR 514; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 18. 25 IAC 2-9-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-9-3 Nonpayment of subcontractors; documentation of nonpayment; procedure

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-5

Sec. 3. Pursuant to Under IC 5-16-5, as amended, partial payments may be temporarily held up by the division if ~~it the~~ **division** has received a certificate from a subcontractor asserting that his ~~or her~~ work, having been completed within the past ~~sixty~~ (60) days was billed to the prime contractor and not paid. Copies of ~~such the~~ certified claim shall be forwarded to the contractor's bond surety for information and possible action. The partial pay request shall be released for payment upon satisfactory evidence that the subcontractor has been paid. If it is evident that a disagreement exists as to the billing in question, then the state shall:

- (1) reduce the partial billing by the amount claimed; and
- (2) pass ~~partial the balance~~ on for payment.

Copies of all correspondence pertaining to the alleged nonpayment to subcontractors in violation of the contract between the state and the prime contractor shall be placed in their respective prequalification file for review by the certification board. Information relative to the alleged nonpayment of bills due involving a contractor, subcontractor, or materialman shall be released to persons only when reasons for ~~such the~~ information are set out in writing, or the one seeking ~~such the~~ information appears in person and requests to see ~~such the~~ financial records.

(*Indiana Department of Administration; Public Works Division Sec I,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.8; filed Feb 3, 1982, 1:05 p.m.: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 19. 25 IAC 2-10-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-10-1 Final project review; final billing

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 5-16-5

Sec. 1. Whenever the project has progressed to the point of substantial completion, ~~an inspection a~~ review shall be made by the contract designer accompanied by **the following**:

- (1) The contractor.
- (2) A representative of ~~this the~~ division. ~~and~~
- (3) A representative of the operating department.

After all deficiencies have been substantially remedied, the designer shall recommend to the director that the construction project be accepted. After the director has accepted the project ~~in on~~ behalf of the state, (~~DAPW 5~~), the final billing may be submitted, accompanied by affidavits and other documents evidencing that all subcontracts and bills for materials and services have been paid. (*Indiana Department of Administration; Public Works Division Sec J,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.8; filed Feb 3, 1982, 1:05 p.m.: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 20. 25 IAC 2-12-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-12-1 Certification; construction of article 2

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6-3-3

Sec. 1. Statutory provisions governing the certification board ~~of the Indiana Department of Administration; Public Works Division;~~ may be found in ~~IC 4-13-7~~ **IC 4-13.6-3-3**, as amended. Rules and regulations incorporated herein are additional and supplemental to the Act and its amendments. (*Indiana Department of Administration; Public Works Division Sec L,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 p.m.: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 21. 25 IAC 2-13-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-13-1 Files; space allocation

Authority: IC 4-13.6-1-2; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. The certification board ~~composed of the State Building Commissioner, Examiner or Deputy Examiner of the State Board of Accounts, and the Director of the Public Works Division; no more than two (2) of whom shall be members of the same political party;~~ shall have its files and other administrative

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materials quartered in space allocated by the ~~Public Works~~ division. (*Indiana Department of Administration; Public Works Division Sec M,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 9; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 22. 25 IAC 2-13-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-13-3 Chairperson

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 3. The ~~Chairman~~ chairperson of the certification board shall be ~~nominated and elected from and by the members of the board for a yearly term dating from each January. It is permissible for the Chairman to succeed himself.~~ director. (*Indiana Department of Administration; Public Works Division Sec M,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 10; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 23. 25 IAC 2-13-4 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-13-4 Certification board meetings

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-14-1.5

Sec. 4. Meetings shall be held ~~on the second Wednesday of each month, unless circumstances require that another date be set. Rescheduling of meetings may be made upon unanimous consent of the members, but meetings shall never be no~~ more than forty-five (45) days apart. Special meetings may be called at any time if: ~~and~~

- (1) a majority of members agree thereto; and if
- (2) it is deemed that ~~such a~~ special meeting will serve the best interests of the state. ~~of Indiana.~~

In accordance with the Indiana Open Door Law, (IC 5-14-1.5, Acts of 1977), notice of all meetings will be posted on the bulletin board in the office of ~~Public Works~~ the division and notice given to all news media representatives who annually in writing request ~~such the~~ notice be given. The agenda of each meeting will be posted with the time, date, and place at least **forty-eight (48) hours prior: before the meeting.** (*Indiana Department of Administration; Public Works Division Sec M,4; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 p.m.: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 24. 25 IAC 2-13-5 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-13-5 Quorum; majority

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 5. The certification board may meet ~~with one member absent if it has the consent of the absent member.~~ a quorum is

present. At least two (2) members must agree if a motion is to be passed whether there be two (2) or three (3) members present. (*Indiana Department of Administration; Public Works Division Sec M,5; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 10; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 25. 25 IAC 2-14-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-14-1 Purposes of the certification board; contractor's prequalification approval

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. ~~(a)~~ The purposes of the certification board are to determine the following:

- (1) Which applicant contractors have the:

- (A) experience;
- (B) physical capabilities; and
- (C) financial resources;

to bid or to subcontract on state construction projects valued in excess of **one hundred** fifty thousand dollars ~~(\$50,000) which (\$150,000) that~~ are implemented through the facilities of the ~~Public Works~~ division and all other agencies so required by statute. ~~and~~

- ~~(b) To determine~~ (2) Which applicant designers have the:

- (A) professional capabilities;
- (B) manpower; and
- (C) experience;

necessary to perform architectural, engineering, or related professional work on state projects ~~of the same magnitude~~ likewise implemented through the ~~Public Works~~ division.

(*Indiana Department of Administration; Public Works Division Sec N,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 p.m.: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 26. 25 IAC 2-14-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-14-2 Certification board approval; certificate of qualification

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. Those applicant contractors and designers ~~which that~~ receive certification board approval are prequalified for future state work to the time and classification limits set forth on the ~~annually-renewed~~ certificate of qualification (hereinafter called the certificate). ~~Contractors are, additionally, qualified to perform work up to a dollar limit (maximum qualification rating) indicated on the certificate.~~ (*Indiana Department of Administration; Public Works Division Sec N,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 p.m.: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 27. 25 IAC 2-14-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-14-3 Prequalification denial; eligibility for projects under \$150,000

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 3. Those contractors ~~which that~~ apply for, but are denied, prequalification by the **certification** board are still eligible to bid or to subcontract on all public works projects valued at less than **one hundred** fifty thousand dollars ~~(\$50,000)~~, **(\$150,000)** unless otherwise restricted by the ~~Public Works~~ division. (*Indiana Department of Administration; Public Works Division Sec N,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 p.m.: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 28. 25 IAC 2-15-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-15-1 Certificate of qualification required for project bids over \$150,000

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. If a contractor intends to bid on a public works project valued in excess of **one hundred** fifty thousand dollars ~~(\$50,000)~~, **his (\$150,000)**, the contractor's bid will not be opened unless ~~he the contractor~~ currently maintains a valid certificate of ~~prequalification~~ **qualification** indicating that he ~~or she~~ is prequalified in the field of work for which the bid is being taken. (*Indiana Department of Administration; Public Works Division Sec O,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 p.m.: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 29. 25 IAC 2-15-4 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-15-4 Subcontractor's prequalification

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 4. Subcontractors who intend to perform state work valued in excess of **one hundred** fifty thousand dollars ~~(\$50,000)~~ **(\$150,000)** under a prime contractor to be awarded a state contract must be prequalified ~~prior to before~~ the start of the work. ~~by the prime. They may also be required to have a "total maximum qualification rating" which exceeds the total value of all their current and pending work combined when coupled with their subcontract amount.~~ (*Indiana Department of Administration; Public Works Division Sec O,4; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 p.m.: 5 IR 518; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 30. 25 IAC 2-16-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-16-2 Limited prequalification; term

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 2. The certification board may ~~temporarily prequalify~~ **give limited prequalification to** an applicant ~~for any period of time from one (1) month to fifteen (15) months~~ if circumstances suggest to the **certification** board that a ~~full-term full~~ prequalification is not appropriate. (*Indiana Department of Administration; Public Works Division Sec P,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 11; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 31. 25 IAC 2-16-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-16-3 Prequalification expiration period; 60 day certificate extension

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. (a) If the:

- (1) period of prequalification expires and no acceptable renewal materials are rendered by the expired certificate holder; or ~~if the~~
- (2) certificate is revoked or suspended for cause before completion of an awarded contract and no acceptable provisions are made to the contrary;

the contract may be ~~cancelled~~ **canceled** by the department. ~~of Administration.~~

(b) The certification board may extend a valid certificate for a period of not more than ~~ninety (90)~~ **sixty (60)** days upon written request from the certificate holder ~~prior to before~~ the original expiration date justifying ~~such the~~ extension. The request will be acknowledged in writing and the **certification** board so informed at the next scheduled meeting. Only one ~~such~~ (1) extension may be granted for each certificate. (*Indiana Department of Administration; Public Works Division Sec P,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 p.m.: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 32. 25 IAC 2-16-4 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-16-4 Prequalification application

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 4. Any applicants for ~~initial~~ prequalification shall submit a fully completed prequalification ~~booklet~~ **application**, which is available from the ~~Public Works~~ division upon request. ~~A booklet~~ **An application** will be considered incomplete if:

- (1) all applicable information is not supplied; or ~~if~~
- (2) that information rendered proves to be false;

and ~~such the~~ incomplete ~~booklet~~ **application** will accordingly

not be considered. All applicants for prequalification should allow up to forty-five (45) days for complete review of application materials and consideration by the certification board. (*Indiana Department of Administration; Public Works Division Sec P,4; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 p.m.: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 33. 25 IAC 2-16-5 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-16-5 Effect of failure to meet qualifications

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 5. Any deviation from requirements set forth in the ~~booklet~~ **application** or in this document will be critically evaluated in the consideration of the application. ~~and either a lesser rating or revocation may be expected.~~ (*Indiana Department of Administration; Public Works Division Sec P,5; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 12; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 34. 25 IAC 2-16-7 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-16-7 Prequalification suspension; denial, revocation; sanctions; grounds

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 7. The **certification** board may suspend, deny, or revoke the prequalification of those applicants not complying with the stipulations of the ~~act statute~~ or of ~~these regulations~~. **this rule**. Additionally, verified reports or indications of misfeasance, malfeasance, or other undesirable practices made by any reliable source (~~including agent or representatives of the Public Works Division as it concerns the Division's projects~~) or financial statements indicating instability, a precarious financial position, or poor business procedures in the eyes of the **certification** board shall each be further due cause for denial, revocation, or suspension of prequalification by the **certification** board. A certificate of qualification may be revoked ~~or denied~~ if the contractor:

- (~~a~~) (1) fails to pay, or satisfactorily settle, all bills due to labor and material on former or existing contracts; ~~or~~
- (~~b~~) (2) is convicted of a violation of a state or federal law in relation to a public contract;
- (~~c~~) (3) defaults on a previous contract; or
- (~~d~~) (4) fails to enter into a public works implemented project contract.

Notification of such pending action will be made in writing, setting forth the grounds for the proposed certificate revocation. The action shall become final unless an appeal in writing is filed. Any appeal must be filed as prescribed hereinafter. The period of disqualification shall not exceed two (2) years. (*Indiana Department of Administration; Public Works Division*

Sec P,7; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 p.m.: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 35. 25 IAC 2-16-9 IS ADDED TO READ AS FOLLOWS:

25 IAC 2-16-9 Fees

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 9. (a) The certification board shall charge and collect the following fees:

- (1) For submitting an application for prequalification certification as a designer or contractor, a fee of one hundred dollars (\$100).
- (2) For the renewal of prequalification certification as a designer or contractor, a fee of one hundred dollars (\$100).
- (3) For an original or renewal application reviewed by the certification board in a special (nonscheduled) meeting, a fee of two hundred dollars (\$200).
- (4) For submitting a request for a sixty (60) day extension, a fee of fifty dollars (\$50).
- (5) For review of an application for additional categories, or reconsideration of a certification board decision concerning a specific category, a fee of fifty dollars (\$50).
- (6) For issuance of a duplicate certificate, a fee of ten dollars (\$10).

(b) All fees are nonrefundable and nontransferable. (*Indiana Department of Administration; 25 IAC 2-16-9*)

SECTION 36. 25 IAC 2-17-7 IS AMENDED TO READ AS FOLLOWS:

Rule 17. Application of Foreign (Out-of-State) Corporations

25 IAC 2-17-7 Supplemental documentation for out-of-state corporations

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 7. The initial application of a corporation shall be accompanied by a certified copy of the minutes covering the election of current officers and a certified copy of the official action assigning the current authority for individuals' personal signature to contracts of the corporation; such official actions may be either a portion of the original Articles of Incorporation or some subsequent official action of the stockholders or the board of directors. If personnel or authority for individuals' personal signature are changed in any manner, the Board shall be immediately notified and furnished with certified copies of appropriate documents. An initial application submitted by an out-of-state (foreign) corporation must be accompanied by a copy of the certificate issued by the Indiana secretary of state

admitting them to do business in Indiana. Thereafter, a copy of the certificate will not be required, but:

- (1) current status with the corporations division of the secretary of state's office will be checked at the time of renewal; and
- (2) any foreign corporation not in good standing will not be issued a prequalification certificate even though approved by the **certification** board until good standing is verified.

(Indiana Department of Administration; Public Works Division; 25 IAC 2-17-7; filed Feb 3, 1982, 1:05 p.m.: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 37. 25 IAC 2-18-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-18-1 Prequalification renewal; prequalification booklet submission

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. Designers must fully complete ~~and annually submit the a prequalification Booklet²² for the purpose of yearly prequalification renewal application.~~ The designer applicant is ~~urged to~~ **may** supply any new informational booklets or brochures relating to the capabilities of the applicant whenever ~~such the~~ documents become available. However, ~~such the~~ supplemental materials are not to be submitted in lieu of the prequalification application. *(Indiana Department of Administration; Public Works Division Sec R,1; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 p.m.: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

SECTION 38. 25 IAC 2-18-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-18-2 Certification in field of architecture; staff requirements

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. Designers will receive certification in the field of architecture only if a professional architect currently registered as such in Indiana is:

- (1) employed at least thirty (30) hours each week by the applicant firm; and ~~is~~
- (2) listed in that capacity in the prequalification ~~booklet.~~ **application.**

The architect on whose qualifications certification is to be granted must also be shown as the architect in charge of at least ~~three (3) five (5)~~ projects listed in the experience data portion of the booklet. *(Indiana Department of Administration; Public Works Division Sec R,2; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 p.m.: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

SECTION 39. 25 IAC 2-18-3 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-18-3 Certification in fields of professional engineering; certification in related nonlicensed fields

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 3. Certification will be granted only in those fields of engineering in which the applicant designer indicates that an Indiana registered professional (PE) is:

- (1) working at least thirty (30) hours a week as an employee of the applicant; and ~~who is~~
- (2) shown as the engineer in charge of at least ~~three (3) five (5)~~ projects listed in the experience data portion of the ~~booklet.~~ **application.**

Resumes or experience data outlines for each Designer will be accepted in lieu of the requirement that each must be listed as the architect or engineer in charge as specified in Section 2 and 3 above (25 IAC 2-18-2) and this section. Such information must show explicitly the specialties for which the applicant firm is requesting certification.

Applicant designers may be certified for more than one classification when classifications are closely related, i.e., Sanitary Engineering and Waste Water Engineering, or when one classification does not require licensing, i.e., Interior Design, or when one classification is Photogrammetry, or when the firm shows overwhelming evidence of the capability to satisfactorily handle classification combinations other than those previously mentioned. *(Indiana Department of Administration; Public Works Division Sec R,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 p.m.: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

SECTION 40. 25 IAC 2-18-4 IS AMENDED TO READ AS FOLLOWS:

25 IAC 2-18-4 Certification of other nonlicensed fields

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 4. For those professional areas ~~which that~~ are not registered in Indiana, but ~~which that~~ are certified by the **certification** board, the applicant designer must show ~~a full time~~ **an employee with a minimum of thirty (30) hours each week** in each ~~such~~ field with sufficient training and adequate experience to satisfy the **certification** board that certification should be granted. *(Indiana Department of Administration; Public Works Division Sec R,4; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 p.m.: 5 IR 523; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

SECTION 41. THE FOLLOWING ARE REPEALED: 25 IAC 2-9-4; 25 IAC 2-15-2; 25 IAC 2-15-3; 25 IAC 2-15-5; 25 IAC 2-16-1; 25 IAC 2-17-1; 25 IAC 2-17-2; 25 IAC 2-17-3; 25 IAC 2-17-4; 25 IAC 2-17-5; 25 IAC 2-17-6.

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Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 23, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room W479, Indianapolis, Indiana the Indiana Department of Administration will hold a public hearing on proposed amendments to 25 IAC 2 to include, but may not be limited to, changes to the duties of the public works division, a designer's bidding duty, the threshold for prequalification, application for prequalification approval, criteria for bidding, the bidding process, nonpayment of subcontractors, the Certification Board and purposes of the Certification Board, prequalification procedures and requirements, bid acceptance, application of foreign corporations, application of designers, qualifications for certification in architecture, professional engineering, and nonlicensed fields, fees for submission, renewal, extension, and reconsideration of an application for prequalification certification, and technical or clarifying corrections.

The Indiana Department of Administration has authority to adopt these rules under IC 4-13-2-9 and IC 4-13.6-3-1. The proposed amendments will impose requirements or costs on small businesses under IC 4-22-2.1-5.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W479 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tom Coulter
Director, Public Works Division
Indiana Department of Administration

TITLE 140 BUREAU OF MOTOR VEHICLES

Proposed Rule LSA Document #06-126 DIGEST

Amends 140 IAC 3.5-2-15 to eliminate transference of interim plates between dealers. Amends 140 IAC 4-1-1 through 140 IAC 4-1-14 concerning commercial driver training schools and instructors. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

The Bureau estimates that all small businesses in the vehicle merchandising industry sector that utilize interim plates and that all small businesses in the commercial driver training school industry sector will be subject to the proposed rule.

Estimated Annual Average Administrative Costs that Small Businesses Will Incur:

The Bureau of Motor Vehicles estimates that the proposed

amendments will impose requirements or administrative costs related to criminal background checks, furnishing documents incorporated by reference, and increased fees for duplicate licenses and name changes.

Estimated Total Annual Economic Impact on Small Businesses:

The proposed changes are estimated to allow some commercial drive schools to expand their business into new market areas. The proposed changes are estimated to reduce the burden resulting from staffing and record keeping requirements. None of the proposed changes should have a negative estimated economic impact beyond the requirement of having handicapped accessible bathrooms and what is already imposed by the existing rule.

Justification of Requirements or Costs on Small Businesses where Rule is not Expressly Required by Law:

Any requirements or costs not expressly required by law are necessary for public safety, public protection, and to implement the requirements of Indiana Code.

Supporting Data, Studies, or Analyses:

The Bureau did not rely on any studies in reaching this estimate.

Regulatory Flexibility Analysis or Alternate Methods:

The Bureau considers these standards necessary to comply with the requirements of state and federal law and considers these standards to be the least restrictive practicable measures under current law.

Explanation of Preliminary Determination:

The Bureau has determined a need for these standards to ensure the orderly administration of the requirements of state and federal law.

Supporting Data, Studies, or Analyses:

The Bureau did not rely on any studies in reaching this conclusion. However, it considered its past experience and the requirements of state and federal law.

140 IAC 3.5-2-15	140 IAC 4-1-8
140 IAC 4-1-1	140 IAC 4-1-9
140 IAC 4-1-2	140 IAC 4-1-10
140 IAC 4-1-3	140 IAC 4-1-11
140 IAC 4-1-4	140 IAC 4-1-12
140 IAC 4-1-5	140 IAC 4-1-13
140 IAC 4-1-6	140 IAC 4-1-14
140 IAC 4-1-7	

SECTION 1. 140 IAC 3.5-2-15 IS AMENDED TO READ AS FOLLOWS:

140 IAC 3.5-2-15 Interim plates; restrictions on use

Authority: IC 9-14-2-2

Affected: IC 9-18-26-10; IC 9-23

Sec. 15. (a) Requirements for the use of interim plates shall be as follows:

(1) Under IC 9-18-26-10, interim plates may be utilized only by the operator of a motor vehicle:

(A) for a period not to exceed thirty-one (31) days after the date of delivery; or

(B) until regular registration plates are obtained; whichever occurs first.

(2) Only one (1) interim plate may be issued by a dealer to the purchaser of a motor vehicle. No additional interim plates may be issued for the motor vehicle for any reason.

(3) Interim plates may not be utilized on **the following vehicles:**

(A) A vehicle owned or in **the** inventory of a licensed dealer.

~~(4) Interim plates may not be utilized on~~ (B) Vehicles sold on consignment by a dealer.

~~(5) Interim plates assigned by the bureau of motor vehicles to any dealer may be given or sold to another registered dealer in good standing with the bureau of motor vehicles so long as the transfer, by interim plate control number, is recorded in each dealer's interim plate log.~~

~~(6) A registered dealer obtaining interim plates from another dealer must record those plates in the dealer's interim plate log by interim plate control number and name of transferring dealer.~~

~~(7)~~ (4) The dealer must provide an ownership document to the purchaser at the time of issuance of the interim plate.

~~(8)~~ (5) Interim plates may not be utilized on vehicles sold to dealers at automobile auctions unless the dealer is:

(A) an out-of-state dealer without metal dealer plates from the dealer's state; or ~~is~~

(B) an Indiana license only dealer without metal dealer plates.

(b) Requirements for the interim plate log shall be as follows:

(1) All dealers utilizing interim plates must maintain a log recording the issuance of each plate.

(2) The interim plate log shall include, but is not limited to, the following:

(A) An interim plate control number by control number sequence.

(B) The name and address of the party to whom the interim plate was issued.

(C) The make, model, and year of the vehicle to which the plate is to be affixed.

(D) The manufacturer's vehicle identification number.

(E) The date of issuance of the interim plate.

(3) All interim plates not issued by the dealer must be retained in the dealer's possession at all times.

(4) The interim plate log shall be maintained continuously for a period of three (3) years.

(c) Penalties shall be as follows:

(1) Any misuse of an interim plate may result in the limiting of the dealer's interim plate usage or suspension of the dealer's license.

(2) The dealer is subject to all criminal penalties provided by statute.

(Bureau of Motor Vehicles; 140 IAC 3.5-2-15; filed Jan 5, 1994, 5:00 p.m.; 17 IR 978; readopted filed Oct 17, 2001, 4:50 p.m.; 25 IR 914)

SECTION 2. 140 IAC 4-1-1 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-1 Definitions

Authority: IC 9-14-2-2

Affected: IC 9-13-2-105; IC 9-24; IC 9-27-4

Sec. 1. Licensing of commercial driver training schools and instructors. ~~(A)~~ Definitions used in these rules and regulations shall have the meanings ascribed to them ~~in this section as follows~~ unless the context clearly indicates a different meaning:

(1) **"Agent" means any person, whether:**

(A) employed by a commercial driver training school or operating in his or her behalf; or

(B) acting in behalf of any school located within or outside of the state of Indiana;

who shall personally solicit any individual within this state to enroll in a commercial driver training school or any person acting on the behalf of the commissioner.

~~(+)~~ (2) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either practically or theoretically, or both, to:

(A) operate or drive motor vehicles; ~~and/or to or~~

(B) prepare an applicant for any examination or validation given by the bureau of motor vehicles for a driver's license; and charging a consideration or tuition for ~~such the~~ services.

(3) **"Commissioner" means the commissioner of the bureau of motor vehicles.**

~~(2)~~ (4) "Instructor" means:

(A) a person, whether acting for himself **or herself** as operator of a commercial driver training school or for any such school for compensation, who:

(i) teaches;

(ii) conducts classes of;

(iii) gives demonstrations to; or

(iv) supervises practice of;

persons learning to operate or drive motor vehicles or preparing to take an examination for a drivers license; and

(B) any person who supervises the work of any other such instructor.

~~(3)~~ **"Commissioner" means the Commissioner of the Bureau of Motor Vehicles.**

~~(4)~~ (5) "License" ~~shall mean~~ **means** the authorization to:

(A) operate a commercial driver training school; or ~~to~~

(B) act as a commercial driver training instructor;

and any and all documents given with the privilege.

~~(5)~~ **"Agent" shall mean any person, whether employed by a commercial driver training school or operating in his behalf; or whether acting in behalf of any school located within or outside of the State of Indiana who shall personally solicit any**

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individual within this State to enroll in a commercial driver training school.

(6) **"Motor vehicle"** has the meaning set forth in IC 9-13-2-105.

(7) **"Person"** means any of the following:

- (A) An individual.
- (B) A combination of individuals.
- (C) A firm.
- (D) A partnership.
- (E) An association.
- (F) A corporation.

(8) **"Revocation"** means the licensee privilege to:

- (A) operate a commercial driver training school; or
- (B) give commercial driver training instruction;

is terminated.

(9) **"Solicitor"** shall mean means any individual, firm, or corporation who:

- (A) sells;
- (B) offers for sale; or
- (C) attempts to sell;

any product or service.

(10) **"Student"** means a person who:

- (A) holds a permit; and
- (B) is actively enrolled in a driver education class.

(11) **"Suspension"** shall mean means the licensee privilege to:

- (A) operate a commercial driver training school; or to
- (B) give commercial driver training instruction;

is temporarily withdrawn.

(8) **"Revocation"** shall mean the licensee privilege to operate a commercial driver training school or to give commercial driver training instruction is terminated.

(9) **"Motor Vehicle"** has the meaning set forth in IC 9-13-2-105.

(10) **"Person"** shall mean any individual, combination of individuals, firm, partnership, association or corporation.

(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule I; filed May 27, 1968, 9:30 a.m.; Rules and Regs. 1969, p. 267; errata filed Aug 10, 1992, 3:00 p.m.: 15 IR 2594; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)

SECTION 3. 140 IAC 4-1-2 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-2 Application for school license

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-27-4

Sec. 2. Requirements for commercial driver training school license. (a) No person, on or after July 1, 1968, 2005, shall:

- (1) operate;
- (2) conduct;
- (3) maintain; or
- (4) establish;

a commercial driver training school in the state of Indiana unless he or she holds a valid, current license issued by the commis-

sioner. of the Indiana Bureau of Motor Vehicles.

(2) (b) Before any license is issued, an application shall must be made in writing to the commissioner on forms prepared and furnished by the commissioner.

(3) (c) The application shall must contain, along with any additional information that the commissioner deems necessary, the following:

(a) (1) The title or name and address of the school, together with the names, and addresses, and e-mail addresses of all owners or partners of an unincorporated school, or the names and addresses of all officers of an incorporated school.

(b) (2) A list and description of the equipment to be used in the school operation.

(c) (3) The specified course of instruction which that will be offered, and the dates and times of the courses throughout the fiscal year.

(d) (4) The qualifications of instructors, agents, and supervisors in each specified field together with their names, addresses, and other information as deemed necessary by the commissioner.

(e) (5) A detailed statement showing the financial condition of the school if requested by the commissioner or his or her authorized agent.

(f) (6) A schedule of all tuitions, fees, and charges to be made by the school.

(g) A sworn statement that the (7) All owners, officers, and instructors are of high moral character and reputation and have not been adjudicated a felon the ten years shall be required to provide a criminal background check applied for with the Indiana state police immediately preceding the date of the application.

(4) (d) The following additional information shall must accompany the application along with any further information that the commissioner shall deem necessary:

(a) (1) Applicants or any officer or partner thereof shall will be required to furnish with the application three (3) photographs taken within thirty (30) days to date of filing and must be presented with the application. The photographs shall must consist of one (1) full-face, one (1) left profile, and one (1) right profile. All photographs must:

(A) be one and one-half (1½) inch square; and must

(B) show the shoulders and an uncovered head.

Updated photographs must be provided to the commissioner upon request.

(b) (2) One (1) set of fingerprints of each digit on the right and left hands accompanied by an affidavit from an Indiana state, county, city, or town enforcement officer, who is qualified to take fingerprints, that the photographs and fingerprints are those of the applicant.

(c) (3) A sworn statement that each instructor employed by the school:

(A) is in possession of a valid, current instructor's license issued by the commissioner; and

(B) has not been adjudicated a felon the ten (10) years immediately preceding the date of the application.

(d) (4) Samples of any and the following:

(A) All contracts to be used by the school.

(e) Samples of any and (B) All written examinations to be given to the students.

(f) Samples of (C) All forms used by the school which that will be furnished or delivered to the students.

(g) (5) If a commercial driver training school has agents or solicitors employed, a copy of the financial agreement between the school and the agents or solicitors.

(6) The school must furnish each student with a copy of the BMV approved "Code of Responsibilities for Driver Education Students" and "Bill of Rights for Driver Education Students".

(7) The school must furnish all advertisements that will be used including Web site information if applicable.

(5) (e) Every application for a commercial driver training school license must be accompanied by an application fee of one hundred ~~(\$100.00)~~ dollars **(\$100)** in the form of a certified check, ~~or~~ United States postal money order, **or corporate check**. No license fee ~~shall~~ **will** be refunded in the event that the license is rejected, suspended, or revoked. There shall be no reduction in fee in the event of application after the beginning of the fiscal year. Licenses expire at midnight, June 30 of each fiscal year. (*Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule II; filed May 27, 1968, 9:30 a.m.; Rules and Regs. 1969, p. 268; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230*)

SECTION 4. 140 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-3 License term; transfer; display; replacement; changes; renewal

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-27-4

Sec. 3. ~~The Commercial Driver Training School License:~~ **(1)**
(a) Each commercial driver training school license shall be valid for a period of one **(1)** fiscal year beginning July 1 and ending June 30. **The license will be valid only for the fiscal year for which it is issued, and there will be no reduction in fee in the event of application after the beginning of the fiscal year. The license will expire at midnight, June 30 of each fiscal year.**

(2) (b) The commercial driver training school license ~~shall~~ **is** not ~~be~~ transferable. In the event of change of ownership, application for a new license must be made, and the old license surrendered to the commissioner before a new license will be issued to the new owner. **The new owner must follow all rules and regulations as described herein to apply for a license as a new school. The school must not conduct any training classes to students during the transition of ownership.** The

fee for the new license ~~shall will~~ be one hundred ~~(\$100.00)~~ dollars **(\$100)** in the form of a certified check, United States postal money order, or corporate check and ~~shall must~~ accompany the application.

(3) (c) The commercial driver training license certificate ~~shall~~ **must** be conspicuously displayed in the licensee's principal place of business at all times.

(4) (d) In the event the commercial driver training school license is lost, destroyed, or mutilated, a duplicate **must be obtained and** will be issued upon proof of the facts and, in case of mutilation, upon surrender of ~~such the~~ license. ~~Such The~~ proof ~~shall must~~ consist of an affidavit indicating **the following:**

(a) (1) The date the license was lost, destroyed, or mutilated.

(b) (2) The circumstances surrounding the loss, destruction, or mutilation

(c) (3) In the event of loss or theft, the name of the police department or police authority to which the report was made and ~~the date of said the~~ report.

The fee for a duplicate commercial driver training school license ~~shall will~~ be ~~five (\$5.00)~~ **twenty dollars (\$20)**. The fee ~~shall must~~ be in the form of a certified check, ~~or~~ United States postal money order, **or corporate check** and must be remitted before the duplicate will be issued.

(5) (e) In the event of any change in address or a change of officers, etc., the following will be required:

(a) (1) The commissioner ~~shall must~~ be notified in writing **as follows:**

(A) Immediately upon the change of address **or e-mail address** of the owner, partner, **or officer.** ~~or driving instructor.~~

(b) The Commissioner shall be notified in writing (B) Within ten (10) days of any change in the officers or directors of a corporation. Officers and directors must supply the same information as would be required on an application by the corporation.

(c) (2) Failure to inform the commissioner ~~shall will~~ be grounds for suspension or revocation of the commercial driver training school license.

(6) (f) Application or renewal of license **requirements are as follows:**

(a) (1) Application or renewal of a license ~~shall must~~ be made on forms prescribed and provided by the commissioner. A renewal fee of one hundred ~~(\$100.00)~~ dollars **(\$100)** in the form of a certified check, ~~or~~ United States postal money order, **or corporate check** must accompany the renewal application.

(b) Where an (2) The application is made for the renewal of a commercial driver training school license; the applicant may continue to conduct business as a commercial driver training school until the renewal application is granted or denied by the Commissioner; Provided, The renewal application is properly must be filed with the commissioner on or before

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~~June 15~~ midnight, May 1 of the current license year. Submission of an incomplete application will result in its return, and the commercial driver training school will not be in compliance with the filing deadline stated herein. A commercial driver training school must not conduct business after the expiration of the current license until the commissioner has granted a new license.

(7) (g) To change the name of a commercial driver training school before the expiration date, the owners must make application to the commissioner for a name change accompanied by a certified check, ~~or~~ United States postal money order, **or corporate check** in the amount of ~~ten (\$10.00)~~ **twenty dollars (\$20)**. The change of name ~~shall~~ **will** be contingent upon approval of the commissioner. In the event of refusal, the ~~ten (\$10.00)~~ **twenty dollar (\$20)** fee shall be refunded.

(8) ~~A name change upon expiration date of the license can be effected in the renewal application by inserting the new name in the license application and attaching thereto an application for name change. There shall be no additional charge for a name change if requested as stated. The change of name shall be contingent upon approval of the Commissioner.~~

(9) ~~If in a partnership, a partner withdraws, the Commissioner shall be notified within five (5) calendar days by certified mail. Should a new partner be added the school shall make application for a new license as provided for in these rules and regulations. (Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule III; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 269; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)~~

SECTION 5. 140 IAC 4-1-4 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-4 Location of school

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 20-1-1-6; IC 20-1-1-6.2; IC 36-1-2-17

Sec. 4. (a) A commercial driver training school that is properly licensed shall be allowed to conduct classroom training ~~only~~ in a county outside the county where the school is located to the students of:

- (1) a school corporation (as defined in IC 36-1-2-17);
- (2) a nonpublic secondary school that voluntarily becomes accredited under IC 20-1-1-6; or
- (3) a nonpublic secondary school recognized under IC 20-1-1-6.2;

if the governing body of the school corporation or the nonpublic secondary school approves the delivery of the training to its students.

(b) Subsection (a)(1) through (a)(3) is subject to a contract or memorandum of understanding from the school corporation, nonpublic secondary school, or nonpublic secondary school recognized under IC 20-1-1-6.2 with the commercial

driver training school who is conducting the course. Classes must be held in a building provided by the school corporation, nonpublic secondary school, or nonpublic secondary school recognized under IC 20-1-1-6.2. The commercial driver training school conducting the course is subject to the rules described in section 7 of this rule. The commissioner or the commissioner's designee may accept reasonable alternative requirements to satisfy this rule.

(c) The commercial driver training school must conduct all classes and operate out of the address appearing on the application.

(b) (d) In no instance shall a commercial driver training school operate in any manner from a residential dwelling. (*Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule IV; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 270; readopted filed Oct 17, 2001, 4:37 p.m.: 25 IR 915*)

SECTION 6. 140 IAC 4-1-5 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-5 Office operations; classrooms; advertising

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-27-4

Sec. 5. All commercial driver training schools ~~shall~~ **must** operate from an office in the following manner:

(1) The commercial driver training school license shall be placed in a conspicuous location within the office.

(2) All records pertaining to the operation of the school ~~shall~~ **must** be maintained in the main office of the school and available for inspection in the presence of the owner or **designee**, after giving notice thereof, by the commissioner or his **or her** authorized agent between the hours of 9 a.m. and 5 p.m. local time, Monday through ~~Friday~~, **Saturday**, excluding legal holidays. Refusal of the owner or an employee to grant an inspection of the records ~~shall~~ **will** be grounds for suspension or revocation.

(3) **The commissioner or his or her authorized agent may periodically attend classroom instruction without notice. Refusal of the owner or an employee to grant attendance will be grounds for suspension or revocation.**

(3) (4) The telephone located in the school ~~shall~~ **must** be used exclusively for the operation of the commercial driver training school.

(4) (5) Sufficient indoor space to teach students the theoretical instruction relating to the rules and regulations of the road and safe driving practices ~~shall~~ **must** be included within the office. The classroom ~~shall~~ **must** be enclosed to eliminate any and all extraneous interference from the public. The classroom shall:

(A) contain chairs and desks or tables in sufficient number to accommodate students;

(B) have adequate lighting; and

(C) be of sufficient size to comfortably accommodate the

students, but in no event shall the classroom contain less than two hundred and twenty-five (225) square feet of usable area.

A minimum of one (1) "unisex" handicapped accessible restroom is required with a functioning lock. Approval of any license application ~~shall~~ **will** be contingent upon approval of the classroom and office space by the commissioner or his **or her** authorized agent.

~~(5)~~ **(6)** One (1) employee of the school must be available ~~from 9 a.m. to 5 p.m., Monday through Friday, a minimum of thirty (30) hours per week~~ to give information regarding lessons. ~~or produce the school's records in the event the commissioner or his authorized agent wishes to inspect the school. Refusal to grant an inspection will be grounds for suspension or revocation.~~

~~(6)~~ **(7)** The office ~~shall~~ **must** not be operated in conjunction with any other business.

~~(7)~~ **(8)** The owner or operator will be permitted to list **the following:**

(A) His or her home phone number in his or her advertisements provided it specifically states that the number may be called after 6 p.m.

~~(8)~~ **The owner or operator will be permitted to list (B)** His or her home address and phone number on his or her business cards.

(9) All commercial driver training schools wishing to provide information electronically or use a telephone answering service in connection with their business shall do so in the following manner: The electronic information service or use of the telephone answering service shall be secondary in the operation of the school. The telephone answering service shall only be used when there is no one in the school's business office to answer the telephone. **The outgoing message is required to provide, at a minimum, the following:**

(A) **The school's operational hours.**

(B) **The school's location.**

(C) **A message indicating calls will be returned to provide requested information.**

(10) In the event a commercial driver training school ceases to operate, the commissioner shall be notified in writing ten (10) calendar days before closure and all student records for the preceding fifteen (15) month period must be provided to the bureau upon request.

(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule V; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 271; readopted filed Oct 17, 2001, 4:37 p.m.: 25 IR 915)

SECTION 7. 140 IAC 4-1-6 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-6 Name of school

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-27-4

Sec. 6. **Commercial Driver Training School Name:** No

commercial driver training school ~~shall~~ **can** use, adopt, or conduct any business under a name that is the same, like, or deceptively similar to the name used by another driving school without the written approval of the commissioner. A commercial driver training school ~~shall at no time~~ **cannot** use the words:

- (1) state;
- (2) government;
- (3) municipal;
- (4) city; or
- (5) county;

in any part of the school name. *(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule VI; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 272; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)*

SECTION 8. 140 IAC 4-1-7 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-7 Ownership of more than one school

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-27-4

Sec. 7. **Additional Commercial Driver Training Schools:** ~~(1)~~

(a) The owner of a commercial driver training school desiring to operate an additional school or schools ~~shall~~ **must** make application on forms prescribed and furnished by the commissioner. Upon approval of the application, the commissioner shall issue a license, appropriately endorsed, for use at the school.

~~(2)~~ **(b)** It shall be permissible, upon approval by the commissioner, for schools to bear the same name so long as ~~the ownership one (1) owner's name~~ is identical for all schools concerned.

~~(3)~~ **(c)** Any and all additional schools ~~shall~~ **must** meet the same requirements and follow the same procedure as the licensed original as provided for in these rules and regulations. *(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule VII; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 272; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)*

SECTION 9. 140 IAC 4-1-8 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-8 Records

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-27-4

Sec. 8. **Commercial Driver Training School Records:** Every commercial driver training school ~~shall~~ **must** maintain the following records ~~which shall be retained~~ for three (3) years:

~~(a)~~ **(1)** A file setting forth **the following:**

(A) The name, address, contract number, and terms of payment with respect to every person giving:

- (i)** lessons;
- (ii)** lectures;

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- (iii) tutoring;
- (iv) instructions of any kind; or
- (v) any other service relating to instructions in the operation of a motor vehicle.

~~(b) A file setting forth~~ (B) The names and addresses of all students along with the amount and type of training completed.

~~(c) (2)~~ A record of all receipts and disbursements **if requested by the commissioner or his or her authorized agent.**

~~(d) (3)~~ A file containing a duplicate copy of every contract entered between the school and every person taking lessons, lectures, tutoring, and instructions relating to the operation of a motor vehicle. The original contract ~~shall~~ **must** be given to the student taking instruction and a ~~carbon~~ duplicate thereof retained by the school **in the form of paper or electronic provided the school can reproduce it if requested by the commissioner or his or her authorized agent.**

(4) An electronic file providing the student's:

- (A) full name;
- (B) phone number;
- (C) contract number;
- (D) grades and hours in classroom;
- (E) behind the wheel training; and
- (F) date of course completion.

(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule VIII; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 272; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)

SECTION 10. 140 IAC 4-1-9 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-9 Contracts with students

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-24; IC 9-27-4

Sec. 9. ~~Commercial Driver Training School Contracts. All Contracts with students shall be required for each student~~ **and must** be written and conform to the following standards:

~~(a) (1)~~ Each contract ~~shall~~ **must**:

(A) contain the agreed contract price per hour, lesson, or course;

~~(b) Each contract shall~~ (B) enumerate all related charges to be made to the student; **and**

~~(c) Each contract shall~~ (C) include the following clause: "An owner, officer, instructor, agent, or employee of any commercial driver training school shall not state nor give the impression to a student that upon completion of the course, they will guarantee the securing of a driver's license to operate a motor vehicle."

~~(d) (2)~~ The term "no refund" ~~shall~~ **must** not be present in the contract. Schools may substitute the following: "The school will not refund any fee, tuition, or charge or any part thereof should the school be ready, willing, and able to fulfill its part of the contract."

(Bureau of Motor Vehicles; Driver Training Schools and

Instructors Rule IX; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 272; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)

SECTION 11. 140 IAC 4-1-10 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-10 Insurance coverage

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-25; IC 9-27-4

Sec. 10. ~~Commercial Driver Training School Insurance. As follows,~~ no commercial driver training school license ~~shall~~ **will** be issued unless and until:

(1) The applicant has filed with the commissioner evidence of insurance in a company authorized to do business in the state of Indiana in the amount of at least:

(A) one hundred thousand ~~(\$100,000)~~ dollars **(\$100,000)** because of bodily injury to or death of any one (1) person and subject to said limit respecting one (1) person; ~~in the amount of at least~~

(B) three hundred thousand ~~(\$300,000)~~ dollars **(\$300,000)** because of bodily injury to or death of two (2) or more persons in any one (1) accident; and ~~in the amount of at least~~

(C) twenty-five thousand ~~(\$25,000)~~ dollars **(\$25,000)** because of injury to or destruction of property in any one (1) accident.

(2) The commercial driver training school ~~shall~~ **must** furnish evidence of such insurance coverage in the form of a certificate from the insurance carrier, which shall:

(A) stipulate that the commissioner shall be notified when the policy expires or if it is ~~cancelled~~, **canceled**; and ~~shall~~

(B) include the make, model, and manufacturer's identification number of any and all automobiles covered in the policy.

Proof of insurance must be made available to the commissioner upon request.

(3) Commercial driver training schools covered by fleet policies can effect sufficient notice of additional vehicles covered by sending written verification from the insurance company to the commissioner, using the make, model, and manufacturer's identification number, stating that the vehicle has been included in the coverage.

(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule X; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 273; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230)

SECTION 12. 140 IAC 4-1-11 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-11 Vehicle standards

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-25; IC 9-27-4

Sec. 11. (a) Every motor vehicle used for commercial driver

training ~~shall~~ **must** have a current Indiana registration plate and be a recent model with not more than five (5) years having elapsed from the date of purchase. As used in this subsection, "date of purchase" means the date of purchase listed upon the certificate of title that was received from the application using the manufacturer's certificate of origin. Every motor vehicle used for commercial driver training ~~shall~~ **must** have the additional equipment as follows:

- (1) One (1) operable extra foot brake.
- (2) One (1) rearview mirror placed on the inside of the motor vehicle.
- (3) Two (2) outside rearview mirrors, one (1) on each side of the vehicle.
- (4) Cushions for the proper seating of students when necessary.

(b) Every training vehicle being operated by a student ~~who has had less than four (4) hours of practical driving instruction~~ must be conspicuously marked ~~as a~~ **and visible from all four (4) sides of the** training vehicle.

(c) ~~If, after four (4) hours of practical training, a student demonstrates suitable proficiency in operating a motor vehicle, the instructor may give instruction in a private vehicle if the student provides proof of insurance coverage:~~

- (1) ~~in at least the amount of twenty-five thousand dollars (\$25,000) because of bodily injury to or death of any one (1) person; and subject to said limit respecting one (1) person;~~
- (2) ~~in the amount of fifty thousand dollars (\$50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident; and~~
- (3) ~~in the amount of ten thousand dollars (\$10,000) because of injury to or destruction of property in any one (1) accident.~~

(c) **Every training vehicle must be clean and in good working condition.**

(d) The school vehicle identification certificate issued by the commissioner ~~shall~~ **must** be carried in the vehicle at all times while driving instructions are being given.

(e) **The vehicle registration and current insurance information must be carried in the vehicle at all times.** (*Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule XI; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 273; readopted filed Oct 17, 2001, 4:37 p.m.: 25 IR 916*)

SECTION 13. 140 IAC 4-1-12 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-12 Curriculum

Authority: IC 9-14-2-2; IC 9-27-4
Affected: IC 9-24; IC 9-27-4

Sec. 12. ~~Commercial Driver Training School Instruction:~~ Commercial driver training schools licensed by the commissioner ~~of the Indiana Bureau of Motor Vehicles shall~~ **must** make

available both theoretical and practical instruction **as follows:**

(1) The theoretical course of instruction shall include, but not be limited to, the following:

- (A) Subject matter relating to rules and regulations of operating a motor vehicle.
- (B) Safe driving practices **including how to avoid drivers who display aggressive and unsafe behavior.**
- (C) Pedestrian safety.
- (D) Driver responsibility.
- (E) Accident reporting.
- (F) Mental attitudes and physical characteristics of individuals as related to the operation of a motor vehicle.
- (G) Maintenance of an automobile.
- (H) Handling of driver emergencies.
- (I) Driving skills **including the following:**
 - (i) **Proper lane changing.**
 - (ii) **Lane positioning.**
 - (iii) **Proper signaling.**
 - (iv) **Merging**
- (J) Basic first aid
- (K) Signs, signals, highway markings, and highway design features ~~which~~ **that** require understanding for the safe operation of a motor vehicle.
- (L) **Backing and parallel parking.**

In preparing questions to be used for instructional or evaluative purposes, the school ~~shall~~ **must** not use questions prepared in the same manner as examination questions used by the Indiana bureau of motor vehicles.

(2) The practical course of instruction shall include the demonstration of ~~and an~~ actual instruction in:

- (A) stopping;
- (B) starting;
- (C) shifting;
- (D) turning;
- (E) **lane changing;**
- (F) **lane positioning;**
- (G) **merging;**
- (H) **signaling;**
- (I) backing;
- (J) parallel parking; and
- (K) steering;

in a dual controlled vehicle ~~which~~ **that** meets the standards prescribed by the commissioner.

(*Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule XII; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 274; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230*)

SECTION 14. 140 IAC 4-1-13 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-13 Instructor's license; qualifications

Authority: IC 9-14-2-2; IC 9-27-4
Affected: IC 9-24; IC 9-27-4-5.5

Sec. 13. (a) No person, on or after July 1, ~~1968;~~ **2005**, shall

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give commercial driver training instruction for compensation or act as a commercial driver training instructor unless he **or she**:

(1) holds a valid, current commercial driver training instructor license issued by the commissioner; ~~of the Indiana bureau of motor vehicles and unless he~~

(2) is employed by a licensed driver training school.

This section does not apply to any full-time teachers in an accredited high school, college, or university who has among his **or her** duties the teaching of driver's education except when employed as an instructor in a commercial driver training school as set forth in the Act and in these rules and regulations.

(b) Requirements for applications and applicants are as follows:

(1) All applications for an instructor's license must be accompanied by a:

(A) certified check, ~~or~~ United States postal money order, **or corporate check** in the amount of ten ~~(\$10)~~ dollars **(\$10)**; and ~~a~~

(B) notarized statement from the owner of a commercial driver training school listing the applicant's ~~name in~~ full **legal name**, the applicant's address, and a statement that the applicant will be employed by the school.

The application for the renewal of an instructor's license must be filed with the commissioner on or before midnight, May 1 of the current license year. Submission of an incomplete application will result in its return, and the instructor will not be in compliance with the filing deadline stated herein. This rule applies to original and renewal applications.

(2) All applicants ~~shall~~ **must** be citizens of the United States of America.

(3) Every commercial driver training instructor: ~~shall~~

(A) **must** be:

- (i) at least twenty-one (21) years of age; and
- (ii) a person of high moral character; **and**

(B) **will be required to provide a criminal background check applied for with the Indiana state police.**

(4) Every person ~~shall~~ **must** hold a valid driver license before making application for a commercial driver training instructor license.

(5) Each application ~~shall~~ **must** be accompanied by a statement from a physician certifying mental ability **and** visual acuity and that the applicant does not have any: ~~contractual~~

(A) **contractual** diseases;

(B) hearing ailments;

(C) epilepsy; or

(D) other malady causing loss of consciousness.

(6) The visual acuity of an instructor ~~shall~~ **must** not be less than 20/40 in either eye with or without eyeglasses or other means of visual correction.

(7) **The visual fields of an instructor shall not be less than fifty-five (55) degrees in either eye.**

~~(7)~~ (8) An instructor giving practical training shall not be absent one (1) functional eye, hand, foot, or leg.

(8) All instructors **must** successfully complete a special written test, a vision test, and a road test, prepared and administered under the authorization of the commissioner, embracing subject matter pertinent to highway design, road signs, and the care, operation, and laws affecting the operation and traffic of motor vehicles. The contents of the written examination shall be taken from the following materials:

(A) The Indiana driver manual;

(B) Indiana motor vehicle laws;

(C) Indiana rules and regulations governing commercial driver training schools and instructors;

(D) Other sources dealing with driver education.

The commissioner may allow for a case-by-case analysis or an instructor's ability to perform instruction in the vehicle or in the classroom and require additional requirements before licensing.

(c) **In conjunction with IC 9-27-4-5.5**, requirements for the instructor license are as follows:

(1) The instructor license shall be valid for a period of one (1) fiscal year beginning July 1 and ending June 30. The license ~~shall~~ **will** be valid only for the fiscal year for which it is issued, and there ~~shall~~ **will** be no reduction in fee in the event of application after the beginning of the fiscal year. All licenses ~~shall~~ **will** expire at midnight, June 30 of each fiscal year.

(2) Where an application is made for the renewal of a commercial driver training instructor license, the ~~applicant may continue to give instructor~~ **must not provide** instruction in the ~~commercial driver or training school until the renewal application is granted or denied by the commissioner, provided the renewal application is properly filed with the commissioner on or before June 15 after the expiration of the current year license year until the commissioner has granted a new license.~~

(3) The instructor wishing to renew his or her license shall submit himself or herself for a complete **physical** reexamination every other year. **The physical must be valid in order to maintain a valid instructor license.**

~~(4) Examinations shall be given at such time and place, as the commissioner shall determine.~~

~~(5)~~ (4) The commissioner, at his **or her** discretion, may order a complete or partial **physical** reexamination of any licensed instructor at any time.

~~(6)~~ (5) An instructor ~~shall~~ **must** have in his or her possession an identification card:

(A) issued by the commissioner; and

(B) containing information prescribed by the commissioner; while acting in behalf of the school he or she is licensed to represent.

~~(7)~~ (6) The instructor's license certificate shall be maintained ~~in~~ **on** file by the commercial driver training school so long as the instructor shall remain in the employ of ~~said~~ the school.

~~(8) More than one (1)~~ (7) **Any** chargeable accident during any consecutive ~~three (3)~~ **two (2)** year period can make an instruc-

tor's license subject to review by the commissioner or his **or her** authorized agent.

~~(9)~~ **(8)** Any violation resulting in suspension or revocation of driving privilege shall cause the revocation of the instructor's license.

~~(10)~~ **(9)** Every commercial driver training instructor who is not licensed to operate a motor vehicle by the Indiana bureau of motor vehicles ~~shall cause to be sent~~ **must provide** to the commissioner a certified copy of his or her driving record from the jurisdiction from which his or her license is issued. This certified record ~~shall~~ **must** be filed:

(A) with the commissioner before the original application will be approved; and ~~shall be filed~~

(B) upon each and every subsequent renewal.

(10) The commissioner must be notified in writing immediately upon the change of address of driving instructor.

(11) In the event the commercial driver training instructor license is lost, destroyed, or mutilated, a duplicate must be obtained and will be issued upon proof of the facts and, in the case of mutilation, upon surrender of the license. The proof must consist of an affidavit indicating the following:

(A) **The date the license was lost, destroyed, or mutilated.**

(B) **The circumstances surrounding the loss, destruction, or mutilation.**

(C) **In the event of loss or theft, the name of the police department or police authority to which the report was made and the date of the report.**

(d) The fee for a duplicate commercial driver training instructor license will be five dollars (\$5). The fee must be:

(1) in the form of a certified check, United States postal money order, or corporate check; and

(2) remitted before the duplicate will be issued.

(Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule XIII; filed May 27, 1968, 9:30 a.m.; Rules and Regs. 1969, p. 274; readopted filed Oct 17, 2001, 4:37 p.m.: 25 IR 916)

SECTION 15. 140 IAC 4-1-14 IS AMENDED TO READ AS FOLLOWS:

140 IAC 4-1-14 General provisions

Authority: IC 9-14-2-2; IC 9-27-4

Affected: IC 9-24; IC 9-27-4

Sec. 14. General Provisions. ~~(1)~~ **(a)** If the commissioner finds that the application and the school or instructor for which the license is sought, complies with:

(1) IC 9-27-4; and

(2) the rules and regulations of the commissioner promulgated under the provisions of IC 9-27-4;
a license shall be issued to the applicant.

~~(2)~~ **(b)** No person shall perform any instructional duties as an owner or employee of any school or branch thereof unless ~~such~~

the person shall meet the qualifications for instructors as herein provided, and all instructional personnel must possess a valid instructor's license issued by the commissioner. of the Indiana Bureau of Motor Vehicles.

~~(3)~~ **(c)** No:

(1) state official or his or her agent or employee whose duties relate in any way to the issuance of Indiana driver driver's licenses; nor any or

(2) employee of the Indiana bureau of motor vehicles or any member of his or her immediate family;

shall be connected in any capacity whatsoever with any commercial driving school.

~~(4)~~ **(d)** Any full-time teacher in an accredited high school, college, or university who has among his **or her** duties the teaching of driver's education shall be exempt from these regulations except when employed as an instructor in a commercial driver training school.

~~(5)~~ **(e)** The provisions of the rules and regulations shall not apply to **any of the following:**

(1) Any person giving driver training lessons without charge.

to

(2) Employers maintaining driver training schools without charge for their employees only. or to

(3) Schools or classes conducted by colleges, universities, and high schools for students regularly enrolled in such a course.

~~(6)~~ **(f)** The commissioner, at his **or her** discretion, may establish an advisory board consisting of licensed commercial driver training school operators and licensed commercial driver training instructors. The advisory board shall have as its ~~chairman~~ **chairperson** the commissioner or his **or her** appointed representative. The members of the board shall:

(1) serve at the pleasure of the commissioner; and shall

(2) receive no compensation for their services.

~~(7)~~ **(g)** No complete course of instruction ~~conforming to the standards of the Indiana Department of Public Instruction~~ shall be completed in ~~less fewer than fourteen (14)~~ **sixteen (16)** calendar days **and not more than ninety (90) days of the first day the course commences. The ninety (90) days can only be waived by written agreement of a student or the parent of the minor student. Not more than two and one-half (2½) hours of classroom or one (1) hour of behind the wheel instruction can be completed in a twenty-four (24) hour period with not more than five (5) two and one-half (2½) hour classroom sessions or three (3) one (1) hour behind the wheel instruction sessions can be scheduled in less than one (1) week. The school must notify the bureau with the name of any student and an explanation of why he or she did not complete the course within ninety (90) days.**

~~(8)~~ **(h)** The commissioner is herein and hereby empowered to grant instructor licenses that are restricted to theoretical instruc-

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tions when the applicant has some affliction or impairment ~~which that~~ would otherwise make it impossible for him ~~or her~~ to receive a license.

~~(9)~~ **(i)** The commercial driver training school is required to ascertain, before giving practical instruction to Indiana residents, that the student possesses a valid:

- (1)** driver education permit;
- (2)** learner's permit;
- (3)** operator license;
- (4)** chauffeur license; or
- (5)** public passenger chauffeur license;

from the Indiana bureau of motor vehicles. All nonresident students must hold a valid license or permit allowing them to operate a motor vehicle in their home state.

~~(10)~~ **(j)** The course of instruction for any person holding a valid driver education permit shall consist of both theoretical and practical instruction in at least the minimal amounts ~~as prescribed by the Indiana Department of Public Instruction: of thirty (30) clock hours of classroom and six (6) clock hours of behind the wheel training.~~ In the event that an individual has successfully completed either the theoretical or practical instruction at either an accredited institution or a licensed commercial driver training school, the school at which the individual is applying can, with written certification from the ~~bureau and the school which that~~ the individual took the course, give the remaining instruction. When the courses of instruction are given at two **(2)** schools, the school giving the latter of the courses ~~can have with~~ records as to the previous instruction **may** certify that the individual has successfully completed both phases, ~~(i.e. that is,~~ theoretical and practical, of his ~~or her~~ training.

~~(11)~~ **(k)** The school shall **do the following:**

- (1)** Agree to permit the commissioner or his ~~or her~~ representatives to inspect the school. ~~and shall~~
- (2)** Make available to the commissioner, at any time when requested to do so, full information pertaining to any or all items of information contained ~~in the application form, and shall herein.~~
- (3)** Permit them to make photostatic copies of the school records required to be kept by the commissioner.

~~(12)~~ **(l)** A school may change its:

- (1)** fee schedule;
- (2)** contracts;
- (3)** examinations; or
- (4)** other forms required to be filed with the commissioner;

only when the school has by certified mail notified the commissioner at least thirty (30) calendar days ~~prior to such before the~~ change.

~~(13)~~ **(m)** A school shall not **do the following:**

- (1)** Use any name other than its licensed name for advertising or publicity purposes. ~~nor shall a school~~

(2) Advertise or imply that it is:

- (A)** supervised;
- (B)** recommended; or
- (C)** endorsed;

by the commissioner or the Indiana bureau of motor vehicles.

~~(14)~~ **(n)** No commercial driver training school shall advertise in any manner until such time as ~~the school is properly licensed~~ by the commissioner **properly licenses the school.**

(1) Commercial schools will be permitted to associate with other lawful commercial enterprises and to accept endorsements, promotions, cooperative advertising, and strategic marketing partnerships so long as the ventures:

- (A) do not diminish the importance of driver education;**
- (B) are not perceived:**
 - (i) by the bureau as unethical; and**
 - (ii) as an endorsement by the state of Indiana or any of its bureaus or agencies.**

(2) Commercial schools must provide the bureau with copies of any and all contracts and information concerning the commercial enterprises if requested by the commissioner or his or her authorized agent.

~~(15)~~ **(o)** No commercial driver training school instructor, employee, or agent will be permitted to **do the following:**

(1) Accompany any student into any office being used for the giving of ~~driver driver's~~ license examinations for the purpose of assisting a student taking an examination.

~~(16) No commercial driver training school instructor, employee or agent shall be permitted to~~ **(2)** Loiter in or on the premises rented, leased, owned, or used in conjunction with the Indiana bureau of motor vehicles.

~~(17) No commercial driver training school instructor, employee or agent shall be permitted to~~ **(3)** Personally solicit any individual on the premises rented, leased, owned, or used in conjunction with the Indiana bureau of motor vehicles for the purpose of enrolling them in any commercial driver training school.

~~(18)~~ **(p)** Any false information on any application or form shall be grounds for suspension or revocation of any license issued.

~~(19)~~ **(q)** The commissioner may suspend or revoke any license or certificate mentioned in this Act or rules and regulations promulgated ~~pursuant to~~ **under** IC 9-27-4 if he ~~or she~~ shall find any of the ~~following~~ violations **listed in this subsection.** Violations that are cause for suspension or revocation are inclusive of, but not limited to, the following:

~~(a)~~ **(1)** The licensee has violated any provision of:

- (A)** IC 9-27-4; or ~~any of~~
- (B)** the rules and regulations of the commissioner.

~~(b)~~ **(2)** The applicant ~~or~~ licensee ~~or~~ any instructor or agent:

- (A)** is addicted to the use of:
 - (i)** alcoholic liquors;
 - (ii)** morphine;

(iii) cocaine; or

(iv) other drugs having similar effects; or

(B) shall become incompetent.

~~(e)~~ (3) The licensee has failed or refused to permit the commissioner or his **or her** representative to inspect:

(A) the school; ~~or~~

(B) the class; ~~or~~

(C) motor vehicles ~~which that~~ are used to teach its students; or

(D) full information pertaining to any or all items contained in ~~an application form or to its program~~. **the rules and regulations.**

~~(d)~~ (4) The applicant has failed or refused to submit to the commissioner an application for license in the manner prescribed by the commissioner.

~~(e)~~ (5) The licensee has failed or refused to produce his **or her** license when requested to do so either by:

(A) prospective students; or

(B) the commissioner or his **or her** authorized agent.

~~(f)~~ (6) The applicant or licensee has failed to maintain:

(A) adequate standards of instruction or qualified instructors; or

(B) equipment sufficient to maintain the school or classes.

~~(g)~~ (7) The licensee is employing instructors, teachers, or agents who have not been approved and licensed by the department.

~~(h)~~ (8) There has been a change in ownership of the school without advising the department immediately by the herein established procedure.

~~(i)~~ (9) The licensee is instructing students contrary to the restrictions imposed on the students' driver license.

~~(j)~~ (10) The licensee has the unauthorized possession of application forms or questionnaires used by the Indiana bureau of motor vehicles in conjunction with administering ~~driver driver's~~ license examinations.

(r) **The license of any driver's license instructor may be suspended or revoked after due notice and a hearing outlining the reasons for suspension or revocation that may include one (1) or more of the following violations:**

(1) **Willful or repeated violation of any of the provisions of the law, rules, or regulations of the bureau of motor vehicles dealing with licensing.**

(2) **Committing any act that, in the opinion of the commissioner, constitutes unprofessional conduct, intemperance, or negligence in the performance of duties required and privileges conferred by licensure.**

(3) **Practicing fraud, deceit, or misrepresentation in obtaining a license.**

(4) **Conducting fraudulent, misleading, or deceptive advertising or promotion in regard to commercial instruction programs.**

Upon application for restoration of a license that has been revoked or suspended for any reason under this rule, the commissioner, at his or her discretion, may reinstate the

license or certification after a due hearing and apply restrictions to the restoration.

~~(20)~~ (s) Violations that are cause for permanent revocation are inclusive of, but not limited to, the following:

~~(a)~~ (1) The licensee has been convicted of a felony or any crime involving:

(A) violence;

(B) dishonesty;

(C) deceit;

(D) indecency; or

(E) moral conduct.

~~(b)~~ (2) The licensee has aided or assisted a person in obtaining a ~~driver driver's~~ license by fraudulent procedure.

(t) The commissioner may enact procedures for electronic transfer of student information, fees, and licensing as modern technology becomes available. (*Bureau of Motor Vehicles; Driver Training Schools and Instructors Rule XIV; filed May 27, 1968, 9:30 a.m.: Rules and Regs. 1969, p. 276; errata filed Aug 10, 1992, 3:00 p.m.: 15 IR 2594; readopted filed Jul 30, 2001, 10:27 a.m.: 24 IR 4230*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 7, 2006 at 8:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Bureau of Motor Vehicles will hold a public hearing on proposed amendments concerning interim plates and commercial driver training schools and instructors.

This proposed rule does not impose any requirement or costs on a regulated entity not expressly required by state or federal law except for those requirements or costs necessary for public safety, public protection, and to implement the requirements of state or federal law.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N440 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David J. Certo

Chief Legal Counsel

Bureau of Motor Vehicles

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

Proposed Rule
LSA Document #06-1

DIGEST

Amends 305 IAC 1, which governs licensed professional geologists, by adding provisions regarding probation, amending

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provisions regarding suspension and revocation, and providing for consistency of actions. Makes technical corrections. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

The Indiana Board of Licensure for Professional Geologists (Board) estimates that no small business will be directly affected by this rule. The Board has authority to promulgate rules in accordance with IC 25-17.6-3-12 including rules reasonably required for the conduct of the Board's responsibilities and duties.

305 IAC 1-1-2

305 IAC 1-3-5.3

305 IAC 1-1-3

305 IAC 1-3-5.5

305 IAC 1-3-5

305 IAC 1-3-6

SECTION 1. 305 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

305 IAC 1-1-2 Administrative review and judicial review

Authority: IC 25-17.6-3-12

Affected: IC 4-21.5-1-15; IC 4-21.5-5-5; IC 14-10-2-2; IC 25-17.6

Sec. 2. (a) The board shall notify a person who is denied a new license, is denied a renewal license, ~~has a license suspended, is placed on probation, is reprimanded,~~ or has a license revoked of the following:

- (1) The reason for the action.
- (2) How the person may take administrative review. ~~and~~
- (3) That any administrative review must be initiated within thirty (30) days of the action.

(b) Any administrative review of a decision by the board under this article shall be taken to an administrative law judge appointed by the natural resources commission under IC 14-10-2-2 and shall be addressed as follows:

Director, Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, Indiana 46204

(c) In addition to IC 25-17.6 and this article, administrative review is governed by IC 4-21.5 and 312 IAC 3-1. The parties to a proceeding are the board and the individual aggrieved by a decision of the board directed to that individual.

(d) An administrative law judge is the ultimate authority for the board under IC 4-21.5-1-15. A party who is dissatisfied with a final order rendered by an administrative law judge may take judicial review under IC 4-21.5-5. (*Indiana Board of Licensure for Professional Geologists; 305 IAC 1-1-2; filed May 8, 1999, 5:18 p.m.: 22 IR 2214; errata filed Jul 21, 1999, 11:30 a.m.: 22 IR 3937; filed Mar 6, 2000, 7:58 a.m.: 23 IR 1618*)

SECTION 2. 305 IAC 1-1-3 IS ADDED TO READ AS FOLLOWS:

305 IAC 1-1-3 Consistency of actions

Authority: IC 25-17.6-3-12

Affected: IC 4-21.5-3-27; IC 4-21.5-3-32; IC 25-17.6

Sec. 3. (a) The board and, on administrative review, an administrative law judge, shall seek to achieve consistency in the application of licensure and sanctions.

(b) Significant departures from prior decisions involving similar conduct shall be explained in findings or orders. (*Indiana Board of Licensure for Professional Geologists; 305 IAC 1-1-3*)

SECTION 3. 305 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

305 IAC 1-3-5 Probation, suspension, and revocation

Authority: IC 25-17.6-3-12

Affected: IC 4-21.5-3-8; IC 25-17.6-3-5; IC 25-17.6-8-1

Sec. 5. (a) ~~The board may issue a complaint under IC 4-21.5-3-8 to suspend or revoke a license, or may refuse to renew a license. When a licensed professional geologist is found responsible for any a violation of IC 25-17.6-8-1, the board may do any of the following:~~

(1) ~~Issue a complaint under IC 4-21.5-3-8 or IC 25-17.6-3-5 to do the following:~~

(A) ~~Place a license on probation.~~

(B) ~~Suspend a license.~~

(C) ~~Revoke a license.~~

(2) ~~Refuse to renew a license.~~

(b) Any violation of IC 25-17.6 or this article is a violation of the code of ethics of the board as prescribed by IC 25-17.6-8-1(4). (*Indiana Board of Licensure for Professional Geologists; 305 IAC 1-3-5; filed Mar 8, 1999, 5:18 p.m.: 22 IR 2218; errata filed Jul 21, 1999, 11:30 a.m.: 22 IR 3937; filed Mar 6, 2000, 7:58 a.m.: 23 IR 1621*)

SECTION 4. 305 IAC 1-3-5.3 IS ADDED TO READ AS FOLLOWS:

305 IAC 1-3-5.3 Probationary license

Authority: IC 25-17.6-3-12

Affected: IC 4-21.5-3-8; IC 25-17.6-8-1; IC 25-17.6-9

Sec. 5.3. (a) A licensed professional geologist whose license has been placed on probation may be subject to any of the following sanctions, singly or in combination:

(1) Report regularly to the board upon the matters that are the basis of the probation.

(2) Limit practice to those areas prescribed by the board.

(3) Continue or renew professional education approved by the board until a satisfactory degree of skill is attained in the areas that are the basis of the probation.

(4) Perform or refrain from performing any acts, including community restitution or service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the licensee.

(b) The board:

- (1) shall determine a reasonable time for the geologist's license to remain on probationary status; and
- (2) at any time, may remove some or all sanctions of probation.

(c) A geologist whose license is placed on probation may petition the board for removal of probationary status at the time determined by the board in subsection (b).

(d) A geologist is entitled to administrative review of a board determination under this section subject to IC 25-17.6-9. (*Indiana Board of Licensure for Professional Geologists*; 305 IAC 1-3-5.3)

SECTION 5. 305 IAC 1-3-5.5 IS ADDED TO READ AS FOLLOWS:

305 IAC 1-3-5.5 Reinstatement of suspended or revoked license

Authority: IC 25-17.6-3-12

Affected: IC 4-21.5-3-8; IC 25-17.6-3-7; IC 25-17.6-8-1

Sec. 5.5. (a) Where a determination is issued under IC 25-17.6-3-7(e)(2) to suspend a license, the board may reinstate the license if the suspended person establishes the ability to practice with reasonable skill, safety, and competency. As a condition of reinstatement, the board may impose disciplinary or corrective measures authorized under this rule, including those of a probationary license.

(b) Where a determination is issued under IC 25-17.6-3-7(e)(2) to revoke a license, the board shall not reinstate the license.

(c) An individual whose license has been revoked shall:

- (1) submit an application to the board; and
- (2) be considered as a new applicant.

(*Indiana Board of Licensure for Professional Geologists*; 305 IAC 1-3-5.5)

SECTION 6. 305 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

305 IAC 1-3-6 Informal hearings before the board

Authority: IC 25-17.6-3-12

Affected: IC 4-21.5; IC 25-17.6

Sec. 6. (a) The board may conduct informal hearings to consider **any of the following**:

- (1) The issuance **or denial** of a new license.
- (2) The renewal of a license.

(3) The ~~denial or~~ suspension of a license.

(4) **The revocation of a license.**

(5) **The reprimand of a practitioner.**

(6) **The placement of a license on probation or other condition of a license.**

(7) Any other matter pertaining to the validity of ~~an individual~~ a license.

(b) An informal hearing under this section is not:

(1) subject to IC 4-21.5; and ~~is not~~

(2) governed by formal rules of evidence.

The board is not required to record a hearing held under this section. (*Indiana Board of Licensure for Professional Geologists*; 305 IAC 1-3-6; filed Mar 8, 1999, 5:18 p.m.: 22 IR 2218; errata filed Jul 21, 1999, 11:30 a.m.: 22 IR 3937; filed Mar 6, 2000, 7:58 a.m.: 23 IR 1621)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 26, 2006 at 2:00 p.m., at the Indiana Geological Survey, 611 North Walnut Grove, Room S-102, Bloomington, Indiana the Indiana Board of Licensure for Professional Geologists will hold a public hearing on proposed amendments to 305 IAC, governing licensed professional geologists.

The Indiana Board of Licensure for Professional Geologists (Board) is adopting this rule to clarify the procedures for sanctioning a license. The Board also is clarifying the type of sanctions that can be imposed. The adoption of this rule gives clear guidance to the Board as to how to administer sanctions. While the Board could continue to function without adopting this rule, the Board feels that with the turnover of Board members, it would better serve the licensed professional geologist community and the general public to have clear guidelines to assist the Board in administering sanctions.

Copies of these rules are now on file at the Indiana Geological Survey, 611 North Walnut Grove, Bloomington, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Amanda Wilson

Licensing Coordinator

Indiana Board of Licensure for Professional Geologists

**TITLE 318 DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT**

Proposed Rule

LSA Document #06-125

DIGEST

Adds 318 IAC concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal

manufacture of a controlled substance in accordance with IC 13-14-1-15. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Background:

The Indiana Department of Environmental Management (Department) is authorized to adopt the proposed rules under IC 13-14-1-15, added by Public Law 192-2005 (SEA 444, SECTION 6). Under that section, the Department is required to create and maintain a list of persons who are qualified to inspect and clean property that is polluted by a contaminant. That Act added chemicals used in the illegal manufacture of controlled substances, immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances to the definition of contaminants. That Act also required the Department to adopt rules to establish qualifications for persons qualified to inspect and clean contaminated properties and to set standards for cleaning these properties.

Estimated number of small businesses subject to the proposed rule:

Small businesses affected by this rule are generally identified by the following NAICS codes:

- 23594 Wrecking and Demolition Contractors. In 2002, there were 29 establishments in NAICS Code 23594 with fewer than 100 employees in Indiana. The Department estimates that no more than 12 entities in NAICS Code 23594 will apply for listing under this rule. The Department assumes that all of these entities are small businesses.
- 5311 Lessors of Real Estate, including 53111 Lessors of Residential Buildings and Dwellings, 53112 Lessors of Nonresidential Buildings (except Miniwarehouses), 53113 Lessors of Miniwarehouses and Self-Storage Units, and 53119 Lessors of Other Real Estate Property. In 2002, there were 1,778 establishments in NAICS Code 5311 with fewer than 100 employees in Indiana. The Department estimates that about 113 of these entities will be affected annually by this rule. It is reasonable to assume that all of these entities are small businesses.
- 562111 Solid Waste Collection. In 2002, there were 114 establishments in NAICS 562111 with fewer than 100 employees in Indiana. Because this rule does not require contaminated properties owned by these entities to be cleaned, the Department estimates that none will be affected by this rule.
- 56291 Remediation Services. In 2002, there were 51 establishments in NAICS Code 56291 with fewer than 100 employees in Indiana. The Department estimates that approximately 12 entities in NAICS Code 56291 will apply for listing under this rule. It is not possible to determine at this time how many will be small businesses.
- 72111 Hotels (except casino hotels) and Motels. In 2002, there were 762 establishments in NAICS Code 72111 with fewer than 100 employees in Indiana. The Department estimates that about 18 of these establishments will be affected annually by this rule. The Department estimates that 17 of these entities will be small businesses.

• Other small businesses that may be affected as property owners may be farms and other property owners with open land or vacant structures. Because the occurrence rate of illegal drug labs is very low, a very small percentage of these entities would be affected. It is not possible to determine at this time how many will be small businesses.

• A number of construction contractors in NAICS codes 233 and 235 that are small businesses may be affected by the requirement to comply with 29 CFR 1910.120(e) if they reconstruct contaminated properties. There is no way of estimating at this time how many of these entities would engage in reconstructing contaminated properties and be affected by or benefit from this proposed rule. It is not possible to determine at this time how many will be small businesses.

Estimated average annual reporting, record keeping, and other administrative costs:

Following cleanup of a contaminated property, the proposed rule would require a qualified inspector to provide the owner of the contaminated property with a certificate of decontamination and to provide copies to the local health department and the State Department of Health. The owner of a contaminated property could remove contaminated materials from a structure but would be required to obtain a certificate of decontamination for that property. A demolition contractor would be required to provide the property owner and the local and state health departments with a written notice that demolition has been completed. The qualified inspector would have to retain laboratory records for five years or transfer them to the local or state health department. The Department has no way to meaningfully estimate these administrative costs at this time.

Estimated total economic impact of compliance with the proposed rule:

Because the Department cannot predict the choices property owners may make in the future, the economic impact of this rulemaking cannot be meaningfully quantified at this time. Compliance with this rule will be a significant cost to property owners affected by this rule. At the same time, compliance with this rule would allow remediation contractors, wrecking contractors, and other contractors to receive payment for services performed under this rule. The Department expects the costs to property owners to roughly balance the benefits to contractors who clean up these properties.

Statement justifying the imposition of the costs and requirements:

IC 13-14-1-15 requires the Department to establish a list of persons qualified to inspect and clean contaminated properties. That law also requires the Department to adopt rules for cleanup and standards for listing.

Regulatory flexibility analysis of less intrusive, less costly or alternative methods:

The proposed rule includes alternatives that will allow an individual property owner to select the most cost-effective cleanup option for that owner's individual situation. The rule includes only the minimum requirements that will allow a remediation contractor to protect human health while cleaning

up a property, complying with federal requirements, and disposing of resulting waste in compliance with Indiana law.

318 IAC

SECTION 1. 318 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 318 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ARTICLE 1. INSPECTION AND CLEANUP OF PROPERTY CONTAMINATED WITH CHEMICALS USED IN THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE

Rule 1. General

318 IAC 1-1-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15

Affected: IC 6-1.1-25-4.1; IC 13-14-1-15

Sec. 1. This article applies to the following:

- (1) The owner of a contaminated property as defined in 318 IAC 1-2-14.
- (2) A person who applies to be listed or who is listed by the department as qualified to inspect and clean up contaminated property.
- (3) A person who cleans up contaminated property under this article.
- (4) A county that takes possession of a contaminated property in accordance with IC 6-1.1-25-4.1

(Department of Environmental Management; 318 IAC 1-1-1)

Rule 2. Definitions

318 IAC 1-2-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11; IC 13-14-1-15

Sec. 1. The definitions in IC 13-11 and this rule apply throughout this article. *(Department of Environmental Management; 318 IAC 1-2-1)*

318 IAC 1-2-2 "Certification" or "certify" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. "Certification" or "certify" means the act of stating the facts about the inspection of a contaminated property under 318 IAC 1-5 and stating in writing that the facts are true and accurate. *(Department of Environmental Management; 318 IAC 1-2-2)*

318 IAC 1-2-3 "Chemicals used in the illegal manufacture of a controlled substance" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-42; IC 35-48-1-9; IC 35-48-1-17; IC 35-48-4-14.5

Sec. 3. "Chemicals used in the illegal manufacture of a controlled substance" means all substances used in or resulting from the illegal manufacture of controlled substances including the following:

- (1) Contaminants as defined in IC 13-11-2-42.
- (2) Controlled substances as defined in IC 35-48-1-9.
- (3) Immediate precursors as defined in IC 35-48-1-17.
- (4) Chemical reagents and precursors as defined in IC 35-48-4-14.5.

(Department of Environmental Management; 318 IAC 1-2-3)

318 IAC 1-2-4 "Cleanup" or "clean up" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 9-22; IC 13-14-1-15

Sec. 4. (a) "Cleanup" or "clean up" means either of the following:

- (1) Decontamination, followed by inspection and certification of decontamination under 318 IAC 1-5.
- (2) Demolition of the structure under 318 IAC 1-6.

(b) The term refers to actions taken after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents.

(c) In the case of a vehicle, the term means either of the following:

- (1) Decontamination, followed by inspection and certification of decontamination under 318 IAC 1-5.
- (2) Disposal under IC 9-22.

(Department of Environmental Management; 318 IAC 1-2-4)

318 IAC 1-2-5 "Commissioner" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. "Commissioner" means the commissioner of the department. *(Department of Environmental Management; 318 IAC 1-2-5)*

318 IAC 1-2-6 "Contaminated property" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 5-2-15; IC 10-11-8-2; IC 13-11-2-42; IC 13-14-1-15; IC 36-7-9

Sec. 6. (a) "Contaminated property" means real property or a vehicle that meets any of the following criteria:

- (1) The property or vehicle:
 - (A) has been identified by a law enforcement agency as having been used for the illegal manufacture of a controlled substance; and
 - (B) is reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.
- (2) The law enforcement agency that terminates the operation of a methamphetamine laboratory has reported the existence of an operational laboratory at that property on the "Indiana State Police Methamphetamine Labora-

tory Occurrence Report” form in accordance with IC 5-2-15.

(b) For an apartment building, multifamily dwelling, condominium, hotel, or motel, the term is limited to the unit that was identified by the law enforcement agency as having been used for the illegal manufacture of a controlled substance if all of the following are true:

(1) The entry to the unit is located on the:

(A) outside of the structure; or

(B) interior of the structure and is closed by a door assembly that meets the requirements of the 2003 Indiana Building Code at 675 IAC 13-2.4.

(2) The unit has no opening to another unit or space. However, if the unit connects to another unit or space, the contaminated property includes all connecting units or spaces.

(3) The heating, ventilating, and air conditioning system for that unit is enclosed within that unit and is separate from the heating, ventilating, and air conditioning system of any other unit, except for:

(A) a hot water boiler that serves more than one (1) unit in the structure; or

(B) an air conditioning condenser located outside the structure.

(c) The property is not a contaminated property if the law enforcement agency that identifies the property as having been used for the illegal manufacture of a controlled substance determines that:

(1) the process used to manufacture the controlled substance has not been started;

(2) all chemicals to be used to manufacture the controlled substance have been removed; and

(3) no contamination related to the illegal manufacture of a controlled substance is present.

(d) The term includes any areas outside a structure that were used for the disposal of chemicals used in the illegal manufacture of a controlled substance.

(e) A property is no longer a contaminated property when the certificate of decontamination for that property is issued. (*Department of Environmental Management; 318 IAC 1-2-6*)

318 IAC 1-2-7 “Contamination” or “contaminant” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-42; IC 13-14-1-15

Sec. 7. “Contamination” or “contaminant” has the meaning set forth at IC 13-11-2-42. (*Department of Environmental Management; 318 IAC 1-2-7*)

318 IAC 1-2-8 “Decontaminate” or “decontamination” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 8. “Decontaminate” or “decontamination” means removal of chemicals used in the illegal manufacture of a controlled substance from a contaminated property that occur after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents. (*Department of Environmental Management; 318 IAC 1-2-8*)

318 IAC 1-2-9 “Department” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-13-1; IC 35-48-1-9

Sec. 9. “Department” means the department of environmental management established under IC 13-13-1. (*Department of Environmental Management; 318 IAC 1-2-9*)

318 IAC 1-2-10 “Illegally manufactured controlled substance” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-9

Sec. 10. “Illegally manufactured controlled substance” means a controlled substance, as defined in IC 35-48-1-9, that has been illegally manufactured. (*Department of Environmental Management; 318 IAC 1-2-10*)

318 IAC 1-2-11 “Inspect” or “inspection” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 11. (a) “Inspect” or “inspection” means the activities conducted to confirm that the property meets the decontamination levels in 318 IAC 1-5-2, Table 1, or to confirm that decontamination is not required. These activities are regulated by 318 IAC 1-5 and include the following:

(1) Sampling.

(2) Analysis by an independent laboratory.

(3) Reporting of laboratory results.

(b) The term does not include activities of any of the following:

(1) State and local law enforcement agencies.

(2) Hazardous materials responders.

(3) Local health departments.

(*Department of Environmental Management; 318 IAC 1-2-11*)

318 IAC 1-2-12 “Law enforcement agency” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 10-11-8-2; IC 35-48-1-18

Sec. 12. “Law enforcement agency” has the meaning set forth in IC 10-11-8-2. (*Department of Environmental Management; 318 IAC 1-2-12*)

318 IAC 1-2-13 “Manufacture” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-18

Sec. 13. “Manufacture” has the meaning set forth in IC

35-48-1-18. *(Department of Environmental Management; 318 IAC 1-2-13)*

318 IAC 1-2-14 “Owner of the contaminated property” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 35-48-1-18

Sec. 14. “Owner of the contaminated property” means either of the following:

- (1) A person having an ownership interest in the contaminated property.
- (2) An agent of a person having an ownership interest in the contaminated property.

(Department of Environmental Management; 318 IAC 1-2-14)

318 IAC 1-2-15 “Person” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-11-2-158

Sec. 15. “Person” has the meaning set forth at IC 13-11-2-158(a). *(Department of Environmental Management; 318 IAC 1-2-15)*

318 IAC 1-2-16 “Qualified inspector” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-11-2-158

Sec. 16. “Qualified inspector” means a person who has been placed on the qualified inspector list. *(Department of Environmental Management; 318 IAC 1-2-16)*

318 IAC 1-2-17 “Qualified inspector list” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-11-2-158; IC 13-14-1-15

Sec. 17. “Qualified inspector list” means the list of persons that the department has determined to be qualified to carry out the duties described in 318 IAC 1-5-1 for qualified inspectors. *(Department of Environmental Management; 318 IAC 1-2-17)*

Rule 3. Responsibilities of the Owner of Contaminated Property

318 IAC 1-3-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

Sec. 1. (a) This rule applies to the owner of any of the following properties that meet the definition of a contaminated property:

- (1) Single or multiple family residences.
- (2) Hotels or motels.
- (3) Businesses.
- (4) Vehicles.
- (5) Rental storage units.
- (6) Outbuildings that are accessible to children.

(7) Buildings used for storage that are accessible to children.

(8) Any other property that contains equipment and containers of chemicals used for illegal manufacture of a controlled substance.

(b) This rule does not apply to any of the following if all equipment and containers of chemicals used for illegal manufacture of a controlled substance have been removed:

- (1) Outbuildings that are not accessible to children.
- (2) Buildings used for storage that are not accessible to children.
- (3) Waste collection containers.
- (4) Open land where no structure is contaminated.

(Department of Environmental Management; 318 IAC 1-3-1)

318 IAC 1-3-2 Cleanup required

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

Sec. 2. If the initial assessment of the property shows that contamination may exceed the final decontamination levels listed in 318 IAC 1-5-2, Table 1, then the owner of the contaminated property shall clean up the contaminated property as required by this article before:

- (1) continuing to occupy or use the property;
- (2) reoccupying or reusing the property;
- (3) allowing the property to be reoccupied or reused; or
- (4) transferring any interest in the property to another person.

(Department of Environmental Management; 318 IAC 1-3-2)

318 IAC 1-3-3 Qualified inspector required for decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 3. The owner of contaminated property who has that property decontaminated shall retain a qualified inspector from the list of qualified inspectors to carry out all duties listed in 318 IAC 1-5-1. *(Department of Environmental Management; 318 IAC 1-3-3)*

318 IAC 1-3-4 Contaminated property in the possession of a county

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 6-1.1-25-4.1; IC 13-14-1-15

Sec. 4. (a) A county may take possession of a contaminated property in accordance with IC 6-1.1-25-4.1 without complying with this rule, unless that property is, or will be, occupied while in the possession of the county.

(b) A county may transfer a contaminated property in accordance with IC 6-1.1-25-4.1 without complying with this rule if the county notifies the person who receives the tax deed to the property that the property is a contaminated

property. The person who receives the tax deed to a contaminated property under IC 6-1.1-25-4.1 must comply with this rule. (*Department of Environmental Management; 318 IAC 1-3-4*)

318 IAC 1-3-5 Decontamination by the owner of the contaminated property

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 5. (a) The owner of a contaminated property shall not decontaminate property controlled by that person unless the decontamination is done under the supervision of a qualified inspector.

(b) The owner of a contaminated property shall not issue a certificate of decontamination under 318 IAC 1-5-9 for property owned or controlled by that person. (*Department of Environmental Management; 318 IAC 1-3-5*)

Rule 4. Listing by the Department as a Qualified Inspector

318 IAC 1-4-1 Who must be listed as a qualified inspector

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 1. (a) A person who performs any of the activities listed in 318 IAC 1-5-1 at a contaminated property must be listed on the qualified inspector list.

(b) A person who:

- (1) is not a supervisor; and
- (2) decontaminates a contaminated property under the supervision of a qualified inspector;

is not required to be listed on the qualified inspector list but must have received the training for general site workers required by 29 CFR 1910.120(e), revised as of July 1, 2005. 29 CFR 1910.120 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. (*Department of Environmental Management; 318 IAC 1-4-1*)

318 IAC 1-4-2 Criteria for listing

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 2. (a) A person who applies to be listed as a qualified inspector must meet all of the criteria in this section.

(b) Each person who applies to be listed as a qualified inspector shall have accumulated at least forty (40) hours of experience doing any of the following:

- (1) Decontaminating contaminated properties.
- (2) Emergency response operations, cleanup or remediation operations, corrective actions, or operations involving hazardous wastes that are regulated under 29

CFR 1910.120, revised as of July 1, 2005.

(c) Each person who applies to be listed as a qualified inspector shall have received the training for supervisors required by 29 CFR 1910.120(e), revised as of July 1, 2005.

(d) Each person who applies to be listed as a qualified inspector shall have done all of the following:

- (1) Received training on decontamination and inspection of contaminated property provided by the department.
- (2) Passed an examination on the subject matter of the training provided by the department with a score of at least eighty percent (80%).

(e) To remain on the qualified inspector list, each qualified inspector shall receive all of the following refresher training:

- (1) Eight (8) hour annual refresher training that meets the requirements of 29 CFR 1910.120(e)(8), revised as of July 1, 2005.
- (2) Biennial refresher training provided by the department.

(f) Each qualified inspector shall maintain the following insurance:

- (1) Professional liability insurance in the amount of at least one million dollars (\$1,000,000).
- (2) Errors and omissions insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.

(g) A person who decontaminates property under this article shall maintain pollution prevention insurance in the amount of at least three million dollars (\$3,000,000). (*Department of Environmental Management; 318 IAC 1-4-2*)

318 IAC 1-4-3 Application to be listed on the qualified inspector list

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 3. (a) A person who wishes to be listed on the qualified inspector list must apply to the department in writing. The application may be in any form but must include all of the following information:

- (1) Full name, address, telephone, and electronic mail contact information.
- (2) Copies of documents showing the applicant meets all applicable criteria in this rule.
- (3) Complete information showing how the person should be described on the qualified inspector list.

(b) Mail or deliver the application to the Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251. (*Department of Environmental Management; 318 IAC 1-4-3*)

318 IAC 1-4-4 Qualified inspector list

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 4. (a) The department will maintain a current list of all persons who have been found by the department to be qualified to inspect and clean contaminated properties.

(b) The purpose of the qualified inspector list is to allow owners of contaminated properties, local health departments, and other persons to:

- (1) locate qualified inspectors; and
- (2) verify that a person is qualified to inspect and clean contaminated properties.

(c) Listing of a person on the qualified inspector list does not convey a property right.

(d) The qualified inspector list will be available to the public as follows:

- (1) In person or by mail at Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.
- (2) By telephone at (317) 232-4535 or toll-free at (800) 451-6027 in Indiana.
- (3) Electronically on the department's Web site at <http://www.in.gov/idem/land/>.

(e) The department will review each application for completeness. When the person or persons identified in the application have demonstrated that all criteria of this rule have been met, the department will place that person or persons on the qualified inspector list.

(f) The department will remove a person from the qualified inspector list who submits a written request for removal from the list to the address in section 3(b) of this rule.

(g) The department may remove a person from the qualified inspector list if the person demonstrates a failure to meet the requirements of this article.

(h) The department may return a person to the qualified inspector list when the condition that caused the department to remove that person from the list has been corrected. (*Department of Environmental Management; 318 IAC 1-4-4*)

318 IAC 1-4-5 Decontamination by a person not listed on the qualified inspector list prohibited

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 5. (a) A person who is not listed by the department on the qualified inspector list shall not:

- (1) supervise decontamination of a contaminated property;
- (2) inspect a contaminated property;

- (3) issue a certificate of decontamination; or
- (4) advertise to decontaminate contaminated properties.

(b) A certificate of decontamination issued by a person who is not listed by the department on the qualified inspector list is not valid to certify decontamination of a contaminated property. (*Department of Environmental Management; 318 IAC 1-4-5*)

Rule 5. Inspection and Decontamination of Contaminated Property

318 IAC 1-5-1 Duties of a qualified inspector

Authority: IC 4-22-2; IC 5-2-15; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 1. A qualified inspector shall do all of the following:

- (1) Review the Indiana State Police Methamphetamine Laboratory Occurrence Report prepared by the law enforcement agency under IC 5-2-15 relevant to that property.
- (2) Consult with the law enforcement agency that terminated the laboratory and the local health department to determine the types of contamination that may reasonably be expected to be present.
- (3) Conduct an initial assessment of the contaminated property to determine the following:

(A) The types and levels of contamination present, including contamination in the septic system or sewage disposal system.

(B) The scope and extent of the decontamination, if any, that will be required to achieve the final decontamination levels listed in Table 1 of section 2 of this rule.

This assessment must cover the entire contaminated property and areas outside a structure that may have been used for disposal of chemicals used in the illegal manufacture of a controlled substance.

(4) Notify both of the following in writing that decontamination will be conducted at that location and the date that decontamination will begin:

(A) The local health department.

(B) Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(5) Supervise decontamination of the property, including the septic system and sewage disposal system.

(6) Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system.

(7) Follow the procedure in section 3 of this rule if contamination is found outside the structure.

(8) Inspect the contaminated property in accordance with this rule:

(A) when decontamination is complete; or

(B) if the initial assessment required by subdivision (3)

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shows that decontamination is not required; to determine that the levels of contamination are below the levels listed in Table 1 of section 2 of this rule.

(9) When the levels of contamination have been determined to be below the levels listed in Table 1 of section 2 of this rule, certify in accordance with section 9 of this rule that:

- (A) the property has been decontaminated; and
- (B) the levels of chemicals used in the illegal manufacture of a controlled substance that were found at the property are below the decontamination levels listed in Table 1 of section 2 of this rule.

(10) Comply with 29 CFR 1910.120, revised as of July 1, 2005, during all decontamination operations.

(11) Dispose or arrange for disposal of wastes resulting from decontamination in accordance with the following:

- (A) 329 IAC 3.1 for wastes that are hazardous wastes as defined in 40 CFR 261.3, as incorporated by reference in 329 IAC 3.1-6-1.
- (B) 327 IAC 7.1 for wastewater from a septic system.
- (C) 329 IAC 10 for all other wastes resulting from decontamination.

(Department of Environmental Management; 318 IAC 1-5-1)

318 IAC 1-5-2 Inspection of contaminated property following decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 2. (a) Before issuing a certificate of decontamination, the qualified inspector shall inspect the contaminated property for the chemicals listed in Table 1 that are determined to be present during the review of law enforcement reports and assessment required by section 1(1) through 1(3) of this rule.

(b) The qualified inspector shall use the sampling procedures in this rule.

(c) Analysis for the contaminants listed in Table 1 must use:

- (1) Method 8270C, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectroscopy", (Method 8270C), from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I, II, IIA, IIB, III, IIIA, and IIIB (SW-846), available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238; or
- (2) an equivalent method acceptable to the commissioner.

(d) The qualified inspector shall determine if the levels of chemicals listed in Table 1 are equal to or lower than the decontamination levels in Table 1.

Table 1.

Chemical	Final Decontamination Level
Methamphetamine	0.1 µg/100 cm ²
Ephedrine	0.1 µg/100 cm ²
Pseudoephedrine	0.1 µg/100 cm ²
Lysergic acid diethylamide (LSD)	0.1 µg/100 cm ²
3,4-methylenedioxy-methamphetamine (MDMA) (Ecstasy)	0.1 µg/100 cm ²
Phencyclidine (PCP)	0.1 µg/100 cm ²
Gamma hydroxybutyrate (GHB)	0.1 µg/100 cm ²

(e) All sample analysis must be conducted by an independent laboratory. *(Department of Environmental Management; 318 IAC 1-5-2)*

318 IAC 1-5-3 Contamination outside a contaminated structure

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 3. If the assessment required by section 1(3) of this rule indicates that contamination exists outside the contaminated structure, the qualified inspector shall:

- (1) remove all contaminated material, including soil;
- (2) dispose of all contaminated material and soil in accordance with 329 IAC 10; and
- (3) document removal in the certificate of decontamination issued under section 9 of this rule.

(Department of Environmental Management; 318 IAC 1-5-3)

318 IAC 1-5-4 Removal in lieu of decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 4. (a) Instead of having the property decontaminated to meet the decontamination levels in Table 1 of section 2 of this rule, the owner of the contaminated property may remove all potentially contaminated material from the interior of the structure or dwelling unit identified as a contaminated property.

(b) The owner of the contaminated property who removes contaminated materials in lieu of decontamination shall remove all of the following from the contaminated property:

- (1) All contents of the structure or dwelling unit and all personal property.
- (2) All plaster and lath, wallboard, and paneling covering all walls and ceilings.
- (3) All floor covering. However, the subflooring may be left in place and sealed if there is no visible contamination present.
- (4) All cabinets, shelves, and closet fixtures.
- (5) All interior doors, baseboards, and moldings.
- (6) All appliances.
- (7) All plumbing and electrical fixtures except as provided

in subsection (c).

(8) Window air conditioners.

(9) Any remaining equipment or materials used in or resulting from the illegal manufacture of a controlled substance.

(c) The following may remain in the structure or dwelling unit if they are thoroughly washed with solvent and then washed again with detergent and water:

(1) Exterior window assemblies.

(2) Exterior doors.

(3) Plumbing and electrical systems and light fixtures that are not enclosed in walls and ceilings.

(4) Recessed light fixtures.

(5) Ceramic or porcelain plumbing fixtures.

(6) Heating, ventilating, and air conditioning appliances except window air conditioners.

(d) Heating, ventilating, and air conditioning ductwork may remain in the structure if:

(1) it has been decontaminated; and

(2) a qualified inspector has inspected the ductwork in accordance with this rule.

(e) Insulation in exterior walls may remain in place if it is covered with a vapor barrier.

(f) Plumbing and electrical systems enclosed in walls and ceilings may remain in place without cleaning.

(g) Inspection of rooms or spaces where removal was done is not required if the removal was done in accordance with this section.

(h) The qualified inspector shall document removal of contaminated material under this section in the certificate of decontamination. (*Department of Environmental Management; 318 IAC 1-5-4*)

318 IAC 1-5-5 Preparation for sampling

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-104; IC 13-14-1-15

Sec. 5. The qualified inspector shall ensure that all of the following have been removed from the contaminated property before sampling:

(1) Carpeting and other floor covering.

(2) Drapery.

(3) Furniture.

(4) Clothing.

(5) Paper and textiles.

(6) Food.

(7) Other household goods.

(8) Household hazardous waste as defined in IC 13-11-2-104.

(*Department of Environmental Management; 318 IAC 1-5-5*)

318 IAC 1-5-6 Number and location of required samples

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 6. (a) Each room and space in the contaminated property shall be sampled. Except as provided in subsection (g), the qualified inspector shall collect all of the samples required by this section in accordance with ASTM D 6661-01, "Standard Practice for Field Collection of Organic Compounds from Surfaces Using Wipe Sampling" (ASTM D 6661-01) or another equivalent method acceptable to the commissioner.

(b) In each room within the contaminated property, four (4) ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following locations:

(1) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of the floor.

(2) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of the ceiling.

(3) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of each of two (2) walls.

These four (4) wipes may be combined into one (1) sample for every room.

(c) In addition to the room samples required by subsection (b), if the contaminated property includes a kitchen, four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following:

(1) Countertop

(2) Sink.

(3) Stovetop.

(4) Floor in front of the stovetop.

If the stove or cook top has been removed, a sample shall be collected from the vent hood or, if there is no vent hood, from a cabinet in the immediate vicinity of the stove or cook top. The four (4) wipes from the kitchen may be combined into one (1) kitchen sample. Wipes from newly replaced appliances shall not be included in the sample.

(d) In addition to the room samples required by subsection (b), if the contaminated property includes a bathroom, four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following in each bathroom:

(1) Countertop.

(2) Sink.

(3) Toilet.

(4) Shower or bathtub.

The four (4) wipes from each bathroom may be combined into one (1) bathroom fixture sample for each bathroom. Wipes from newly replaced fixtures shall not be included in the sample.

(e) In addition to the room samples required by subsection (b), four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled at four (4) different locations in the ventilation system. These four (4) wipes may be combined into one (1) sample.

(f) If the contaminated property contains any cleaned appliances, one (1) ten (10) centimeter by ten (10) centimeter area for a total of one hundred (100) square centimeters shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, up to four (4) wipes may be combined into one (1) appliance sample for a total of four hundred (400) square centimeters per sample.

(g) If highly textured, coarse, or porous materials, such as concrete, brick, cloth, wood, or textured ceiling paint, are present on ceilings, walls, or floors after decontamination, those surfaces shall be:

- (1) removed;
- (2) sampled using the vacuum sampling method in ASTM D 5756-02, "Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration" (ASTM D 5756-02) or another equivalent method acceptable to the commissioner; or
- (3) sampled by removing a one hundred (100) square centimeter sample and analyzing the sample in accordance with Method 8270C or another equivalent method acceptable to the commissioner.

(h) In addition to the samples required by subsections (b) through (g), all quality control samples required by ASTM D 6661-01, ASTM D 5756-02, Method 8270C, or an equivalent method acceptable to the commissioner shall be obtained.

(i) The qualified inspector shall preserve and handle all samples in accordance with Method 8270C or another equivalent method acceptable to the commissioner.

(j) ASTM methods are available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. (*Department of Environmental Management; 318 IAC 1-5-6*)

318 IAC 1-5-7 Laboratory analytical procedures

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 7. The qualified inspector shall ensure that the laboratory that analyzes the samples uses Method 8270C, or another equivalent method acceptable to the commissioner, for all analysis. (*Department of Environmental Management; 318 IAC 1-5-7*)

318 IAC 1-5-8 Laboratory reports

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 8. The qualified inspector shall:

(1) obtain from the analytical laboratory all reports and data required by:

- (A) Method 8270C and SW-846, Chapter One; or
- (B) the equivalent method used; and

(2) retain those reports as required by section 11 of this rule.

(*Department of Environmental Management; 318 IAC 1-5-8*)

318 IAC 1-5-9 Certificate of decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 9. (a) When the final decontamination levels listed in Table 1 of section 2 of this rule have been met, the qualified inspector shall certify in writing that decontamination has been completed and all applicable final decontamination levels have been met. The certification must be:

- (1) on the form provided by the commissioner; and
- (2) signed by the qualified inspector.

(b) Within five (5) days of receiving the reports and data from the analytical laboratory, the qualified inspector shall provide the following:

- (1) The original certificate of decontamination to the owner of the contaminated property.
- (2) A copy of the certificate of decontamination to all of the following:

(A) The local health department.

(B) The Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(C) Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

(*Department of Environmental Management; 318 IAC 1-5-9*)

318 IAC 1-5-10 Third party validation

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 10. Nothing in this article may be construed to prohibit independent third party validation of any records and analytical data relevant to the contaminated property. (*Department of Environmental Management; 318 IAC 1-5-10*)

318 IAC 1-5-11 Record retention

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 11. The person who signs the certificate of decontamination shall make the following records and documents relevant to decontaminations and inspections performed by that person available upon request to the owner of the

contaminated property, the department, the local health department, and the state department of health for a period of at least five (5) years after the certificate of decontamination has been issued:

- (1) A copy of the certificate of decontamination.
- (2) All data and reports received from the laboratory that analyzes the post-decontamination samples relevant to the property.
- (3) Copies of relevant laboratory records described in Chapter One of SW-846.

(Department of Environmental Management; 318 IAC 1-5-11)

Rule 6. Demolition

318 IAC 1-6-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 1. A person who demolishes a contaminated property that is a structure or a dwelling unit shall comply with all requirements of this rule. *(Department of Environmental Management; 318 IAC 1-6-1)*

318 IAC 1-6-2 Duties of a demolition contractor

Authority: IC 4-22-2; IC 5-2-15; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 2. The demolition contractor shall do all of the following:

- (1) Review the Indiana State Police Methamphetamine Laboratory Occurrence Report prepared by the law enforcement agency under IC 5-2-15 for that property.
- (2) Perform a visual inspection of the contaminated property to identify safety and health hazards at the property that can affect the health of persons at or near the property.
- (3) Notify the local health department of the following:
 - (A) That demolition will be conducted at that location.
 - (B) The date that demolition will begin.
- (4) Remove the septic tank or ensure the septic tank has been emptied. Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance.
- (5) Protect all persons at the contaminated property from hazards identified at that property, including respiratory protection if needed.
- (6) Dispose of all materials resulting from activities under this rule in accordance with 329 IAC 10.

(Department of Environmental Management; 318 IAC 1-6-2)

318 IAC 1-6-3 Notice that demolition has been completed

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4
Affected: IC 13-14-1-15

Sec. 3. Not more than five (5) days after completing demolition, the demolition contractor shall notify the following in writing that demolition has been completed:

- (1) The local health department.

(2) The Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(Department of Environmental Management; 318 IAC 1-6-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2006 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Department of Environmental Management will hold a public hearing on proposed new rules at 318 IAC concerning inspection and cleaning of properties contaminated with chemicals used in the illegal manufacture of a controlled substance.

The purpose of this hearing is to receive comments from the public prior to adoption of these rules by the department. 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 Steve Mojonniere in the 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. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333 (TDD). Please provide a minimum of 72 hours' notification.

IC 4-22-2-24(d)(3) Statement Concerning Requirements or Costs Not Expressly Required by Statute: All requirements and costs imposed by this rulemaking are required by IC 13-14-1-15. The requirements imposed under this rulemaking are the minimum necessary to effectively implement IC 13-14-1-15. This rulemaking provides alternatives that will allow regulated entities to select the appropriate and cost effective way to comply with the rule.

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.

Thomas W. Easterly
Commissioner
Department of Environmental Management

Proposed Rules

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule LSA Document #05-315

DIGEST

Adds 345 IAC 1-1.5 to prescribe official forms, recognize electronic filing, and consolidate filing requirements. Amends 345 IAC 1-3-1.5 concerning definitions. Amends 345 IAC 1-3-4 to eliminate import permit requirements for Camelidae and Caprinae. Amends 345 IAC 2-6-1 concerning definitions. Amends 345 IAC 3-4-3 concerning official health certificates required for sale. Amends 345 IAC 7-3.5-2 concerning definitions. Amends 345 IAC 7-5-1 and 345 IAC 7-5-2.5 and adds 345 IAC 7-5-2.3 to eliminate certificate of veterinary inspection requirements for exhibition. Makes other changes to animal health laws including laws governing certificates of veterinary inspection. Repeals 345 IAC 7-5-15.1, 345 IAC 7-5-20, and 345 IAC 7-5-25.6. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

The rule affects veterinarians and owners of livestock that exhibit their animals. There are 2,363 persons with an Indiana license to practice veterinary medicine and a United States Department of Agriculture accreditation. The number of people owning livestock that exhibit the animals is estimated to be 20,000.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Imposed on Small Businesses:

The proposed changes do not impose any new reporting, record keeping, or other administrative costs. The rule clarifies filing requirements for certificates of veterinary inspection.

Estimated Total Annual Economic Impact on Small Businesses:

There is no annual economic impact on small businesses. The revisions to certificate of veterinary inspection requirements for exhibition removes a current requirement imposed on an exhibitor of livestock.

Justification for Costs:

There are no additional requirements or costs on small businesses.

Regulatory Flexibility Analysis:

The proposed rule incorporates the alternative methods the agency determined to be less costly or less intrusive to small businesses while still meeting statutory requirements.

Supporting Data, Studies, or Analyses:

The Board did not rely on any studies in reaching the conclusions in this economic impact statement.

345 IAC 1-1.5	345 IAC 7-5-1
345 IAC 1-3-1.5	345 IAC 7-5-2.3
345 IAC 1-3-4	345 IAC 7-5-2.5
345 IAC 2-6-1	345 IAC 7-5-15.1
345 IAC 3-4-3	345 IAC 7-5-20
345 IAC 7-3.5-2	345 IAC 7-5-25.6

SECTION 1. 345 IAC 1-1.5 IS ADDED TO READ AS FOLLOWS:

Rule 1.5. Official Forms

345 IAC 1-1.5-1 Definitions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-2-9.9; IC 15-2.1-3; IC 15-2.1-4; IC 15-2.1-18-17

Sec. 1. (a) The definitions in IC 15-2.1-2 and this section apply throughout this rule.

(b) “Board” means the Indiana state board of animal health appointed under IC 15-2.1-3.

(c) “Certificate of veterinary inspection” or “CVI” shall have the meaning set forth in IC 15-2.1-2-9.9.

(d) “State veterinarian” means the state veterinarian appointed under IC 15-2.1-4 and all authorized agents. (Indiana State Board of Animal Health; 345 IAC 1-1.5-1)

345 IAC 1-1.5-2 Certificates of veterinary inspection

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3; IC 15-2.1-18-17

Sec. 2. (a) The following qualify as official certificates of veterinary inspection for purposes of IC 15-2.1 and this title:

(1) A printed or electronic form that meets the following requirements:

(A) The form meets the requirements of IC 15-2.1 and this rule.

(B) The form is approved by the state veterinarian.

(C) The form is issued and signed by a veterinarian who holds the following qualifications:

(i) The veterinarian is accredited by the United States Department of Agriculture under 9 CFR, Subchapter J.

(ii) The veterinarian is licensed to practice veterinary medicine in the state.

(2) A printed or electronic form that is approved by the principal animal health official of another state if the following requirements are met:

(A) The state veterinarian determines that the form meets the requirements for a CVI in IC 15-2.1 and this title.

(B) The state of origin recognizes Indiana CVIs.

(C) The form is issued and signed by a veterinarian who holds the following qualifications:

(i) The veterinarian is accredited by the United States Department of Agriculture (USDA) under 9 CFR, Subchapter J.

(ii) The veterinarian is licensed to practice veterinary medicine in the state of origin.

(3) A printed or electronic form that is approved by the United States Department of Agriculture if the following requirements are met:

(A) The state veterinarian determines that the form meets the requirements for a CVI in IC 15-2.1 and this title.

(B) The form is issued and signed by a veterinarian who holds the following qualifications:

(i) The veterinarian is accredited by the United States Department of Agriculture (USDA) under 9 CFR, Subchapter J.

(ii) The veterinarian is licensed to practice veterinary medicine in the state of origin.

(4) A printed or electronic form that is approved by the principal animal health official of another country if the following requirements are met:

(A) The state veterinarian determines that the form meets the requirements for a CVI in IC 15-2.1 and this title.

(B) The form is recognized by the United States Department of Agriculture.

(C) The form is issued and signed by a veterinarian that is recognized by USDA as authorized to prepare official animal health documents for moving animals into the United States.

(b) A CVI that meets the requirements of this rule must be used whenever a CVI is required by IC 15-2.1 or this title. However, if a statute or rule requires a specific form for a CVI, the more specific requirement shall control over the general requirements in this rule.

(c) A veterinarian completing a CVI for animals located in Indiana must file a copy of the CVI with the board not more than thirty (30) days after the document is completed. However, if a statute or rule requires a different time frame for submission of documents, the more specific requirement shall control over the general requirements in this rule. (*Indiana State Board of Animal Health; 345 IAC 1-1.5-2*)

345 IAC 1-1.5-3 Completing, distributing, and filing official documents

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3; IC 15-2.1-18-17

Sec. 3. (a) Veterinarians must comply with the standards in 9 CFR 161.3 when issuing a CVI, form, record, or report required by this title.

(b) A person completing a CVI, form, record, or report must complete and distribute the form as indicated by the following:

- (1) The applicable requirements in IC 15-2.1.
- (2) The applicable requirements in this title.
- (3) Instructions issued on or with the form.
- (4) Instructions issued by the state veterinarian.

(c) Whenever IC 15-2.1 or a rule in this title requires any of the following be filed with the board, the state veterinarian may accept electronic filing of the document to the extent that an electronic version of the document meets the applicable requirements for the document and that electronic submission is otherwise allowed by law:

(1) A certificate of veterinary inspection.

(2) A form.

(3) A record.

(4) An application.

(5) A registration.

(6) A notice.

(7) A report.

(8) Any other document.

(*Indiana State Board of Animal Health; 345 IAC 1-1.5-3*)

SECTION 2. 345 IAC 1-3-1.5 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-1.5 Definitions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-2-15; IC 15-2.1-3-13; IC 15-2.1-4; IC 15-2.1-8; IC 15-2.1-21-6; IC 15-2.1-24

Sec. 1.5. The definitions in IC 15-2.1-2 and the following definitions apply throughout this rule:

(1) "Approved official health certificate" or "approved certificate of veterinary inspection" means an official certificate of veterinary inspection endorsed or approved by the chief livestock health official of the state of origin.

(2) "Approved vaccine" means a vaccine that is:

(A) approved by the board for use in Indiana; and

(B) manufactured under license granted by the Veterinary Biologics Division, United States Department of Agriculture.

(3) "Baby calves" means calves of all breeds that are:

(A) imported without dams; and

(B) under two hundred (200) pounds in weight.

(4) "Board" means the Indiana state board of animal health created under IC 15-2.1.

(5) "Cattle" means all animals of the:

(A) bovine species; and ~~all animals of the~~

(B) bison species.

(6) "Cervid" or "Cervidae" means all members of the Cervidae family, including **the following**:

(A) Deer.

(B) Elk.

(C) Moose.

(D) Caribou.

(E) Reindeer. ~~and~~

(F) Related species and hybrids thereof.

(7) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(8) "Class A", "Class B", or "Class C" state or zone means the state or zone is designated or classified by the United States Department of Agriculture as a brucellosis "A", brucellosis "B", or brucellosis "C" area.

(9) "Domestic animal" has the meaning set forth in IC 15-2.1-2-15.

(10) "Duly recognized slaughtering establishment" or "approved slaughtering establishment" means an establishment where domestic animals are slaughtered and processed

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for human consumption under the federal Meat Inspection Act (21 U.S.C. 601 et seq.) or the Indiana Meat and Poultry Inspection Act (IC 15-2.1-24).

(11) "Equine infectious anemia" or "EIA" means the infectious disease equine infectious anemia caused by a lentivirus, equine infectious anemia virus (EIAV).

(12) "Equine infectious anemia test" means the official test for the detection of EIA as defined in 345 IAC 6-1.1.

(13) "Farm of origin of cattle and bison" means a farm or other premises:

(A) where cattle or bison to be shipped interstate were born or have been kept for not less than four (4) months ~~prior to~~ **before** the date of shipment; and ~~which premises;~~

(B) **that**, within the four (4) months ~~prior to~~ **before** the date of shipment, have not been used to assemble cattle or bison from any other premises.

(14) "Feeder cattle" means the following cattle, but does not include female dairy type cattle of any kind:

(A) Steers of any age.

(B) Nonpregnant and nonparturient females.

(C) Bulls of beef breeds that are:

(i) obviously under eighteen (18) months of age; and ~~are~~

(ii) intended for slaughter after having reached the desired feeding state.

(15) "Feeder pigs" means:

(A) swine intended for feeding purposes, commonly designated as feeder pigs; and

(B) swine of any breed, weighing not in excess of one hundred eighty (180) pounds.

(16) "Hatchery" means hatchery equipment on one (1) premises operated or controlled by any person, company, or corporation for the hatching of poultry.

(17) "Hatching eggs" means eggs of poultry for hatching purposes, including embryonated eggs.

(18) "Immediate slaughter" means livestock that are designated for slaughter must be slaughtered within seven (7) days of first consignment.

(19) "John's disease" means an infectious communicable disease that primarily affects:

(A) cattle;

(B) sheep;

(C) goats; and

(D) other domestic, exotic, and wild ruminants;

also known as paratuberculosis, caused by *Mycobacterium paratuberculosis*.

(20) "National Poultry Improvement Plan" or "NPPI" means the National Poultry Improvement Plan and Auxiliary Provisions adopted by the board in 345 IAC 4-4-1.

(21) "Normal trade area" means an area in an adjoining state in which are located buyers and sellers who normally do business at an Indiana auction market, the size and extent of ~~such~~ **the** area to be determined by the board.

(22) "Official ear tag" is a metal identification ear tag that:

(A) conforms to the nine (9) character alphanumeric National Uniform Ear Tagging System; and ~~that~~

(B) is the appropriate color.

(23) "Official health certificate", "health certificate", ~~or "certificate of veterinary inspection", or "CVI"~~ means ~~the printed a form adopted by a state to record that meets the owner, identification, description, tests, vaccinations, and other data concerning the health status of domestic animals listed thereon. The requirements for a certificate of veterinary inspection in 345 IAC 1-1.5. CVIs, for the purpose of this rule, must be issued for the following:~~

(A) ~~issued for~~ Feeder pigs within fifteen (15) days ~~prior to~~ **before** importation.

(B) ~~issued for~~ All other domestic animals within thirty (30) days ~~prior to~~ **before** importation.

~~(C) signed by a licensed and accredited veterinarian; and~~
~~(D) in compliance with all board rules for health certificates.~~

(24) "Official test" means a disease detection test approved by the state veterinarian conducted in a laboratory approved by the state veterinarian.

(25) "Permit" means a permit for importation of domestic animals issued by the ~~the~~ state veterinarian.

(26) "Poultry" means live chickens and turkeys of all ages.

(27) "Premises identification number" means a unique number assigned by the state veterinarian to a livestock production unit that is, in the judgment of the state veterinarian, epidemiologically distinct from other livestock production units. A premises identification number shall consist of the state's two-letter postal abbreviation (IN) followed by the premises' assigned number.

(28) "Quarantine" means a law or ~~an~~ order restricting or prohibiting the movement of animals:

(A) onto or off of a premises; or

(B) into or out of an area.

(29) "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4 or an authorized agent.

(Indiana State Board of Animal Health; 345 IAC 1-3-1.5; filed Jan 8, 1986, 2:52 p.m.: 9 IR 990; filed Dec 2, 1994, 3:52 p.m.: 18 IR 855; filed Oct 11, 1996, 2:00 p.m.: 20 IR 738; errata filed Jan 2, 1997, 4:00 p.m.: 20 IR 1124; filed Jan 6, 1999, 4:22 p.m.: 22 IR 1477; errata filed Mar 31, 1999, 9:36 a.m.: 22 IR 2534; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1334; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 3. 345 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-4 Certificate of veterinary inspection and permit required for importation

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1

Sec. 4. (a) A person may not transport into Indiana a domestic animal, or a wild animal of the family Bovidae, family Suidae, family Equidae, family Cervidae, or family Camelidae, unless the animal is accompanied by an official certificate of veterinary inspection. The following animals may be transported into

Indiana without a certificate of veterinary inspection:

- (1) Those consigned for immediate slaughter.
- (2) The state veterinarian may allow a person to transport into Indiana an animal without a certificate of veterinary inspection in order to facilitate the diagnosis, prevention, or control of disease.
- (3) Swine moving under the procedures in section 16.5 of this rule.

(b) No person may transport into Indiana an animal other than those described in subsection (a) unless the animal is accompanied by a shipping manifest clearly stating the following information:

- (1) The origin of each animal.
- (2) An individual description and identification of each animal.
- (3) The destination of each animal.
- (4) The import permit number, if required under subsection (d), for the shipment.

(c) The state veterinarian may set specific restrictions, prerequisites, and other requirements for the transportation of diseased or experimental animals into Indiana. Each official certificate of veterinary inspection or shipping manifest must note any restrictions imposed.

(d) No person may transport into Indiana any domestic or wild animal of the family Bovidae, family Suidae, **or** family Cervidae, ~~or family Camelidae~~ regardless of age, sex, or breed, without first obtaining a permit to transport the animal into Indiana. Permits shall be obtained from the state veterinarian. The state veterinarian shall assign a permit number for each permit issued. The permit number shall be recorded on the certificate of veterinary inspection associated with the permitted animals or, if a certificate of veterinary inspection is not required, the shipping manifest accompanying the shipment. The certificate of veterinary inspection or shipping manifest with the correct permit number must be in possession of the person in charge of animals during movement. A person transporting the following animals into Indiana is exempt from the requirements in this subsection:

- (1) Animals transported into Indiana for immediate slaughter.
- (2) The state veterinarian may waive all or part of the requirements in this subsection for a specific shipment of animals to facilitate the diagnosis, prevention, or control of disease.
- (3) Swine moving under the procedures in section 16.5 of this rule.

(4) Animals of the subfamily Caprinae (sheep and goats).

(e) Permits for the transportation of animals into Indiana may be obtained day or night, including weekends and holidays, by calling the following telephone numbers:

- (1) For a permit to transport an animal of the bovine, ~~ovine, caprine,~~ bison, **or** Cervidae ~~or camelid~~ species, call (317) 227-0316.
- (2) For a permit to transport an animal of the porcine species,

call (317) 227-0311.

(Indiana State Board of Animal Health; Reg 76-1, Title I, Sec 3; filed Aug 10, 1976, 10:29 a.m.: Rules and Regs. 1977, p. 128; filed May 2, 1983, 10:02 a.m.: 6 IR 1039; filed Jan 8, 1986, 2:52 p.m.: 9 IR 992; filed May 24, 1988, 9:40 a.m.: 11 IR 3535; filed May 1, 1990, 10:25 a.m.: 13 IR 1700; filed Dec 2, 1994, 3:52 p.m.: 18 IR 857; filed Jan 6, 1999, 4:22 p.m.: 22 IR 1478; errata filed Mar 31, 1999, 9:36 a.m.: 22 IR 2534; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1337; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:05 p.m.: 26 IR 1524)

SECTION 4. 345 IAC 2-6-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 2-6-1 Definitions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13

Sec. 1. The following definitions apply throughout this rule:

(1) “‘B’ branded cattle” means all reactor cattle shall be permanently identified by hot iron branding with the letter “B” (at least two (2) inches by two (2) inches) placed high on the left tailhead (over the fourth to the seventh coccygeal vertebrae). An approved reactor tag must be placed in the left ear. Identification of reactors must be accomplished within fifteen (15) days of the test date. The time may be extended fifteen (15) days for reasons mutually acceptable to the cooperating state and federal officials-in-charge.

(+)(2) “‘B’ brand permit (VS Form #1-27)” means an official document issued by a USDA Veterinary Services representative, ~~Indiana state board of animal health~~ representative, or licensed, accredited veterinarian. This document is to accompany “B” branded cattle and bison (or exposed cattle and bison moved under official seal). The permit must include the following:

- (A) Identification tag, tattoo, United States Department of Agriculture (USDA) back tag, registration number, or similar identification.
- (B) The reactor tag number.
- (C) The owner’s name and address.
- (D) Origin and destination locations.
- (E) Number of cattle covered.
- (F) The purpose of the movement.

If a change in destination becomes necessary, a new permit must be prepared. No diversion from the permitted destination is allowed. Distribution of the copies is printed on the official document and must be followed.

(2) “‘B² branded cattle” means all reactor cattle shall be permanently identified by hot iron branding with the letter “B” (at least two (2) inches by two (2) inches) placed high on the left tailhead (over the fourth to the seventh coccygeal vertebrae). An approved reactor tag must be placed in the left ear. Identification of reactors must be accomplished within fifteen (15) days of the test date. The time may be extended

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fifteen (15) days for reasons mutually acceptable to the cooperating state and federal officials in charge.

(3) "Board" means the Indiana state board of animal health or its authorized agent.

(4) "Brucellosis", commonly called contagious abortion or Bang's Disease, means a communicable and infectious disease in domestic animals caused by *Brucella* organisms.

(5) "Brucellosis tests", used at the state or state-federal laboratory, must be approved by USDA, APHIS, VS, and state-federal veterinary brucellosis epidemiologists.

(6) "Cattle" means genus *Bos* and includes all dairy and beef animals and bison.

(7) "Certified brucellosis-free herd" means a herd:

(A) that meets the requirements of section 3 of this rule; and

(B) for which the owner holds an unrevoked and unexpired brucellosis-free certificate issued by the board.

(8) "Cooperating agencies" means the Indiana state board of animal health and the Animal and Plant Health Inspection Service (APHIS) Veterinary Services of the United States Department of Agriculture (USDA).

(9) "Exposed cattle" means those that are part of a brucellosis infected herd or have been in contact with a brucellosis reactor twenty-four (24) hours, or less than twenty-four (24) hours if a reactor has recently aborted, calved, or has a vaginal or uterine discharge.

(10) "Feeder cattle" means steers of any age and nonpregnant, nonparturient females and bulls of beef breeds:

(A) obviously under eighteen (18) months of age; and

(B) intended for slaughter after having reached the desired feeding state.

(11) "Goats" means genus *Capra*.

(12) "Herd depopulation" means removal of all sexually intact animals to an approved slaughter establishment.

(13) "Herds" means all cattle, except steers and spayed heifers, under common ownership or supervision that are grouped on one (1) or more parts of any single premise (lot, farm, or ranch), or all cattle on two (2) or more premises geographically separated, but on which the cattle have been interchanged or where there has been:

(A) contact of cattle between the premises; or

(B) interchange of equipment used or caretakers.

For brucellosis eradication purposes, groups of cattle, under multiple ownership on common premises, such as community pastures or grazing association units, shall also be considered as a herd. Such herds shall include all other groups of cattle owned by those persons unless the epidemiological investigation establishes that association has not occurred.

(14) "Immediate slaughter" means a shipment of cattle from the premises of origin directly to a slaughtering establishment or consigned to one (1) market for reconsignment directly to an approved state or federal slaughtering establishment within seven (7) days of the first consignment.

(15) "Individual herd plan" means a herd management and testing plan designed by **the following**:

(A) The herd owner.

(B) His or her veterinarian if so requested. ~~and~~

(C) A veterinarian of the cooperative brucellosis eradication program that will control and eventually eradicate brucellosis from an affected herd.

A similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd is also within the meaning of the term.

(16) "Livestock auction market" or "salebarn" means an established place of business and contiguous surroundings, including vehicles of transportation:

(A) from which domestic animals consigned to such livestock auction market or salebarn are sold or exchanged at auction or otherwise; and

(B) for the sale or exchange of which a commission is paid to the operator of ~~such the~~ place of business.

(17) "Market cattle reactor herd" means a herd from which one (1) or more reactors were disclosed on the market cattle identification program test (MCI).

(18) "Milk ring suspicious herd" means a herd that has been classified suspicious to the standard milk ring test of milk or cream.

(19) "Milk ring test (BRT)" means a test for brucellosis using whole milk or cream.

(20) "Negative" means the following:

(A) Official vaccinates of dairy breeds twenty (20) months of age or over and official vaccinates of beef breeds twenty-four (24) months of age or over with brucellosis test titers not higher than complete agglutination of 1:50 dilution on the standard plate test or standard tube test unless diagnosed suspect or reactor on the basis of a card test or complement fixation test.

(B) Cattle more than six (6) months of age when the standard plate test or standard tube test:

(i) discloses reactions of not more than complete agglutination in the 1:25 dilution if performed;

(ii) is negative to the brucellosis card test if performed;

(iii) discloses twenty-five percent (25%) fixation or less (one (1) plus) at the 1:10 dilution on the complement fixation test if performed; or

(iv) discloses less than complete agglutination at the 1:25 dilution on the rivanol plate agglutination test if performed.

The board may accept variations when an epidemiological investigation indicates *Brucella abortus* infection is present. A diagnosis of suspect or reactor will then be accepted.

(C) Cattle negative to **the following**:

(i) The rapid screening test when no other tests are performed.

~~(D) Cattle negative to~~ (ii) The card test when no other tests are performed.

~~(E) Cattle negative to~~ (iii) Both rapid screen test and brucellosis card test where plate titers are disclosed that are less than incomplete 1:100.

(21) "New state classification" shall be as follows:

(A) "Free status" means no field Strain B. *abortus* infection

in the state for the past twelve (12) months, maintained and adjusted as per current UM & R.

(B) "Class A status" means twelve (12) months' accumulated herd infection rate due to field Strain B. abortus shall not exceed twenty-five hundredths percent (.25%) or two and five-tenths (2.5) herds per one thousand (1,000), maintained and adjusted as per current UM & R.

(C) "Class B status" means twelve (12) months' accumulated herd infection rate not to exceed one and five-tenths percent (1.5%) or fifteen (15) herds per one thousand (1,000), maintained and adjusted as per current UM & R.

(D) "Class C status" means twelve (12) months' accumulated herd infection rate exceeding one and five-tenths percent (1.5%) or fifteen (15) herds per one thousand (1,000), maintained and adjusted as per current UM & R.

(22) "Official ear tag" means a metal identification ear tag purchased from ~~Indiana state~~ a board of animal health designated source, conforming to the nine (9) character alphanumeric National Uniform Ear Tagging System of appropriate color, for example, orange for brucellosis vaccination. The ear tag provides unique identification for each individual animal.

(23) "Official ear tag record" means an accurate record of all ear tags applied by the licensed, accredited veterinarian must be:

(A) recorded on record of identification card provided with the ear tags; and

(B) returned to the board as soon as the card is completed.

(24) "Official health certificate", **"certificate of veterinary inspection", or "CVI"** means ~~any prescribed or printed a form adopted by a state to be used for that meets the purpose of recording:~~

~~(A) data;~~

~~(B) results of tests; and~~

~~(C) statements;~~

~~concerning the health status or other matters requirements in relation thereto with respect to domestic animals listed thereon.~~ **345 IAC 1-1.5 for a certificate of veterinary inspection.**

(25) "Official vaccinate" means a female bovine animal or bison vaccinated by a licensed, accredited veterinarian against brucellosis in accordance with this rule.

(26) "Owner" means the legal owner or his ~~or her~~ agent or person in possession of, or responsible for, cattle involved.

(27) "Reactor" means the following:

(A) Official vaccinates of dairy breeds twenty (20) months of age or over and official vaccinates of beef breeds twenty-four (24) months of age or over, as evidenced by the presence of the first pair of permanent incisors, or official vaccinates under these ages that are parturient (springers) or postparturient when they disclose complete standard plate test or standard tube test agglutination reactions in the blood titer dilution of 1:200 or higher.

(i) Positive to the brucellosis card test where it has been the only test conducted.

(ii) Disclose titers of twenty-five percent (25%) fixation (one (1) plus) in a dilution of 1:40 or higher on the complement fixation test, if it is performed.

(iii) Disclose a complete agglutination reaction in the 1:25 dilution or higher on the rivanol test, if it is performed.

(B) All other cattle more than six (6) months of age when they disclose a complete agglutination reaction in the blood titer dilution of 1:100 or higher on the standard plate test or standard tube test.

(i) Are positive to the brucellosis card test where it has been the only test conducted.

(ii) Disclose titers of fifty percent (50%) fixation (two (2) plus) in a dilution of 1:20 or higher on the complement fixation test.

(iii) Disclose a complete agglutination reaction in the 1:25 dilution or higher on the rivanol test.

(C) Found infected by isolation of *Brucella abortus* microorganisms.

The board may accept variations when an epidemiological investigation indicates *Brucella abortus* is not present. A diagnosis of suspect will then be accepted.

(28) "'S' branded cattle" means cattle that have been identified by branding, with a hot iron, the letter "S" (at least two (2) inches by two (2) inches) placed high on the left tailhead (over the fourth to the seventh coccygeal vertebrae). "S" branding is required for exposed cattle to move in marketing channels from farms or markets to immediate slaughter. Finished fed heifers moving in marketing channels directly to slaughter will be exempted from the "S" branding requirement.

(29) "'S' brand permit" means a document that is required to accompany animals in marketing channels having a restricted destination. The permit must show **the following:**

(A) The origin.

(B) The destination.

(C) The number of restricted cattle.

(D) The purpose of the movement.

(E) The USDA back tag numbers (when applied serially, only the beginning and the ending number need be recorded). ~~and~~

(F) A statement certifying to the "S" brand identification.

The permit shall be prepared at the point of origin by a licensed, accredited veterinarian, a representative of the board, or a designated official at a quarantined feedlot. A copy of this "S" brand permit shall be immediately sent to the state animal health official with the original accompanying the animals. The original shall be delivered at the destination and retained at that location for a minimum of six (6) months.

(30) "Suspect" means the following:

(A) Official vaccinates of dairy breeds twenty (20) months of age or over and official vaccinates of beef breeds twenty-four (24) months of age or over, as evidenced by the presence of the first pair of permanent incisor teeth or official vaccinates under these ages that are parturient (springers) or postparturient when they disclosed any

standard plate test or standard tube agglutination reactions in the dilution of 1:100 or incomplete agglutination in the 1:200 dilution.

(i) Vaccinated cattle serologically negative to the standard plate test or standard tube test but that are positive to the brucellosis card test, if it is performed.

(ii) Vaccinated cattle having less than twenty-five percent (25%) fixation (one (1) plus) in a dilution of 1:40 and fifty percent (50%) (two (2) plus) or more in a dilution of 1:10 to the complement fixation test, if it is performed.

(B) All other cattle more than six (6) months of age when they disclose a positive rapid screen test or a positive card test or plate titers of incomplete one hundred (100) or over and are not classified as reactors. Cattle having less than fifty percent (50%) fixation (two (2) plus) in a dilution of 1:20 and fifty percent (50%) fixation (two (2) plus) or more in a dilution of 1:10 to the complement fixation test, if it is performed.

(C) The board may accept variations when an epidemiological investigation indicates *Brucella abortus* is not present. A diagnosis of negative will then be accepted. When an epidemiological investigation indicates *Brucella abortus* infection is present, a diagnosis of reactor will be accepted.

(31) "Tested herd", formerly qualified herd, means cattle for which records show that the complete herd has been subjected to official testing for brucellosis, in accordance with the required procedures for herds. Testing shall be done within the previous twelve (12) months, and the herd must not be known to be affected with brucellosis.

(32) "Test-eligible cattle" means the following:

(A) All cattle over six (6) months of age except steers, spayed heifers, official calthood vaccinates under twenty (20) months of age for dairy breeds and twenty-four (24) months of age for beef breeds that are not parturient (springers) or postparturient and feeder cattle held under quarantine and kept separate and apart from all other cattle.

(B) "Market cattle identification (MCI) and blood sampling" means blood sampling, at a slaughtering establishment, of all cows and bulls over two (2) years of age, including preparturient heifers.

(33) "Uniform methods and rules" or "UM & R" means minimum standards of current brucellosis eradication procedures recommended by the Brucellosis Committee of the United States Animal Health Association approved by the USDA. The board may accept any of the recommendations of the current uniform methods and rules that are compatible with this rule. In case of conflict, the state rules will prevail.

(34) "Veterinarian" means a person who:

(A) is licensed and accredited to practice veterinary medicine in Indiana; or

(B) graduated veterinarian employed by Animal Plant Health Inspection Service (APHIS) of USDA.

(Indiana State Board of Animal Health; 345 IAC 2-6-1; filed Oct 29, 1984, 8:59 a.m.: 8 IR 163; filed Dec 22, 1986, 3:40 p.m.: 10 IR 1061; filed Sep 6, 1990, 2:30 p.m.: 14 IR 83; errata

filed Sep 10, 1990, 9:30 a.m.: 14 IR 155; filed Oct 11, 1996, 2:00 p.m.: 20 IR 740, ineffective under IC 4-22-2-25; filed Mar 27, 1997, 11:15 a.m.: 20 IR 2108; errata, 22 IR 2007; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 5. 345 IAC 3-4-3 IS AMENDED TO READ AS FOLLOWS:

Rule 4. Swine Brucellosis Testing, Control, and Eradication; Validated Brucellosis-Free Herds

345 IAC 3-4-3 Official health certificate required for sale

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1

Sec. 3. (a) As long as Indiana maintains a validated brucellosis-free state status, Indiana swine in intrastate commerce are not required to be tested and found negative for brucellosis ~~prior to before~~:

- (1) sale;
- (2) offer for sale;
- (3) lease;
- (4) barter; or
- (5) exchange.

Interstate swine must satisfy the swine brucellosis requirements of the state of destination. If Indiana loses the validated brucellosis-free state status, the requirements in subsection (b) apply.

(b) No person shall sell, offer for sale, lease, barter, or exchange any swine for breeding purposes in Indiana unless the transaction is accompanied by an official ~~health~~ certificate ~~(a special form prescribed for such purpose by the Indiana state board of animal health may be used in lieu of an official health certificate in approved laboratories at markets and stockyards) indicating said veterinary inspection that meets the requirements in 345 IAC 1-1.5 and that indicates the swine to be are~~ individually identified and negative to brucellosis within the thirty (30) days preceding the date of sale, lease, barter, or exchange, except as follows:

- (1) Swine originating directly from the owner's currently validated brucellosis-free herd.
- (2) Swine under six (6) months of age.
- (3) Swine consigned for immediate slaughter.
- (4) Barrows.
- (5) Swine exempted by the board.

(Indiana State Board of Animal Health; Reg 73-1, Title III, Sec 1; filed Jan 22, 1974, 9:15 a.m.: Rules and Regs. 1975, p. 179; filed Oct 29, 1984, 9:02 a.m.: 8 IR 178; filed Jun 18, 1990, 3:06 p.m.: 13 IR 1995; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 6. 345 IAC 7-3.5-2 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-2 Definitions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-2-15; IC 15-2.1-2-27; IC 15-2.1-3; IC 15-2.1-4; IC 15-2.1-14; IC 15-2.1-15

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

- (1) "Board" means the Indiana state board of animal health appointed under IC 15-2.1-3.
- (2) "Cattle" means all dairy and beef animals and bison.
- (3) "Concentration point" means a licensed place of business under the provisions of IC 15-2.1-14 where only feeder pigs, to which the licensee of such point has taken title, are assembled for resale within or without of the state of Indiana.
- (4) "Consignee" means one to whom livestock is delivered or assigned for the purpose of sale, resale, or exchange.
- (5) "Consignment" or "consigning" means the act of delivering or shipping domestic animals to another for sale, resale, or exchange.
- (6) "Consignor" means any person consigning, shipping, or delivering domestic animals for sale, resale, or exchange.
- (7) "Dealer" means any person engaged in the business of dealing and includes, but is not limited to, **the following**:
 - (A) Stockyards.
 - (B) Auction markets.
 - (C) Buying stations. ~~and~~
 - (D) Concentration points.
- (8) "Dealing" means buying, selling, trading, or negotiating the transfer of livestock either for:
 - (A) processing into meat products in conjunction with the operation of a business enterprise; or ~~for~~
 - (B) the purpose of resale, transfer, or final disposition in any other manner.
- (9) "Domestic animals" has the meaning set forth in IC 15-2.1-2-15.
- (10) "Draft" means a group of animals that are weighed and sold together as a unit.
- (11) "Immediate slaughter" means any domestic animals purchased or sold for slaughter must:
 - (A) be consigned to a recognized slaughtering establishment or be slaughtered within seven (7) days of first consignment; and ~~must~~
 - (B) not be diverted for further feeding or breeding purposes.
- (12) "Inspection" means a critical observation of livestock by a licensed, accredited veterinarian or by one under his or her direct supervision and conducted in a manner that will lend itself to the disclosure of the apparent physical condition or health status of the animals inspected.
- (13) "Licensee" means any person:
 - (A) licensed by the state of Indiana as an individual or market facility dealer; or
 - (B) holding a combination license.
- (14) "Livestock" has the meaning set forth in IC 15-2.1-2-27(a).
- (15) "Livestock auction market" or "auction market" means an established place of business and contiguous surroundings where domestic animals are consigned to be sold at public auction upon a commission basis to be paid by the consignor at which place the operator of the business acts as agent for consignor.

- (16) "Market facility" means a livestock auction market, stockyard, or concentration point.
- (17) "Nonambulatory" or "downed" animal means a conscious animal that is unable to stand or walk without assistance.
- (18) "Official health certificate", ~~or~~ "certificate of veterinary inspection", ~~or~~ "CVI" means ~~the printed a form adopted by any of that meets the various states and designed to record the identification, description, tests, vaccinations, and other data concerning the health status requirements for a certificate of domestic animals listed thereon. veterinary inspection in 345 IAC 1-1.5.~~
- (19) "Permit" means permission granted by the board for the importation of domestic animals that will include an identification number of the permit.
- (20) "Person" means **any of the following**:
 - (A) **An individual or** individuals of either sex.
 - (B) Firms.
 - (C) Copartnerships.
 - (D) Corporations.
 - (E) Associations.
 - (F) Cooperatives. ~~and~~
 - (G) Joint ventures of all kinds. ~~and~~
 - (H) Places of residence. ~~or~~
 - (I) Any other groups or combinations acting in concert.
- (21) "Quarantined" means **the subject of an order issued by the board restricting the movement of animals onto or off of a premises.**
- ~~(22)~~ (22) "Sale" means:
 - (A) sale;
 - (B) lease;
 - (C) donation;
 - (D) trade; or
 - (E) exchange in any manner.
- ~~(23)~~ (23) "Sell" means to:
 - (A) sell;
 - (B) lease;
 - (C) donate;
 - (D) trade;
 - (E) barter; or
 - (F) exchange in any manner.
- ~~(24)~~ (24) "Selling" means:
 - (A) selling;
 - (B) leasing;
 - (C) donating;
 - (D) trading;
 - (E) bartering; or
 - (F) exchanging in any manner.
- ~~(24)~~ "Quarantined" means **the subject of an order issued by the board restricting the movement of animals onto or off of a premises.**
- (25) "Slaughtering establishment" means **a place of business where domestic animals are slaughtered and meat products are processed for human consumption subject to federal, state, or local inspection.**

Proposed Rules

~~(25)~~ **(26)** “Slaughter only market” means any market facility where all animals purchased are consigned directly to a recognized slaughtering establishment or sold for direct reassignment to a recognized slaughtering establishment but not including auction markets.

~~(26)~~ “Slaughtering establishment” means a place of business where domestic animals are slaughtered and meat products are processed for human consumption subject to federal, state, or local inspection.

(27) “State veterinarian” means the state veterinarian appointed under IC 15-2.1-4.

(28) “Stockyard” means any place of business commonly known or advertised as a stockyard, and which is operated for compensation or profit as a public market consisting of sheds, pens, or other enclosures, and their contiguous appurtenances in which live livestock is received from the public and kept temporarily for sale, marketing, or shipping.

(Indiana State Board of Animal Health; 345 IAC 7-3.5-2; filed Jan 20, 1988, 4:01 p.m.: 11 IR 1750; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1285; errata filed Dec 5, 1997, 9:15 a.m.: 21 IR 1349; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:02 a.m.: 25 IR 1609)

SECTION 7. 345 IAC 7-5-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-5-1 Definitions

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-2; IC 15-2.1-3; IC 15-2.1-4; IC 15-2.1-15-14

Sec. 1. The following definitions and the definitions in IC 15-2.1-2 apply throughout this rule:

(1) “Accredited veterinarian” means a veterinarian that is accredited by the United States Department of Agriculture under 9 CFR, Subchapter J.

(2) “Approved official health certificate” or “approved certificate of veterinary inspection” means an official certificate of veterinary inspection that bears the endorsement or **other** approval of the chief livestock health official of the state of origin.

(3) “Board” means the Indiana state board of animal health appointed under IC 15-2.1-3.

(4) “Certificate of veterinary inspection” or “CVI” means ~~any prescribed or printed~~ a form adopted by a state to be used for **that meets** the purpose of recording the identification, description, results of tests, vaccinations, and other data concerning the health status of animals listed thereon. Certificates of veterinary inspection must be issued and signed by a veterinarian who holds the following qualifications:

(A) The veterinarian is accredited by the United States Department of Agriculture under 9 CFR, Subchapter J.

(B) The veterinarian is licensed to practice veterinary medicine in the state in which the requirements for a certificate is issued: **of veterinary inspection in 345 IAC 1-1.5.**

(5) “Equine infectious anemia” or “EIA” means an acute or chronic disease of Equidae, characterized by **the following**:

(A) Intermittent fever.

(B) Depression.

(C) Progressive weakness.

(D) Loss of weight.

(E) Edema. **and**

(F) Progressive or transitory anemia.

(6) “Equine infectious anemia test” has the meaning set forth in 345 IAC 6-1.1-1.

(7) “Exhibition” means a fair, show, or competition of limited duration that congregates animals from multiple sources on a premises.

(8) “National Poultry Improvement Plan” or “NPPI” means the National Poultry Improvement Plan and Auxiliary Provisions adopted by the board in 345 IAC 4-4-1.

(9) “Official ear tag” means an identification ear tag approved by the state veterinarian and conforming to the alphanumeric, security, and design requirements set by the state veterinarian.

(10) “Quarantine” means an order restricting the movement of animals into or out of, or both, a premises.

(11) “State 4-H department” means the branch of the Cooperative Extension Service of the United States Department of Agriculture (USDA) that is responsible for administering the state 4-H programs.

(12) “State veterinarian” means the state veterinarian appointed under IC 15-2.1-4 and authorized agents.

(Indiana State Board of Animal Health; Reg 77-2, Title I; filed Jul 21, 1978, 2:30 p.m.: 1 IR 567; filed May 2, 1983, 10:03 a.m.: 6 IR 1035; filed May 21, 1984, 3:20 p.m.: 7 IR 1714; filed Feb 15, 1985, 9:05 a.m.: 8 IR 790; filed Jan 8, 1986, 2:54 p.m.: 9 IR 997; filed Dec 2, 1994, 3:50 p.m.: 18 IR 859; filed Oct 11, 1996, 2:00 p.m.: 20 IR 750; errata filed Jan 2, 1997, 4:00 p.m.: 20 IR 1124; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:00 p.m.: 26 IR 1535)

SECTION 8. 345 IAC 7-5-2.3 IS ADDED TO READ AS FOLLOWS:

345 IAC 7-5-2.3 Requirements imposed by the exhibition

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3; IC 15-2.1-15-14

Sec. 2.3. (a) **Nothing in this rule prohibits an exhibition organizer from imposing animal health requirements in addition to those prescribed by the board. Requirements added by an exhibitor may not contradict requirements imposed by the board.**

(b) **An exhibition organizer may procure a licensed and accredited veterinarian to review animals and animal health documentation during the exhibition.** *(Indiana State Board of Animal Health; 345 IAC 7-5-2.3)*

SECTION 9. 345 IAC 7-5-2.5 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-5-2.5 Animal health documentation

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3; IC 15-2.1-15-14

Sec. 2.5. (a) A person moving animals into the state for exhibition must comply with the requirements in 345 IAC 1-3 and this rule.

(b) **If a test, vaccination, inspection or other procedure is required under this title to exhibit an animal, written record of the following animals test, vaccination, inspection, or procedure must be accompanied by a certificate of veterinary inspection for accompany the animal while on the exhibition premises.**

- (1) All animals of the family Bovidae; including cattle, sheep, goats, and buffalo.
- (2) All animals of the family Equidae if the animal originates from outside the state.
- (3) All animals of the family Suidae; including domestic and feral swine.
- (4) All animals of the family Cervidae; including deer and elk.
- (5) All animals of the family Camelidae; including camels, llamas, and alpacas.

(c) For the purposes of this rule, a certificate of veterinary inspection is valid only if the certificate was issued within the following time frames:

- (1) If the animal originated from within the state and the certificate of veterinary inspection is an Indiana certificate, within the ninety (90) days immediately preceding the date the animal enters the exhibition grounds.
- (2) If the animal originated from outside the state, within the thirty (30) days immediately preceding the date the animal enters the exhibition grounds.

(d) **The certificate of veterinary inspection written record must include the information required on the certificate, including the following:**

- (1) The official identification of each animal as required under section 9 of this rule.
- (2) The age and sex of each animal.
- (3) **The results of any tests test, vaccination, inspection, or procedure conducted on each animal including any applicable results.**
- (4) The name and address of the exhibitor.
- (5) **The name, address, and veterinary license code of the veterinarian performing the test, vaccination, inspection, or procedure.**

(e) Each person intending to exhibit an animal in the state or an agent for that person must mail or deliver a copy of the official certificate of veterinary inspection for the animal to the state veterinarian prior to the opening date of the exhibition. A person moving an animal out of state to exhibition must mail or deliver a copy of the official certificate of veterinary inspection to the state veterinarian within thirty (30) days of the date the

certificate was completed.

(f) **The state veterinarian may refuse to allow an animal to be exhibited if the requirements in this section are not met:** (*Indiana State Board of Animal Health; 345 IAC 7-5-2.5; filed May 24, 1988, 9:45 a.m.: 11 IR 3537; filed Jun 18, 1990, 2:49 p.m.: 13 IR 1990; filed Dec 2, 1994, 3:50 p.m.: 18 IR 860; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:00 p.m.: 26 IR 1536*)

SECTION 10. THE FOLLOWING ARE REPEALED: 345 IAC 7-5-15.1; 345 IAC 7-5-20; 345 IAC 7-5-25.6.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 27, 2006 at 9:40 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed rules that add 345 IAC 1-1.5 to prescribe official forms, recognize electronic filing, and consolidate filing requirements, amend 345 IAC 1-3-4 to eliminate import permit requirements for Camelidae and Caprinae, amend 345 IAC 7-5 to eliminate certificate of veterinary inspection requirements for exhibition, and make other changes to animal health laws including laws governing certificates of veterinary inspection.

The proposed changes eliminate requirements and clarify existing requirements and therefore do not impose additional requirements on individuals and regulated entities. The Board did not rely on any data, studies, or analyses in reaching this conclusion.

Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #06-30

DIGEST

Amends 345 IAC 1-6-2 and 345 IAC 1-6-3 to change the list of diseases in animals that must be reported to the Indiana State Board of Animal Health to reflect changes in Board of Animal Health programs, the World Organisation for Animal Health (OIE) reportable disease list, and the National Animal Health Reporting System (NAHRS) reportable disease list. Effective 30 days after filing with the Secretary of State.

Proposed Rules

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

The rule will affect diagnostic laboratories.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Imposed on Small Businesses:

The proposed changes change reporting requirements but do not impose any new reporting, record keeping, or other administrative costs.

Estimated Total Annual Economic Impact on Small Businesses:

The Board estimates that the proposed changes will not impose any additional costs on small businesses.

Justification for Costs:

The Board estimates that the proposed changes will not impose any additional costs on small businesses.

Regulatory Flexibility Analysis:

The proposed rule incorporates the alternative methods the agency determined to be less costly or less intrusive to small businesses while still meeting statutory requirements.

Supporting Data, Studies, or Analyses:

The Board did not rely on any studies in reaching the conclusions in this economic impact statement.

345 IAC 1-6-2

345 IAC 1-6-3

SECTION 1. 345 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-6-2 Individual and veterinarian responsibility

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-18-10

Sec. 2. A ~~diagnostic laboratory~~, veterinarian, owner, or custodian that receives information indicating a clinical diagnosis of any of the following reportable diseases in an animal or article must report that information to the state veterinarian within two (2) business days of receiving the information:

- (1) Anthrax (*Bacillus anthracis*).
- (2) Aujeszky's disease (pseudorabies).
- (3) Avian mycoplasmosis (*Mycoplasma gallisepticum*) in turkeys.
- (4) Bovine tuberculosis (*Mycobacterium bovis*).
- (5) Brucellosis (*Brucella abortus*, *brucella suis*, caprine and ovine brucellosis).
- (6) Equine infectious anemia (EIA).
- (7) Foreign animal diseases.
- (8) Fowl typhoid (*Salmonella gallinarum*).
- (9) Paratuberculosis (Johne's disease, *Mycobacterium paratuberculosis*).
- (10) Pullorum disease (*Salmonella pullorum*).
- (11) Rabies.
- (12) Transmissible spongiform encephalopathies, including the following:
 - (A) Chronic wasting disease.

(B) Scrapie.

(C) Bovine spongiform encephalopathy.

(13) Vesicular diseases, including the following:

(A) Foot-and-mouth disease.

(B) Vesicular stomatitis.

(C) Swine vesicular disease.

(D) Vesicular exanthema.

(Indiana State Board of Animal Health; 345 IAC 1-6-2; filed Jul 23, 1992, 2:00 p.m.: 15 IR 2568; filed Oct 11, 1996, 2:00 p.m.: 20 IR 740; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4205; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:00 a.m.: 25 IR 1607; filed Sep 5, 2003, 8:41 a.m.: 27 IR 90)

SECTION 2. 345 IAC 1-6-3 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-6-3 Laboratory responsibility

Authority: IC 15-2.1-3-19

Affected: IC 15-2.1-3-13; IC 15-2.1-18-10

Sec. 3. (a) Except as provided in subsection (b), for the purpose of facilitating animal disease programs and participating in the United States Department of Agriculture, National Animal Health Reporting System, a diagnostic laboratory must report a diagnosis of any of the following reportable diseases in an animal or article from Indiana or whose owner is from Indiana to the state veterinarian within two (2) business days of the diagnosis:

(1) Multiple species diseases as follows:

(A) Anthrax (*Bacillus anthracis*).

(B) Aujeszky's disease (Pseudorabies).

(C) Bluetongue.

(D) Bovine tuberculosis (*Mycobacterium bovis*).

(E) Brucellosis (*Brucella abortus*, *brucella suis*, caprine and ovine brucellosis).

(F) Contagious bovine pleuropneumonia (*Mycoplasma mycoides mycoides*).

(G) Foot-and-mouth disease (all FMD virus types).

(H) Echinococcosis/hydatidosis.

(I) Heartwater (*Cowdria ruminantium*).

(J) Leptospirosis.

(K) Lumpy skin disease.

(L) New World screwworm (*Cochliomyia hominivorax*).

(M) Old World screwworm (*Chrysomya bezziana*).

(N) Paratuberculosis (Johne's disease, *Mycobacterium paratuberculosis*).

(O) Peste des petits ruminants.

(P) Q Fever (*Coxiella burnetii*).

(Q) Rabies.

(R) Rift valley fever.

(S) Rinderpest.

(T) Transmissible spongiform encephalopathies, including the following:

(i) Chronic wasting disease.

(ii) Scrapie.

(iii) Bovine spongiform encephalopathy.

~~(U) Trichinellosis (Trichinella spiralis).~~
~~(V) Vesicular stomatitis (VS viruses Indiana, New Jersey, or not typed).~~
(2) (1) The following diseases in cattle, diseases as follows: bison, and buffalo:
(A) Anthrax (Bacillus anthracis).
(B) Aujeszky's disease (pseudorabies).
(C) Bluetongue.
~~(A) (D) Bovine anaplasmosis (Anaplasma marginale, A. centrale).~~
~~(B) (E) Bovine babesiosis (Babesia bovis, B. bigemina).~~
~~(C) Bovine cysticercosis (Cysticercus bovis metacestode stage of Taenia saginata).~~
(F) Bovine brucellosis (Brucella abortus).
(G) Bovine spongiform encephalopathy.
(H) Bovine tuberculosis (Mycobacterium bovis).
(I) Brucellosis (Brucella melitensis).
(J) Brucellosis (Brucella suis).
~~(B) (K) Bovine genital campylobacteriosis (Campylobacter fetus venerealis).~~
~~(E) Dermatophilosis (Dermatophilus congolensis).~~
(L) Bovine viral diarrhea (BVD).
(M) Contagious bovine pleuropneumonia (Mycoplasma mycoides mycoides).
(N) Crimean Congo haemorrhagic fever.
(O) Echinococcosis/hydatidosis.
~~(F) (P) Enzootic bovine leukosis (BLV).~~
(Q) Foot-and-mouth disease (all FMD virus types and those not typed).
~~(G) (R) Haemorrhagic septicaemia (Pasteurella multocida, B/Asian or E/African serotypes).~~
(S) Heartwater (Cowdria ruminantium).
~~(H) (T) Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis (IBR/IPV).~~
(U) Leptospirosis.
(V) Lumpy skin disease.
~~(H) (W) Malignant catarrhal fever (Bovine malignant catarrh, wildebeest associated).~~
(X) New World screwworm (Cochliomyia hominivorax).
(Y) Old World screwworm (Chrysomya bezziana).
(Z) Paratuberculosis (Johne's disease, Mycobacterium Avium paratuberculosis).
(AA) Q Fever (Coxiella burnetti).
(BB) Rabies.
(CC) Rift valley fever.
(DD) Rinderpest.
~~(H) (EE) Theileriosis (Theileria annulata, T. parva).~~
~~(K) (FF) Trichomonosis (Trichomonas (Trichomonas) foetus).~~
~~(H) (GG) Trypanosomosis (Trypanosoma congolense, T. vivax, T. brucei brucei).~~
(HH) Vesicular stomatitis (VS viruses Indiana, New Jersey, or not typed).
(3) (2) The following diseases in sheep and goat diseases as follows: goats:

(A) Anthrax (Bacillus anthracis).
(B) Aujeszky's disease (pseudorabies).
(C) Bluetongue.
~~(A) (D) Caprine and ovine brucellosis (excluding B. ovis).~~
~~(B) (E) Caprine arthritis/encephalitis (CAE).~~
~~(C) (F) Contagious agalactia (Mycoplasma agalactiae, M. capricolum capricolum, M. putrefaciens, M. mycoides mycoides, M. mycoides mycoides (LC)).~~
~~(D) (G) Contagious caprine pleuropneumonia (Mycoplasma capricolum capripneumoniae).~~
(H) Crimean Congo haemorrhagic fever.
(I) Echinococcosis/hydatidosis.
~~(E) (J) Enzootic abortion of ewes (Ovine Psittacosis, Chlamydia psittaci).~~
~~(F) Ovine pulmonary adenomatosis.~~
(K) Foot-and-mouth disease (all FMD virus types and those not typed).
(L) Heartwater (Cowdria ruminantium).
(M) Leptospirosis.
~~(G) (N) Maedi-visna/ovine progressive pneumonia.~~
~~(H) (O) Nairobi sheep disease.~~
(P) New World screwworm (Cochliomyia hominivorax).
(Q) Old World screwworm (Chrysomya bezziana).
~~(H) (R) Ovine epididymitis (Brucella ovis infection).~~
(S) Paratuberculosis (Johne's disease, Mycobacterium Avium paratuberculosis).
(T) Peste des petits ruminants.
(U) Q Fever (Coxiella burnetti).
(V) Rabies.
(W) Rift valley fever.
(X) Rinderpest.
~~(H) (Y) Salmonellosis (Salmonella abortusovis).~~
(Z) Scrapie.
~~(K) (AA) Sheep pox and goat pox.~~
(BB) Tularemia (Francisella tularensis).
(CC) West Nile fever.
(DD) Vesicular stomatitis (VS viruses Indiana, New Jersey, or not typed).
(4) (3) The following diseases in equine: diseases as follows:
(A) African horse sickness.
(B) Anthrax (Bacillus anthracis).
(C) Bovine brucellosis (Brucella abortus).
(D) Brucellosis (Brucella suis).
~~(B) (E) Contagious equine metritis (Tylorella equigenitalis).~~
~~(C) (F) Dourine (Trypanosoma equiperdum).~~
~~(D) Epizootic lymphangitis (Histoplasma farciminosum).~~
~~(E) (G) Equine encephalomyelitis (Eastern) and Western).~~
(H) Equine encephalomyelitis (Western).
~~(F) (I) Equine infectious anemia (EIA).~~
~~(G) (J) Equine influenza (virus type A).~~
~~(H) (K) Equine piroplasmosis (Babesiosis, Babesia (Piroplasma) equi, B. caballi).~~
~~(H) (L) Equine rhinopneumonitis (1 and 4).~~
~~(H) (M) Equine viral arteritis (EVA).~~
~~(K) (N) Glanders (Pseudomonas mallei).~~

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- ~~(L)~~ Horse mange.
~~(M)~~ Horse pox.
~~(N)~~ (O) Japanese encephalitis.
(P) Leptospirosis.
(Q) New World screwworm (*Cochliomyia hominivorax*).
(R) Old World screwworm (*Chrysomya bezziana*).
(S) Rabies.
~~(T)~~ (T) Surra (*Trypanosoma evansi*).
(U) Trichinellosis (*Trichinella spiralis*).
(V) Tularemia (*Francisella tularensis*).
(W) Vesicular stomatitis (VS viruses Indiana, New Jersey, or not typed).
~~(X)~~ (X) Venezuelan equine encephalomyelitis.
(Y) West Nile fever.
- ~~(5)~~ (4) The following diseases in swine: diseases as follows:
~~(A)~~ Atrophic rhinitis of swine (*Bordetella bronchiseptica*, *Pasteurella multocida*).
~~(B)~~ (A) African swine fever.
(B) Anthrax (*Bacillus anthracis*).
(C) Aujeszky's disease (pseudorabies).
(D) Brucellosis (*Brucella suis*).
~~(E)~~ (E) Classical swine fever.
~~(F)~~ Enterovirus encephalomyelitis.
~~(G)~~ Porcine brucellosis (*Brucella suis*).
~~(H)~~ Porcine Cysticercosis (*Cysticercus cellulosae* metacestode stage of *Taenia solium*).
(G) Echinococcosis/hydatidosis.
(H) Foot-and-mouth disease (all FMD virus types).
(I) Japanese encephalitis.
(J) Leptospirosis.
(K) New World screwworm (*Cochliomyia hominivorax*).
(L) Nipah virus encephalitis.
(M) Old World screwworm (*Chrysomya bezziana*).
~~(N)~~ (N) Porcine reproductive and respiratory syndrome (PRRS).
(O) Rabies.
(P) Rinderpest.
~~(Q)~~ (Q) Swine vesicular disease.
~~(R)~~ (R) Transmissible gastroenteritis (TGE).
(S) Trichinellosis (*Trichinella spiralis*).
(T) Tularemia (*Francisella tularensis*).
(U) Vesicular stomatitis (VS viruses Indiana, New Jersey, or not typed).
- ~~(6)~~ Avian (5) The following diseases as follows: in birds:
(A) Avian chlamydiosis (*Psittacosis* and *Ornithosis*, *Chlamydia psittaci*).
(B) Avian infectious bronchitis.
(C) Avian infectious laryngotracheitis.
(D) Avian influenza.
(E) Avian mycoplasmosis (*Mycoplasma gallisepticum*).
(F) Avian tuberculosis (*Mycobacterium avium*).
mycoplasmosis (*Mycoplasma synoviae*).
(G) Duck virus hepatitis.
~~(H)~~ Duck virus enteritis.
~~(I)~~ (H) Fowl cholera (*Pasteurella multocida*).
- ~~(J)~~ Fowl pox.
~~(K)~~ (I) Fowl typhoid (*Salmonella gallinarum*).
~~(L)~~ (J) Infectious bursal disease (Gumboro disease).
~~(M)~~ (K) Marek's disease.
~~(N)~~ (L) Newcastle disease.
~~(O)~~ (M) Pullorum disease (*Salmonella pullorum*).
(N) Turkey rhinotracheitis.
- ~~(7)~~ (6) The following diseases in fish: diseases as follows:
(A) Viral haemorrhagic septicaemia.
(B) Spring viraemia of carp.
(C) Infectious haematopoietic necrosis.
(D) Epizootic haematopoietic necrosis.
(E) Oncorhynchus masou virus disease.
- (7) The following diseases in lagomorphs:**
(A) Myxomatosis.
(B) Rabbit haemorrhagic disease.
- (8) The following diseases in Cervidae:**
(A) Bovine brucellosis (*Brucella abortus*).
(B) Bovine tuberculosis (*Mycobacterium bovis*).
(C) Brucellosis (*Brucella melitensis*).
(D) Brucellosis (*Brucella suis*).
(E) Chronic wasting disease.
(F) Paratuberculosis (Johne's disease, *Mycobacterium Avium paratuberculosis*).
- (b) The state veterinarian may do the following:**
(1) Conduct surveillance for reportable diseases.
(2) Establish a reporting agreement with a laboratory that does not require reporting every diagnosis of a particular disease listed in subsection (a) if the reporting standard is consistent with the National Animal Health Reporting System and board programs.

(Indiana State Board of Animal Health; 345 IAC 1-6-3; filed Jul 23, 1992, 2:00 p.m.: 15 IR 2568; filed Oct 11, 1996, 2:00 p.m.: 20 IR 740; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4205; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 31, 2001, 10:00 a.m.: 25 IR 1607; filed Sep 5, 2003, 8:41 a.m.: 27 IR 90)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 27, 2006 at 9:35 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed rules that amend 345 IAC 1-6 to change the list of diseases in animals that must be reported to the Indiana State Board of Animal Health to reflect changes in Board of Animal Health programs, the World Organisation for Animal Health (OIE) reportable disease list, and the National Animal Health Reporting System (NAHRS) reportable disease list.

The proposed changes do not impose additional requirements on individuals and regulated entities. The Board did not rely on any data, studies, or analyses in reaching this conclusion.

Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and

*Legislative Services Agency, One North Capitol, Suite 325,
Indianapolis, Indiana and are open for public inspection.*

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule LSA Document #06-5

DIGEST

Amends 405 IAC 5-14-1 and 405 IAC 5-14-3 to place limitations on dental services for adults that are in accordance with HEA 1001-2005, SECTION 239, and amends rules regarding coverage for diagnostic services. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

There were approximately 1,500 participating dental providers in the Indiana Medicaid Program during calendar year 2005. Potentially, any of these providers could provide services to adults and could be impacted by this rule change.

There would be no reporting requirements imposed on providers associated with this rule change. There would be a minor administrative impact in that providers would now have to obtain prior authorization for certain dental services. Previously, these services did not require prior authorization before claims could be submitted for payment.

Obtaining prior authorization requires completion of a form denoting the service and the medical (or dental) reason for the service. This is then sent to the Indiana Medicaid Medical Policy Contractor who handles prior authorization reviews. Dentists would receive a response by not later than 10 working days (plus four days mailing time) of the results of the prior authorization review. If prior authorization is given, the service can be provided and billed. If the authorization request is denied, the provider may request an administrative review and if denied, a hearing. This process is no different from the existing process for prior authorization transactions. Providers will receive advance notice that these services will be subject to prior authorization and they receive written instructions on implementing the change.

There is no less intrusive or costly alternative to achieve the purpose of this rule. Most providers already have experience with prior authorization procedures for other services provided to Medicaid recipients. The total annual estimated economic impact to all affected providers under this rule is \$153,000. This was calculated based on an annual spending by Medicaid of \$5.1 million on dental services that will now require prior authorization. It is estimated that prior authorization of these

services will cause a drop in the provision of unnecessary services (approximately 3%), resulting in a savings to the state of \$153,000. Spread over the pool of dental providers, each provider is expected to be impacted approximately \$100 per year due to this change.

SECTION 1 of this document is the result of a mandated change by legislation and the agency has no discretion other than to move forward with this change. No alternatives to making this change are known at this time. SECTION 2 of this document expands the providers ability to chose the best service for the client based on the provider's observations. It imposes neither new costs or requirements on providers. As such, SECTION 2 of this document does not fall within the purview of IC 4-22-2.1-5.

405 IAC 5-14-1

405 IAC 5-14-3

SECTION 1. 405 IAC 5-14-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-14-1 Policy

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2;
IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15-13-6

Sec. 1. (a) Medicaid reimbursement is available only for those dental services listed in section 2 of this rule subject to the limitations set out in this rule.

(b) For those recipients twenty-one (21) years of age and over, covered services routinely provided in a dental office will be limited to six hundred dollars (\$600) per recipient, per twelve (12) month period. This limit precedes all other limits within this rule. The procedure codes that will be included within the limitation:

- (1) will be listed and published in a provider bulletin; and
- (2) may be updated by the office as needed.

A provider bulletin issued under this subsection shall be effective no earlier than permitted under IC 12-15-13-6.

(c) For those recipients twenty-one (21) years of age and over, all covered services will require prior authorization except the following:

- (1) Diagnostic and preventative services.**
- (2) Direct restorations.**
- (3) Treatment of lesions.**
- (4) Periodontal services for the following immuno-compromised individuals:**
 - (A) Transplant patients.**
 - (B) Pregnant women.**
 - (C) Diabetic patients.**
- (5) Extractions.**
- (6) Emergency and trauma care.**

(Office of the Secretary of Family and Social Services; 405 IAC 5-14-1; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3319; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Dec 13, 2002, 4:00 p.m.: 26 IR 1546)

Proposed Rules

SECTION 2. 405 IAC 5-14-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-14-3 Diagnostic services

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2; IC 12-15-21-3

Affected: IC 12-13-7-3; IC 12-15

Sec. 3. Medicaid reimbursement is available for diagnostic services, including initial and periodic evaluations, prophylaxis, radiographs, and emergency treatments, with the following limitations.

(1) Either a full mouth series ~~radiographs~~ or panorex is limited to one (1) set per recipient every three (3) years.

(2) Bitewing ~~and intraoral~~ radiographs are limited to one (1) set per recipient every twelve (12) months. One (1) set of bitewings is defined as a ~~total of either:~~

(A) four (4) ~~single horizontal~~ films; or

(B) seven (7) to eight (8) vertical films.

(3) Intraoral radiographs are limited to one (1) first film and seven (7) additional films, **per recipient every twelve (12) months.**

(4) Temporomandibular joint ~~arthograms~~; **arthograms**, other temporomandibular films, tomographic surveys, and cephalometric films are no longer covered in a dental office.

~~(3)~~ (5) A comprehensive or detailed oral evaluation is limited to one (1) per lifetime, per recipient, per provider, with an annual limit of two (2) per recipient.

~~(4)~~ (6) A periodic or limited oral evaluation is limited to one (1) every six (6) months, per recipient, any provider.

~~(5)~~ (7) Mouth gum cultures and sensitivity tests are not covered.

~~(6)~~ (8) Oral hygiene instructions:

(A) are reimbursed in the Medicaid payment allowance for diagnostic services; and

(B) may not be billed separately to Medicaid.

~~(7)~~ (9) Payment for the writing of prescriptions:

(A) is included in the reimbursement for diagnostic services; and

(B) may not be billed separately to Medicaid.

(Office of the Secretary of Family and Social Services; 405 IAC 5-14-3; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3320; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Apr 16, 2003, 10:50 a.m.: 26 IR 2863)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 22, 2006 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments concerning the Office Medicaid Policy and Planning's rule to place limitations on dental services and amend coverage for diagnostic services.

SECTION 1 of this document is being implemented in

accordance with HEA 1001-2005, SECTION 239; SECTION 2 of this document is being proposed to expand provider options when providing covered services.

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.

E. Mitchell Roob Jr.

Secretary

Office of the Secretary of Family and Social Services

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule

LSA Document #06-29

DIGEST

Adds 405 IAC 5-38 to define telemedicine services and describe the circumstances under which Medicaid will reimburse for such services. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Small businesses that may be impacted directly by this rule change would consist of Medicaid providers that deliver certain covered services via a real-time communication between the patient at the host site (physician office, clinic, or hospital) and the specialist at the hub site. This delivery approach increases access to patients in areas where specialists or entities providing certain services are not available.

The agency's Management Reporting System shows that, for calendar year 2005, there were 9,479 participating physicians and 1,286 participating clinics. If one-fourth of these providers began utilizing telemedicine services, approximately 2,691 would be impacted. However, this impact would be quite small and virtually cost-free. Providers are not required to participate in telemedicine services.

Many of Indiana's large providers are recommending coverage of this service, and telemedicine is covered by the Medicaid programs in most states, as well as by Medicare and large commercial payors such as Aetna and Cigna. It is difficult to know how many providers are set up to utilize this service at this time, and the agency anticipates this will service will grow in popularity over the next few years.

The agency anticipates that this rule will save the state approximately \$23,760 annually. This is based on a hundred mile round trip to a provider for which Medicaid would be responsible at a base rate of \$20 (round trip) and mileage of \$1.25 for 80 miles (round trip – Medicaid does not pay mileage for the first 10 miles of each one-way trip). These expenses

amount to \$120. Subtracting the facility fee of \$21 (currently planned to be priced at the Medicare rate of approximately \$21) would result in savings of \$99 for each instance of telemedicine. A conservative estimate of 20 patients a month utilizing this service yields a savings of \$1,980 per month. The agency would be saving \$23,760 annually and providing easier access to specialty services not available in the immediate community of the member.

The coverage for telemedicine services is an added benefit to providers and recipients. Billing would occur within existing formats. There would be a very minor administrative impact on how providers complete claims for payment. Those requirements would include a specific procedure code for the spoke site and a specific modifier to be used by the hub site along with established procedure codes, of which the provider is already aware. This is the only administrative change. Providers would receive advance notice of this change and would receive written instructions on implementing the change.

405 IAC 5-38

SECTION 1. 405 IAC 5-38 IS ADDED TO READ AS FOLLOWS:

Rule 38. Telemedicine Services

405 IAC 5-38-1 General provisions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 1. (a) Telemedicine services refer to a specific method of delivery of certain services, including medical exams and consultations, which are already reimbursed by Medicaid. Telemedicine uses videoconferencing equipment allowing a medical provider to render an exam or other service to a patient at distant location. Telemedicine services are covered by Medicaid within the parameters specified in this rule.

(b) Telemedicine is not the use of a:

- (1) telephone transmitter for transtelephonic monitoring; or**
- (2) telephone or any other means of communication, consultation from one (1) doctor to another.**

(Office of the Secretary of Family and Social Services; 405 IAC 5-38-1)

405 IAC 5-38-2 Definitions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

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

- (1) "Hub site" means the location of the physician or provider rendering consultation services.**
- (2) "Interactive television" or "IATV" means the videoconferencing equipment at the hub and spoke site that allows real time, face-to-face consultation.**
- (3) "Spoke site" means the location where the patient is**

physically located when services are provided.

(4) "Store and forward" means the electronic transmission of medical information for subsequent review by a health care provider at the hub site.

(Office of the Secretary of Family and Social Services; 405 IAC 5-38-2)

405 IAC 5-38-3 Description of service

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 3. (a) In any telemedicine encounter, there will be the following:

- (1) A hub site.**
- (2) A spoke site.**
- (3) An attendant to connect the patient to the specialist at the hub site.**
- (4) A computer or television monitor to allow the patient to have:**
 - (A) real-time;**
 - (B) interactive; and**
 - (C) face-to-face;****communication with the hub specialist/consultant via IATV technology.**

(b) Services may be rendered in an inpatient, outpatient, or office setting. *(Office of the Secretary of Family and Social Services; 405 IAC 5-38-3)*

405 IAC 5-38-4 Limitations

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 4. Telemedicine shall be limited by the following conditions:

- (1) The patient must:**
 - (A) be physically present at the spoke site; and**
 - (B) participate in the visit.**
- (2) The physician or practitioner who will be examining the patient from the hub site must determine if it is medically necessary for a medical professional to be at the spoke site. Separate reimbursement for a provider at the spoke site is payable only if that provider's presence is medically necessary. Adequate documentation must be maintained in the patient's medical record to support the need for the provider's presence at the spoke site during the visit. Such documentation is subject to postpayment review. If a health care provider's presence at the spoke site is medically necessary, billing of the appropriate evaluation and management code is permitted.**
- (3) Reimbursement for telemedicine services is available only when the hub and spoke sites are greater than fifty (50) miles apart.**
- (4) Store and forward technology is not reimbursable by Medicaid.**
- (5) The following service or provider types may not be reimbursed for telemedicine:**

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- (A) Ambulatory surgical centers.
- (B) Outpatient surgical services.
- (C) Home health agencies or services.
- (D) Radiological services.
- (E) Laboratory services.
- (F) Long term care facilities, including nursing facilities, intermediate care facilities, or community residential facilities for the developmentally disabled.
- (G) Anesthesia services or nurse anesthetist services.
- (H) Audiological services.
- (I) Chiropractic services.
- (J) Care coordination services.
- (K) DME, medical supplies, hearing aids, or oxygen.
- (L) Optical or optometric services.
- (M) Podiatric services.
- (N) Services billed by school corporations.
- (O) Physical or speech therapy services.
- (P) Transportation services.
- (Q) Services provided under a Medicaid waiver.

(Office of the Secretary of Family and Social Services; 405 IAC 5-38-4)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 22, 2006 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments concerning the Office Medicaid Policy and Planning's rule to define telemedicine services and describe the circumstances under which Medicaid will reimburse for such services.

This rule is being promulgated because the agency is desirous to offer this method of health care delivery under certain restrictions as outlined in the proposed rule.

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.

E. Mitchell Roob Jr.
Secretary
Office of the Secretary of Family and Social Services

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule LSA Document #05-320

DIGEST

Amends 410 IAC 7-22-15 to establish standards for the certification of food handlers for food establishments and the

imposition of penalties for violations. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Description of Rule:

The Indiana State Department of Health (ISDH) has responsibility for the regulation of certified food handlers in food establishments across the state. In 2001 the Indiana General Assembly adopted Senate Enrolled Act 404 that created IC 16-42-5.2 requiring that food establishments employ a certified food handler. The statute mandated that the ISDH adopt rules to administer the new law and establish monetary penalties for noncompliance. The ISDH adopted those rules, and the certified food handler requirement became effective January 1, 2005. Since the adoption of the ISDH certified food handler rule, there have been two separate legislative changes to the controlling statute. The result is that the existing food handler certification rule, 410 IAC 7-22, is no longer consistent with the statute. The purpose of the amendments to the rule is to make the rule consistent with the statute by incorporating the additional exemptions established when IC 16-42-5.2-2 and IC 16-42-5.2-3 were amended and IC 16-42-5.2-3.5 was added.

Fiscal Impact

Indiana Code 4-22-2-28(c) requires an agency to submit to the Office of Management and Budget any proposed rule with an estimated economic impact of greater than \$500,000 on all persons regulated by the rule. After the preliminary adoption of such a rule, the Office of Management and Budget must prepare a fiscal impact statement concerning the effect that compliance with the proposed rule will have on the state and all persons regulated by the proposed rule.

The department reviewed the proposed rule to determine whether the total economic impact of the rule on regulated persons will exceed \$500,000. The department determined, based on the information available at the time of the rule promulgation, that the proposed rule does not have an estimated economic impact of greater than \$500,000 on the persons regulated by the rule. The ISDH therefore did not submit the proposed rule to the Office of Management and Budget prior to the rule being adopted.

Economic Impact on Small Businesses

1. Estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.

IC 4-22-2.1-4 defines a small business as any person, firm, corporation, limited liability company, partnership, or association that:

- (1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;
- (2) is independently owned and operated;
- (3) employs one hundred (100) or fewer full-time employees; and
- (4) has gross annual receipts of five million dollars (\$5,000,000) or less.

The two major North American Industry Classification System (NAICS) categories for food establishments affected by this rule

are NAICS 722000 (Food Services and Drinking Places) and NAICS 445000 (Food and Beverage Stores). The last time ISDH and local health departments conducted an inventory of food establishments in Indiana was 1994. At that time approximately 27,000 food establishments were found to be operating. In 1994, Indiana's population was approximately 5,752,000. The U.S. Census Bureau estimates that Indiana's population in 2005 was 6,272,000. Extrapolating based on the increase in population from 1994 to 2005, there should be at least 29,440 food establishments currently operating in Indiana. But since the trend is for people to dine out more than in the past, ISDH estimates that the number of food establishments currently operating in Indiana is closer to 30,000. While some of these facilities are owned and operated by chains that qualify as large businesses, the vast majority of restaurants, and many groceries qualify as small businesses.

This proposed rule revision will reduce the number of establishments subject to 410 IAC 7-22. In compliance with IC 16-42-5.2 as amended, this revision would exempt from compliance the following categories of facilities that may qualify as food establishments: 1) community mental health centers; 2) private mental health institutions; 3) area agencies on aging; 4) food pantries; and 5) organizations exempt from state retail gross retail tax. ISDH records indicate that there are a total of 30 community mental health centers and private mental health institutions in Indiana. Likewise, there are a total of 289 area agencies on aging. According to the Indiana Family and Social Services Administration, there are approximately 600 food pantries operating in Indiana. ISDH has no way to estimate the number of organizations exempt from state retail gross retail tax that qualify as food establishments. An anomaly in the law is that IC 16-42-5.2 originally required food establishments exempt from state retail gross retail tax to retain the services of a certified food handler, yet IC 16-42-5-4 exempted those same facilities from compliance with ISDH's food sanitation rules. Because of this anomaly, neither ISDH nor the local health departments had attempted to force such food establishments to comply with IC 16-42-5.2; neither did we try to inventory them. Since we have not tried to apply the law to these facilities, they have not been impacted, and this rule revision assures that they won't be in the future. Based on the foregoing, ISDH estimates that the total number of food establishments impacted by this rule revision will be 919 and the impact will be to exempt them from the rule requirements.

2. Estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.

There are no record keeping requirements associated with ISDH's food handler certification rule, 410 IAC 7-22. The rule simply requires that there be a certified food handler at or available to each affected food establishment and that their food handler certificate be posted in the food establishment where it can be observed by ISDH or the local health department at the time of any inspection.

Likewise, there are no record keeping requirements associated

with ISDH's food handler certification rule. Hence, there are no record keeping costs.

There is an administrative cost for the third-party training course and accompanying test to become a certified food handler, which averages \$125 per person. As stated previously, ISDH estimates that the number of food establishments currently operating in Indiana is approximately 30,000. However, a goodly number of food establishments were exempt from the requirements of IC 16-42-5.2 as originally enacted. Neither ISDH nor the local health departments have inventoried food service establishments since 1994, so we do not have data about how many of the estimated 30,000 facilities are exempt from the law as originally enacted. However, we do have data about the number of food establishments that are newly exempt from IC 16-42-5.2, because of the amendments recently enacted. As stated previously, those facilities total 919. Therefore, adoption of this rule revision to comport with IC 16-42-5.2 as amended, will result in a savings of $919 \times \$125 = \$114,875$, in administrative costs for small business.

3. Estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule.

The proposed rule results in a decrease in economic impact to small businesses as compared to the current rule. The current rule requires every food establishment to have a certified food handler. In estimating the cost of that requirement, all three third-party training and testing agencies approved by the ISDH to certify food handlers in Indiana issue certificates that are valid for a period of five years. After that, the individual must renew his/her food handler certification, again at a cost of \$125 per person. As stated previously, the ISDH estimates that the number of food establishments currently operating in Indiana is approximately 30,000. However, a goodly number of food establishments were exempt from the requirements of IC 16-42-5.2 as originally enacted. Neither ISDH nor the local health departments have inventoried food service establishments since 1994, so we do not have data about how many of the estimated 30,000 facilities are exempt from the law as originally enacted. Assuming that each of the 30,000 facilities had to comply with IC 16-42-5.2, the average annual economic impact of the current rule would be the cost of food handler certification or renewal every five years, or $30,000 \times \$125$, divided by 5 years = \$750,000.

Because of the exemptions newly created through amendment of IC 16-42-5.2, which ISDH proposes to revise 410 IAC 7-22 to comport with, there will be a savings of approximately \$125, divided by 5 years = \$25 per year for each facility that will be newly exempted. Since there are 919 newly exempted facilities, the annual savings resulting from this rule revision will be $919 \times \$25 = \$22,975$.

4. Statement justifying any requirement or cost that is imposed on small businesses by the rule; and not expressly required by the statute authorizing the agency to adopt the rule; or any other state or federal law.

ISDH believes the proposed rule revision meets the require-

ments established in the applicable statutes, as amended. We are proposing revisions to 410 IAC 7-22 to comply with amendments made to its authorizing statute, IC 16-42-5.2. There are no costs associated with this proposed rule revision not expressly authorized by the statute.

5. Regulatory Flexibility Analysis

A. Establishment of less stringent compliance or reporting requirements for small businesses.

This proposed rule revision does not include any reporting requirements. Neither do other parts of the original rule. It requires only that each food establishment subject to IC 16-42-5.2 retain the services of a certified food handler. There are no lesser options for compliance available, or even possible, under the authorizing statute.

B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

This proposed rule revision does not establish any deadlines other than what IC 16-42-5.2 requires. Neither do other parts of the original rule. There are no less stringent deadlines available, or even possible, under the authorizing statute.

C. Consolidation or simplification of compliance or reporting requirements for small businesses.

This proposed rule revision does not include any reporting requirements. Neither do other parts of the original rule. Compliance is determined when ISDH or the local health department, as part of a routine inspection, checks to see whether or not there is a food handler certificate posted in the food establishment at the time of inspection.

D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

Both the original rule and the revisions proposed comprise a performance standard - that there be a certified food handler at or available to a food establishment. There are no design or operational standards in 410 IAC 7-22 or the revision proposed.

E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule.

The purpose of the proposed rule revision is provide exemptions to small businesses to the extent that IC 16-42-5.2 allows.

Conclusion

The proposed rule revision will reduce the economic impact on selected small businesses to the extent that IC 16-42-5.2 allows.

410 IAC 7-22-15

SECTION 1. 410 IAC 7-22-15 IS AMENDED TO READ AS FOLLOWS:

410 IAC 7-22-15 Certified food handler requirements

Authority: IC 16-42-5.2-13

Affected: IC 6-2.5-5-21; IC 12-7-2-38; IC 12-10-1; IC 12-10-15; IC 12-25; IC 16-21; IC 16-28; IC 16-42-5.2; IC 23-2-4

Sec. 15. (a) A corporation or local health department may not impose any registration, certification, or licensing requirements

on food handling or food handlers.

(b) After December 31, 2004, at least one (1) food handler at a food establishment must be a certified food handler. A food handler's certification must be recognized by the Conference for Food Protection or an equivalent nationally recognized certification examination as determined by the department.

(c) A food establishment shall have at least one (1) certified food handler responsible for all periods of the food establishment's operation. However, a certified food handler need not be present at the food establishment during all hours of operation. It shall be the responsibility of the certified food handler to provide the certificate, letter, or document for verification of passing the examination.

(d) A food establishment that begins operation or changes ownership shall comply with ~~section 15(b) of this rule~~ **subsection (b)** not later than six (6) months after beginning operation or changing ownership.

(e) If a food establishment does not have a certified food handler because the certified food handler terminates employment with the food establishment, the owner or operator of the food establishment shall comply with ~~section 15(b) of this rule~~ **subsection (b)** not later than three (3) months after the termination date of the previous certified food handler.

(f) If more than one (1) food establishment operated by the same individual is located on the same property or on contiguous properties, only one (1) certified food handler is required for the food establishments.

(g) **Except as provided in subsection (h),** the certified food handler requirement does not apply to a food establishment when the food establishment's food handling activities are limited solely to one (1) or more of the following:

(1) Heating or serving precooked ~~hot dog or sausage products, popcorn, nachos, pretzels, or frozen pizza.~~ **foods.**

(2) Preparing or serving a continental breakfast, such as:

- (A) rolls;
- (B) coffee;
- (C) juice;
- (D) milk; and
- (E) cold cereal.

(3) Preparing or serving nonalcoholic or alcoholic beverages **that are not potentially hazardous beverages** or ice.

(4) **Preparing or serving packaged or unpackaged foods that are not potentially hazardous foods, including the following:**

- (A) Elephant ears.
- (B) Funnel cakes.
- (C) Cotton candy.
- (D) Confectionaries.
- (E) Baked goods.
- (F) Popcorn.

(G) Chips.

(H) Grinding coffee beans.

~~(5) Packaged foods that are not potentially hazardous foods in accordance with the rules adopted by the executive board.~~

~~(6) Heating when it is the only step for a bakery product. or~~

~~(7) (5) Providing prepackaged food in its original package.~~

(h) A food establishment that has more than ten thousand (10,000) square feet in total retail sales space at the food establishment location must comply with this rule. This does not apply to a pharmacy that is a food establishment that provides only prepackaged food products for sale.

~~(h)~~ **(i) The certified food handler requirement does not apply to the following institutions:**

(1) Hospitals licensed under IC 16-21.

(2) Health facilities licensed under IC 16-28.

(3) Housing with services establishments that are required to file disclosure statements under IC 12-10-15. or

(4) Continuing care retirement communities required to file disclosure statements under IC 23-2-4.

(5) Community mental health centers (as defined in IC 12-7-2-38).

(6) Private mental health institutions licensed under IC 12-25.

(7) An area agency on aging designated under IC 12-10-1 that provides food under a nutrition service program. However, the premises where the food is prepared is not exempt from the requirements under this rule.

(8) A food pantry that:

(A) is operated or affiliated with a nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) distributes food, which may include food from the United States Department of Agriculture, to needy persons.

(j) A food bank or other facility that distributes donated food to other organizations is not exempt from the requirements of this rule.

(k) An organization that is exempt from the state gross retail tax under IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D) is exempt from complying with the requirements of this rule.

(l) This section does not prohibit an exempted organization from waiving the exemption and using a certified food handler. (Indiana State Department of Health; 410 IAC 7-22-15; filed May 19, 2003, 8:50 a.m.: 26 IR 3336)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2006 at 1:30 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Myers Conference Room, Indianapolis, Indiana the Indiana State Department of Health will hold a

public hearing on a proposed amendment to 410 IAC 7-22-15 to establish standards for the certification of food handlers for food establishments and the imposition of penalties for violations.

These rules are amended to meet the changes made to IC 16-42-5.2 by the Indiana General Assembly.

Copies of these rules are now on file at the Health Care Regulatory Services Commission at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sue Uhl

Deputy State Health Commissioner

Indiana State Department of Health

**TITLE 820 STATE BOARD OF COSMETOLOGY
EXAMINERS**

Proposed Rule

LSA Document #06-108

DIGEST

Repeals 820 IAC 6 concerning continuing education requirements, approved cosmetology educators, continuing education course requirements, and distance learning continuing education based on SEA 333-2006 (P.L.157-2006). Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

This proposed rule will not impose any costs or requirements on small businesses under IC 4-22-2.1-5.

820 IAC 6

SECTION 1. 820 IAC 6 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 17, 2006 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the State Board of Cosmetology Examiners will hold a public hearing on repeal 820 IAC 6 concerning continuing education requirements, approved cosmetology educators, continuing education course requirements, and distance learning continuing education based on SEA 333-2006 (P.L.157-2006).

The State Board of Cosmetology Examiners has the authority to repeal rules concerning continuing education in compliance with the statutory changes in SEA 333 (P.L.157-2006). This proposed repeal of rules will have no cost to regulated entities. The Board did not rely on any data, studies, or analyses in determining the imposition of the requirement or cost.

Proposed Rules

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

Proposed Rule

LSA Document #06-65

DIGEST

Amends 872 IAC 1-2-1 to address the ethical requirements for licensees by incorporating by reference the June 1, 2005, pronouncements on professional standards of the American Institute of Certified Public Accountants (to apply to certified public accountants). Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to This Rule:

U.S. Census Bureau North American Standard Classification System 541211 Offices of Certified Public Accountants

U.S. Census Bureau North American Standard Classification System 541219 Other Accounting Services

The Indiana Board of Accountancy (Board) has the authority to promulgate rules governing the administration and enforcement of Indiana Code 25-2.1 and the conduct of licensees, including rules of professional conduct directed to controlling the quality and probity of the practice of accountancy by licensees, including independence, integrity, and objectivity, competence and technical standards, and responsibilities to the public and clients. There are 16,139 certified public accountants in the state of Indiana. Although the proposed rule affects the practices of certified public accountants specifically, small businesses for which these certified public accountants are employed will also be affected because of the licensees' compliance. There are approximately 1,460 accounting firms with permits to practice accountancy issued by the Board. Some businesses that do not have a certified public accountant employed would not be affected by this rule. Some businesses that employ certified public accountants and are affected by this rule are not small businesses so those businesses would not be included in this estimate. Therefore, the exact number of small businesses affected by this rule is less than 1,460. The costs imposed on these small businesses are because the licensed certified public accountants that are directly affected by this rule will have to comply with the most recent American Institute of Certified Public Accountants (AICPA) Professional Standards requirements as opposed to the version of the standards currently in effect.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur:

The Board estimates that there will be no annual reporting, administrative costs, or record keeping requirements incurred by small businesses to comply with this rule because the small businesses are already complying with these professional standards as opposed to the version of the standards currently in effect.

Estimated Total Annual Economic Impact on Small Businesses:

The Board estimates that there will be an impact on small businesses as a result of compliance with this rule. In order to comply with this proposed rule, a certified public accountant may have to replace 2004 AICPA edition with the 2005 AICPA edition. Compliance with the new 2005 edition of the AICPA Professional Standards is not intended to have any compliance costs or will have only minimal compliance costs because certified public accountants are already complying these professional standards as opposed to the version of the standards currently in effect. Therefore, there are no viable alternative into carrying out the purpose of this proposed rule.

• Justification of Requirements or Costs on Small Businesses

Where Rule Is Not Expressly Required by Law:

The proposed rule was permitted by IC 25-2.1-2-15 for the Board to enforce and administer its article, including adopting rules of professional conduct directed to controlling the quality and probity of the practice of accountancy by licensees, including independence, integrity, and objectivity, competence and technical standards, and responsibilities to the public and clients. In addition, the American Institute of Certified Public Accountants Professional Standards is the national standard for professional accountancy practice that certified public accountants are expected to follow. The Board is incorporating these standards in their rules to keep current with the national standards.

• Supporting Data, Studies, or Analyses: The Board did not rely on any data, studies, or analyses in determining the imposition of the AICPA Professional Standards is necessary.

Regulatory Flexibility Analysis of Alternative Methods:

The proposed rule was permitted by IC 25-2.1-2-15 for the Board to enforce and administer its article, including adopting rules of professional conduct directed to controlling the quality and probity of the practice of accountancy by licensees, including independence, integrity, and objectivity, competence and technical standards, and responsibilities to the public and clients. The purpose of this proposed rule is to have the national standards in effect in Indiana and applying to all certified public accountants so there are no less intrusive and cost effective methods for regulating the practice of accountancy.

A. Establishment of less stringent compliance or reporting requirements for small businesses.

The Board is incorporating these standards in their rules to keep current with the national standards. The standards established by AICPA are for all certified public accountants no matter the size of the business.

B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

Because there are no reporting requirements, there was no need to establish less stringent schedules or deadlines for small business compliance.

C. Consolidation or simplification of compliance or reporting requirements for small businesses.

There are no other reporting requirements imposed by the proposed rule. The standards established by AICPA are for all certified public accountants Indiana no matter the size of the business.

D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

The standards imposed by this rule were developed by the American Institute of Certified Public Accountants. The standards established by AICPA are for all certified public accountants no matter the size of the business.

E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule.

This proposed rule does not impose additional reporting requirements or costs. The standards established by AICPA are for all certified public accountants no matter the size of the business.

872 IAC 1-2-1

SECTION 1. 872 IAC 1-2-1, AS AMENDED AT 29 IR 1214, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-2-1 Rules of professional conduct; applicability

Authority: IC 25-2.1-2-15

Affected: IC 4-22-2; IC 23-1.5; IC 25-1-11-12; IC 25-2.1

Sec. 1. (a) In the interpretation and enforcement of this rule, the board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings, and opinions issued by the following:

- (1) Boards of other jurisdictions.
- (2) Appropriately authorized committees on ethics of professional organizations.

(b) No licensee of the board shall violate the following standards for the competent practice of accounting appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy, which are incorporated by reference as if fully set out in this rule:

- (1) The following pronouncements on professional standards set forth in the AICPA Professional Standards, Volumes 1 and 2 (June 1, ~~2004~~, **2005**), subject to the exceptions listed in subsection (c) (applicable to certified public accountants only):

- (A) U.S. Auditing - AICPA, including the following:
 - (i) Statement on Auditing Standards - Introduction.
 - (ii) The General Standards.

(iii) The Standards of Field Work.

(iv) The First, Second, and Third Standards of Reporting.

(v) The Fourth Standard of Reporting.

(vi) Other Types of Reports.

(vii) Special Topics.

(viii) Compliance Auditing.

(ix) Special Reports of the Committee on Auditing Procedure.

(B) Statements on Standards for Attestation Engagements.

(C) Statements on Standards for Accounting and Review Services.

(D) Code of Professional Conduct.

(E) Statement on Standards for Consulting Services.

(F) Tax Services.

(G) Personal Financial Planning.

(2) Professional corporation act at IC 23-1.5.

(3) National Society of Accountants (NSA) Rules of Professional Conduct and Official Interpretations, May 2003, excluding the interpretations and Rule 9 (professional referrals) (applicable to accounting practitioners and public accountants only).

(c) As incorporated by reference in subsection (b)(1), the AICPA professional standards are amended to read as follows:

(1) ET 50 (Principles of Professional Conduct – Sections 51 through 57) is deleted.

(2) The third paragraph of Rule 505 (Form of Organization and Name) is deleted.

(3) The phrase “standards promulgated by bodies designated by Council”, or any similar reference, shall mean the standards incorporated by reference in subsection (b)(1).

(d) Notwithstanding the use of the word “should” in the AICPA pronouncements incorporated by reference in subsection (b)(1)(A) through (b)(1)(G), a certified public accountant must:

- (1) comply with the pronouncements; or
- (2) justify any departures therefrom.

(e) It shall be deemed incompetent practice contrary to high standards of integrity and dignity in the profession of certified public accountancy for a licensee of the board to be found by a court of competent jurisdiction to have engaged in accounting practices falling below professional standards in Indiana.

(f) As used in this rule, “member”, as used in the:

- (1) AICPA Professional Standards; and
- (2) NSA Rules of Professional Conduct and Official Interpretations;

means licensee.

(g) Where matters incorporated by reference in this section conflict with express provisions of:

- (1) IC 25-2.1 (accountancy act);
- (2) IC 23-1.5 (professional corporation act); or
- (3) rules adopted by the board;

the express provisions control.

Proposed Rules

(h) No subsequent editions, amendments, supplements, or releases of the:

- (1) AICPA Professional Standards;
- (2) NSA Rules of Professional Standards; or
- (3) NSA Rules of Professional Conduct;

will be in effect in Indiana or adopted by the board, except by following the rulemaking provisions of IC 4-22-2.

(i) The standards incorporated by reference in subsection (b) apply to conduct that occurs after ~~December 31, 2005~~ **September 30, 2006**. This subsection shall not be construed to extinguish the board's authority to impose any sanction under IC 25-1-11-12 for conduct that occurred before ~~January 1, 2006~~ **October 1, 2006**, in violation of a previous version of this section.

(j) A copy of the AICPA Professional Standards and the NSA Rules of Professional Conduct are available for public inspection at the offices of the Indiana Professional Licensing Agency, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204. Copies of the AICPA Professional Standards are available from the entity originally issuing the document, the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775. Copies of the NSA Rules of Professional Conduct are also available from the entity originally issuing the document, the National Society of Accountants, 1010 North Fairfax Street, Alexandria, Virginia 22314. (*Indiana Board of Accountancy; Rule 69-1, 39; filed Jun 30, 1978, 9:54 a.m.: 1 IR 402; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1932; filed May 1, 1984, 12:50 p.m.: 7 IR 1544; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1040; filed Aug 28, 1986, 3:20 p.m.: 10 IR 68; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1399; filed Feb 24, 1997, 4:00 p.m.: 20 IR 1736; filed Dec 18, 2000, 9:27 a.m.: 24 IR 1353, eff Feb 1, 2001; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Nov 18, 2005, 9:40 a.m.: 29 IR 1214, eff Jan 1, 2006*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 21, 2006 at 10:15 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 5, Indianapolis, Indiana the Indiana Board of Accountancy will hold a public hearing on proposed amendments to address the ethical requirements for licensees by incorporating by reference the June 1, 2005, pronouncements on professional standards of the American Institute of Certified Public Accountants (to apply to certified public accountants).

The Indiana Board of Accountancy (Board) has the authority to promulgate rules governing the administration and enforcement of Indiana Code 25-2.1 and the conduct of licensees, including rules of professional conduct directed to controlling the quality and probity of the practice of accountancy by licensees, including independence, integrity, and objectivity, competence and technical standards, and responsibilities to the public and clients. The proposed rule simply incorporates the

2005 edition of AICPA Professional Standards as it applies to certified public accountants. AICPA is the national standard for professional accounting practice that certified public accountants are expected to follow. The Board is incorporating these standards in their rules to keep current with the national standards. The Board has not relied upon any data, studies, or analyses in determining the imposition of requirement or cost.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

Notices of Intent to Readopt**TITLE 31 STATE PERSONNEL DEPARTMENT**

Notice of Intent
LSA Document #06-150

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Secretary of State.

OVERVIEW: Rules to be readopted without changes are as follows:

31 IAC 4 RETIREE FLEXIBLE SPENDING PROGRAM

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Keith Beesley
State Personnel Department
Indiana Government Center-South
402 West Washington Street, Room W161
Indianapolis, IN 46204

Statutory authority: IC 4-15-1.8-6.

TITLE 62 OFFICE OF THE PUBLIC ACCESS COUNSELOR

Notice of Intent
LSA Document #06-149

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Secretary of State.

OVERVIEW: Rules to be readopted without changes are as follows:

62 IAC 1 FORMAL COMPLAINTS

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Office of the Public Access Counselor
402 West Washington Street, W460
Indianapolis, IN 46204
Attn: Karen Davis

Statutory authority: IC 5-14-5-10.

TITLE 207 CORONERS TRAINING BOARD

Notice of Intent
LSA Document #06-160

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Secretary of State.

OVERVIEW: Rules to be readopted without changes are as follows:

207 IAC 1 DEPUTY CORONERS; MINIMUM TRAINING REQUIREMENTS

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Indiana Criminal Justice Institute
ATTN: Silvia Miller, General Counsel
One North Capitol, Suite 1000
Indianapolis, IN 46204

Statutory authority: IC 4-23-6.5-7

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Notice of Intent
LSA Document #06-144

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Secretary of State.

OVERVIEW: Rules to be readopted without changes are as follows:

511 IAC 4-1.5	Student Services
511 IAC 5-3-4	Definition of grade 10
511 IAC 6.1-5.1-7	Health and physical education
511 IAC 7-17	Definitions
511 IAC 7-18	General Provisions
511 IAC 7-19-3	Equipment and supplies for the benefit of private school students
511 IAC 7-20	Program Planning and Evaluation
511 IAC 7-21	General Administration of Programs
511 IAC 7-22-2	Prior written notice
511 IAC 7-23-1	Access to and disclosure of educational records
511 IAC 7-23-3	Confidentiality safeguards in the collection, maintenance, and destruction of educational records

Readopted Rules

511 IAC 7-24	Educational Surrogate Parents
511 IAC 7-25-1	In general
511 IAC 7-25-2	Child identification
511 IAC 7-26	Eligibility Criteria
511 IAC 7-27-1	Local procedures and training
511 IAC 7-27-2	Notice of case conference committee meetings
511 IAC 7-27-3	Case conference committee participants
511 IAC 7-27-6	Individualized education program; components
511 IAC 7-27-8	Individualized education program; accountability
511 IAC 7-27-10	Instruction for student at student's home or alternative setting
511 IAC 7-27-11	Instruction for students with injuries and temporary or chronic illnesses
511 IAC 7-27-13	Transportation of students in public or private residential placements
511 IAC 7-28	Related Services; Transitions; Transfer of Rights
511 IAC 7-29-1	Suspension
511 IAC 7-29-2	Expulsion
511 IAC 7-29-3	Interim alternative educational setting; weapons and drugs
511 IAC 7-29-4	Interim alternative educational setting; dangerous students
511 IAC 7-29-7	Placement of the student during due process hearings or appeals of disciplinary action
511 IAC 7-29-9	Referral to law enforcement and judicial authorities
511 IAC 7-30-2	Complaints
511 IAC 7-30-5	Expedited due process hearings and appeals
511 IAC 7-31	Child Count and Data Collection

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Mr. Jeffery P. Zaring
State Board Administrator
Indiana Department of Education
229 State House
Indianapolis, Indiana 46204
Statutory authority: IC 20-19-2-8.

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

Notice of Intent
LSA Document #06-143

Readopts rules in anticipation of IC 4-22-2.5-2, providing that

an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Secretary of State.

OVERVIEW: Rules to be readopted without changes are as follows:

540 IAC 1-4-3 Number of accounts

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Indiana Education Savings Authority
ATTENTION: Susan Loftus
Executive Director
One North Capitol, Suite 444
Indianapolis, Indiana 46204
Statutory authority: IC 21-9-4-7.

TITLE 575 STATE SCHOOL BUS COMMITTEE

Notice of Intent
LSA Document #06-138

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Secretary of State.

OVERVIEW: Rules to be readopted without changes are as follows:

575 IAC 1-5.5-3	Wheelchairs
575 IAC 1-5.5-4	Wheelchair and occupant restraint systems
575 IAC 1-5.5-12	Applicability of rule

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comment to:

Indiana State School Bus Committee
Pete Baxter, Administrator
Indiana Department of Education
Room 229 State House
Indianapolis, IN 46204-2798
Statutory authority: IC 20-27-3-4.

60 Day Requirement (IC 4-22-2-19)

**TITLE 50 DEPARTMENT OF LOCAL
GOVERNMENT FINANCE**

LSA Document #05-253

April 18, 2006

Representative Michael Murphy, Chairperson
Administrative Rules Oversight CommitteeAttn: Sarah Burkman, Staff Attorney
Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, IN 46204

RE: Notification of noncompliance with 60-day requirement

Dear Representative Murphy,

Pursuant to IC 4-22-2-19(c), please consider this letter notification of the Department of Local Government Finance's ("DLGF") noncompliance with the 60-day provision of IC 4-22-2-19. The DLGF did not begin the rulemaking process to repeal 50 IAC 13 regarding land valuation for real property assessment purposes within 60-days after the statutory authorization.

The DLGF timely promulgated 50 IAC 2.3 which incorporates by reference the Real Property Assessment Manual and Real Property Assessment Guidelines. The Real Property Assessment Manual and Real Property Assessment Guidelines include provisions for the valuation of land and all real property assessed after February 28, 2002 must be assessed in accordance with the Real Property Assessment Manual and Real Property Assessment Guidelines. During the rulemaking process for 50 IAC 2.3, the DLGF inadvertently failed to repeal 50 IAC 13 which is in conflict with the land valuation procedures described in the Guidelines. As soon as the DLGF realized this oversight we began the rulemaking process to repeal 50 IAC 13 and correct this problem. The final rule to repeal 50 IAC 13, LSA Doc. #05-253, will be submitted to the Attorney General's Office to begin the approval process by the end of the week.

Please call (233-4361) if you have any questions regarding this notification or if you require any additional information.

Sincerely,

Amber Merlau St. Amour
Staff Attorney
Department of Local Government Finance

**TITLE 410 INDIANA STATE DEPARTMENT OF
HEALTH**

LSA Document #05-94

EXTENSION OF TIME REQUEST

VIA HAND DELIVERY

May 3, 2006

The Honorable Todd Rokita
Secretary of State of Indiana
Room 201, Statehouse
Indianapolis, IN 46204

Dear Secretary Rokita:

Pursuant to Indiana Code 4-22-2-34(b), this statement is being filed with your office to inform you that I intend to take an additional fifteen (15) days to approve or disapprove the following rules, which were submitted to me on April 19, 2006:

Indiana State Department of Health:

LSA #05-94(F) - Second Submission Abortion Clinics

We would be grateful if you would file and date stamp the attached copy of this letter and return it to my office via our courier. Please call Phil Wickizer, Associate General Counsel, at 232-4564 with any questions concerning this matter.

Sincerely,

Mitchell E. Daniels, Jr.
Governor

TITLE 326 AIR POLLUTION CONTROL BOARD
SECOND NOTICE OF COMMENT PERIOD
 LSA Document #05-232(APCB)

DEVELOPMENT OF NEW RULES CONCERNING THE ENVIRONMENTAL STEWARDSHIP PROGRAM AND COMPREHENSIVE LOCAL ENVIRONMENTAL ACTION NETWORK
PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new article at 326 IAC 25 concerning two voluntary performance based leadership programs. The Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) are new Indiana programs that offer recognition and incentives for companies and units of local government that consistently demonstrate environmental stewardship and strive for continual environmental improvement initiatives in Indiana's environmental programs. 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: September 1, 2005, Indiana Register (28 IR 3665).

Continuation of First Notice: April 1, 2006, Indiana Register (29 IR 2373).

CITATIONS AFFECTED: 326 IAC 25.

AUTHORITY: IC 13-14-8; IC 13-17-3-1; IC 13-17-3-4; Public Law 100-2006.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING
Basic Purpose and Background

The purpose of this rule is the creation of two voluntary environmental performance based leadership programs to promote continuous environmental improvement in Indiana. IDEM is proposing the development of two programs, the Environmental Stewardship Program (ESP) for businesses, and the Comprehensive Local Environmental Action Network (CLEAN) for units of local government. Similar to the United States Environmental Protection Agency's National Environmental Performance Track Program (NEPT), these state programs are designed to achieve environmental results by recognizing innovation, motivating organizations to work toward environmental improvements, and complementing existing regulatory activities. These programs focus on environmental outcomes such as reduced emissions, reduced waste, and lower discharges. Performance based leadership programs combine elements such as environmental management systems, a history of regulatory compliance, and continuous environmen-

tal improvement projects to create a solid program that yields environmental benefits.

An environmental management system (EMS) is a system for identifying, controlling, and monitoring activities that impact the environment. The system integrates environmental responsibilities into everyday business decision making leading to a proactive approach to environmental management rather than a reactive one. All employees associated with those processes or responsibilities that could have environmental implications are informed of the environmental aspects of the organization, potential environmental impacts of those aspects, and their responsibilities to ensure compliance and environmental protection. An effective EMS helps an organization to avoid, reduce, or control the adverse environmental impacts of its activities, products, and services, achieve compliance with applicable legal requirements, and assist in continually improving environmental performance. Organizations with an effective EMS also realize increases in operational efficiency and decreased costs, making them a better, cleaner, more stable employer. Since an EMS is site-specific, implementation of an EMS is practical and useful for organizations of all types and sizes.

Members of performance based leadership programs must be in compliance with regulatory requirements and must be able to demonstrate a history of compliance. Before an organization can work towards going beyond compliance improvements, mechanisms must be in place to consistently take corrective and preventive actions and maintain compliance.

Continuous environmental improvement initiatives are projects the entity commits to implement that provide an environmental benefit that would not be achieved by compliance with applicable requirements alone. Sample "commitments" by members of the NEPT that could be part of a state program include increasing the amount of material recycled, reducing toxic inputs into a process, working with suppliers on environmental projects at the suppliers' locations, reducing air emissions, reducing water discharges, reducing water usage, reducing energy usage, reducing the quantity of hazardous waste generated, and working with their local communities to identify and implement environmentally beneficial projects.

Staff time is a limited resource for both IDEM and regulated entities. In order to allow high performers to focus their resources on environmental improvements, these innovative programs offer operational flexibility. This allows more strategically targeted resource allocations by members of the programs and IDEM to produce better overall environmental results. For example, one state performance based program worked with a member to reduce water effluent monitoring frequency, where a documented history of compliance existed, saving the member time and money. These resources were shifted towards efforts to reduce environmental impacts identified in the member's EMS and environmental improvement projects. Some of the improvements made by the member included elimination of a toxic chemical from the manufacturing process, reduced water usage, energy usage and solid waste

generation, and reduced BOD in wastewater effluent.
National Environmental Performance Track Program

NEPT is a federal voluntary partnership program that recognizes and rewards companies that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. NEPT is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring technological innovation. U.S. EPA provides exclusive regulatory and administrative benefits to NEPT members, including placing them at low priority for routine inspections, and offers public recognition, networking opportunities, and other benefits. To qualify for NEPT, applicants must have adopted and implemented an EMS, show evidence of specific past environmental achievements, have a history of sustained compliance with environmental requirements, commit to continued environmental improvement, and commit to public outreach and performance reporting.

In this rulemaking, IDEM proposes an incorporation by reference of a federal rule change for NEPT members. This provision is being added to state rules for consistency with the federal rule, however, it is only available to members of the federal NEPT program.

Environmental Stewardship Program and Comprehensive Local Environmental Action Network

ESP and CLEAN are voluntary programs that recognize and reward entities that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. Both IDEM and the member organization commit to new ways of achieving environmental goals through this program. For Indiana organizations that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement, ESP offers recognition, regulatory flexibility, and an opportunity to work directly with IDEM on innovative pilot projects. IDEM sees this program as a mechanism to reward organizations that are currently taking a proactive approach to environmental management as well as a way to motivate more Indiana organizations to take the next step and take a proactive approach to environmental management.

CLEAN helps local government take steps to plan, develop, and implement a quality of life plan, similar to an EMS. The quality of life plan addresses continuous environmental improvement and management of the community's environmental issues above and beyond the baseline of regulatory compliance. The quality of life plan consists of four components:

- (1) mission statement;
- (2) environmental activities and goals;
- (3) implementation and operation procedures; and
- (4) monitoring and reviewing the plan's progress.

The CLEAN Community Challenge is structured similarly to the ESP and has eligibility criteria at least as stringent as the ESP. IDEM is adding the CLEAN program to this rulemaking so that the programs can operate in tandem.

To qualify for ESP and CLEAN, applicants must demonstrate that they have:

- (1) implemented an environmental management system (EMS) that meets the requirements of this rule;
- (2) evidence of sustained compliance with environmental requirements and a commitment to maintain the level of compliance necessary to qualify for the program; and
- (3) a commitment to continued environmental improvement through environmental improvement initiatives over the term of the membership.

The ESP and CLEAN programs require members to submit an annual summary reporting on their progress toward their environmental improvement initiatives and verifying their EMS has gone through review and still maintains the standard necessary for participation. This annual summary will provide IDEM with measurable results attained through the member's initiatives.

Differences Between the Federal and State Programs

Though IDEM has worked towards and continues to strive for consistency with the federal program, the ESP and CLEAN programs have some differences from the NEPT program on some program elements. IDEM desires to develop a program that encourages organizations to take that next step in the evolution of their environmental management responsibilities from compliance driven to beyond compliance and continuous environmental improvement. IDEM has reviewed and incorporated many elements from other state performance based programs and has also considered the nature of Indiana's natural and regulatory environment, yielding a program unique to Indiana. Some of the differences between the proposed state programs and the federal NEPT program are described below:

- Past Environmental Achievements: The NEPT program requires applicants to report results from two past environmental achievements. IDEM has elected not to require applicants to report on past achievements. IDEM's programs are forward looking programs and designed to provide that mechanism for applicants to decide to take that next proactive step to continuous improvement and are open to applicants just beginning this progressive approach to environmental management. IDEM feels that encouraging entities to become program members while they are in the early stages of developing a proactive environmental management system will provide support for further improvements and can provide the impetus for senior management to see the value in progressive environmental management. IDEM also hopes that the Indiana programs will motivate entities to work to achieve higher levels of environmental management.

- Future Environmental Achievements: NEPT applicants must identify four environmental performance commitments in their initial and renewal applications. ESP applicants must identify one environmental improvement initiative in their initial application and one environmental improvement initiative in each annual summary as long as the member continues to maintain membership in the program. CLEAN applicants must identify five environmental improvement

initiatives for the three-year membership. IDEM chose to have ESP applicants identify initiatives on an annual basis in order to better coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets. IDEM understands that many initiatives may take longer than one year to be attained and the implementation time frames for each initiative will vary. IDEM is electing to require three initiatives for ESP rather than four in order to enable the member to focus more resources on attaining the initiatives and producing measurable results. IDEM feels that requiring three initiatives will lead to better progress towards the goals of the initiatives and increased resource allocation by the member toward each initiative.

- **Environmental Management System:** The EMS requirements in the federal and state programs are very similar because they are based on the ISO 14001 basic elements. Both programs require an independent audit of the EMS prior to becoming a member. Independent audits are conducted by parties not directly employed at the location being audited and not directly involved in developing the EMS being audited. The NEPT program requires that before an interested entity may be accepted into the program, its EMS must complete one full cycle (plan-do-check-act). IDEM will require that members have an EMS developed and implemented (plan-do), and that the member demonstrates that the cycle continues via the annual summary mechanism. As indicated earlier, IDEM feels that by encouraging entities in the early stages of progressive environmental management to become members, the program will encourage more entities to take that next step towards proactive environmental management and continuous environmental improvement and provide impetus for senior management to see the value of the environmental management system.

- **Community Outreach:** The NEPT program identifies community outreach as a separate component of the membership eligibility criteria. The NEPT community outreach component requires identifying and responding to community concerns, informing the community of important matters that affect it, and reporting on the facility's EMS and performance commitments. IDEM feels that these are appropriate community outreach requirements. However, IDEM feels that these elements can be appropriately addressed by the entity's environmental management system. Therefore, IDEM is requiring the same community outreach requirements as a required element of the applicant's environmental management system, providing an annual review mechanism of this important component of the program.

Incentives

Incentives are an integral part of environmental performance based leadership programs.

The decision to join a performance based leadership program will be a business decision for Indiana entities. These incentives offer business value and provide the opportunity to shift limited environmental management resources from certain environmen-

tal responsibilities to the entity's EMS and continuous environmental improvement identification and implementation activities. During the program development process, IDEM considered a variety of different incentives, only a few of which are included in this rule. Recognition, networking, and many regulatory incentives based on IDEM policy, procedure, and discretion will be described in more detail in separate ESP and CLEAN program documents. Those regulatory incentives that are based on existing state rules are included in this rule to provide the necessary authority for members to use the incentive. Additional incentives may be added in the future as the program develops. IDEM anticipates using leadership entities to pilot future innovative environmental management strategies through this program. Proposed incentives that prove to jeopardize IDEM's ability to fulfill its environmental protection responsibilities, fail to provide anticipated business value, or create overly burdensome requirements on program members may be removed from the program.

- **Recognition Incentives:** The most important mechanism created by the ESP and CLEAN programs will be the capacity to recognize Indiana entities that are taking a proactive approach to their environmental management responsibilities and attaining continuous environmental improvements. Ways in which members may receive recognition for their commitment include public recognition via a press release made available to local media outlets, IDEM attendance at an on-site membership announcement, a plaque or framed certificate, use of the ESP program logo in promotional and marketing efforts, recognition at the annual Pollution Prevention Conference, and recognition on IDEM's ESP or CLEAN web page.

- **Networking Incentives:** Because the members of ESP and CLEAN will be proactively working on continual environmental improvements, IDEM anticipates that the members will always be searching for new ideas. Networking opportunities can provide a forum for problem solving and the sharing of ideas, successes, and barriers. IDEM intends to organize and facilitate networking opportunities for members of the program.

- **Regulatory Incentives:** Another key element of programs such as ESP and CLEAN is the idea of creating administrative and regulatory changes to encourage exceptional compliance behavior, the use of government resources more efficiently, and improving the environmental economics for members. Good performers who are proactive with respect to environmental management do not require the same level of detailed regulatory oversight as entities without these systems in place and a history of noncompliance. Therefore, in an effort to reduce regulatory transaction costs and regulatory uncertainty for members, the ESP will offer regulatory flexibility opportunities. Some of the regulatory incentives may include streamlined NPDES and air permit renewal processes, consistent contacts within each program area, pre- or post-application meetings, extended Federally Enforceable State Operating Permit (FESOP) and Minor Source Operating Permit (MSOP)

terms, alternative compliance monitoring strategies where compliance is demonstrated, lowered routine inspection priority, alternative reporting schedules (certain air permit quarterly reports can be submitted semiannually where deviations will still be reported quarterly), alternative reporting schedules for monthly monitoring reports (MMRs), discharge monitoring reports (DMRs), and monthly reports of operation (MROs), one day advance notice of routine inspections, and expedited permit review where feasible. IDEM anticipates that the resources saved by members will be reallocated toward future continued environmental improvement. IDEM anticipates that regulatory agency compliance resources saved will be reallocated toward entities needing additional oversight and higher risk entities.

The Indiana Environmental Stewardship Program and the Comprehensive Local Environmental Action Network are voluntary programs, therefore, rulemaking is not necessary to initiate the programs. IDEM has chosen to pursue a rulemaking pertaining to each of the regulatory programs (air, water, and solid and hazardous waste) to establish these programs based on new legislation (Public Law 100-2006). This rulemaking will provide an opportunity for public input on the programs, to create regulatory incentives, and to provide consistency and clarity for the programs.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. There is no requirement imposed under this rule because it is a voluntary program.

Potential Fiscal Impact

Because this rule is for a voluntary program, there will be no requirements with a fiscal impact. However, members taking advantage of the program could see reduced costs from some of the potential incentives. For example, the implementation of ten-year permit renewals under 326 IAC 25-2-2 is likely to result in time and money savings for members choosing this option and for IDEM due to reduced paperwork.

Public Participation and Workgroup Information

Numerous public meetings have been held to discuss the intent and details of this program. No workgroup is planned for this rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through October 3, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM also requested public comment from April 1, 2006, through May 1, 2006, on the addition of the CLEAN program to the rule. IDEM received comments from the following parties by the comment period deadline:

Barnes and Thornburg (BT)

Eli Lilly and Company (ELC)

Indiana Cast Metals Association (INCMA)

Indiana Farm Bureau, Inc. (IFB)

International Truck and Engine Corporation (ITEC)

Milestone Contractors, L.P. (MSC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: We support the effort to adopt the program in rules where necessary, but believe timely implementation is most important to gain the benefits anticipated from such a program. We also have some concerns about rulemaking not providing flexibility to quickly adjust a new program that may need to be adjusted as more experience is gained from implementation. (INCMA)

Response: IDEM believes such a program must extend beyond policy and agency discretion to provide the level of desired consistency and value to program members. This is achieved by adopting the program in rules. Very good progress is being made in drafting these rules. Legislation granting IDEM authority to develop such a program has been enacted. IDEM will begin to accept members into the program providing those benefits that are not dependent on rule revisions, but are based on IDEM policy and procedures. Upon completion of this rulemaking, the regulatory flexibility incentives will be available to members. Depending on the nature of future revisions and additions to the program, rulemaking may be needed.

Comment: We believe the federal performance program standards are adequate and that the state should mirror these standards in setting up a state program. Further, we support reciprocity for the federal and state programs so that they will be linked and eliminate duplicate application submissions. (INCMA)

Response: IDEM's eligibility standards will be closely aligned with those of the federal NEPT program. There will be a few differences in membership eligibility criteria, however. IDEM anticipates that the slight differences will provide Indiana companies that are in compliance and desiring to take the next step with respect to their environmental responsibilities with the motivation and foundation to take that step.

The federal program requires a full one-year EMS cycle to be completed before allowing membership. IDEM aims to encourage Indiana entities to develop an Environmental Management System (EMS) by allowing membership once an EMS is implemented. The federal program requires documentation of two past voluntary environmental improvement initiatives. IDEM aims to encourage participation by entities in the early stages of progressive environmental responsibility. Therefore, IDEM is not requiring documentation of past environmental improvements. The federal program requires members to identify four environmental commitments every three years at the time of application or renewal. IDEM anticipates requiring members to identify three environmental improvement initiatives over the three year membership term. In order to coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization

of objectives and targets, members of ESP will be asked to identify one initiative each year of membership. The basic environmental management system criteria are similar between the state and federal programs since both follow the plan - do - check - act model.

Since the programs likely will not be exactly the same, membership will not be completely reciprocal. Entities desiring membership in both programs must meet the federal program requirements. However, IDEM does not anticipate that these differences will be burdensome for entities wishing to be members of both programs.

IDEM will be working with the U.S. EPA in the coming months to coordinate applications for membership. IDEM and EPA are aiming for a system as described in this paragraph. If an entity applies for membership in the federal program using the online federal application submittal process, that applicant will be able to check that they are also interested in applying for the state program. Applicants applying for the state program at the same time they are applying for the federal program may be asked a few additional questions on their online federal application. Entities desiring membership in both programs that do not yet meet the federal requirements (for example they are not through a complete EMS cycle or do not yet have documentation of two past environmental achievements), may apply to the state program first, using the state application, then apply to the federal program later or the entity may wait and apply for the two programs together once they meet the federal program requirements. Entities desiring state only membership may apply to the state program using the state application. Members with state only membership will be eligible for state incentives, but will not be eligible for federal incentives.

Comment: We support the concept of a Performance Track program tailored to Indiana. Lilly has monitored the national Performance Track program since its inception, but has not seen any significant advantages to participating since many of the flexibility provisions touted by EPA have not been supported by IDEM. For example, current IDEM policy regarding the Title V permit program specifies quarterly compliance reporting, which prevents us from taking advantage of federal rules promulgated for national Performance Track subscribers requiring only semi-annual reporting. Therefore, we are highly supportive of identifying those opportunities to change rules and/or agency policy to allow recognition of good compliance practice and to allow innovative approaches to compliance. We understand that any such program must result in a higher level of environmental performance. We have many examples of where we can achieve this if certain rules provided more flexibility. (ELC)

Response: IDEM believes the state performance program will provide that desired flexibility and valued incentives for being a member. We encourage entities to submit examples of those specific rules that may be limiting entities ability to go beyond compliance, achieving higher compliance levels and improving environmental quality.

The incentive provided as an example in this comment is a federal program incentive. The federal program incentives will

only be available to members of the National Environmental Performance Track Program. In order to take advantage of this benefit, entities would have to apply to and be granted membership in the federal program. IDEM is currently in the process of incorporating the federal incentives into the state rules so that members of the federal program in Indiana may take advantage of them. Once the incentive is fully incorporated into the state rules, federal program members may request to take advantage of the incentive.

Comment: We encourage IDEM to make the program entry compliance requirements flexible so that paperwork violations or permit exceedances where corrective action has been taken do not preclude participation. In some cases these criteria may differ from the national Performance Track criteria. (ELC)

Comment: The primary concern with the federal program is the definition of "in compliance" which IDEM representatives have suggested would not reflect 100% compliance 100% of the time. Few would meet that standard given paperwork issues, etc. that have no reflection on substantive compliance and environmental protection. (INCMA)

Comment: Will this program only apply to sources that are in 100% compliance? If not, what noncompliance is still acceptable for a company to be able to participate in the program? (BT)

Response: The compliance requirements for the state programs have been taken from the federal NEPT program. These compliance criteria include, among other criteria, no criminal conviction or plea for environmentally related violations of criminal laws within the past five years, no more than two significant violations in the past three years, and no unaddressed, unresolved significant non-compliance or significant violations. This criterion provides allowances for insignificant or relatively minor compliance issues. However, it is IDEM's intent to maintain a high standard of compliance for membership eligibility.

Comment: We would like to see a company-based option of the Performance Track program instead of only the facility-based option. Allowing companies, such as Milestone, with multiple facilities with very few employees (typically three) at each facility to enter the program as a company instead of each individual facility would open up the program to more industries in the State of Indiana. Milestone with three-employee facilities would currently be unlikely to enter the program. Several industries in Indiana are in the same position. (MSC)

Response: In general, IDEM anticipates membership in the program to be determined on a location by location basis, following the eligibility set up of the federal NEPT program. However, IDEM understands that certain organization types are structured such that membership on a location by location basis may be prohibitive of participation. Therefore, IDEM is considering a membership option for organizations meeting certain criteria. Each location must meet the applicability criteria individually and as a group. This includes the requirement to identify environmental improvement initiatives. The initiatives may be similar or the same for all of the locations, but each

location must play an active role in each initiative and each location must demonstrate continuous environmental improvement.

Comment: We applaud IDEM for pursuing a Performance Track Program for Indiana businesses. We ask that IDEM please consider agricultural operations for eligibility to participate in the three rulemakings, where applicable. It is important that there are real incentives for producers who go above and beyond the regulatory requirements. Many confined animal feeding operations have a proven record of regulatory compliance and can demonstrate a commitment to continuous improvement. Many of the same benefits that would be attractive to manufacturing concerns would be welcomed by livestock producers who would choose to participate on a voluntary basis. (IFB)

Response: The program will be open to all Indiana entities. It is our belief that the current draft list of regulatory flexibility and incentives afforded to program members does have applicability and value to the agricultural community.

Comment: We support a variety of incentives that recognize different companies value different incentives. Foundry leaders have expressed support for the following:

1. A tax credit for technology innovation or some portion of compliance expenditures.
2. A reduction in permitting fees given a potential reduction in agency oversight expenditures.
3. Reduced inspections and monitoring requirements.
4. Reduced stack testing given it reflects significant expenditures and provides a narrow picture of emissions.
5. Fast tracking permits although this particular item would require more analysis given economic considerations that are important to all companies.
6. Construction/equipment installation flexibility.
7. Reduced compliance reporting to semi-annual which we believe is already allowed under current regulation.

(INCMA)

Response: IDEM's current proposed list of incentives includes many of the items recommended by the foundry industry. However, a reduction in fees or tax credits are not economically feasible at this time, but may be further explored later should there be significant interest.

Comment: The Environmental Performance Track Program should evaluate the benefits of other unique programs and propose such incentives as:

1. Flexibility when permitting new technologies and monitoring systems.
2. EMS based permits.

Both of the above programs would likely provide the additional incentives for companies to see the value of the proposed program. (ITEC)

Response: It is IDEM's intent to develop incentives that provide sufficient business value to those interested in becoming members. Permit flexibility and alternative compliance monitoring requirements are currently included in the proposed incentives list. IDEM is willing to further discuss EMS-based permits,

although, such a permitting approach has not been discussed in the context of this program. IDEM is aware of EPA's efforts to explore EMS-based permitting and will continue to stay abreast of developments. Should EMS-based permitting be proven successful in those efforts, IDEM would likely look to members of the state performance based program for piloting an EMS-based permit here in Indiana.

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:

#05-232(APCB) ESP and CLEAN Programs

Christine Pedersen Mail Code 61-50

c/o Administrative Assistant

Rules Development Section

Office of Air Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204.

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 July 3, 2006.

Additional information regarding the ESP or CLEAN Programs may be obtained from Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

Additional information regarding this rulemaking action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 25 IS ADDED TO READ AS FOLLOWS:

ARTICLE 25. VOLUNTARY PERFORMANCE BASED LEADERSHIP PROGRAMS

Rule 1. Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program

326 IAC 25-1-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12; P.L.100-2006

Affected: IC 13-15; IC 13-17

Sec. 1. (a) The Indiana Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program are voluntary performance based leadership programs that offer recognition, regulatory flexibility, and an opportunity to work directly with the department on innovative pilot projects for entities that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement. In accordance with Public Law 100-2006, an entity is not required to comply with this rule and 326 IAC 25-2 except as a provision of participation in these programs.

(b) This rule applies to any Indiana entity that:

- (1) voluntarily participates in either program;
- (2) meets the eligibility requirements of section 3 of this rule; and
- (3) maintains membership by complying with this rule and 326 IAC 25-2.

(Air Pollution Control Board; 326 IAC 25-1-1)

326 IAC 25-1-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-11-2-35; IC 13-11-2-51; IC 13-15; IC 13-17

Sec. 2. In addition to the definitions in IC 13-11-2, the following definitions apply throughout this rule and 326 IAC 25-2:

- (1) “Commissioner”, as defined in IC 13-11-2-35(a), means the commissioner of the department of environmental management.
- (2) “Comprehensive Local Environmental Action Network Community Challenge Program” or “CLEAN” means the voluntary state program for units of local government in Indiana that:

- (A) demonstrate environmental stewardship; and
- (B) strive for continual environmental improvement.

(3) “Department”, as defined in IC 13-11-2-51, means the Indiana department of environmental management.

(4) “Entity” means a company, corporation, firm, enterprise, authority, institution, partnership, or unit of local government, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. Except as described in section 4(c) of this rule, an entity is one (1) geographic location under:

- (A) a single EMS; and
- (B) the direction of senior management.

(5) “Environmental aspect” means an element of the activities, products, or services of an entity that has the potential to interact with the environment.

(6) “Environmental impact” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from the environmental aspects of an entity.

(7) “Environmental management system” or “EMS” means a continuous cycle of planning, implementing,

reviewing, and improving a set of documented processes and practices used to develop and implement the environmental policy and manage the environmental aspects of an entity to:

- (A) maintain compliance;
- (B) reduce adverse environmental impacts; and
- (C) increase operational efficiency.

(8) “Environmental objective” means an environmental goal that is consistent with the environmental policy of an entity.

(9) “Environmental policy” means the overall commitment and direction of an entity related to environmental performance as formally expressed by senior management.

(10) “Environmental Stewardship Program” or “ESP” means the voluntary state program for entities in Indiana that:

- (A) demonstrate environmental stewardship; and
- (B) strive for continual environmental improvement.

(11) “Environmental target” means a detailed performance requirement that:

- (A) is quantified where practical; and
- (B) arises from the environmental objectives.

(12) “Independent audit” means an audit conducted by a party that:

- (A) is not directly employed by the entity being audited; and
- (B) has not played a substantive role in implementing the EMS being audited.

(13) “National Environmental Performance Track Program” or “NEPT” means the U.S. EPA’s National Environmental Performance Track Program.

(14) “Senior management” means the following:

- (A) For entities, the person or group with executive responsibility for the entity.
- (B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
- (C) For a unit of local government, either a principal executive officer or ranking elected official.

(15) “U.S. EPA” means the administrator of the United States Environmental Protection Agency or the administrator’s designee.

(Air Pollution Control Board; 326 IAC 25-1-2)

326 IAC 25-1-3 Eligibility criteria

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 3. Participation in ESP or CLEAN is voluntary and is open to entities located and operating in Indiana that meet the following criteria:

- (1) The standard of environmental compliance as described in section 10 of this rule.
- (2) Implement and maintain an EMS as described in section 11 of this rule.
- (3) Conduct continuous environmental improvement initiatives as described in section 12 of this rule.

(Air Pollution Control Board; 326 IAC 25-1-3)

326 IAC 25-1-4 Membership application

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 4. (a) A member of senior management shall submit an application by one (1) of the following methods:

(1) For applications for either ESP or CLEAN only, to the department on:

- (A) a form, whether electronically or hard copy, provided by the department; or
- (B) an equivalent form.

(2) For applications for both ESP and NEPT, to U.S. EPA, electronically on the form provided by U.S. EPA.

(3) Electronic submission is the preferred method of applying to these programs.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) A membership for an entity shall be limited to cover one (1) geographic location under a single EMS, except that an entity may apply for membership as a group of locations if the following criteria are met:

- (1) Each location must meet the applicability criteria individually and as a group, including the requirement to identify environmental improvement initiatives.
- (2) The environmental improvement initiatives may be similar or the same for all of the locations, but each location must:
 - (A) play an active role in each initiative; and
 - (B) demonstrate continuous environmental improvement.
- (3) The EMS must address staff and activities at each location.
- (4) Senior management must be common to all locations.
- (5) All locations must be engaged in the same business activity.
- (6) The standards of environmental compliance in section 10 of this rule shall apply to all Indiana locations under the control of the entity.

(d) The commissioner shall make a determination on acceptance into ESP or CLEAN based on the following:

- (1) The EMS must meet the standards in section 11 of this rule.
- (2) A site visit by a representative of the department to provide an understanding of the environmental aspects of the entity and the EMS.
- (3) Identification of environmental improvement initia-

tives and associated objectives and targets as follows:

- (A) For ESP applicants, at least one (1) environmental improvement initiative and associated objectives and targets for the first year of membership.
- (B) For CLEAN applicants, at least five (5) environmental improvement initiatives and associated objectives and targets for the three (3) year term of membership.
- (4) For ESP applicants, information provided to U.S. EPA if the entity has also applied for membership in NEPT.
- (5) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;
 as appropriate.
- (6) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Air Pollution Control Board; 326 IAC 25-1-4)

326 IAC 25-1-5 Term of membership

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 5. (a) The term of membership is three (3) years from the date the entity is accepted into the program as long as the entity continues to meet the program criteria and submits the annual summary.

(b) For ESP members, the department may extend the term for up to one (1) year to:

- (1) coincide with the membership date in NEPT, if applicable; or
- (2) cover the time period from the normal three (3) year expiration date to the renewal date based on submittal of an renewal application by April 1 of the third year.

(c) For CLEAN members, the department may extend the term for up to ninety (90) days to accommodate submittal of the third annual report, at which time CLEAN members may seek to renew membership in the program. (Air Pollution Control Board; 326 IAC 25-1-5)

326 IAC 25-1-6 Renewal of ESP membership

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 6. (a) To renew ESP membership, a member of senior management shall submit a renewal application by April 1 of the third year of membership as follows:

- (1) For renewal applications for ESP only, to the department on:
 - (A) a form, either electronically or hard copy, provided by the department; or
 - (B) an equivalent form.
- (2) For renewal applications for both ESP and NEPT,

electronically to U.S. EPA on the form provided by U.S. EPA.

(3) The preferred method of submission for both programs is electronic.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the renewal application and the annual summaries submitted during the most recent term of membership. The review of a renewal shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a determination on the ESP renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to set at least one (1) environmental improvement initiative and associated goals for the next year of membership.
- (4) Information provided by U.S. EPA if the entity has also applied for membership in NEPT.
- (5) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;

as appropriate.

(6) Other information, including the following:

- (A) Compliance information obtained from department staff.
- (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Air Pollution Control Board; 326 IAC 25-1-6)

326 IAC 25-1-7 Renewal of CLEAN membership

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 7. (a) To renew CLEAN membership, a member of senior management shall submit the third annual summary of the previous membership term:

- (1) to the department within sixty (60) days after the third annual anniversary of the date the previous membership term began;

(2) clearly indicating the intention to renew membership; and

(3) including five (5) objectives, targets, and action plans for the next three (3) year term.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the annual summaries and five (5) objectives, targets, and action plans submitted during the most recent term of membership. The review of this information shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a decision on the CLEAN renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to identify at least five (5) environmental improvement initiatives and associated goals for the next three (3) year term of membership.
- (4) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;

as appropriate.

(5) Other information, including the following:

- (A) Compliance information obtained from department staff.
- (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(e) If the entity does not request a renewal with the third annual summary, then membership in CLEAN expires upon receipt by the department of the third annual summary. (Air Pollution Control Board; 326 IAC 25-1-7)

326 IAC 25-1-8 Revocation

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 8. (a) The commissioner shall revoke membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The standards of environmental compliance described in section 10 of this rule.

(2) The requirement to make sufficient progress towards attaining the environmental initiatives identified and agreed upon at the time of application and submittal of the annual summaries.

(3) The requirement to maintain an approved EMS as required for membership.

(4) The prohibition against knowingly submitting false information:

- (A) on the application;
- (B) in the annual summary;
- (C) during a site visit or evaluation by the department; or
- (D) during an independent audit.

(b) The commissioner may revoke the membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The ESP or CLEAN program requirements, as applicable.
- (2) Federal, state, or local environmental laws and regulations.
- (3) The requirement to meet other appropriate standards as determined by the commissioner based upon the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(c) If the commissioner determines that a situation may warrant revocation of membership, the following applies:

- (1) The commissioner shall notify the entity in writing:
 - (A) of any potential deficiencies found; and
 - (B) that the commissioner is considering removing the entity from the program.
- (2) The notice shall:
 - (A) state that the commissioner may consider removing the entity from the program after the response time period provided to the member;
 - (B) identify the potential deficiencies; and
 - (C) provide the entity with thirty (30) days to respond.
- (3) Within thirty (30) days after the end of the time period provided to the member, the commissioner shall consider the response and determine if the situation warrants revocation of membership.

(d) An entity whose membership has been revoked may reapply under section 4 of this rule at any time twelve (12) months after the revocation. (*Air Pollution Control Board; 326 IAC 25-1-8*)

326 IAC 25-1-9 Transfers

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 9. Membership in ESP or CLEAN cannot be transferred to another entity. (*Air Pollution Control Board; 326 IAC 25-1-9*)

326 IAC 25-1-10 Standards of environmental compliance

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 10. (a) To be accepted into ESP or CLEAN, a member of senior management of the entity shall submit a certification with the application to the department certifying that to the best of their knowledge, the entity is currently in compliance with all local, state, and federal environmental laws and regulations.

(b) The department shall:

- (1) review the administrative, civil, and criminal environmental compliance and enforcement history of the entity in order to determine if the entity satisfies the required standard of substantial environmental compliance; and
- (2) consider all relevant and appropriate environmental compliance and enforcement criteria, including, but not limited to, the criteria in subsections (c) and (d) in determining whether or not an entity has achieved substantial environmental compliance.

(c) The following criteria shall prevent acceptance of an entity into the ESP or CLEAN:

- (1) Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the entity or an officer of the entity within the past five (5) years.
- (2) Criminal conviction or plea of employee at the entity for environmentally-related violations of criminal laws within the past five (5) years.

(d) The existence of one (1) or more of the following criteria may prevent acceptance of an entity into ESP or CLEAN:

- (1) Ongoing criminal investigation or prosecution of the entity, or an officer or employee of the entity, for a violation of environmental law.
- (2) Three (3) or more significant violations at the entity in the past three (3) years.
- (3) Unresolved or unaddressed significant noncompliance or significant violations.
- (4) Planned, but not yet filed, judicial or administrative action against the entity.
- (5) Ongoing U.S. EPA or state-initiated litigation against the entity.
- (6) A situation where an entity is not in compliance with the schedule and terms of an order or decree.
- (7) A history of significant problems or a pattern of noncompliance at the entity or at other affiliated entities under the same ownership or control.

(*Air Pollution Control Board; 326 IAC 25-1-10*)

326 IAC 25-1-11 Environmental management system

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 11. (a) An approved EMS must be implemented

before acceptance of an entity into ESP or CLEAN.

(b) An EMS that meets the criteria for ESP and CLEAN must, at a minimum, include the following:

- (1) Evidence of senior management support, commitment, and approval.
- (2) A written environmental policy directed toward the following:
 - (A) Compliance.
 - (B) Pollution prevention.
 - (C) Continuous improvement.
- (3) For CLEAN members, the environmental policy must also address sharing environmental decisions and performance information with the community.
- (4) Identification of the environmental aspects at the entity.
- (5) Prioritization of the environmental aspects and a determination of those aspects deemed significant considering, at the minimum, environmental impacts and applicable laws and regulations.
- (6) Established priorities and environmental objectives and targets for the following:
 - (A) Continuous improvement in environmental performance.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
- (7) An established community outreach mechanism that includes the following:
 - (A) Identifying and responding to community concerns.
 - (B) Informing the community of important matters that affect the community.
 - (C) Reporting on the EMS, including, at a minimum, reporting to the public on the environmental policy and significant aspects.
 - (D) Through the annual summary, reporting on the environmental improvement initiatives, including progress towards the most recent environmental improvement initiatives identified in the application or annual summary.
- (8) Incorporation of environmental and pollution prevention planning in the development of new products, processes, and services and modifications of existing processes.
- (9) Evidence of clear responsibility for the following:
 - (A) Implementation, training, monitoring, EMS maintenance, and taking corrective action.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
- (10) Documentation of the implementation procedures and the results of implementation.
- (11) Appropriate written EMS procedures.
- (12) An annual evaluation of the EMS with written results provided to senior management and affected employees.

(c) For CLEAN members, the environmental policy must be adopted through an executive order, resolution, or

ordinance.

(d) The department shall determine if the EMS meets the criteria in subsection (b).

(e) A representative of the department shall perform an on-site review, evaluation, and verification of the EMS if, within twelve (12) months of the application submittal, the EMS has not been:

- (1) audited by an independent party; or
- (2) registered pursuant to a recognized certification standard.

(Air Pollution Control Board; 326 IAC 25-1-11)

326 IAC 25-1-12 Continuous environmental improvement

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 12. (a) In coordination with the department, a member of senior management shall identify continuous environmental improvement initiatives for the appropriate program, as follows:

- (1) For ESP, a member of senior management shall identify three (3) continuous environmental improvement initiatives for each membership term. One (1) initiative shall be identified at the time of the initial or renewal application and the remaining initiatives shall be identified each year at the time the annual summary is submitted to the department.
- (2) For CLEAN, a member of senior management shall identify five (5) continuous environmental improvement initiatives for the three (3) year membership term.

(b) Entities accepted into ESP or CLEAN shall:

- (1) maintain records that describe and track the actions taken toward achievement of the environmental improvement initiatives; and
- (2) submit an annual summary in accordance with section 13 or 14 of this rule, as applicable, documenting progress toward the environmental improvement initiatives for that year.

(c) Entities accepted into ESP or CLEAN shall demonstrate continuous environmental improvement by the following:

- (1) Conducting periodic pollution prevention or environmental improvement assessments that identify opportunities for reducing pollution and eliminating waste at the entity.
- (2) Identifying, obtaining approval for, and implementing environmental improvement initiatives in coordination with the department that:
 - (A) include objectives and targets beyond current legal requirements; and
 - (B) as applicable, specify the:
 - (i) environmental media;
 - (ii) types of pollution to be prevented or reduced;
 - (iii) implementation activities; and

(iv) projected time frames.

(3) Reporting on the activities undertaken toward implementation of the initiatives identified with the department. (*Air Pollution Control Board; 326 IAC 25-1-12*)

326 IAC 25-1-13 Annual summary for ESP members

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 13. (a) Entities accepted into ESP shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the environmental improvement initiative for that year.
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
- (3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative, a member of senior management shall provide the following:

- (1) Verification of continued progress toward the objectives and targets.
- (2) A description of the reason the objectives and targets have not been attained.

(c) Each annual summary must include identification of the environmental improvement initiative for the next year, unless the entity is terminating membership in ESP.

(d) The annual summary shall:

- (1) cover the twelve (12) month calendar year;
- (2) be submitted to the department for each year by April 1 of the following year; and
- (3) be submitted for each calendar year in which the entity has been a member for at least three (3) full months.

(e) An annual summary submitted to U.S. EPA as a requirement of being a member of NEPT shall constitute an equivalent submission. (*Air Pollution Control Board; 326 IAC 25-1-13*)

326 IAC 25-1-14 Annual summary for CLEAN members

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 14. (a) Entities accepted into CLEAN shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the five (5) environmental improvement initiatives.
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
- (3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative at the time the third annual summary is submitted, a member

of senior management shall provide a description of the reason the objectives and targets have not been attained.

(c) The annual summary shall be submitted to the department sixty (60) days after the annual anniversary of the date the previous membership term began. (*Air Pollution Control Board; 326 IAC 25-1-14*)

Rule 2. Regulatory Flexibility for the Environmental Stewardship Program, Comprehensive Local Environmental Action Network Community Challenge Program, and Incorporation by Reference of NEPT Incentives

326 IAC 25-2-1 Incorporation by reference of federal incentive for NEPT members

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-17

Sec. 1. The air pollution control board incorporates by reference the Performance Track provisions at 40 CFR 63.2*, 40 CFR 63.10*, and 40 CFR 63.16*. The incentives in these federal rules are only available to members of the NEPT program.

*This body of documents 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 25-2-1*)

326 IAC 25-2-2 Ten year permit renewals

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15-3-2; IC 13-17

Sec. 2. (a) Notwithstanding 326 IAC 2-1.1-9.5 and 326 IAC 2-8-4(2) and in accordance with IC 13-15-3-2, a federally enforceable state operating permit (FESOP) for a member in ESP or CLEAN may be renewed for a period of up ten (10) years, if approved by the commissioner.

(b) Notwithstanding 326 IAC 2-1.1-9.5 and 326 IAC 2-6.1-7(a) and in accordance with IC 13-15-3-2, a minor state operating permit (MSOP) for a member in ESP or CLEAN may be renewed for a period of up ten (10) years, if approved by the commissioner. (*Air Pollution Control Board; 326 IAC 25-2-2*)

326 IAC 25-2-3 Monthly compliance methods for volatile organic compound

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15-3-2; IC 13-17

Sec. 3. (a) Notwithstanding 326 IAC 8-1-2(a)(7), the emission limitations specified in 326 IAC 8 can be achieved through monthly volume-weighted averaging of all coatings applied in a coating line or printing line subject to the requirements in 326 IAC 8-2 or 326 IAC 8-5-5.

(b) Sufficient records must be maintained to demonstrate

compliance with the applicable emission limitation on a monthly average basis and made available upon request.

(c) Records of monthly VOC emissions shall be maintained in:

- (1) pounds per month; or
- (2) tons per month.

(d) If monthly records sufficient to determine an accurate monthly weighted average are not available, each coating, ink, and solvent shall meet the requirements of the applicable section. (*Air Pollution Control Board; 326 IAC 25-2-3*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on October 4, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, the Air Pollution Control Board will hold a public hearing on a new article at 326 IAC 25.

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 article. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251*

or call (317) 232-3077(V) or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 711 or 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

FIRST NOTICE OF COMMENT PERIOD LSA Document #06-156(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PRETREATMENT STREAMLINING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules 327 IAC 5-16 through 327 IAC 5-21 concerning pretreatment program permit requirements. 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 5-16 through 327 IAC 5-21.

AUTHORITY: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The proposed rule revises several provisions of the general pretreatment regulations that address requirements for, and oversight of, industrial users (IUs) who introduce pollutants into publicly owned treatment works (POTWs). This proposed rule includes changes to certain program requirements to be consistent with national pollutant discharge elimination system (NPDES) requirements for direct dischargers to surface waters. This action will reduce the regulatory burden on IUs and state and POTW control authorities (CAs) without adversely affecting environmental protection and will allow CAs to better focus oversight resources on IUs with the greatest potential for adversely affecting POTW operations or the environment.

Alternatives To Be Considered Within the Rulemaking

This rulemaking incorporates by reference 40 CFR 437, an updated federal categorical pretreatment standard.

1. Required: This required change provides an updated reference relating to the centralized waste treatment point source category.

Potential Fiscal Impact of Alternative 1. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

EPA has identified thirteen (13) required rule changes that are more stringent than the previous federal requirements in 40 CFR Part 403 and therefore are considered required modifications for the state and/or the POTW, and fourteen (14) optional provisions that are generally less stringent than current requirements to be considered for state adoption.

2. Required: This required change provides updated references relating to requirements that POTWs must meet to adjust removal credits for combined sewer overflows (CSOs).

Potential Fiscal Impact of Alternative 2. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

3. Required: Applicable slug control requirements must be included in the significant industrial user's (SIU's) control mechanism.

Potential Fiscal Impact of Alternative 3. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

4. Required: POTWs must evaluate all of their SIUs for the need for a slug control plan or other action to control slug discharges within a year from the final rule's effective date or from becoming an SIU.

Potential Fiscal Impact of Alternative 4. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

5. Required: SIUs are required to notify the POTW immediately of changes that occur at the facility affecting the potential for a slug discharge.

Potential Fiscal Impact of Alternative 5. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

6. Required: The definition of significant noncompliance (SNC) is expanded to include additional types of pretreatment standards and requirements that are to be considered when determining whether an SIU's violations constitute SNC.

Potential Fiscal Impact of Alternative 6. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

7. Required: SIU reports must include best management practice (BMP) compliance information.

Potential Fiscal Impact of Alternative 7. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

8. Required: SIU control mechanisms must contain any BMPs required by a pretreatment standard, local limit, state, or local law.

Potential Fiscal Impact of Alternative 8. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

9. Required: Documentation of compliance with BMP requirements must be maintained as part of the SIU's and POTW's recordkeeping requirements.

Potential Fiscal Impact of Alternative 9. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

10. Required: CAs that perform sampling for SIUs must perform any required repeat sampling and analysis within thirty (30) days of becoming aware of a violation.

Potential Fiscal Impact of Alternative 10. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

11. Required: SIUs are required to follow sampling requirements for periodic compliance reports; the CA is required to specify the number of grab samples necessary in periodic and noncategorical SIU (NCSIU) reports; and NCSIUs are required to report all monitoring results.

Potential Fiscal Impact of Alternative 11. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

12. Required: NCSIUs are required to provide representative samples in their periodic monitoring reports.

Potential Fiscal Impact of Alternative 12. There is no anticipated state fiscal impact to this rule as this is a requirement from

federal regulations.

13. Required: IUs must notify the CA, as well as the POTW, of a change in discharge if the POTW is not the CA.

Potential Fiscal Impact of Alternative 13. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

14. Required: The POTW must, in writing by the principal executive officer or ranking elected official of the POTW, authorize the use of a duly authorized employee.

Potential Fiscal Impact of Alternative 14. There is no anticipated state fiscal impact to this rule as this is a requirement from federal regulations.

15. Optional: This optional provision allows publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice.

Potential Fiscal Impact of Alternative 15. This alternative is expected to provide a cost savings to affected CAs.

16. Optional: This optional provision amends the SNC criteria to apply only to SIUs and to those IUs that cause significant adverse impacts to the POTW, human health, or the environment.

Potential Fiscal Impact of Alternative 16. This alternative is expected to provide a cost savings to affected CAs.

17. Optional: Currently, SNC applies if a required report is submitted more than thirty (30) days late. This optional provision extends the thirty (30) day deadline to forty-five (45) days.

Potential Fiscal Impact of Alternative 17. This alternative is expected to be cost neutral to affected IUs and CAs.

18. Optional: This optional provision provides POTWs the flexibility to review the need for a slug control plan or other action as necessary.

Potential Fiscal Impact of Alternative 18. This alternative is expected to provide a cost savings to affected CAs.

19. Optional: This optional provision gives the CA the flexibility to determine the appropriate minimum number of grab samples IUs are required to take to measure pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds.

Potential Fiscal Impact of Alternative 19. This alternative is expected to provide a cost savings to affected IUs.

20. Optional: This optional provision clarifies that multiple grab samples for cyanide, total phenols, sulfide, oil and grease, and volatile organic compounds collected during a twenty-four (24) hour period may be composited prior to analysis. The CA will also be allowed to authorize manually composited grab samples for other parameters that are unaffected by compositing procedures.

Potential Fiscal Impact of Alternative 20. This alternative is expected to provide a cost savings to affected IUs and CAs.

21. Optional: This optional provision removes the requirement that flow composite sampling must be determined "infeasible" in order to allow time composite sampling. The IU must demonstrate that the time-proportional or grab samples are representative of the discharge before the CA may allow the IU

to submit such samples.

Potential Fiscal Impact of Alternative 21. This alternative is expected to provide a cost savings to affected IUs and CAs.

22. Optional: This optional provision authorizes the CA to reduce some of its oversight responsibilities and sampling and inspection requirements for a newly established class of indirect discharger, the NSCIU that discharges no more than one hundred (100) gallons per day of categorical wastewater to the POTW.

Potential Fiscal Impact of Alternative 22. This alternative is expected to provide a cost savings to affected IUs and CAs.

23. Optional: This optional provision allows the CA to reduce the reporting requirements for categorical industrial users (CIUs) meeting eligibility criteria when the CIU's categorical wastewater flow does not exceed:

- (1) one-hundredth (.01) percent of the POTW's design dry weather hydraulic capacity, or five thousand (5,000) gallons per day, whichever is smaller;
- (2) one-hundredth (.01) percent of the POTW's design organic treatment capacity; and
- (3) one-hundredth (.01) percent of the maximum allowable headworks loading (MAHL).

The POTW can reduce its own required annual inspections and monitoring of those CIUs eligible for reduced reporting.

Potential Fiscal Impact of Alternative 23. There is no anticipated state fiscal impact to this rule as this alternative is voluntary. However, unless IDEM receives widespread support, IDEM does not propose to adopt this provision as the cost of implementing this alternative would be high for POTWs and the benefits would be small to IUs.

24. Optional: This optional provision allows the CA to authorize a sampling waiver for a pollutant if the CIU can demonstrate the given pollutant is not present in its discharge or is present only in background levels in intake water.

Potential Fiscal Impact of Alternative 24. This alternative is expected to provide a cost savings to affected IUs and CAs.

25. Optional: This optional provision allows the CA to develop a general permit to regulate the activities of groups of SIUs.

Potential Fiscal Impact of Alternative 25. This alternative is expected to provide a cost savings to affected SIUs and CAs.

26. Optional: This optional provision allows the use of concentration based limits in lieu of flow based mass limits for facilities in the organic chemical and synthetic fibers, petroleum refining, and pesticide chemicals categories.

Potential Fiscal Impact of Alternative 26. This alternative is expected to provide a cost savings to affected IUs and CAs.

27. Optional: This optional provision gives the CA the discretion to calculate an equivalent mass limit for a control mechanism for categorical pretreatment standards that are expressed in terms of concentration.

Potential Fiscal Impact of Alternative 27. This alternative is expected to be cost neutral.

28. Optional: This optional provision defines BMPs consistent with NPDES regulations and allows their use in lieu of numeric local limits.

Potential Fiscal Impact of Alternative 28. This alternative is expected to provide a cost savings to affected IUs.

Applicable Federal Law

40 CFR Parts 9, 122, 403, and 437

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at <http://www.in.gov/idem/compliance/ctap/index.html>.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program

OPPTA - MC60-04

100 N. Senate Avenue, W-041

Indianapolis, IN 46204-2251

(317) 232-8578

selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman

External Affairs - MC50-01

100 N. Senate Avenue, IGCN 1301

Indianapolis, IN 46204-2251

(317) 234-3386

elevenha@idem.in.gov

Public Participation and Workgroup Information

This rulemaking implements several mandatory provisions of the general pretreatment program as required by federal regulation. Therefore, at this time, no workgroup is planned for the rulemaking. However, if you feel that a workgroup or other informal discussion on the optional rule changes is appropriate, please contact Rebecca Schmitt, Rules Development Section, Office of Water Quality at (317) 234-0986 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any

particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#06-156(WPCB) [Pretreatment Streamlining]
Rebecca Schmitt, Rulewriter
Rules Development Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

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 Office of Water Quality, Rules Development Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 30, 2006.

Additional information regarding this action may be obtained from Rebecca Schmitt, Rules Development Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana) or technical information concerning industrial permit requirements may be obtained from Jay Hanko, Industrial Permits Section, Office of Water Quality, (317) 233-3555 or (800) 451-6027 (in Indiana) or technical information concerning pretreatment standards may be obtained from Natalie Maupin, State Pretreatment Coordinator, Compliance Evaluation Section, Office of Water Quality, (317) 232-8729 or (800) 451-6027 (in Indiana).

Bruno Pigott
Assistant Commissioner
Office of Water Quality

TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-233(WPCB)

DEVELOPMENT OF NEW RULES CONCERNING THE ENVIRONMENTAL STEWARDSHIP PROGRAM AND

COMPREHENSIVE LOCAL ENVIRONMENTAL ACTION NETWORK

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new article at 327 IAC 18 concerning two voluntary performance based leadership programs. The Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) are new Indiana programs that offer recognition and incentives for companies and units of local government that consistently demonstrate environmental stewardship and strive for continual environmental improvement initiatives in Indiana's environmental programs. 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: September 1, 2005, Indiana Register (28 IR 3686).

Continuation of First Notice: April 1, 2006, Indiana Register (29 IR 2375).

CITATIONS AFFECTED: 327 IAC 18.

AUTHORITY: IC 13-14-8; IC 13-18-3-1; Public Law 100-2006.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rule is the creation of two voluntary environmental performance based leadership programs to promote continuous environmental improvement in Indiana. IDEM is proposing the development of two programs, the Environmental Stewardship Program (ESP) for businesses, and the Comprehensive Local Environmental Action Network (CLEAN) for units of local government. Similar to the United States Environmental Protection Agency's National Environmental Performance Track Program (NEPT), these state programs are designed to achieve environmental results by recognizing innovation, motivating organizations to work toward environmental improvements, and complementing existing regulatory activities. These programs focus on environmental outcomes such as reduced emissions, reduced waste, and lower discharges. Performance based leadership programs combine elements such as environmental management systems, a history of regulatory compliance, and continuous environmental improvement projects to create a solid program that yields environmental benefits.

An environmental management system (EMS) is a system for identifying, controlling, and monitoring activities that impact the environment. The system integrates environmental responsibilities into everyday business decision making leading to a proactive approach to environmental management rather than a reactive one. All employees associated with those processes or

responsibilities that could have environmental implications are informed of the environmental aspects of the organization, potential environmental impacts of those aspects, and their responsibilities to ensure compliance and environmental protection. An effective EMS helps an organization to avoid, reduce, or control the adverse environmental impacts of its activities, products, and services, achieve compliance with applicable legal requirements, and assist in continually improving environmental performance. Organizations with an effective EMS also realize increases in operational efficiency and decreased costs, making them a better, cleaner, more stable employer. Since an EMS is site-specific, implementation of an EMS is practical and useful for organizations of all types and sizes.

Members of performance based leadership programs must be in compliance with regulatory requirements and must be able to demonstrate a history of compliance. Before an organization can work towards going beyond compliance improvements, mechanisms must be in place to consistently take corrective and preventive actions and maintain compliance.

Continuous environmental improvement initiatives are projects the entity commits to implement that provide an environmental benefit that would not be achieved by compliance with applicable requirements alone. Sample "commitments" by members of the NEPT that could be part of a state program include increasing the amount of material recycled, reducing toxic inputs into a process, working with suppliers on environmental projects at the suppliers' locations, reducing air emissions, reducing water discharges, reducing water usage, reducing energy usage, reducing the quantity of hazardous waste generated, and working with their local communities to identify and implement environmentally beneficial projects.

Staff time is a limited resource for both IDEM and regulated entities. In order to allow high performers to focus their resources on environmental improvements, these innovative programs offer operational flexibility. This allows more strategically targeted resource allocations by members of the programs and IDEM to produce better overall environmental results. For example, one state performance based program worked with a member to reduce water effluent monitoring frequency, where a documented history of compliance existed, saving the member time and money. These resources were shifted towards efforts to reduce environmental impacts identified in the member's EMS and environmental improvement projects. Some of the improvements made by the member included elimination of a toxic chemical from the manufacturing process, reduced water usage, energy usage, and solid waste generation, and reduced BOD in wastewater effluent.

National Environmental Performance Track Program

NEPT is a federal voluntary partnership program that recognizes and rewards companies that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. NEPT is based on the premise that government should complement existing programs with new tools and strategies that not only protect

people and the environment but also capture opportunities for reducing cost and spurring technological innovation. U.S. EPA provides exclusive regulatory and administrative benefits to NEPT members, including placing them at low priority for routine inspections, and offers public recognition, networking opportunities, and other benefits. To qualify for NEPT, applicants must have adopted and implemented an EMS, show evidence of specific past environmental achievements, have a history of sustained compliance with environmental requirements, commit to continued environmental improvement, and commit to public outreach and performance reporting.

Environmental Stewardship Program and Comprehensive Local Environmental Action Network

ESP and CLEAN are voluntary programs that recognize and reward entities that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. Both IDEM and the member organization commit to new ways of achieving environmental goals through this program. For Indiana organizations that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement, ESP offers recognition, regulatory flexibility, and an opportunity to work directly with IDEM on innovative pilot projects. IDEM sees this program as a mechanism to reward organizations that are currently taking a proactive approach to environmental management as well as a way to motivate more Indiana organizations to take the next step and take a proactive approach to environmental management.

CLEAN helps local government take steps to plan, develop, and implement a quality of life plan, similar to an EMS. The quality of life plan addresses continuous environmental improvement and management of the community's environmental issues above and beyond the baseline of regulatory compliance. The quality of life plan consists of four components:

- (1) mission statement;
- (2) environmental activities and goals;
- (3) implementation and operation procedures; and
- (4) monitoring and reviewing the plan's progress.

The CLEAN Community Challenge is structured similarly to the ESP and has eligibility criteria at least as stringent as the ESP. IDEM is adding the CLEAN program to this rulemaking so that the programs can operate in tandem.

To qualify for ESP and CLEAN, applicants must demonstrate that they have:

- (1) implemented an environmental management system (EMS) that meets the requirements of this rule;
- (2) evidence of sustained compliance with environmental requirements and a commitment to maintain the level of compliance necessary to qualify for the program; and
- (3) a commitment to continued environmental improvement through environmental improvement initiatives over the term of the membership.

The ESP and CLEAN programs require members to submit an annual summary reporting on their progress toward their environmental improvement initiatives and verifying their EMS

has gone through review and still maintains the standard necessary for participation. This annual summary will provide IDEM with measurable results attained through the member's initiatives.

Differences Between the Federal and State Programs

Though IDEM has worked towards and continues to strive for consistency with the federal program, the ESP and CLEAN programs have some differences from the NEPT program on some program elements. IDEM desires to develop a program that encourages organizations to take that next step in the evolution of their environmental management responsibilities from compliance driven to beyond compliance and continuous environmental improvement. IDEM has reviewed and incorporated many elements from other state performance based programs and has also considered the nature of Indiana's natural and regulatory environment, yielding a program unique to Indiana. Some of the differences between the proposed state programs and the federal NEPT program are described below:

- Past Environmental Achievements: The NEPT program requires applicants to report results from two (2) past environmental achievements. IDEM has elected not to require applicants to report on past achievements. IDEM's programs are forward looking programs and designed to provide that mechanism for applicants to decide to take that next proactive step to continuous improvement and are open to applicants just beginning this progressive approach to environmental management. IDEM feels that encouraging entities to become program members while they are in the early stages of developing a proactive environmental management system will provide support for further improvements and can provide the impetus for senior management to see the value in progressive environmental management. IDEM also hopes that the Indiana programs will motivate entities to work to achieve higher levels of environmental management.

- Future Environmental Achievements: NEPT applicants must identify four (4) environmental performance commitments in their initial and renewal applications. ESP applicants must identify one (1) environmental improvement initiative in their initial application and one (1) environmental improvement initiative in each annual summary as long as the member continues to maintain membership in the program. CLEAN applicants must identify five (5) environmental improvement initiatives for the three-year membership. IDEM chose to have ESP applicants identify initiatives on an annual basis in order to better coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets. IDEM understands that many initiatives may take longer than one (1) year to be attained and the implementation time frames for each initiative will vary. IDEM is electing to require three (3) initiatives for ESP rather than four (4) in order to enable the member to focus more resources on attaining the initiatives and producing measurable results. IDEM feels that requiring three (3) initiatives will lead to better progress towards the goals of the initiatives and

increased resource allocation by the member toward each initiative.

- Environmental Management System: The EMS requirements in the federal and state programs are very similar because they are based on the ISO 14001 basic elements. Both programs require an independent audit of the EMS prior to becoming a member. Independent audits are conducted by parties not directly employed at the location being audited and not directly involved in developing the EMS being audited. The NEPT program requires that before an interested entity may be accepted into the program, its EMS must complete one (1) full cycle (plan-do-check-act). IDEM will require that members have an EMS developed and implemented (plan-do) and that the member demonstrates that the cycle continues via the annual summary mechanism. As indicated earlier, IDEM feels that, by encouraging entities in the early stages of progressive environmental management to become members, the program will encourage more entities to take that next step towards proactive environmental management and continuous environmental improvement and provide impetus for senior management to see the value of the environmental management system.

- Community Outreach: The NEPT program identifies community outreach as a separate component of the membership eligibility criteria. The NEPT community outreach component requires identifying and responding to community concerns, informing the community of important matters that affect it, and reporting on the facility's EMS and performance commitments. IDEM feels that these are appropriate community outreach requirements. However, IDEM feels that these elements can be appropriately addressed by the entity's environmental management system. Therefore, IDEM is requiring the same community outreach requirements as a required element of the applicant's environmental management system, providing an annual review mechanism of this important component of the program.

Incentives

Incentives are an integral part of environmental performance based leadership programs. The decision to join a performance based leadership program will be a business decision for Indiana entities. These incentives offer business value and provide the opportunity to shift limited environmental management resources from certain environmental responsibilities to the entity's EMS and continuous environmental improvement identification and implementation activities. During the program development process, IDEM considered a variety of different incentives, only a few of which are included in this rule. Recognition, networking, and many regulatory incentives based on IDEM policy, procedure, and discretion will be described in more detail in separate ESP and CLEAN program documents. Those regulatory incentives that are based on existing state rules are included in this rule to provide the necessary authority for members to use the incentive. Additional incentives may be added in the future as the program develops. IDEM anticipates using leadership entities to pilot future innovative environmental

management strategies through this program. Proposed incentives that prove to jeopardize IDEM's ability to fulfill its environmental protection responsibilities, fail to provide anticipated business value, or create overly burdensome requirements on program members may be removed from the program.

- **Recognition Incentives:** The most important mechanism created by the ESP and CLEAN programs will be the capacity to recognize Indiana entities that are taking a proactive approach to their environmental management responsibilities and attaining continuous environmental improvements. Ways in which members may receive recognition for their commitment include public recognition via a press release made available to local media outlets, IDEM attendance at an on-site membership announcement, a plaque or framed certificate, use of the ESP program logo in promotional and marketing efforts, recognition at the annual Pollution Prevention Conference, and recognition on IDEM's ESP or CLEAN web page.

- **Networking Incentives:** Because the members of ESP and CLEAN will be proactively working on continual environmental improvements, IDEM anticipates that the members will always be searching for new ideas. Networking opportunities can provide a forum for problem solving and the sharing of ideas, successes, and barriers. IDEM intends to organize and facilitate networking opportunities for members of the program.

- **Regulatory Incentives:** Another key element of programs such as ESP and CLEAN is the idea of creating administrative and regulatory changes to encourage exceptional compliance behavior, the use of government resources more efficiently, and improving the environmental economics for members. Good performers who are proactive with respect to environmental management do not require the same level of detailed regulatory oversight as entities without these systems in place and a history of noncompliance. Therefore, in an effort to reduce regulatory transaction costs and regulatory uncertainty for members, the ESP will offer regulatory flexibility opportunities. Some of the regulatory incentives may include streamlined NPDES and air permit renewal processes, consistent contacts within each program area, pre- or post-application meetings, extended Federally Enforceable State Operating Permit (FESOP) and Minor Source Operating Permit (MSOP) terms, alternative compliance monitoring strategies where compliance is demonstrated, lowered routine inspection priority, alternative reporting schedules (certain air permit quarterly reports can be submitted semiannually where deviations will still be reported quarterly), alternative reporting schedules for monthly monitoring reports (MMRs), discharge monitoring reports (DMRs), and monthly reports of operation (MROs), one day advance notice of routine inspections, and expedited permit review where feasible. IDEM anticipates that the resources saved by members will be reallocated toward future continued environmental improvement. IDEM anticipates that regulatory agency compliance

resources saved will be reallocated toward entities needing additional oversight and higher risk entities.

The Indiana Environmental Stewardship Program and the Comprehensive Local Environmental Action Network are voluntary programs; therefore, rulemaking is not necessary to initiate the programs. IDEM has chosen to pursue a rulemaking pertaining to each of the regulatory programs (air, water, and solid and hazardous waste) to establish these programs based on new legislation (Public Law 100-206). This rulemaking will provide an opportunity for public input on the programs, to create regulatory incentives, and to provide consistency and clarity for the programs.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. There is no requirement imposed under this rule because it is a voluntary program.

Potential Fiscal Impact

Because this rule is for a voluntary program, there will be no requirements with a fiscal impact. However, members taking advantage of the program could see reduced costs from some of the potential incentives. For example, the reduction of reporting requirements such as the NPDES discharge monitoring report form for wastewater dischargers is likely to result in time and money savings for members choosing this option.

Public Participation and Workgroup Information

Numerous public meetings have been held to discuss the intent and details of this program. No workgroup is planned for this rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through October 3, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM also requested public comment from April 1, 2006, through May 1, 2006, on the addition of the CLEAN program to the rule. IDEM received comments from the following parties by the comment period deadline:

- Barnes and Thornburg (BT)
- Eli Lilly and Company (ELC)
- Indiana Cast Metals Association (INCMA)
- Indiana Farm Bureau, Inc. (IFB)
- International Truck and Engine Corporation (ITEC)
- Milestone Contractors, L.P. (MSC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: We support the effort to adopt the program in rules where necessary but believe timely implementation is most important to gain the benefits anticipated from such a program. We also have some concerns about rulemaking not providing flexibility to quickly adjust a new program that may need to be

adjusted as more experience is gained from implementation. (INCMA)

Response: IDEM believes such a program must extend beyond policy and agency discretion to provide the level of desired consistency and value to program members. This is achieved by adopting the program in rules. Very good progress is being made in drafting these rules. Legislation granting IDEM authority to develop such a program has been enacted. IDEM will begin to accept members into the program providing those benefits that are not dependent on rule revisions, but are based on IDEM policy and procedures. Upon completion of this rulemaking, the regulatory flexibility incentives will be available to members. Depending on the nature of future revisions and additions to the program, rulemaking may be needed.

Comment: We believe the federal performance program standards are adequate and that the state should mirror these standards in setting up a state program. Further, we support reciprocity for the federal and state programs so that they will be linked and eliminate duplicate application submissions. (INCMA)

Response: IDEM's eligibility standards will be closely aligned with those of the federal NEPT program. There will be a few differences in membership eligibility criteria, however. IDEM anticipates that the slight differences will provide Indiana companies that are in compliance and desiring to take the next step with respect to their environmental responsibilities with the motivation and foundation to take that step.

The federal program requires a full one-year EMS cycle to be completed before allowing membership. IDEM aims to encourage Indiana entities to develop an Environmental Management System (EMS) by allowing membership once an EMS is implemented. The federal program requires documentation of two past voluntary environmental improvement initiatives. IDEM aims to encourage participation by entities in the early stages of progressive environmental responsibility. Therefore, IDEM is not requiring documentation of past environmental improvements. The federal program requires members to identify four (4) environmental commitments every three (3) years at the time of application or renewal. IDEM anticipates requiring members to identify three (3) environmental improvement initiatives over the three (3) year membership term. In order to coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets, members of ESP will be asked to identify one (1) initiative each year of membership. The basic environmental management system criteria are similar between the state and federal programs since both follow the plan - do - check - act model.

Since the programs likely will not be exactly the same, membership will not be completely reciprocal. Entities desiring membership in both programs must meet the federal program requirements. However, IDEM does not anticipate that these differences will be burdensome for entities wishing to be members of both programs.

IDEM will be working with the U.S. EPA in the coming

months to coordinate applications for membership. IDEM and EPA are aiming for a system as described in this paragraph. If an entity applies for membership in the federal program using the online federal application submittal process, that applicant will be able to check that they are also interested in applying for the state program. Applicants applying for the state program at the same time they are applying for the federal program may be asked a few additional questions on their online federal application. Entities desiring membership in both programs that do not yet meet the federal requirements (for example they are not through a complete EMS cycle or do not yet have documentation of two (2) past environmental achievements), may apply to the state program first, using the state application, then apply to the federal program later or the entity may wait and apply for the two (2) programs together once they meet the federal program requirements. Entities desiring state only membership may apply to the state program using the state application. Members with state only membership will be eligible for state incentives but will not be eligible for federal incentives.

Comment: We support the concept of a Performance Track program tailored to Indiana. Lilly has monitored the national Performance Track program since its inception but has not seen any significant advantages to participating since many of the flexibility provisions touted by EPA have not been supported by IDEM. For example, current IDEM policy regarding the Title V permit program specifies quarterly compliance reporting, which prevents us from taking advantage of federal rules promulgated for national Performance Track subscribers requiring only semi-annual reporting. Therefore, we are highly supportive of identifying those opportunities to change rules and/or agency policy to allow recognition of good compliance practice and to allow innovative approaches to compliance. We understand that any such program must result in a higher level of environmental performance. We have many examples of where we can achieve this if certain rules provided more flexibility. (ELC)

Response: IDEM believes the state performance program will provide that desired flexibility and valued incentives for being a member. We encourage entities to submit examples of those specific rules that may be limiting entities' ability to go beyond compliance, achieving higher compliance levels, and improving environmental quality.

The incentive provided as an example in this comment is a federal program incentive. The federal program incentives will only be available to members of the National Environmental Performance Track Program. In order to take advantage of this benefit, entities would have to apply to and be granted membership in the federal program. IDEM is currently in the process of incorporating the federal incentives into the state rules so that members of the federal program in Indiana may take advantage of them. Once the incentive is fully incorporated into the state rules, federal program members may request to take advantage of the incentive.

Comment: We encourage IDEM to make the program entry compliance requirements flexible so that paperwork violations or permit exceedances where corrective action has been taken

do not preclude participation. In some cases these criteria may differ from the national Performance Track criteria. (ELC)

Comment: The primary concern with the federal program is the definition of “in compliance”, which IDEM representatives have suggested would not reflect 100% compliance 100% of the time. Few would meet that standard given paperwork issues, etc. that have no reflection on substantive compliance and environmental protection. (INCMA)

Response: The compliance requirements for the state programs have been taken from the federal NEPT program. These compliance criteria include, among other criteria, no criminal conviction or plea for environmentally related violations of criminal laws within the past five (5) years, no more than two (2) significant violations in the past three (3) years, and no unaddressed, unresolved significant non-compliance or significant violations. This criterion provides allowances for insignificant or relatively minor compliance issues. However, it is IDEM’s intent to maintain a high standard of compliance for membership eligibility.

Comment: Will this program only apply to sources that are in 100% compliance? If not, what noncompliance is still acceptable for a company to be able to participate in the program? (BT)

Response: The compliance requirements for the state programs have been taken from the federal NEPT program. These compliance criteria include, among other criteria, no criminal conviction or plea for environmentally related violations of criminal laws within the past five (5) years, no more than two (2) significant violations in the past three (3) years, and no unaddressed, unresolved significant non-compliance or significant violations. This criterion provides allowances for insignificant compliance or relatively minor issues. However, it is IDEM’s intent to maintain a high standard of compliance for membership eligibility.

Comment: We would like to see a company-based option of the Performance Track program instead of only the facility-based option. Allowing companies, such as Milestone, with multiple facilities with very few employees (typically three (3)) at each facility to enter the program as a company instead of each individual facility would open up the program to more industries in the State of Indiana. Milestone with three-employee facilities would currently be unlikely to enter the program. Several industries in Indiana are in the same position. (MSC)

Response: In general, IDEM anticipates membership in the program to be determined on a location by location basis, following the eligibility set up of the federal NEPT program. However, IDEM understands that certain organization types are structured such that membership on a location by location basis may be prohibitive of participation. Therefore, IDEM is considering a membership option for organizations meeting certain criteria. Each location must meet the applicability criteria individually and as a group. This includes the requirement to identify environmental improvement initiatives. The initiatives may be similar or the same for all of the locations, but each location must play an active role in each initiative and each

location must experience continuous environmental improvement.

Comment: We applaud IDEM for pursuing a Performance Track Program for Indiana businesses. We ask that IDEM please consider agricultural operations for eligibility to participate in the three rulemakings, where applicable. It is important that there are real incentives for producers who go above and beyond the regulatory requirements. Many confined animal feeding operations have a proven record of regulatory compliance and can demonstrate a commitment to continuous improvement. Many of the same benefits that would be attractive to manufacturing concerns would be welcomed by livestock producers who would choose to participate on a voluntary basis. (IFB)

Response: The program will be open to all Indiana entities. It is our belief that the current draft list of regulatory flexibility and incentives afforded to program members does have applicability and value to the agricultural community.

Comment: We support a variety of incentives that recognize different companies value different incentives. Foundry leaders have expressed support for the following:

1. A tax credit for technology innovation or some portion of compliance expenditures.
2. A reduction in permitting fees given a potential reduction in agency oversight expenditures.
3. Reduced inspections and monitoring requirements.
4. Reduced stack testing given it reflects significant expenditures and provides a narrow picture of emissions.
5. Fast tracking permits although this particular item would require more analysis given economic considerations that are important to all companies.
6. Construction/equipment installation flexibility.
7. Reduced compliance reporting to semi-annual which we believe is already allowed under current regulation.

(INCMA)

Response: IDEM’s current proposed list of incentives includes many of the items recommended by the foundry industry. However, a reduction in fees or tax credits are not economically feasible at this time but may be further explored later should there be significant interest.

Comment: The Environmental Performance Track Program should evaluate the benefits of other unique programs and propose such incentives as:

1. Flexibility when permitting new technologies and monitoring systems.
2. EMS based permits.

Both of the above programs would likely provide the additional incentives for companies to see the value of the proposed program. (ITEC)

Response: It is IDEM’s intent to develop incentives that provide sufficient business value to those interested in becoming members. Permit flexibility and alternative compliance monitoring requirements are currently included in the proposed incentives list. IDEM is willing to further discuss EMS-based permits; although, such a permitting approach has not been discussed in

the context of this program. IDEM is aware of EPA's efforts to explore EMS-based permitting and will continue to stay abreast of developments. Should EMS-based permitting be proven successful in those efforts, IDEM would likely look to members of the state performance based program for piloting an EMS-based permit here in Indiana.

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:

#05-233(WPCB) ESP and CLEAN Programs
 MaryAnn Stevens Mail Code 65-40
 Rules Development Section
 Office of Water Quality
 Indiana Department of Environmental Management
 100 North Senate Avenue
 Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments also may 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 Office of Water Quality, Rules Development Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 3, 2006.

Additional information regarding the ESP or CLEAN Programs may be obtained from Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana). Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Development Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 18 IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. VOLUNTARY PERFORMANCE BASED LEADERSHIP PROGRAMS

Rule 1. Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program

327 IAC 18-1-1 Applicability

Authority: IC 13-14-8; IC 13-18-3-1; Public Law 100-2006
 Affected: IC 13-15; IC 13-18

Sec. 1. (a) The Indiana Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program are voluntary

performance based leadership programs that offer recognition, regulatory flexibility, and an opportunity to work directly with the department on innovative pilot projects for entities that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement. In accordance with Public Law 100-2006, an entity is not required to comply with this rule and 327 IAC 18-2 except as a provision of participation in these programs.

(b) This rule applies to any Indiana entity that:

- (1) voluntarily participates in either program;
- (2) meets the eligibility requirements of section 3 of this rule; and
- (3) maintains membership by complying with this rule and 327 IAC 18-2.

(Water Pollution Control Board; 327 IAC 18-1-1)

327 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
 Affected: IC 13-11-2-35; IC 13-11-2-51; IC 13-15; IC 13-18

Sec. 2. In addition to the definitions in IC 13-11-2, the following definitions apply throughout this rule and 327 IAC 18-2:

- (1) "Commissioner", as defined in IC 13-11-2-35(a), means the commissioner of the department of environmental management.
- (2) "Comprehensive Local Environmental Action Network Community Challenge Program" or "CLEAN" means the voluntary state program for units of local government in Indiana that:

- (A) demonstrate environmental stewardship; and
- (B) strive for continual environmental improvement.

- (3) "Department", as defined in IC 13-11-2-51, means the Indiana department of environmental management.
- (4) "Entity" means a company, corporation, firm, enterprise, authority, institution, partnership, or unit of local government, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. Except as described in section 4(c) of this rule, an entity is one (1) geographic location under:

- (A) a single EMS; and
- (B) the direction of senior management.

- (5) "Environmental aspect" means an element of the activities, products, or services of an entity that has the potential to interact with the environment.

- (6) "Environmental impact" means any change to the environment, whether adverse or beneficial, wholly or partially resulting from the environmental aspects of an entity.

- (7) "Environmental management system" or "EMS" means a continuous cycle of planning, implementing, reviewing, and improving a set of documented processes and practices used to develop and implement the environmental policy and manage the environmental aspects of an

entity to:

- (A) maintain compliance;
- (B) reduce adverse environmental impacts; and
- (C) increase operational efficiency.
- (8) "Environmental objective" means an environmental goal that is consistent with the environmental policy of an entity.
- (9) "Environmental policy" means the overall commitment and direction of an entity related to environmental performance as formally expressed by senior management.
- (10) "Environmental Stewardship Program" or "ESP" means the voluntary state program for entities in Indiana that:
 - (A) demonstrate environmental stewardship; and
 - (B) strive for continual environmental improvement.
- (11) "Environmental target" means a detailed performance requirement that:
 - (A) is quantified where practical; and
 - (B) arises from the environmental objectives.
- (12) "Independent audit" means an audit conducted by a party that:
 - (A) is not directly employed by the entity being audited; and
 - (B) has not played a substantive role in implementing the EMS being audited.
- (13) "National Environmental Performance Track Program" or "NEPT" means the U.S. EPA's National Environmental Performance Track Program.
- (14) "Senior management" means the following:
 - (A) For entities, the person or group with executive responsibility for the entity.
 - (B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
 - (C) For a unit of local government, either a principal executive officer or ranking elected official.
- (15) "U.S. EPA" means the administrator of the United States Environmental Protection Agency or the administrator's designee.

(Water Pollution Control Board; 327 IAC 18-1-2)

327 IAC 18-1-3 Eligibility criteria

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
 Affected: IC 13-15; IC 13-18

Sec. 3. Participation in ESP or CLEAN is voluntary and is open to entities located and operating in Indiana that meet the following criteria:

- (1) The standard of environmental compliance as described in section 10 of this rule.
- (2) Implement and maintain an EMS as described in section 11 of this rule.
- (3) Conduct continuous environmental improvement initiatives as described in section 12 of this rule.

(Water Pollution Control Board; 327 IAC 18-1-3)

327 IAC 18-1-4 Membership application

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
 Affected: IC 13-15; IC 13-18

Sec. 4. (a) A member of senior management shall submit an application by one (1) of the following methods:

(1) For applications for either ESP or CLEAN only, to the department on:

- (A) a form, whether electronically or hard copy, provided by the department; or
- (B) an equivalent form.

(2) For applications for both ESP and NEPT, to U.S. EPA, electronically on the form provided by U.S. EPA.

(3) Electronic submission is the preferred method of applying to these programs.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) A membership for an entity shall be limited to cover one (1) geographic location under a single EMS, except that an entity may apply for membership as a group of locations if the following criteria are met:

- (1) Each location must meet the applicability criteria individually and as a group, including the requirement to identify environmental improvement initiatives.
- (2) The environmental improvement initiatives may be similar or the same for all of the locations, but each location must:

- (A) play an active role in each initiative; and
- (B) demonstrate continuous environmental improvement.

(3) The EMS must address staff and activities at each location.

(4) Senior management must be common to all locations.

(5) All locations must be engaged in the same business activity.

(6) The standards of environmental compliance in section 10 of this rule shall apply to all Indiana locations under the control of the entity.

(d) The commissioner shall make a determination on acceptance into ESP or CLEAN based on the following:

(1) The EMS must meet the standards in section 11 of this rule.

(2) A site visit by a representative of the department to provide an understanding of the environmental aspects of the entity and the EMS.

(3) Identification of environmental improvement initiatives and associated objectives and targets as follows:

- (A) For ESP applicants, at least one (1) environmental improvement initiative and associated objectives and

targets for the first year of membership.

(B) For CLEAN applicants, at least five (5) environmental improvement initiatives and associated objectives and targets for the three (3) year term of membership.

(4) For ESP applicants, information provided to U.S. EPA if the entity has also applied for membership in NEPT.

(5) Compliance audits conducted by:

- (A) the department;
- (B) the U.S. EPA;
- (C) other state offices; and
- (D) other federal agencies;

as appropriate.

(6) Other information, including the following:

- (A) Compliance information obtained from department staff.
- (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Water Pollution Control Board; 327 IAC 18-1-4)

327 IAC 18-1-5 Term of membership

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 5. (a) The term of membership is three (3) years from the date the entity is accepted into the program as long as the entity continues to meet the program criteria and submits the annual summary.

(b) For ESP members, the department may extend the term for up to one (1) year to:

- (1) coincide with the membership date in NEPT, if applicable; or
- (2) cover the time period from the normal three (3) year expiration date to the renewal date based on submittal of an renewal application by April 1 of the third year.

(c) For CLEAN members, the department may extend the term for up to ninety (90) days to accommodate submittal of the third annual report, at which time CLEAN members may seek to renew membership in the program. *(Water Pollution Control Board; 327 IAC 18-1-5)*

327 IAC 18-1-6 Renewal of ESP membership

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 6. (a) To renew ESP membership, a member of senior management shall submit a renewal application by April 1 of the third year of membership as follows:

- (1) For renewal applications for ESP only, to the department on:
 - (A) a form, either electronically or hard copy, provided by the department; or
 - (B) an equivalent form.
- (2) For renewal applications for both ESP and NEPT, electronically to U.S. EPA on the form provided by U.S. EPA.
- (3) The preferred method of submission for both programs is electronic.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the renewal application and the annual summaries submitted during the most recent term of membership. The review of a renewal shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a determination on the ESP renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to set at least one (1) environmental improvement initiative and associated goals for the next year of membership.
- (4) Information provided by U.S. EPA if the entity has also applied for membership in NEPT.
- (5) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;
 as appropriate.
- (6) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Water Pollution Control Board; 327 IAC 18-1-6)

327 IAC 18-1-7 Renewal of CLEAN membership

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 7. (a) To renew CLEAN membership, a member of senior management shall submit the third annual summary of the previous membership term:

- (1) to the department within sixty (60) days after the third annual anniversary of the date the previous membership term began;
- (2) clearly indicating the intention to renew membership; and
- (3) including five (5) objectives, targets, and action plans for the next three (3) year term.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the annual summaries and five (5) objectives, targets, and action plans submitted during the most recent term of membership. The review of this information shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a decision on the CLEAN renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to identify at least five (5) environmental improvement initiatives and associated goals for the next three (3) year term of membership.
- (4) Compliance audits conducted by:
 - (A) the department;
 - (B) the U.S. EPA;
 - (C) other state offices; and
 - (D) other federal agencies;
 as appropriate.
- (5) Other information, including the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(e) If the entity does not request a renewal with the third annual summary, then membership in CLEAN expires upon receipt by the department of the third annual summary. (*Water Pollution Control Board; 327 IAC 18-1-7*)

327 IAC 18-1-8 Revocation

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
 Affected: IC 13-15; IC 13-18

Sec. 8. (a) The commissioner shall revoke membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The standards of environmental compliance described in section 10 of this rule.
- (2) The requirement to make sufficient progress towards attaining the environmental initiatives identified and agreed upon at the time of application and submittal of the annual summaries.

(3) The requirement to maintain an approved EMS as required for membership.

(4) The prohibition against knowingly submitting false information:

- (A) on the application;
- (B) in the annual summary;
- (C) during a site visit or evaluation by the department; or
- (D) during an independent audit.

(b) The commissioner may revoke the membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The ESP or CLEAN program requirements, as applicable.
- (2) Federal, state, or local environmental laws and regulations.
- (3) The requirement to meet other appropriate standards as determined by the commissioner based upon the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(c) If the commissioner determines that a situation may warrant revocation of membership, the following applies:

- (1) The commissioner shall notify the entity in writing:
 - (A) of any potential deficiencies found; and
 - (B) that the commissioner is considering removing the entity from the program.
- (2) The notice shall:
 - (A) state that the commissioner may consider removing the entity from the program after the response time period provided to the member;
 - (B) identify the potential deficiencies; and
 - (C) provide the entity with thirty (30) days to respond.
- (3) Within thirty (30) days after the end of the time period provided to the member, the commissioner shall consider the response and determine if the situation warrants revocation of membership.

(d) An entity whose membership has been revoked may reapply under section 4 of this rule at any time twelve (12) months after the revocation. (*Water Pollution Control Board; 327 IAC 18-1-8*)

327 IAC 18-1-9 Transfers

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
 Affected: IC 13-15; IC 13-18

Sec. 9. Membership in ESP or CLEAN cannot be transferred to another entity. (*Water Pollution Control Board; 327 IAC 18-1-9*)

327 IAC 18-1-10 Standards of environmental compliance

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12
 Affected: IC 13-15; IC 13-18

Sec. 10. (a) To be accepted into ESP or CLEAN, a member of senior management of the entity shall submit a certification with the application to the department certifying that to the best of their knowledge, the entity is currently in compliance with all local, state, and federal environmental laws and regulations.

(b) The department shall:

- (1) review the administrative, civil, and criminal environmental compliance and enforcement history of the entity in order to determine if the entity satisfies the required standard of substantial environmental compliance; and
- (2) consider all relevant and appropriate environmental compliance and enforcement criteria, including, but not limited to, the criteria in subsections (c) and (d) in determining whether or not an entity has achieved substantial environmental compliance.

(c) The following criteria shall prevent acceptance of an entity into the ESP or CLEAN:

- (1) Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the entity or an officer of the entity within the past five (5) years.
- (2) Criminal conviction or plea of employee at the entity for environmentally-related violations of criminal laws within the past five (5) years.

(d) The existence of one (1) or more of the following criteria may prevent acceptance of an entity into ESP or CLEAN:

- (1) Ongoing criminal investigation or prosecution of the entity, or an officer or employee of the entity, for a violation of environmental law.
- (2) Three (3) or more significant violations at the entity in the past three (3) years.
- (3) Unresolved or unaddressed significant noncompliance or significant violations.
- (4) Planned, but not yet filed, judicial or administrative action against the entity.
- (5) Ongoing U.S. EPA or state-initiated litigation against the entity.
- (6) A situation where an entity is not in compliance with the schedule and terms of an order or decree.
- (7) A history of significant problems or a pattern of noncompliance at the entity or at other affiliated entities under the same ownership or control.

(Water Pollution Control Board; 327 IAC 18-1-10)

327 IAC 18-1-11 Environmental management system

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 11. (a) An approved EMS must be implemented before acceptance of an entity into ESP or CLEAN.

(b) An EMS that meets the criteria for ESP and CLEAN must, at a minimum, include the following:

- (1) Evidence of senior management support, commitment, and approval.
- (2) A written environmental policy directed toward the following:
 - (A) Compliance.
 - (B) Pollution prevention.
 - (C) Continuous improvement.
- (3) For CLEAN members, the environmental policy must also address sharing environmental decisions and performance information with the community.
- (4) Identification of the environmental aspects at the entity.
- (5) Prioritization of the environmental aspects and a determination of those aspects deemed significant considering, at the minimum, environmental impacts and applicable laws and regulations.
- (6) Established priorities and environmental objectives and targets for the following:
 - (A) Continuous improvement in environmental performance.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
- (7) An established community outreach mechanism that includes the following:
 - (A) Identifying and responding to community concerns.
 - (B) Informing the community of important matters that affect the community.
 - (C) Reporting on the EMS, including, at a minimum, reporting to the public on the environmental policy and significant aspects.
 - (D) Through the annual summary, reporting on the environmental improvement initiatives, including progress towards the most recent environmental improvement initiatives identified in the application or annual summary.
- (8) Incorporation of environmental and pollution prevention planning in the development of new products, processes, and services and modifications of existing processes.
- (9) Evidence of clear responsibility for the following:
 - (A) Implementation, training, monitoring, EMS maintenance, and taking corrective action.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
- (10) Documentation of the implementation procedures and the results of implementation.
- (11) Appropriate written EMS procedures.
- (12) An annual evaluation of the EMS with written results provided to senior management and affected employees.

(c) For CLEAN members, the environmental policy must be adopted through an executive order, resolution, or ordinance.

(d) The department shall determine if the EMS meets the criteria in subsection (b).

(e) A representative of the department shall perform an on-site review, evaluation, and verification of the EMS if, within twelve (12) months of the application submittal, the EMS has not been:

- (1) audited by an independent party; or
- (2) registered pursuant to a recognized certification standard.

(*Water Pollution Control Board; 327 IAC 18-1-11*)

327 IAC 18-1-12 Continuous environmental improvement

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 12. (a) In coordination with the department, a member of senior management shall identify continuous environmental improvement initiatives for the appropriate program, as follows:

- (1) For ESP, a member of senior management shall identify three (3) continuous environmental improvement initiatives for each membership term. One (1) initiative shall be identified at the time of the initial or renewal application and the remaining initiatives shall be identified each year at the time the annual summary is submitted to the department.
- (2) For CLEAN, a member of senior management shall identify five (5) continuous environmental improvement initiatives for the three (3) year membership term.

(b) Entities accepted into ESP or CLEAN shall:

- (1) maintain records that describe and track the actions taken toward achievement of the environmental improvement initiatives; and
- (2) submit an annual summary in accordance with section 13 or 14 of this rule, as applicable, documenting progress toward the environmental improvement initiatives for that year.

(c) Entities accepted into ESP or CLEAN shall demonstrate continuous environmental improvement by the following:

- (1) Conducting periodic pollution prevention or environmental improvement assessments that identify opportunities for reducing pollution and eliminating waste at the entity.
- (2) Identifying, obtaining approval for, and implementing environmental improvement initiatives in coordination with the department that:
 - (A) include objectives and targets beyond current legal requirements; and
 - (B) as applicable, specify the:
 - (i) environmental media;
 - (ii) types of pollution to be prevented or reduced;
 - (iii) implementation activities; and
 - (iv) projected time frames.
- (3) Reporting on the activities undertaken toward implementation of the initiatives identified with the department.

(*Water Pollution Control Board; 327 IAC 18-1-12*)

327 IAC 18-1-13 Annual summary for ESP members

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 13. (a) Entities accepted into ESP shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the environmental improvement initiative for that year.
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
- (3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative, a member of senior management shall provide the following:

- (1) Verification of continued progress toward the objectives and targets.
- (2) A description of the reason the objectives and targets have not been attained.

(c) Each annual summary must include identification of the environmental improvement initiative for the next year, unless the entity is terminating membership in ESP.

(d) The annual summary shall:

- (1) cover the twelve (12) month calendar year;
- (2) be submitted to the department for each year by April 1 of the following year; and
- (3) be submitted for each calendar year in which the entity has been a member for at least three (3) full months.

(e) An annual summary submitted to U.S. EPA as a requirement of being a member of NEPT shall constitute an equivalent submission. (*Water Pollution Control Board; 327 IAC 18-1-13*)

327 IAC 18-1-14 Annual summary for CLEAN members

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-12

Affected: IC 13-15; IC 13-18

Sec. 14. (a) Entities accepted into CLEAN shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

- (1) Progress toward the objectives and targets identified for the five (5) environmental improvement initiatives.
- (2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.
- (3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative at the time the third annual summary is submitted, a member of senior management shall provide a description of the reason the objectives and targets have not been attained.

(c) The annual summary shall be submitted to the department sixty (60) days after the annual anniversary of the date the previous membership term began. (*Water Pollution Control Board; 327 IAC 18-1-14*)

Rule 2. Regulatory Flexibility for the Environmental Stewardship Program, Comprehensive Local Environmental Action Network Community Challenge Program, and Incorporation by Reference of NEPT Incentives

327 IAC 18-2-1 Reduction of NPDES sampling frequency

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

Affected: IC 13-11-2; IC 13-18-4

Sec. 1. While a member of the ESP or CLEAN program, an entity may be assessed on a parameter by parameter basis for a reduction of requirements under 327 IAC 5-2-13 regarding sampling frequency:

- (1) at the time of program application or at the time of NPDES permit renewal;
- (2) if, before program application, the entity's past sampling results show sustained compliance; and
- (3) if the sampling results remain measurably below the applicable limitations.

(*Water Pollution Control Board; 327 IAC 18-2-1*)

327 IAC 18-2-2 Modification of DMR submission schedule

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

Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 2. While a member of the ESP or CLEAN program, an entity shall receive an exemption from any NPDES requirement for monthly submission of discharge monitoring reports (DMR) and shall be required to submit DMR to the department not more frequently than annually provided:

- (1) the reports are prepared according to 327 IAC 5-2-15;
- (2) information and data used to determine and verify compliance status with permit conditions at the time intervals specified according to the NPDES permit or section 1 of this rule shall be:

(A) maintained at the entity's discharge facility offices in a format allowing easy determination of the facility's compliance; and

(B) made available to the department or state authorized inspector upon request; and

- (3) instances of noncompliance with permit requirements or permitted effluent limitations must be reported within twenty-four (24) hours of the occurrence to the department.

(*Water Pollution Control Board; 327 IAC 18-2-2*)

327 IAC 18-2-3 Deletion of MRO submission requirement

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

Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 3. While a member of the ESP or CLEAN program, an entity shall receive an exemption from 327 IAC 2-4-1 and 327 IAC 5-2-15(a) requiring the submission of monthly reports of operation provided DMR are submitted according to section 2 of this rule. (*Water Pollution Control Board; 327 IAC 18-2-3*)

327 IAC 18-2-4 Deletion of MMR submission requirement

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

Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 4. While a member of the ESP or CLEAN program, an entity shall receive an exemption from 327 IAC 5-2-15(a) requiring the submission of the Indiana Discharge Monitoring Report Form 30530 (also known as the monthly monitoring report and the state DMR) provided DMR are submitted according to section 2 of this rule. (*Water Pollution Control Board; 327 IAC 18-2-4*)

327 IAC 18-2-5 Simplified NPDES permit renewal application submission

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

Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 5. Notwithstanding 327 IAC 5-2-3 and 327 IAC 5-3-2, an NPDES permittee may accomplish submission of a permit renewal application by completing the General Information Application form and only those applicable forms necessary to address any changes in operations and submitting them along with a letter to IDEM requesting the reissuance of the existing NPDES permit if the following assurances are stated in the letter:

- (1) The permittee has reviewed the NPDES permit application submitted to IDEM from which the current NPDES permit was issued.
- (2) The NPDES permit application referenced in subdivision (1) could, without significant change, be submitted to IDEM to accurately and completely fulfill the permittee's present permit renewal requirement.

(*Water Pollution Control Board; 327 IAC 18-2-5*)

327 IAC 18-2-6 Permit application for renewal of an existing land application program permit

Authority: IC 13-14-8-7; IC 13-15-1-2; IC 13-15-2-1; IC 13-15-7-1; IC 13-18-3-1; IC 13-18-12-4

Affected: IC 13-11-2-77; IC 13-15-7; IC 13-30-6; IC 36-9-30-35

Sec. 6. Notwithstanding 327 IAC 6.1-3-1 and before the expiration of the existing permit, a permit application for renewal of an existing permit for land application of a biosolid, industrial waste product, or pollutant-bearing water must meet the following or the permit will be invalid upon expiration:

- (1) Postmarked.
- (2) Delivered in one (1) of the following manners:
 - (A) Hand delivered to the office of land quality, department of environmental management.

(B) Deposited with a private carrier as shown by the receipt issued by the carrier, if the application is sent by the private carrier to the address for the department on the application.

(Water Pollution Control Board; 327 IAC 18-2-6)

327 IAC 18-2-7 Reports and reporting for the land application program

Authority: IC 13-14-8-7; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-12-4

Affected: IC 13-14-4-3; IC 13-15

Sec. 7. Notwithstanding 327 IAC 6.1-4-18(a), activities and analyses related to disposal of a biosolid or industrial waste product on sites listed in a site-specific or hybrid land application permit and sites not used for the first time under a nonsite-specific or hybrid land application permit must be reported:

(1) to the commissioner within sixty (60) days of the last day of each calendar month for the term of the permit; and

(2) submitted on forms and in a format prescribed by the commissioner unless the commissioner makes a determination that only an electronic copy is needed.

(Water Pollution Control Board; 327 IAC 18-2-7)

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 September 13, 2006, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, the Water Pollution Control Board will hold a public hearing on a new article at 327 IAC 18.

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 article. 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 Development 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

Indianapolis, Indiana 46204-2251

or call (317) 232-3077(V) or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 711 or 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, Room N1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #06-145(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING TEMPORARY STORAGE OF SPENT LEAD ACID BATTERIES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 3.1 concerning temporary storage of spent lead acid batteries. This rulemaking will propose requirements for the management of spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, other storage facilities, and reclamation facilities. 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 3.1-11-2; 329 IAC 3.1-11.1; IC 13-20-16.

AUTHORITY: IC 4-22-2; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Under the current rule at 329 IAC 3.1-11-2(3), owners or operators of facilities that store whole spent lead acid batteries before reclaiming them are subject to the general RCRA notification and storage requirements. IC 13-20-16 currently regulates spent lead acid battery recycling by retailers, wholesalers, and manufacturers. The proposed rule would provide requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, other storage facilities, and reclamation facilities, to prevent releases of contaminants into the environment. Intermittent storage of partially reclaimed spent lead acid batteries is also proposed to be regulated.

The proposed definition of "spent lead-acid battery" includes any lead-acid battery being discarded, abandoned, and/or disposed, making it more consistent with the statutory (IC 13-20-16) reference to "used" lead-acid batteries.

The proposed rules are consistent with Indiana's environmental requirements and are basic common sense storage practices.

Spent lead-acid battery reclaimers would be allowed to stage whole spent lead-acid batteries on incoming trailers for up to ten (10) days on an asphalt or concrete surface maintained in good condition. Management practices, which include mainly inspection and maintenance requirements, would be required to be met during the staging period.

The proposed rule would require intermediate storage facilities that accumulate more than five thousand (5,000) kilograms of spent lead-acid batteries to notify IDEM of the storage location which is consistent with the notification requirements for large quantity handlers of Universal Waste (40 CFR 273 Subpart C).

Closure requirements will apply to the regulated intermittent storage areas allowing for the utilization of current Risk Integrated System of Closure (RISC) guidance performance standards. The proposed rule also indicates that corrective action may be initiated at any time during the life of the facility.

Requirements for transporters of spent lead-acid batteries are also being clarified under this proposal.

Alternatives to be Considered Within the Rulemaking

There are two (2) alternatives to accomplish the purposes of this notice.

IDEM is considering the following alternatives in this rulemaking, as follows:

Alternative 1. IDEM can add to and amend the requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, and other storage facilities to prevent releases to the environment. This rulemaking would also make the existing statutory and federal requirements fit better with the actual practices at regulated entities.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* No.
- *Is this alternative imposed by federal law or is there a comparable federal law?* IDEM is clarifying and expanding on applicable federal regulations. 40 CFR 266; Sections 3006 and 3009 of RCRA and 40 CFR 271.
- *If this alternative is a federal requirement, is it different from federal law?* Federal law regulates storage of spent lead acid batteries prior to reclamation only at the reclamation facilities. IDEM is proposing to add and amend requirements for the management of spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, intermediate storage facilities and reclamation facilities, as it makes sense for protecting the environment.

- *If it is different, describe the differences.* Same as above.

Alternative 2. IDEM can leave the existing rules as is without making changes to 329 IAC 3.1. Existing minimal requirements would still exist in the Indiana code and the federal regulations. Not changing the rules would leave the state rules adaptable to actual practices by regulated entities and would not allow the ten day staging period or address management issues that IDEM feels should be clarified.

- *Is this alternative an incorporation of federal standards, either by reference or full text incorporation?* No.
- *Is this alternative imposed by federal law or is there a comparable federal law?* No.
- *If this alternative is a federal requirement, is it different from federal law?* No.
- *If it is different, describe the differences.* Not applicable.

Applicable Federal Law

Sections 3006 and 3009 of RCRA and 40 CFR 271 require states that choose to administer and enforce a hazardous waste management program, in lieu of the federal program, to adopt rules that are at least as stringent as the federal program. These programs can be authorized by the EPA to operate in lieu of the federal hazardous waste program. If the EPA Administrator determines that a state is not maintaining its program to be at least as stringent as the federal program, that authorization can be withdrawn.

The proposed rulemaking is not less stringent than federal rules. By this rulemaking, IDEM is adding requirements and clarifying existing rules.

Potential Fiscal Impact

Alternative 1 is not required to be adopted under federal law and may potentially have the following fiscal impact:

Potential Fiscal Impact of Alternative 1.

This alternative will generally result in minimal fiscal impact on affected parties. In fact, this rulemaking may result in savings through the allowance for staging for spent lead acid batteries. Requirements for intermittent storage of spent lead acid batteries during recycling may have some impact on facilities that are not currently managing that storage under the proposed standards. IDEM will not have to hire additional staff for compliance and enforcement purposes and will be able to utilize existing resources to administer the rule.

Alternative 2 is not required to be adopted under federal law and will have the following fiscal impact:

Potential Fiscal Impact of Alternative 2.

This alternative will not have any fiscal impact since nothing will be changed.

IDEM specifically solicits comments on any potential fiscal impact that may result from the proposed rulemaking.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04

100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:
Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Kiran Verma, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-8899 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life, or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The submission of information on the fiscal impact of the alternatives identified in this notice.

Mailed comments should be addressed to:

#06-145(SWMB) [Spent Lead Acid Battery Staging Rule]
Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land Quality, MC65-45
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Land Quality's Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 30, 2006.

Additional information regarding this action may be obtained from Kiran Verma, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-8899 or (800) 451-6027 (in Indiana).

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #06-147(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING THE SCORING MODEL AT 329 IAC 7.1 FOR HAZARDOUS SUBSTANCE RESPONSE SITES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on plans to repeal 329 IAC 7 and replace the current article with a new article, 329 IAC 7.1. The proposed new rules would continue to protect human health and the environment while increasing efficiency and improving accountability. 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 7; 329 IAC 7.1.

AUTHORITY: IC 4-22-2; IC 13-14-8-2; IC 13-14-9; IC 13-19-3; IC 13-25-4-7.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This new article would establish new criteria and procedures for a priority ranking system of hazardous substance response sites in Indiana to ensure that those sites believed to pose the most significant threat to human health or the environment are scheduled first for response and for appropriate allocation of department resources. The current scoring model has become

ineffective and cumbersome and staff time required to score a site is excessive. In addition, the commissioner's bulletin does not accurately reflect the real time status of cleanups. This rulemaking proposes to repeal the existing scoring model at 329 IAC 7. All parties involved with any hazardous response site not on the National Priorities List will be affected by this rulemaking.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Maintain the status quo and continue to use an outdated scoring model. Currently not all sites are scored so the commissioner's bulletin does not present an accurate accounting of remediation sites.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law, but the comparable federal law is the U.S. EPA Hazard Ranking System at 40 CFR 300, Appendix A. The scoring model is a "state-only" requirement under IC 13-25-4-7.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Amend the current scoring model and completely rewrite 329 IAC 7.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, this alternative is not imposed by federal law, but the comparable federal law is the U.S. EPA Hazard Ranking System at 40 CFR 300, Appendix A. The scoring model is a "state only" requirement under IC 13-25-4-7.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Repeal the current Article 329 IAC 7 and propose a new article consisting of an updated and more consistent scoring model.

- Is this alternative an incorporation of federal standard or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, this alternative is not imposed by federal law, but the comparable federal law is the U.S. EPA Hazard Ranking System at 40 CFR 300, Appendix A. The scoring model is a "state only" requirement under IC 13-25-4-7.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

None applicable.

Potential Fiscal Impact

No potential fiscal impact on affected parties from any of the alternatives. IDEM will be able to utilize existing resources to administer the rule.

Small Business Assistance Information

IDEM established a Compliance and Technical Assistance Program (CTAP) under IC 13-28-3. This program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program

OPPTA - MC60-04

100 N. Senate Avenue

W-041

Indianapolis, IN 46204-2251

(317) 232-8578

selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman

External Affairs - MC50-01

100 N. Senate Avenue

IGCN 1301

Indianapolis, IN 46204-2251

(317) 234-3386

elevenha@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lou McFadden, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-8922 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#06-147(SWMB) New scoring model

Marjorie Samuels

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate, Room 1101

Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by June 30, 2006.

Additional information regarding this action may be obtained from Lou McFadden, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-8922 or (800) 451-6027 (in Indiana).

Bruce Palin
Assistant Commissioner
Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD
SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-234(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING THE ENVIRONMENTAL STEWARDSHIP PROGRAM AND COMPREHENSIVE LOCAL ENVIRONMENTAL ACTION NETWORK
PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new article at 329 IAC 18 concerning two voluntary performance based leadership programs. The Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) are new Indiana programs that offer recognition and incentives for companies and units of local government that

consistently demonstrate environmental stewardship and strive for continual environmental improvement initiatives in Indiana's environmental programs. 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 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: September 1, 2005, Indiana Register (28 IR 3691).

Continuation of First Notice: April 1, 2006, Indiana Register (29 IR 2378).

CITATIONS AFFECTED: 329 IAC 18.

AUTHORITY: IC 13-14-8; IC 13-19-3; Public Law 100-2006.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING
Basic Purpose and Background

The purpose of this rule is the creation of two voluntary environmental performance based leadership programs to promote continuous environmental improvement in Indiana. IDEM is proposing the development of two programs, the Environmental Stewardship Program (ESP) for businesses, and the Comprehensive Local Environmental Action Network (CLEAN) for units of local government. Similar to the United States Environmental Protection Agency's National Environmental Performance Track Program (NEPT), these state programs are designed to achieve environmental results by recognizing innovation, motivating organizations to work toward environmental improvements, and complementing existing regulatory activities. These programs focus on environmental outcomes such as reduced emissions, reduced waste, and lower discharges. Performance based leadership programs combine elements such as environmental management systems, a history of regulatory compliance, and continuous environmental improvement projects to create a solid program that yields environmental benefits.

An environmental management system (EMS) is a system for identifying, controlling, and monitoring activities that impact the environment. The system integrates environmental responsibilities into everyday business decision making leading to a proactive approach to environmental management rather than a reactive one. All employees associated with those processes or responsibilities that could have environmental implications are informed of the environmental aspects of the organization, potential environmental impacts of those aspects, and their responsibilities to ensure compliance and environmental protection. An effective EMS helps an organization to avoid, reduce, or control the adverse environmental impacts of its activities, products, and services, achieve compliance with applicable legal requirements, and assist in continually improving environmental performance. Organizations with an effective EMS also realize increases in operational efficiency and decreased costs, making them a better, cleaner, more stable

employer. Since an EMS is site-specific, implementation of an EMS is practical and useful for organizations of all types and sizes.

Members of performance based leadership programs must be in compliance with regulatory requirements and must be able to demonstrate a history of compliance. Before an organization can work towards going beyond compliance improvements, mechanisms must be in place to consistently take corrective and preventive actions and maintain compliance.

Continuous environmental improvement initiatives are projects the entity commits to implement that provide an environmental benefit that would not be achieved by compliance with applicable requirements alone. Sample "commitments" by members of the NEPT that could be part of a state program include increasing the amount of material recycled, reducing toxic inputs into a process, working with suppliers on environmental projects at the suppliers' locations, reducing air emissions, reducing water discharges, reducing water usage, reducing energy usage, reducing the quantity of hazardous waste generated, and working with their local communities to identify and implement environmentally beneficial projects.

Staff time is a limited resource for both IDEM and regulated entities. In order to allow high performers to focus their resources on environmental improvements, these innovative programs offer operational flexibility. This allows more strategically targeted resource allocations by members of the programs and IDEM to produce better overall environmental results. For example, one state performance based program worked with a member to reduce water effluent monitoring frequency, where a documented history of compliance existed, saving the member time and money. These resources were shifted towards efforts to reduce environmental impacts identified in the member's EMS and environmental improvement projects. Some of the improvements made by the member included elimination of a toxic chemical from the manufacturing process, reduced water usage, energy usage and solid waste generation, and reduced BOD in wastewater effluent.

National Environmental Performance Track Program

NEPT is a federal voluntary partnership program that recognizes and rewards companies that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. NEPT is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring technological innovation. U.S. EPA provides exclusive regulatory and administrative benefits to NEPT members, including placing them at low priority for routine inspections, and offers public recognition, networking opportunities, and other benefits. To qualify for NEPT, applicants must have adopted and implemented an EMS, show evidence of specific past environmental achievements, have a history of sustained compliance with environmental requirements, commit to continued environmental improvement, and commit to public outreach and performance reporting.

Environmental Stewardship Program and Comprehensive Local Environmental Action Network

ESP and CLEAN are voluntary programs that recognize and reward entities that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. Both IDEM and the member organization commit to new ways of achieving environmental goals through this program. For Indiana organizations that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement, ESP offers recognition, regulatory flexibility, and an opportunity to work directly with IDEM on innovative pilot projects. IDEM sees this program as a mechanism to reward organizations that are currently taking a proactive approach to environmental management as well as a way to motivate more Indiana organizations to take the next step and take a proactive approach to environmental management.

CLEAN helps local government take steps to plan, develop, and implement a quality of life plan, similar to an EMS. The quality of life plan addresses continuous environmental improvement and management of the community's environmental issues above and beyond the baseline of regulatory compliance. The quality of life plan consists of four components:

- (1) mission statement;
- (2) environmental activities and goals;
- (3) implementation and operation procedures; and
- (4) monitoring and reviewing the plan's progress.

The CLEAN Community Challenge is structured similarly to the ESP and has eligibility criteria at least as stringent as the ESP. IDEM is adding the CLEAN program to this rulemaking so that the programs can operate in tandem.

To qualify for ESP and CLEAN, applicants must demonstrate that they have:

- (1) implemented an environmental management system (EMS) that meets the requirements of this rule;
- (2) evidence of sustained compliance with environmental requirements and a commitment to maintain the level of compliance necessary to qualify for the program; and
- (3) a commitment to continued environmental improvement through environmental improvement initiatives over the term of the membership.

The ESP and CLEAN programs require members to submit an annual summary reporting on their progress toward their environmental improvement initiatives and verifying their EMS has gone through review and still maintains the standard necessary for participation. This annual summary will provide IDEM with measurable results attained through the member's initiatives.

Differences Between the Federal and State Programs

Though IDEM has worked towards and continues to strive for consistency with the federal program, the ESP and CLEAN programs have some differences from the NEPT program on some program elements. IDEM desires to develop a program that encourages organizations to take that next step in the evolution of their environmental management responsibilities

from compliance driven to beyond compliance and continuous environmental improvement. IDEM has reviewed and incorporated many elements from other state performance based programs and has also considered the nature of Indiana's natural and regulatory environment, yielding a program unique to Indiana. Some of the differences between the proposed state programs and the federal NEPT program are described below:

- Past Environmental Achievements: The NEPT program requires applicants to report results from two past environmental achievements. IDEM has elected not to require applicants to report on past achievements. IDEM's programs are forward looking programs and designed to provide that mechanism for applicants to decide to take that next proactive step to continuous improvement and are open to applicants just beginning this progressive approach to environmental management. IDEM feels that encouraging entities to become program members while they are in the early stages of developing a proactive environmental management system will provide support for further improvements and can provide the impetus for senior management to see the value in progressive environmental management. IDEM also hopes that the Indiana programs will motivate entities to work to achieve higher levels of environmental management.

- Future Environmental Achievements: NEPT applicants must identify four environmental performance commitments in their initial and renewal applications. ESP applicants must identify one environmental improvement initiative in their initial application and one environmental improvement initiative in each annual summary as long as the member continues to maintain membership in the program. CLEAN applicants must identify five environmental improvement initiatives for the three-year membership. IDEM chose to have ESP applicants identify initiatives on an annual basis in order to better coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets. IDEM understands that many initiatives may take longer than one year to be attained and the implementation time frames for each initiative will vary. IDEM is electing to require three initiatives for ESP rather than four in order to enable the member to focus more resources on attaining the initiatives and producing measurable results. IDEM feels that requiring three initiatives will lead to better progress towards the goals of the initiatives and increased resource allocation by the member toward each initiative.

- Environmental Management System: The EMS requirements in the federal and state programs are very similar because they are based on the ISO 14001 basic elements. Both programs require an independent audit of the EMS prior to becoming a member. Independent audits are conducted by parties not directly employed at the location being audited and not directly involved in developing the EMS being audited. The NEPT program requires that before an interested entity may be accepted into the program, its EMS must complete one full cycle (plan-do-check-act). IDEM will require that members

have an EMS developed and implemented (plan-do), and that the member demonstrates that the cycle continues via the annual summary mechanism. As indicated earlier, IDEM feels that by encouraging entities in the early stages of progressive environmental management to become members, the program will encourage more entities to take that next step towards proactive environmental management and continuous environmental improvement and provide impetus for senior management to see the value of the environmental management system.

- Community Outreach: The NEPT program identifies community outreach as a separate component of the membership eligibility criteria. The NEPT community outreach component requires identifying and responding to community concerns, informing the community of important matters that affect it, and reporting on the facility's EMS and performance commitments. IDEM feels that these are appropriate community outreach requirements. However, IDEM feels that these elements can be appropriately addressed by the entity's environmental management system. Therefore, IDEM is requiring the same community outreach requirements as a required element of the applicant's environmental management system, providing an annual review mechanism of this important component of the program.

Incentives

Incentives are an integral part of environmental performance based leadership programs.

The decision to join a performance based leadership program will be a business decision for Indiana entities. These incentives offer business value and provide the opportunity to shift limited environmental management resources from certain environmental responsibilities to the entity's EMS and continuous environmental improvement identification and implementation activities. During the program development process, IDEM considered a variety of different incentives. Recognition, networking, and many regulatory incentives based on IDEM policy, procedure, and discretion will be described in more detail in separate ESP and CLEAN program documents. Regulatory incentives that are based on existing state rules may be added to this new article in the future to provide the necessary authority for members to use the incentive. IDEM anticipates using leadership entities to pilot future innovative environmental management strategies through this program. Proposed incentives that prove to jeopardize IDEM's ability to fulfill its environmental protection responsibilities, fail to provide anticipated business value, or create overly burdensome requirements on program members may be removed from the program.

- Recognition Incentives: The most important mechanism created by the ESP and CLEAN programs will be the capacity to recognize Indiana entities that are taking a proactive approach to their environmental management responsibilities and attaining continuous environmental improvements. Ways in which members may receive recognition for their commitment include public recognition via a press release made available to local media outlets, IDEM attendance at an on-

site membership announcement, a plaque or framed certificate, use of the ESP program logo in promotional and marketing efforts, recognition at the annual Pollution Prevention Conference, and recognition on IDEM's ESP or CLEAN web page.

- **Networking Incentives:** Because the members of ESP and CLEAN will be proactively working on continual environmental improvements, IDEM anticipates that the members will always be searching for new ideas. Networking opportunities can provide a forum for problem solving and the sharing of ideas, successes, and barriers. IDEM intends to organize and facilitate networking opportunities for members of the program.

- **Regulatory Incentives:** Another key element of programs such as ESP and CLEAN is the idea of creating administrative and regulatory changes to encourage exceptional compliance behavior, the use of government resources more efficiently, and improving the environmental economics for members. Good performers who are proactive with respect to environmental management do not require the same level of detailed regulatory oversight as entities without these systems in place and a history of noncompliance. Therefore, in an effort to reduce regulatory transaction costs and regulatory uncertainty for members, the ESP will offer regulatory flexibility opportunities. Some of the regulatory incentives may include streamlined NPDES and air permit renewal processes, consistent contacts within each program area, pre- or post-application meetings, extended Federally Enforceable State Operating Permit (FESOP) and Minor Source Operating Permit (MSOP) terms, alternative compliance monitoring strategies where compliance is demonstrated, lowered routine inspection priority, alternative reporting schedules (certain air permit quarterly reports can be submitted semiannually where deviations will still be reported quarterly), alternative reporting schedules for monthly monitoring reports (MMRs), discharge monitoring reports (DMRs), and monthly reports of operation (MROs), one day advance notice of routine inspections, and expedited permit review where feasible. IDEM anticipates that the resources saved by members will be reallocated toward future continued environmental improvement. IDEM anticipates that regulatory agency compliance resources saved will be reallocated toward entities needing additional oversight and higher risk entities.

The Indiana Environmental Stewardship Program and the Comprehensive Local Environmental Action Network are voluntary programs, therefore, rulemaking is not necessary to initiate the programs. IDEM has chosen to pursue a rulemaking pertaining to each of the regulatory programs (air, water, and solid and hazardous waste) to establish these programs based on new legislation (Public Law 100-2006). This rulemaking will provide an opportunity for public input on the programs, to create regulatory incentives, and to provide consistency and clarity for the programs.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. There is no requirement imposed under this rule because it is a voluntary program.

Potential Fiscal Impact

Because this rule is for a voluntary program, there will be no requirements with a fiscal impact. However, members taking advantage of the program could see reduced costs from some of the potential incentives.

Public Participation and Workgroup Information

Numerous public meetings have been held to discuss the intent and details of this program. No workgroup is planned for this rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through October 3, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM also requested public comment from April 1, 2006, through May 1, 2006, on the addition of the CLEAN program to the rule. IDEM received comments from the following parties by the comment period deadline:

Barnes and Thornburg (BT)
Eli Lilly and Company (ELC)
Indiana Cast Metals Association (INCMA)
Indiana Farm Bureau, Inc. (IFB)
International Truck and Engine Corporation (ITEC)
Milestone Contractors, L.P. (MSC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: We support the effort to adopt the program in rules where necessary, but believe timely implementation is most important to gain the benefits anticipated from such a program. We also have some concerns about rulemaking not providing flexibility to quickly adjust a new program that may need to be adjusted as more experience is gained from implementation. (INCMA)

Response: IDEM believes such a program must extend beyond policy and agency discretion to provide the level of desired consistency and value to program members. This is achieved by adopting the program in rules. Very good progress is being made in drafting these rules. Legislation granting IDEM authority to develop such a program has been enacted. IDEM will begin to accept members into the program providing those benefits that are not dependent on rule revisions, but are based on IDEM policy and procedures. Upon completion of this rulemaking, the regulatory flexibility incentives will be available to members. Depending on the nature of future revisions and additions to the program, rulemaking may be needed.

Comment: We believe the federal performance program standards are adequate and that the state should mirror these standards in setting up a state program. Further, we support

reciprocity for the federal and state programs so that they will be linked and eliminate duplicate application submissions. (INCMA)

Response: IDEM's eligibility standards will be closely aligned with those of the federal NEPT program. There will be a few differences in membership eligibility criteria, however. IDEM anticipates that the slight differences will provide Indiana companies that are in compliance and desiring to take the next step with respect to their environmental responsibilities with the motivation and foundation to take that step.

The federal program requires a full one-year EMS cycle to be completed before allowing membership. IDEM aims to encourage Indiana entities to develop an Environmental Management System (EMS) by allowing membership once an EMS is implemented. The federal program requires documentation of two past voluntary environmental improvement initiatives. IDEM aims to encourage participation by entities in the early stages of progressive environmental responsibility. Therefore, IDEM is not requiring documentation of past environmental improvements. The federal program requires members to identify four environmental commitments every three years at the time of application or renewal. IDEM anticipates requiring members to identify three environmental improvement initiatives over the three year membership term. In order to coordinate with the business planning cycle and with the environmental management system cycle of identification and prioritization of objectives and targets, members of ESP will be asked to identify one initiative each year of membership. The basic environmental management system criteria are similar between the state and federal programs since both follow the plan - do - check - act model.

Since the programs likely will not be exactly the same, membership will not be completely reciprocal. Entities desiring membership in both programs must meet the federal program requirements. However, IDEM does not anticipate that these differences will be burdensome for entities wishing to be members of both programs.

IDEM will be working with the U.S. EPA in the coming months to coordinate applications for membership. IDEM and EPA are aiming for a system as described in this paragraph. If an entity applies for membership in the federal program using the online federal application submittal process, that applicant will be able to check that they are also interested in applying for the state program. Applicants applying for the state program at the same time they are applying for the federal program may be asked a few additional questions on their online federal application. Entities desiring membership in both programs that do not yet meet the federal requirements (for example they are not through a complete EMS cycle or do not yet have documentation of two past environmental achievements), may apply to the state program first, using the state application, then apply to the federal program later or the entity may wait and apply for the two programs together once they meet the federal program requirements. Entities desiring state only membership may apply to the state program using the state application. Members with

state only membership will be eligible for state incentives, but will not be eligible for federal incentives.

Comment: We support the concept of a Performance Track program tailored to Indiana. Lilly has monitored the national Performance Track program since its inception, but has not seen any significant advantages to participating since many of the flexibility provisions touted by EPA have not been supported by IDEM. For example, current IDEM policy regarding the Title V permit program specifies quarterly compliance reporting, which prevents us from taking advantage of federal rules promulgated for national Performance Track subscribers requiring only semi-annual reporting. Therefore, we are highly supportive of identifying those opportunities to change rules and/or agency policy to allow recognition of good compliance practice and to allow innovative approaches to compliance. We understand that any such program must result in a higher level of environmental performance. We have many examples of where we can achieve this if certain rules provided more flexibility. (ELC)

Response: IDEM believes the state performance program will provide that desired flexibility and valued incentives for being a member. We encourage entities to submit examples of those specific rules that may be limiting entities ability to go beyond compliance, achieving higher compliance levels and improving environmental quality.

The incentive provided as an example in this comment is a federal program incentive. The federal program incentives will only be available to members of the National Environmental Performance Track Program. In order to take advantage of this benefit, entities would have to apply to and be granted membership in the federal program. IDEM is currently in the process of incorporating the federal incentives into the state rules so that members of the federal program in Indiana may take advantage of them. Once the incentive is fully incorporated into the state rules, federal program members may request to take advantage of the incentive.

Comment: We encourage IDEM to make the program entry compliance requirements flexible so that paperwork violations or permit exceedances where corrective action has been taken do not preclude participation. In some cases these criteria may differ from the national Performance Track criteria. (ELC)

Comment: The primary concern with the federal program is the definition of "in compliance" which IDEM representatives have suggested would not reflect 100% compliance 100% of the time. Few would meet that standard given paperwork issues, etc. that have no reflection on substantive compliance and environmental protection. (INCMA)

Comment: Will this program only apply to sources that are in 100% compliance? If not, what noncompliance is still acceptable for a company to be able to participate in the program? (BT)

Response: The compliance requirements for the state programs have been taken from the federal NEPT program. These compliance criteria include, among other criteria, no criminal conviction or plea for environmentally related violations of criminal laws within the past five years, no more than two

significant violations in the past three years, and no unaddressed, unresolved significant non-compliance or significant violations. This criterion provides allowances for insignificant or relatively minor compliance issues. However, it is IDEM's intent to maintain a high standard of compliance for membership eligibility.

Comment: We would like to see a company-based option of the Performance Track program instead of only the facility-based option. Allowing companies, such as Milestone, with multiple facilities with very few employees (typically three) at each facility to enter the program as a company instead of each individual facility would open up the program to more industries in the State of Indiana. Milestone with three-employee facilities would currently be unlikely to enter the program. Several industries in Indiana are in the same position. (MSC)

Response: In general, IDEM anticipates membership in the program to be determined on a location by location basis, following the eligibility set up of the federal NEPT program. However, IDEM understands that certain organization types are structured such that membership on a location by location basis may be prohibitive of participation. Therefore, IDEM is considering a membership option for organizations meeting certain criteria. Each location must meet the applicability criteria individually and as a group. This includes the requirement to identify environmental improvement initiatives. The initiatives may be similar or the same for all of the locations, but each location must play an active role in each initiative and each location must experience continuous environmental improvement.

Comment: We applaud IDEM for pursuing a Performance Track Program for Indiana businesses. We ask that IDEM please consider agricultural operations for eligibility to participate in the three rulemakings, where applicable. It is important that there are real incentives for producers who go above and beyond the regulatory requirements. Many confined animal feeding operations have a proven record of regulatory compliance and can demonstrate a commitment to continuous improvement. Many of the same benefits that would be attractive to manufacturing concerns would be welcomed by livestock producers who would choose to participate on a voluntary basis. (IFB)

Response: The program will be open to all Indiana entities. It is our belief that the current draft list of regulatory flexibility and incentives afforded to program members does have applicability and value to the agricultural community.

Comment: We support a variety of incentives that recognize different companies value different incentives. Foundry leaders have expressed support for the following:

1. A tax credit for technology innovation or some portion of compliance expenditures.
2. A reduction in permitting fees given a potential reduction in agency oversight expenditures.
3. Reduced inspections and monitoring requirements.
4. Reduced stack testing given it reflects significant expenditures and provides a narrow picture of emissions.

5. Fast tracking permits although this particular item would require more analysis given economic considerations that are important to all companies.

6. Construction/equipment installation flexibility.

7. Reduced compliance reporting to semi-annual which we believe is already allowed under current regulation.

(INCMA)

Response: IDEM's current proposed list of incentives includes many of the items recommended by the foundry industry. However, a reduction in fees or tax credits are not economically feasible at this time, but may be further explored later should there be significant interest.

Comment: The Environmental Performance Track Program should evaluate the benefits of other unique programs and propose such incentives as:

1. Flexibility when permitting new technologies and monitoring systems.
2. EMS based permits.

Both of the above programs would likely provide the additional incentives for companies to see the value of the proposed program. (ITEC)

Response: It is IDEM's intent to develop incentives that provide sufficient business value to those interested in becoming members. Permit flexibility and alternative compliance monitoring requirements are currently included in the proposed incentives list. IDEM is willing to further discuss EMS-based permits, although, such a permitting approach has not been discussed in the context of this program. IDEM is aware of EPA's efforts to explore EMS-based permitting and will continue to stay abreast of developments. Should EMS-based permitting be proven successful in those efforts, IDEM would likely look to members of the state performance based program for piloting an EMS-based permit here in Indiana.

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:

#05-234(SWMB) ESP and CLEAN Programs

Marjorie Samuel

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251.

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 the IDEM fax number: (317) 232-3403, 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, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 3, 2006.

Additional information regarding the ESP or CLEAN Programs may be obtained from Karen Teliha, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).

Additional information regarding this document and Indiana's rulemaking process may be obtained from Steve Mojonier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking Web site at <http://www.in.gov/idem/rules/>.

DRAFT RULE

SECTION 1. 329 IAC 18 IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. VOLUNTARY PERFORMANCE BASED LEADERSHIP PROGRAMS

Rule 1. Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program

329 IAC 18-1-1 Applicability

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 1. (a) The Indiana Environmental Stewardship Program and Comprehensive Local Environmental Action Network Community Challenge Program are voluntary performance based leadership programs that offer recognition, regulatory flexibility, and an opportunity to work directly with the department on innovative pilot projects for entities that consistently demonstrate environmental stewardship and make measurable efforts towards continual environmental improvement. In accordance with Public Law 100-2006, an entity is not required to comply with this rule except as a provision of participation in these programs.

(b) This rule applies to any Indiana entity that:

- (1) voluntarily participates in either program;
- (2) meets the eligibility requirements of section 3 of this rule; and
- (3) maintains membership by complying with this rule.

(Solid Waste Management Board; 329 IAC 18-1-1)

329 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-11-2-35; IC 13-11-2-51; IC 13-15; IC 13-19

Sec. 2. In addition to the definitions in IC 13-11-2, the following definitions apply throughout this rule:

- (1) "Commissioner", as defined in IC 13-11-2-35(a), means the commissioner of the department of environmental management.

(2) "Comprehensive Local Environmental Action Network Community Challenge Program" or "CLEAN" means the voluntary state program for units of local government in Indiana that:

- (A) demonstrate environmental stewardship; and
- (B) strive for continual environmental improvement.

(3) "Department", as defined in IC 13-11-2-51, means the Indiana department of environmental management.

(4) "Entity" means a company, corporation, firm, enterprise, authority, institution, partnership, or unit of local government, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration. Except as described in section 4(c) of this rule, an entity is one (1) geographic location under:

- (A) a single EMS; and
- (B) the direction of senior management.

(5) "Environmental aspect" means an element of the activities, products, or services of an entity that has the potential to interact with the environment.

(6) "Environmental impact" means any change to the environment, whether adverse or beneficial, wholly or partially resulting from the environmental aspects of an entity.

(7) "Environmental management system" or "EMS" means a continuous cycle of planning, implementing, reviewing, and improving a set of documented processes and practices used to develop and implement the environmental policy and manage the environmental aspects of an entity to:

- (A) maintain compliance;
- (B) reduce adverse environmental impacts; and
- (C) increase operational efficiency.

(8) "Environmental objective" means an environmental goal that is consistent with the environmental policy of an entity.

(9) "Environmental policy" means the overall commitment and direction of an entity related to environmental performance as formally expressed by senior management.

(10) "Environmental Stewardship Program" or "ESP" means the voluntary state program for entities in Indiana that:

- (A) demonstrate environmental stewardship; and
- (B) strive for continual environmental improvement.

(11) "Environmental target" means a detailed performance requirement that:

- (A) is quantified where practical; and
- (B) arises from the environmental objectives.

(12) "Independent audit" means an audit conducted by a party that:

- (A) is not directly employed by the entity being audited; and
- (B) has not played a substantive role in implementing the EMS being audited.

(13) "National Environmental Performance Track Pro-

gram” or “NEPT” means the U.S. EPA’s National Environmental Performance Track Program.

(14) “Senior management” means the following:

- (A) For entities, the person or group with executive responsibility for the entity.
- (B) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
- (C) For a unit of local government, either a principal executive officer or ranking elected official.

(15) “U.S. EPA” means the administrator of the United States Environmental Protection Agency or the administrator’s designee.

(Solid Waste Management Board; 329 IAC 18-1-2)

329 IAC 18-1-3 Eligibility criteria

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 3. Participation in ESP or CLEAN is voluntary and is open to entities located and operating in Indiana that meet the following criteria:

- (1) The standard of environmental compliance as described in section 10 of this rule.
- (2) Implement and maintain an EMS as described in section 11 of this rule.
- (3) Conduct continuous environmental improvement initiatives as described in section 12 of this rule.

(Solid Waste Management Board; 329 IAC 18-1-3)

329 IAC 18-1-4 Membership application

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 4. (a) A member of senior management shall submit an application by one (1) of the following methods:

- (1) For applications for either ESP or CLEAN only, to the department on:
 - (A) a form, whether electronically or hard copy, provided by the department; or
 - (B) an equivalent form.
- (2) For applications for both ESP and NEPT, to U.S. EPA, electronically on the form provided by U.S. EPA.
- (3) Electronic submission is the preferred method of applying to these programs.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) A membership for an entity shall be limited to cover one (1) geographic location under a single EMS, except that an entity may apply for membership as a group of locations if the following criteria are met:

(1) Each location must meet the applicability criteria individually and as a group, including the requirement to identify environmental improvement initiatives.

(2) The environmental improvement initiatives may be similar or the same for all of the locations, but each location must:

- (A) play an active role in each initiative; and
- (B) demonstrate continuous environmental improvement.

(3) The EMS must address staff and activities at each location.

(4) Senior management must be common to all locations.

(5) All locations must be engaged in the same business activity.

(6) The standards of environmental compliance in section 10 of this rule shall apply to all Indiana locations under the control of the entity.

(d) The commissioner shall make a determination on acceptance into ESP or CLEAN based on the following:

(1) The EMS must meet the standards in section 11 of this rule.

(2) A site visit by a representative of the department to provide an understanding of the environmental aspects of the entity and the EMS.

(3) Identification of environmental improvement initiatives and associated objectives and targets as follows:

(A) For ESP applicants, at least one (1) environmental improvement initiative and associated objectives and targets for the first year of membership.

(B) For CLEAN applicants, at least five (5) environmental improvement initiatives and associated objectives and targets for the three (3) year term of membership.

(4) For ESP applicants, information provided to U.S. EPA if the entity has also applied for membership in NEPT.

(5) Compliance audits conducted by:

- (A) the department;
- (B) the U.S. EPA;
- (C) other state offices; and
- (D) other federal agencies;

as appropriate.

(6) Other information, including the following:

(A) Compliance information obtained from department staff.

(B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(Solid Waste Management Board; 329 IAC 18-1-4)

329 IAC 18-1-5 Term of membership

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 5. (a) The term of membership is three (3) years from the date the entity is accepted into the program as long as the entity continues to meet the program criteria and submits the annual summary.

(b) For ESP members, the department may extend the term for up to one (1) year to:

- (1) coincide with the membership date in NEPT, if applicable; or
- (2) cover the time period from the normal three (3) year expiration date to the renewal date based on submittal of an renewal application by April 1 of the third year.

(c) For CLEAN members, the department may extend the term for up to ninety (90) days to accommodate submittal of the third annual report, at which time CLEAN members may seek to renew membership in the program. (*Solid Waste Management Board; 329 IAC 18-1-5*)

329 IAC 18-1-6 Renewal of ESP membership

Authority: IC 13-14-8; IC 13-19-3
Affected: IC 13-15; IC 13-19

Sec. 6. (a) To renew ESP membership, a member of senior management shall submit a renewal application by April 1 of the third year of membership as follows:

- (1) For renewal applications for ESP only, to the department on:
 - (A) a form, either electronically or hard copy, provided by the department; or
 - (B) an equivalent form.
- (2) For renewal applications for both ESP and NEPT, electronically to U.S. EPA on the form provided by U.S. EPA.
- (3) The preferred method of submission for both programs is electronic.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the renewal application and the annual summaries submitted during the most recent term of membership. The review of a renewal shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a determination on the ESP renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to set at least one (1) environmental improvement initiative and associated goals for the next year

of membership.

(4) Information provided by U.S. EPA if the entity has also applied for membership in NEPT.

(5) Compliance audits conducted by:

- (A) the department;
- (B) the U.S. EPA;
- (C) other state offices; and
- (D) other federal agencies;

as appropriate.

(6) Other information, including the following:

(A) Compliance information obtained from department staff.

(B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(*Solid Waste Management Board; 329 IAC 18-1-6*)

329 IAC 18-1-7 Renewal of CLEAN membership

Authority: IC 13-14-8; IC 13-19-3
Affected: IC 13-15; IC 13-19

Sec. 7. (a) To renew CLEAN membership, a member of senior management shall submit the third annual summary of the previous membership term:

- (1) to the department within sixty (60) days after the third annual anniversary of the date the previous membership term began;
- (2) clearly indicating the intention to renew membership; and
- (3) including five (5) objectives, targets, and action plans for the next three (3) year term.

(b) The application shall be signed by a member of senior management. The signature shall:

- (1) constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application; and
- (2) subject the member of senior management to liability under state laws forbidding false or misleading statements.

(c) The department shall review the annual summaries and five (5) objectives, targets, and action plans submitted during the most recent term of membership. The review of this information shall follow the same procedures as the review for the initial application regarding compliance checks and EMS evaluations, except a general site visit by a representative of the department shall not be required.

(d) The commissioner shall make a decision on the CLEAN renewal application based on the following:

- (1) The EMS must continue to meet the standards in section 11 of this rule.
- (2) Review of the annual summaries submitted during the previous membership term.
- (3) Successful coordination with a member of senior management to identify at least five (5) environmental improvement initiatives and associated goals for the next

three (3) year term of membership.

(4) Compliance audits conducted by:

- (A) the department;
- (B) the U.S. EPA;
- (C) other state offices; and
- (D) other federal agencies;

as appropriate.

(5) Other information, including the following:

- (A) Compliance information obtained from department staff.
- (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(e) If the entity does not request a renewal with the third annual summary, then membership in CLEAN expires upon receipt by the department of the third annual summary. (*Solid Waste Management Board; 329 IAC 18-1-7*)

329 IAC 18-1-8 Revocation

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 8. (a) The commissioner shall revoke membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The standards of environmental compliance described in section 10 of this rule.
- (2) The requirement to make sufficient progress towards attaining the environmental initiatives identified and agreed upon at the time of application and submittal of the annual summaries.
- (3) The requirement to maintain an approved EMS as required for membership.
- (4) The prohibition against knowingly submitting false information:
 - (A) on the application;
 - (B) in the annual summary;
 - (C) during a site visit or evaluation by the department; or
 - (D) during an independent audit.

(b) The commissioner may revoke the membership in ESP or CLEAN if the entity has not substantially complied with any of the following:

- (1) The ESP or CLEAN program requirements, as applicable.
- (2) Federal, state, or local environmental laws and regulations.
- (3) The requirement to meet other appropriate standards as determined by the commissioner based upon the following:
 - (A) Compliance information obtained from department staff.
 - (B) Verifiable, applicable information received from sources determined to be relevant by the commissioner.

(c) If the commissioner determines that a situation may

warrant revocation of membership, the following applies:

- (1) The commissioner shall notify the entity in writing:
 - (A) of any potential deficiencies found; and
 - (B) that the commissioner is considering removing the entity from the program.
- (2) The notice shall:
 - (A) state that the commissioner may consider removing the entity from the program after the response time period provided to the member;
 - (B) identify the potential deficiencies; and
 - (C) provide the entity with thirty (30) days to respond.
- (3) Within thirty (30) days after the end of the time period provided to the member, the commissioner shall consider the response and determine if the situation warrants revocation of membership.

(d) An entity whose membership has been revoked may reapply under section 4 of this rule at any time twelve (12) months after the revocation. (*Solid Waste Management Board; 329 IAC 18-1-8*)

329 IAC 18-1-9 Transfers

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 9. Membership in ESP or CLEAN cannot be transferred to another entity. (*Solid Waste Management Board; 329 IAC 18-1-9*)

329 IAC 18-1-10 Standards of substantial environmental compliance

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 10. (a) To be accepted into ESP or CLEAN, a member of senior management of the entity shall submit a certification with the application to the department certifying that to the best of their knowledge, the entity is currently in compliance with all local, state, and federal environmental laws and regulations.

(b) The department shall:

- (1) review the administrative, civil, and criminal environmental compliance and enforcement history of the entity in order to determine if the entity satisfies the required standard of substantial environmental compliance; and
- (2) consider all relevant and appropriate environmental compliance and enforcement criteria, including, but not limited to, the criteria in subsections (c) and (d) in determining whether or not an entity has achieved substantial environmental compliance.

(c) The following criteria shall prevent acceptance of an entity into the ESP or CLEAN:

- (1) Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the entity or an officer of the entity within the past five (5) years.

(2) Criminal conviction or plea of employee at the entity for environmentally-related violations of criminal laws within the past five (5) years.

(d) The existence of one (1) or more of the following criteria may prevent acceptance of an entity into ESP or CLEAN:

- (1) Ongoing criminal investigation or prosecution of the entity, or an officer or employee of the entity, for a violation of environmental law.
- (2) Three (3) or more significant violations at the entity in the past three (3) years.
- (3) Unresolved or unaddressed significant noncompliance or significant violations.
- (4) Planned, but not yet filed, judicial or administrative action against the entity.
- (5) Ongoing U.S. EPA or state-initiated litigation against the entity.
- (6) A situation where an entity is not in compliance with the schedule and terms of an order or decree.
- (7) A history of significant problems or a pattern of noncompliance at the entity or at other affiliated entities under the same ownership or control.

(Solid Waste Management Board; 329 IAC 18-1-10)

329 IAC 18-1-11 Environmental management system

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 11. (a) An approved EMS must be implemented before acceptance of an entity into ESP or CLEAN.

(b) An EMS that meets the criteria for ESP and CLEAN must, at a minimum, include the following:

- (1) Evidence of senior management support, commitment, and approval.
- (2) A written environmental policy directed toward the following:
 - (A) Compliance.
 - (B) Pollution prevention.
 - (C) Continuous improvement.
- (3) For CLEAN members, the environmental policy must also address sharing environmental decisions and performance information with the community.
- (4) Identification of the environmental aspects at the entity.
- (5) Prioritization of the environmental aspects and a determination of those aspects deemed significant considering, at the minimum, environmental impacts and applicable laws and regulations.
- (6) Established priorities and environmental objectives and targets for the following:
 - (A) Continuous improvement in environmental performance.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
- (7) An established community outreach mechanism that

includes the following:

- (A) Identifying and responding to community concerns.
- (B) Informing the community of important matters that affect the community.
- (C) Reporting on the EMS, including, at a minimum, reporting to the public on the environmental policy and significant aspects.
- (D) Through the annual summary, reporting on the environmental improvement initiatives, including progress towards the most recent environmental improvement initiatives identified in the application or annual summary.
- (8) Incorporation of environmental and pollution prevention planning in the development of new products, processes, and services and modifications of existing processes.
- (9) Evidence of clear responsibility for the following:
 - (A) Implementation, training, monitoring, EMS maintenance, and taking corrective action.
 - (B) Ensuring compliance with applicable environmental laws, regulations, and permit conditions.
- (10) Documentation of the implementation procedures and the results of implementation.
- (11) Appropriate written EMS procedures.
- (12) An annual evaluation of the EMS with written results provided to senior management and affected employees.

(c) For CLEAN members, the environmental policy must be adopted through an executive order, resolution, or ordinance.

(d) The department shall determine if the EMS meets the criteria in subsection (b).

(e) A representative of the department shall perform an on-site review, evaluation, and verification of the EMS if, within twelve (12) months of the application submittal, the EMS has not been:

- (1) audited by an independent party; or
- (2) registered pursuant to a recognized certification standard.

(Solid Waste Management Board; 329 IAC 18-1-11)

329 IAC 18-1-12 Continuous environmental improvement

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 12. (a) In coordination with the department, a member of senior management shall identify continuous environmental improvement initiatives for the appropriate program, as follows:

- (1) For ESP, a member of senior management shall identify three (3) continuous environmental improvement initiatives for each membership term. One (1) initiative shall be identified at the time of the initial or renewal application, and the remaining initiatives shall be identified each year at the time the annual summary is submitted.

ted to the department.

(2) For CLEAN, a member of senior management shall identify five (5) continuous environmental improvement initiatives for the three (3) year membership term.

(b) Entities accepted into ESP or CLEAN shall:

(1) maintain records that describe and track the actions taken toward achievement of the environmental improvement initiatives; and

(2) submit an annual summary in accordance with section 13 or 14 of this rule, as applicable, documenting progress toward the environmental improvement initiatives for that year.

(c) Entities accepted into ESP or CLEAN shall demonstrate continuous environmental improvement by the following:

(1) Conducting periodic pollution prevention or environmental improvement assessments that identify opportunities for reducing pollution and eliminating waste at the entity.

(2) Identifying, obtaining approval for, and implementing environmental improvement initiatives in coordination with the department that:

(A) include objectives and targets beyond current legal requirements; and

(B) as applicable, specify the:

(i) environmental media;

(ii) types of pollution to be prevented or reduced;

(iii) implementation activities; and

(iv) projected time frames.

(3) Reporting on the activities undertaken toward implementation of the initiatives identified with the department.

(Solid Waste Management Board; 329 IAC 18-1-12)

329 IAC 18-1-13 Annual summary for ESP members

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 13. (a) Entities accepted into ESP shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

(1) Progress toward the objectives and targets identified for the environmental improvement initiative for that year.

(2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.

(3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative, a member of senior management shall provide the following:

(1) Verification of continued progress toward the objectives and targets.

(2) A description of the reason the objectives and targets have not been attained.

(c) Each annual summary must include identification of the environmental improvement initiative for the next year, unless the entity is terminating membership in ESP.

(d) The annual summary shall:

(1) cover the twelve (12) month calendar year;

(2) be submitted to the department for each year by April 1 of the following year; and

(3) be submitted for each calendar year in which the entity has been a member for at least three (3) full months.

(e) An annual summary submitted to U.S. EPA as a requirement of being a member of NEPT shall constitute an equivalent submission. (Solid Waste Management Board; 329 IAC 18-1-13)

329 IAC 18-1-14 Annual summary for CLEAN members

Authority: IC 13-14-8; IC 13-19-3

Affected: IC 13-15; IC 13-19

Sec. 14. (a) Entities accepted into CLEAN shall submit an annual summary on a form provided by the department or an equivalent form documenting the following:

(1) Progress toward the objectives and targets identified for the five (5) environmental improvement initiatives.

(2) Results obtained from achieving the environmental improvement initiative objectives and targets, if applicable.

(3) An annual review of the EMS by the entity.

(b) If the entity has not attained the objectives and targets associated with an environmental improvement initiative at the time the third annual summary is submitted, a member of senior management shall provide a description of the reason the objectives and targets have not been attained.

(c) The annual summary shall be submitted to the department sixty (60) days after the annual anniversary of the date the previous membership term began. (Solid Waste Management Board; 329 IAC 18-1-14)

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 September 19, 2006, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, the Solid Waste Management Board will hold a public hearing on a new article at 329 IAC 18.

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 article. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding the Environmental Stewardship Program may be obtained from Daniel Murray, Assistant Commissioner, Office of Pollution Prevention and

Technical Assistance, (317) 233-6658 or (800) 451-6027 (in Indiana). Additional information regarding this hearing may be obtained from Steve Mojonier, Office of Land Quality, (317) 233-1655 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

Indianapolis, Indiana 46204-2251

or call (317) 232-3077(V) or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 711 or 1-800-743-3333. Please provide a minimum of 72 hours notification.

Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

**OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES
NOTICE OF PROPOSED CHANGES IN METHODS AND STANDARDS OF
MEDICAID REIMBURSEMENT FOR NURSING FACILITIES**

In accordance with public notice requirements established at 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP) publishes this notice of proposed changes to methods and standards governing reimbursement policy for Medicaid-enrolled state-owned nursing facilities.

OMPP proposes to amend the reimbursement methodology at 405 IAC 17 by also applying it to state-owned nursing facilities. Currently, this methodology applies only to state owned intermediate care facilities for the mentally retarded (ICFs/MR). The existing methodology is based on retrospective rate setting principles and includes an annual cost settlement. The Medicaid State Plan Amendment implementing this change will take effect on July 1, 2006, and is being adopted in order to provide consistent treatment to all Medicaid-enrolled state-owned long-term care facilities. A hearing on amendments to the rule at 405 IAC 1-17 will be held at a later date, with prior notice of the hearing being published in the Indiana Register and Indianapolis Star.

The estimated annual increase in Medicaid expenditures is expected to be \$20.2 million in state and federal dollars. One facility (the Indiana Veteran's Home) is expected to be impacted by this change and the proposed per diem rate for that facility is \$232 per day.

Anyone who wishes to comment on the proposed changes may submit written comments to: OMPP, Attention: Karen Filler, 402 West Washington Street, Room W382, P.O. Box 7083, Indianapolis, IN, 46207-7083. Correspondence should be identified in the following manner: COMMENTS RE: PROPOSED CHANGES TO STATE-OWNED FACILITY REIMBURSEMENT SYSTEM.

E. Mitchell Roob Jr.
Secretary
Office of the Secretary of Family and Social Services

**STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS**

EXECUTIVE ORDER: 06-05

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS;

WHEREAS, MAURICE FAHIM WASILY, who has petitioned for a pardon, was convicted in 1983 in Marion County of Conspiracy to Commit Arson and Arson, for which he served his sentence without incident or violation of parole;

WHEREAS, the petitioner, who was released to probation in 1986, is a 73-year-old Egyptian-born legal permanent resident who immigrated to the United States in 1968 to be with his family and pursue the “American Dream” and has since the instant offense lived a law-abiding and productive life;

WHEREAS, the petitioner has numerous letters of support from friends, co-workers, past employers, and community leaders, all of whom recommend that his petition for pardon be granted;

WHEREAS, the petitioner has been a long-time resident and homeowner in Anderson, IN, and has maintained steady employment and lived a vibrant life with an eye toward always giving back to the community;

WHEREAS, the petitioner has high hopes of continuing to live in America and with the encouragement of his fellow citizens, friends, and neighbors of one day graduating from permanent resident status to full citizenship; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in this case, has recommended that this pardon be granted.

NOW THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, by virtue of the authority vested in me by the Constitution and the laws of said State, do hereby issue a pardon to MAURICE FAHIM WASILY.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of May, 2006.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

**STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS**

EXECUTIVE ORDER: 06-06

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS;

WHEREAS, CHARLES FREDERICK MCELHENY, who has petitioned for a pardon, was convicted in Montgomery County for violation of the 1935 Uniform Narcotic Drug Act (the offense was what we now refer to as Possession of Marijuana) in 1969, for which the Montgomery County Circuit Court sentenced him to two to ten years, with all but time served suspended, along with two years probation;

Executive Orders

WHEREAS, the petitioner, who was discharged from probation in November 1971, is now 59 years old, married, with two grown children, and has maintained steady and successful employment the duration of his adult life while at some time being an active volunteer and member within his church and community;

WHEREAS, the petitioner has received numerous letters of support from family, friends, and co-workers, all of whom recommend that his petition for pardon be granted and attest to the excellent character and law-abiding life which petitioner has led since the time of his one and only conviction;

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in this case, has recommended that this pardon be granted.

NOW THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, by virtue of the authority vested in me by the Constitution and the laws of said State, do hereby issue a pardon to CHARLES FREDERICK MCELHENY.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 3rd day of May, 2006.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 06-07

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS;

WHEREAS, JOSEPH BARTLEY SHELTON, who has petitioned for a pardon, was convicted in Monroe County for Fraud (a Class A Misdemeanor), for which he was sentenced by the court to one year of probation and one month of house arrest;

WHEREAS, the petitioner, who is now 33 years old and successfully employed, has a degree from Indiana University and works in Social Services; at the time of the offense petitioner was 18 years old, since that time he has remained crime free and led a productive and successful life;

WHEREAS, the petitioner's pardon request is supported by his friends and family, and a letter of recommendation was received by the Board from a member of the General Assembly urging that this pardon be granted based on the rehabilitation and deserving nature of the petitioner;

WHEREAS, the petitioner asks that the State forgive him for his past transgressions by granting this pardon and helping to remove obstacles that stand in the way of advanced employment opportunities; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in this case, has recommended that this pardon be granted.

NOW THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, by virtue of the authority vested in me by the Constitution and the laws of said State, do hereby issue a pardon to JOSEPH BARTLEY SHELTON.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 3rd day of May, 2006.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 06-08

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS;

WHEREAS, BRIAN VUKADINOVICH, who has petitioned for a pardon, was convicted in LaPorte County of Driving While Intoxicated and Public Intoxication in 1985 and was sentenced to 60 days in the LaPorte County Jail;

WHEREAS, the petitioner, who is a 54 year old teacher at Hanover Central High School, has been a committed volunteer, coach, and educator throughout his entire life, before, during, and after the time of the instant offense;

WHEREAS, the petitioner also has received numerous letters of support from his friends, co-workers, and past employers; he has also been active with several youth and educational organizations, whose leaders support his petition for pardon;

WHEREAS, the petitioner is well educated, having obtained both an undergraduate and graduate degree, and hopes to be able to continue his work and advance his career in areas previously denied to him because of this conviction; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in this case, has recommended that this pardon be granted.

NOW THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, by virtue of the authority vested in me by the Constitution and the laws of said State, do hereby issue a pardon to BRIAN VUKADINOVICH.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 3rd day of May, 2006.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 06-09

FOR: PARDON

Executive Orders

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS;

WHEREAS, AARON MCDERMOTT, who has petitioned for a pardon, was convicted in 1997 in Monroe County for Maintaining a Common Nuisance, a Class A Misdemeanor (Possession of Marijuana), for which Monroe County Circuit Court sentenced him to one and a half years, time suspended, with two years probation and community service;

WHEREAS, the petitioner, who was 19 years old and a freshman at Indiana University at the time of the offense, is now 28 years old, successfully graduated from college, and is pursuing a successful career in real estate;

WHEREAS, the petitioner has received numerous letters of support from family and friends, all of whom recommend that his petition for pardon be granted;

WHEREAS, the petitioner over the last years has been active in volunteering with his community and various youth organizations and has continued to live a law-abiding and healthy life; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in this case, has recommended that this pardon be granted.

NOW THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, by virtue of the authority vested in me by the Constitution and the laws of said State, do hereby issue a pardon to AARON MCDERMOTT.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 3rd day of May, 2006.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL

ATTEST: Todd Rokita
Secretary of State

**DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE # 31
June 2006**

DISCLAIMER: Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Fireworks Public Safety Fee

REFERENCE: IC 22-11-14-1; IC 22-11-14-8; IC 22-11-14-12; IC 22-11-14-13; and IC 22-11-14-14

I. INTRODUCTION

House Enrolled Act 1099 which passed during the 2006 session of the Indiana General Assembly enacted a five percent (5%) public safety fee on the gross retail income of fireworks sold in Indiana. The fee is effective for all transactions occurring in Indiana after May 31, 2006.

II. DEFINITIONS

The Act defines the various types of fireworks that will be subject to the fireworks public safety fee.

A "Consumer firework" means a small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical compositions, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. Examples of consumer fireworks are aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines and shells, firecrackers, salutes, and clusters.

"Special fireworks" means fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than 130 milligrams of explosive composition, aerial shells and other display items that exceed the limits for classification for consumer fireworks.

The following items are also subject to the fireworks public safety fee. They include dipped sticks, wire sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers snakes or glow worms, smoke devices, and trick noisemakers.

III. IMPOSITION OF PUBLIC SAFETY FEE

The public safety fee is imposed on the retail sale of fireworks in Indiana. The person who acquires the fireworks in a retail transaction is liable for the public safety fee on the transaction, and shall pay the public safety fee to the retailer as a separate added amount to the transaction. The retailer shall collect the public safety fee as an agent for the state.

The public safety fee is measured by the gross retail income received by the retailer for the sale of fireworks and is imposed at the following rates:

PUBLIC SAFETY FEE	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION		
\$ 0		less than	\$ 0.10
\$ 0.01	at least \$ 0.10	but less than	\$ 0.30
\$ 0.02	at least \$ 0.30	but less than	\$ 0.50
\$ 0.03	at least \$ 0.50	but less than	\$ 0.70
\$ 0.04	at least \$ 0.70	but less than	\$ 0.90
\$ 0.05	at least \$ 0.90	but less than	\$ 1.10

If the retail transaction exceeds one dollar and ten cents \$1.10, the public safety fee is five percent (5%) of the gross retail income.

If the public safety fee computed results in a fraction of one-half cent (\$0.005) or more, the amount of the public safety fee shall be rounded to the next additional cent.

IV. REMITTANCE OF THE PUBLIC SAFETY FEE

The public safety fee is collected by the retailer as an agent for the state. The public safety fees collected in trust for the state makes an individual retailer, an employee, officer, partner in a partnership or member of a limited liability company personally liable for the payment of the public safety fee to the state. A person who knowingly or intentionally fails to collect or remit the public safety fees due commits a Class D felony.

The public safety fee is due twenty (20) days after the end of the month in which the public safety fee was collected. The public safety fee shall be remitted to the Department on forms required by the Department.

V. REGISTRATION WITH THE DEPARTMENT OF REVENUE

The Act requires any person selling consumer fireworks, special fireworks, or novelties and trick noisemakers at retail to collect the public safety fee. The Act requires all retailers that are selling consumer fireworks to register with the state fire marshal. The entities that register with the state fire marshal will automatically be registered with the Department and will receive the forms

Nonrule Policy Documents

necessary to remit the public safety fee.

A person that is required to register with the state fire marshal and receive a certificate of compliance as a resident wholesaler, manufacturer, importer, or distributor is not prohibited from selling consumer fireworks at retail if the consumer fireworks are to be used on the property of the purchaser, or on the property of another person who has given permission to the purchaser to use the consumer fireworks.

A retailer who is selling items listed in IC 22-11-14 -8(a), which includes sparklers, snakes, ground spinners, smoke devices, and trick noisemakers among other things will be required to collect the public safety fee. All wholesalers, manufacturers, importers, and distributors are required to provide a list to the state fire marshal of all retailers to whom they have sold or will sell these items.

A retailer selling items listed in IC 22-11-14-8(a) from a temporary stand must obtain a fireworks stand retail sales permit from the state fire marshal. These retailers are required to collect and remit the public safety fee to the Department and will receive forms from the Department to remit the fee.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE

Departmental Notice #2

June 1, 2006

Prepayment of Sales Tax on Gasoline

This document is not a "statement" required to be published in the Indiana Register under IC 4-22-7-7. However, under IC 6-2.5-7-14, the Department is required to publish the prepayment rate in the June and December issues of the Indiana Register. The purpose of this notice is to inform each refiner, terminal operator, and qualified distributor known to the Department to be required to collect prepayments of sales tax on gasoline of the "prepayment rate" effective for the next six-month period. A prepayment rate is calculated twice a year by the Department and is effective for the period January 1 through June 30, or, July 1 through December 31, as appropriate.

The prepayment rate is defined by IC 6-2.5-7-1 as the product of:

- 1) the statewide average retail price per gallon of gasoline (excluding the Indiana gasoline tax, the federal gasoline tax, and the Indiana gross retail tax); multiplied by
- 2) the state gross retail tax rate [6%]; multiplied by
- 3) ninety percent (90%); and then
- 4) rounded to the nearest one-tenth of one cent (\$0.001)

The prepayment rate of sales tax on gasoline for the six – (6) month period beginning July 1, 2006, is nine and five-tenths cents (\$0.095) per gallon.

Using the most recent retail price of gasoline available (as required by IC 6-2.5-7-14(b)), the Department has determined the statewide average retail price per gallon of gasoline to be one dollars and seventy six and seven tenths cents (\$1.767). The most recent retail price of gasoline available was based on data contained in the May 2006 Petroleum Marketing Monthly as published by the Energy Information Agency.

The prepayment rates for periods beginning July 1, 1994 are established below:

<u>Period</u>		<u>Rate Per Gallon</u>
July 1, 1994	to December 31, 1994	2.9 cents
January 1, 1995	to June 30, 1995	3.7 cents
July 1, 1995	to December 31, 1995	3.3 cents
January 1, 1996	to June 30, 1996	3.3 cents
July 1, 1996	to December 31, 1996	3.4 cents
January 1, 1997	to June 30, 1997	4.0 cents
July 1, 1997	to December 31, 1997	3.9 cents
January 1, 1998	to June 30, 1998	4.0 cents
July 1, 1998	to December 31, 1998	2.9 cents
January 1, 1999	to June 30, 1999	3.0 cents
July 1, 1999	to December 31, 1999	2.4 cents
January 1, 2000	to June 30, 2000	3.6 cents
July 1, 2000	to December 31, 2000	4.6 cents

January 1, 2001	to	June 30, 2001	4.9 cents
July 1, 2001	to	December 31, 2001	4.9 cents
January 1, 2002	to	June 30, 2002	4.9 cents
July 1, 2002	to	December 31, 2002	3.2 cents
January 1, 2003	to	June 30, 2003	5.3 cents
July 1, 2003	to	December 31, 2003	6.6 cents
January 1, 2004	to	June 30, 2004	6.5 cents
July 1, 2004	to	December 31, 2004	6.6 cents
January 1, 2005	to	June 30, 2005	7.6 cents
July 1, 2005	to	December 31, 2005	7.8 cents
January 1, 2006	to	June 30, 2006	11.2 cents
July 1, 2006	to	December 31, 2006	9.5 cents

Indiana Department of State Revenue

John Eckart
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #22
INCOME TAX
JULY 2006**

(Replaces Bulletin #22 dated January 2003)

DISCLAIMER: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Neighborhood Assistance Tax Credit

REFERENCE: IC 6-3.1-9

INTRODUCTION

An income tax credit is available to Indiana taxpayers who contributed to individuals, groups or neighborhood organizations, or who engage in activities to upgrade economically disadvantaged areas for economically disadvantaged households. This credit is limited to the lesser of fifty percent (50%) of the amount contributed or invested, state income tax due, or twenty-five thousand dollars (\$25,000) in any taxable year. The credit can be applied against the taxpayer's adjusted gross income tax liability or the financial institutions tax.

I. Qualification for Claiming the Neighborhood Assistance Credit

The credit may be claimed by any taxpayer (including any S Corporation, partnership or individual) who makes a contribution to or an investment in some type of activity which will result in the upgrading of an area designated as economically disadvantaged by the Indiana Housing and Community Development Authority after consultation with the community services agency. Examples of qualifying activities are:

1. Furnishing financial assistance, labor, material, and technical advice to aid the physical or economic improvement of an economically disadvantaged area.
2. Any type of instruction to an individual who resides in an economically disadvantaged area or an economically disadvantaged household that enables the individual to acquire the necessary vocational skills to become either employable, or to be able to seek a higher grade of employment.
3. Any activity which aids in the reduction of crime in an economically disadvantaged area.
4. Contributions to any neighborhood organization which performs community services in an economically disadvantaged area or for an economically disadvantaged household, provided that such organization qualifies and obtains a ruling as exempt from taxation under provisions of the Internal Revenue Code and from the Indiana Department of Revenue as a religious, charitable, scientific, literary, educational or civic organization.
5. Any type of scholastic instruction or scholarship assistance to an individual residing in an economically disadvantaged area which enables the individual to prepare for better life opportunities.

Nonrule Policy Documents

NOTE: None of the above activities can benefit an individual employed by the donor or an individual administering such activities. On-going volunteer activities and out of pocket expenses necessary for day to day operation of the program do not qualify for the credit.

II. Credit Limitations and Application

The credit is limited to the lesser of fifty percent (50%) of the amount contributed or invested, the state income tax due, or twenty-five thousand dollars (\$25,000) and should be claimed for the tax year in which the contribution is made. There is no provision for carry back, carry forward or refund of the credit. For purposes of the limitation, state income tax due is first reduced by any credit for taxes paid to other states, and the college contribution credit, before the application of the neighborhood assistance credit.

The total amount of neighborhood assistance credit allowed to all taxpayers in any state fiscal year is limited to \$2,500,000. Applications for the credit will be considered in the chronological order received until the \$2,500,000 limit is reached.

III. Procedure

Any organization or individual providing neighborhood assistance must first apply to the Indiana Housing and Community Development Authority requesting approval of a proposed program. Such application should set forth the program to be conducted, the economically disadvantaged area selected, the estimated amount to be invested and the plans for implementing the program.

Donors with approved programs should complete Form NC-10, Neighborhood Assistance Credit Application, and Form NC-20, Notice of Department Decision on Neighborhood Assistance Credit Application, and submit both forms along with the Contributor Application and Certification to the Indiana Housing and Community Development Authority. Indiana Housing and Community Development Authority will review the application and forward it to the Department of Revenue with a recommendation for approval or rejection of the credit.

The Department of Revenue will return Form NC-20 to the donor indicating the amount of credit approved or the reason the credit was disapproved. The Department of Revenue will accept a properly completed Contributor Application and Certification as proof of cash donations. Contributions of property and or services require additional documentation as shown below.

IV. Contributions Other Than Cash

In order to qualify for the credit, contributions other than cash must be contemplated by the program proposal submitted by an organization for approval. Donors to approved programs should check with the organization administering the program to determine if contributions other than cash are within the scope of the approved program.

Contributions other than cash should be valued and documented according to the following guidelines:

Property

Donations of property should be valued at the lower of cost or market value. The value for new property will be determined on the basis of fair and reasonable market price as available to consumers on the open market but not in excess of the substantiated cost to the donor. The value of used property will be determined on the basis of book value (using generally accepted accounting principles) as certified by the donor. Book value is the purchase cost less reasonable depreciation using the straight line method, with one-half year of depreciation used in the year purchased and one-half used in the year of contribution. Unless it can be otherwise clearly established, a five-year useful life should be used in calculating depreciation.

“New Property” is property which has not been used by the end user and which is packaged as it would normally be received by the end user upon purchase. Unless it can be otherwise clearly established, “new property” held more than twelve (12) months prior to contribution will be treated as used property.

A copy of the original invoice showing cost and date of purchase must be submitted with each application. In the case of manufactured property, a statement supporting the cost of the manufactured property must accompany any claim.

Services

Contributions of services should be valued at the donor’s usual charge for such services, but not to exceed the average fee charged for the same type of services in the locality in which the services are rendered.

An itemized listing of the services rendered with the proposed charge for each service should be submitted with each application.

John Eckart
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #91
INCOME TAX
JUNE 2006**

(Replaces Bulletin #91, dated July 2005)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made

to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Biodiesel Tax Credits

REFERENCES: IC 6-3.1-27

INTRODUCTION

There are three separate tax credits related to biodiesel. The first is a credit for producing biodiesel; the second credit is for producing blended biodiesel; and the third is for the retail sale of blended biodiesel to an end user. The credits can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.

I. BIODIESEL PRODUCTION TAX CREDIT

Biodiesel is defined as a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification D6751- 03a Standard Specification for biodiesel fuel (B100) blend stock for Distillate Fuels.

A taxpayer that has been certified by the Indiana Economic Development Corporation (IEDC), and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of one dollar (\$1.00) multiplied by the number of gallons of biodiesel produced by the taxpayer during the taxable year and used to produce blended biodiesel.

The total amount of credits allowed may not exceed three million dollars (\$3,000,000) for a taxpayer for all taxable years. This amount may be increased to five million dollars (\$5,000,000) with the prior approval of the IEDC.

II. BLENDED BIODIESEL TAX CREDIT

Blended biodiesel is defined as a blend of biodiesel with petroleum diesel, so that the percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater). The term does not include biodiesel (B100).

A taxpayer that has been certified by the IEDC, and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of two cents (\$.02) multiplied by the number of gallons of blended biodiesel produced at the Indiana facility and blended with Indiana produced biodiesel.

The total amount of credits allowed may not exceed three million dollars (\$3,000,000) for all taxpayers and all taxable years.

III. RETAIL SALE OF BLENDED BIODIESEL TAX CREDIT

A taxpayer that is a dealer and distributes at retail blended biodiesel is entitled to a credit against the taxpayer's state tax liability.

The credit allowed is one cent (\$.01) multiplied by the number of gallons of blended biodiesel distributed at retail by the taxpayer in a taxable year.

The total amount of credits allowed may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years. A credit may not be taken for blended biodiesel distributed at retail after December 31, 2010.

IV. APPLICATION FORM AND APPROVAL OF THE TAX CREDIT

Taxpayers desiring to claim one of the three credits must file a claim for credit on Form BD-100 Biodiesel Credit Application which is available at the Department's web site (www.in.gov/dor/taxforms/f&eforms).

Taxpayers desiring to claim the credit for biodiesel production or for blending biodiesel must attach a copy of the certification from the IEDC. Retailers selling to end users are not required to be certified by the IEDC. The claim for credit must be completed by the taxpayer and filed with the Department for approval. The approved claim will be returned to the applicant. A copy of the approved claim and certification from the IEDC must be attached to any tax return on which the credit is taken. The application and claim can be filed on a monthly, quarterly, semi-annual or annual basis depending on which tax type the taxpayer is claiming the credit for and the filing frequency of the return for the type of tax. Failure to submit the approved BD-100 with the tax return will result in the claim being denied by the Department.

V. ADMINISTRATION OF THE TAX CREDITS

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same percentage as the person's distributive income to which the person is entitled.

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is to be applied against a taxpayer's sales tax liability, the credit can be taken on a monthly basis. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against the use tax due on the taxpayer's taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess credit to the following taxable years. A credit may be carried forward for up to six (6) taxable years following the taxable year in which the taxpayer was first entitled to claim the credit. The taxpayer is not entitled to a refund or carryback of any unused credits.

The total amount of credits allowed for biodiesel production, biodiesel blending, and ethanol production may not exceed fifty

million dollars (\$50,000,000) for all taxpayers and all taxable years beginning after December 31, 2004. The IEDC shall determine the maximum amount for each type of credit, but the amount must be at least four million (\$4,000,000) for each type of credit.

John Eckart
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #93
INCOME TAX
JUNE 2006**

(Replaces Bulletin #93, dated July 2005)

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SUBJECT: Ethanol Production Tax Credit

REFERENCES: IC 6-3.1-28

INTRODUCTION

There is a tax credit for ethanol production. The credit can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.

I. ETHANOL PRODUCTION TAX CREDIT

Ethanol is defined as agriculturally derived ethyl alcohol. A taxpayer that produces ethanol at a facility located in Indiana that has the capacity to produce at least forty million (40,000,000) gallons of ethanol a year or which after December 31, 2003 increased its ethanol production capacity by at least forty million (40,000,000) gallons per year, may qualify for the credit.

A taxpayer that produces ethanol is entitled to a credit against the taxpayer's state tax liability equal to the product of twelve and one-half cents (\$.125) multiplied by the number of gallons of ethanol produced at the Indiana facility.

The total amount of credits for all taxable years allowed per taxpayer may not exceed a total of two million dollars (\$2,000,000) if the taxpayer produces at least forty million (40,000,000) but less than sixty million (60,000,000) gallons of ethanol in a taxable year. The total amount of credits for all taxable years for a taxpayer may not exceed three million dollars (\$3,000,000) in the case of a taxpayer who produces at least sixty million (60,000,000) gallons of ethanol in a taxable year. The total credits available to all taxpayers for all years that may be awarded for biodiesel production, blended biodiesel production and ethanol production may not exceed fifty million dollars (\$50,000,000).

II. ADMINISTRATION OF THE TAX CREDIT

Taxpayers desiring to claim the ethanol production tax credit must file a copy of the Indiana Economic Development Corporation's certificate of eligibility when they claim the credit on the appropriate Indiana tax return.

III. PASS THROUGH ENTITIES

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit, but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same percentage as the person's distributive income to which the person is entitled. A shareholder, partner or member of the pass through entity should attach a copy of the certificate received from the IEDC by the pass through entity.

IV. CLAIMING THE CREDIT

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is applied against a taxpayer's sales tax liability, the taxpayer is required to obtain a direct pay permit in accordance with IC 6-2.5-8-9. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against use tax due on its taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess to the succeeding taxable years. The taxpayer is not entitled to a refund or carryback of any unused credits.

John Eckart
Commissioner

**DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN # 95
INCOME TAX
JULY 2006**

(Replaces Bulletin #95 dated October 2005)

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Hoosier Business Investment Tax Credit

REFERENCES: IC 6-3.1-26

INTRODUCTION

The Hoosier business investment tax credit (HBITC) was originally passed in 2003 effective for taxable years beginning after December 31, 2003. The statute was amended during the 2005 session of the Indiana General Assembly to expand the entities eligible for the credit, to change the calculation of the credit, and expand the definition of qualified investment. Certification of an applicant is approved by the Indiana Economic Development Corporation (IEDC).

I. QUALIFIED ENTITIES

A taxpayer is defined as an individual, corporation, partnership or other entity that has a state tax liability.

Pass through entities are defined as S Corporations, partnerships, trusts, limited liability companies, or limited liability partnerships. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit.

II. QUALIFIED INVESTMENTS

The qualified investment is determined to be the amount of a taxpayer's expenditure in Indiana for any of the following items:

- The purchase of, costs associated with modernization of, or the construction of facilities and equipment used for telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution.
- Costs associated with the purchase of machinery, equipment, or special purpose buildings used to make a motion picture or audio production. Motion picture or audio production includes a feature length film, video, television services, commercial, music video or audio recording. The term also includes a corporate production for any combination of theatrical, television, or other media viewing or a television pilot.

Qualified investments include expenditures for onsite infrastructure improvements, and costs associated with retooling existing machinery and equipment. Costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry are also qualified investments.

Property that can be readily moved outside of Indiana does not qualify as a qualified investment.

All qualified investments must be made during the period from January 1, 2004 through December 31, 2011 effective for taxable years beginning after December 31, 2003.

III. CREDIT CALCULATION PRIOR TO MAY 15, 2005

Prior to May 15, 2005 the credit in a taxable year equaled the lesser of thirty percent (30%) of the qualified investment or the taxpayer's state tax liability growth. The following provisions apply to HBITC certifications for a pass through entity prior to May 15, 2005. "State tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus the greater of the taxpayer's state tax liability in the most recent prior taxable year or the taxpayer's base state tax liability. "Base state tax liability" means a taxpayer's state tax liability in the taxable year immediately preceding the taxable year in which a taxpayer makes a qualified investment. The base state tax liability amount shall not be adjusted as a result of any net operating loss that could be carried back to the base year. The taxpayer can file an amended return to use a net operating loss deduction, but it will not change the amount of the base state tax liability for purposes of calculating the HBITC.

EXAMPLE: A regular C Corporation (taxpayer) made a qualified investment of \$2,000,000 in 2004. The taxpayer had a state tax liability of \$350,000 in 2003 (base state tax liability). The taxpayer's state tax liability in 2004 was \$520,000. The state tax liability growth is the difference between the current year liability and the base state tax liability (\$520,000-\$350,000=\$170,000). The amount of the credit for the taxable year is the lesser of \$600,000 (30% of the qualified investment (30% multiplied by \$2,000,000=\$600,000)), or the state tax liability growth of \$170,000. The remaining tax credit balance of \$430,000 can be carried forward to future tax years.

A pass through entity by definition is not subject to the adjusted gross income tax, and therefore does not have a state tax liability to calculate a base state tax liability or the amount of state tax liability growth, but the legislation creating the HBITC provides that pass through entities shall be eligible for the credit.

In order for a pass through entity to claim a credit, the pass through entity will calculate a state tax liability based on its Indiana taxable income and the tax liability that would be incurred based on the imputed tax liability of its partners, shareholders, or members.

EXAMPLE: A limited liability company has individuals and a regular C Corporation as members. The individuals represent 80% of the ownership and the Regular C Corporation represents 20%. The members' imputed rate is 4.42% (.8 multiplied by .034) for the individual members and (.2 multiplied by .085) for the Regular C member. This is arrived at by taking the individual members' percent of ownership multiplied by the individual income tax rate, plus the Regular C member's percent of ownership multiplied by the corporate adjusted gross income tax rate.

After the determination of the imputed tax rate is made for the base year, the rate shall be applied to the Indiana taxable income to arrive at the base state tax liability amount. The imputed rate will be recalculated on an annual basis to be used to calculate the state tax liability growth amount and the amount of credit that the entity is eligible to claim.

IV. CREDIT CALCULATION FOR CERTIFICATIONS AFTER MAY 15, 2005

SEA 496-2005 amended the HBITC statute to change the calculation of the credit by eliminating the state tax liability growth as a calculation to be used in determining the amount of the credit that an entity is eligible to receive.

The amount of credit that may be claimed by a taxpayer for a taxable year is a percentage determined by the IEDC, not to exceed ten percent (10%) of the amount of the qualified investment made by the taxpayer during the taxable year.

V. ADMINISTRATION OF THE CREDIT

A. Application

A taxpayer that proposes a project to create new jobs or increase wage levels in Indiana shall apply to the IEDC before the taxpayer makes the qualified investment.

B. Amount of Credit

The IEDC shall certify the amount of the qualified investment that is eligible for a credit. The IEDC may grant a credit that is up to ten percent (10%) of the amount of qualified investment that is directly attributable to expanding the workforce in Indiana.

C. Claiming the Credit

A taxpayer claiming a credit is required to submit to the Department a copy of the certificate of verification when claiming the credit on the tax return filed by the taxpayer. The certificate of verification shall be supplied to the taxpayer by the IEDC.

D. Carry Forward of Credit

A taxpayer is allowed to carry forward an unused credit for the number of years determined by the IEDC, but not to exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment.

E. Expiration and Time Limitation of Credit

The credit applies to qualified investments made for taxable years beginning after December 31, 2003, and ending on or before December 31, 2011. A taxpayer is not prevented from carrying forward an unused credit to a taxable year beginning after December 31, 2011 for a qualified investment made before January 1, 2008.

For further information concerning this tax credit, contact the Indiana Economic Development Corporation at One North Capitol, Suite 700, Indianapolis, IN 46204.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE

18-20020278.LOF

LETTER OF FINDINGS NUMBER: 02-0278

Financial Institutions Tax

For the Year 1992-1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Financial Institutions Tax—Statute of Limitations

Authority: Ind. Code § 6-8.1-5-2; *Phoenix Coal Co. v. Comm'r*, 231 F.2d 420 (2d Cir. 1956)

Taxpayer protests the assessment of additional tax for certain taxable years, based on the assessments being made in an untimely

manner.

II. Financial Institutions Tax--Unitary Filing and Economic Nexus

Authority: Ind. Code § 6-5.5-1-18; *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); *Container Corp. v. Franchise Tax Board*, 463 U.S. 159 (1983); *Exxon Corp. v. Dep't of Revenue of Wisconsin*, 447 U.S. 207 (1980).

Taxpayer protests the inclusion of three subsidiaries as part of Taxpayer's unitary group based on economic nexus.

III. Financial Institutions Tax--Apportionment Factors

Authority: Ind. Code § 6-5.5-2-4; *Citicorp North America Inc. v. Franchise Tax Bd.*, 100 Cal. Rptr. 2d 509 (Cal. Ct. App. 1st Dist. 2000).

Taxpayer protests the inclusion of the receipts from Indiana credit card holders in Taxpayer's receipts numerator for determining apportionment.

IV. Tax Administration--Negligence Penalty

Authority: Ind. Code 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer consists of a number of corporations engaged in varying businesses. One of Taxpayer's subsidiaries, Sub P, filed Financial Institutions Tax returns for 1992 to 1998. Two other subsidiaries, Sub C and Sub L, filed regular Corporate Income Tax returns for 1994 to 1997. After a merger between Sub C and Sub L, the successor company, Sub F, filed corporate income tax returns for part of 1997 and 1998.

In addition to the various banking activities that they may have been engaged in, Sub D and Sub B were in the credit card business at various points during the years in question. Sub D and Sub B had credit cards issued to Indiana customers; however, Sub D and Sub B did not have property in Indiana, and they did not have any payroll in Indiana. Further, any solicitation of credit cards was done by telephone or by United States Mail. Sub H was a company that held and managed an investment portfolio and did not otherwise have any other apparent activities.

The Department audited Taxpayer for the years in question. As a result of the Department audit, it was determined that the various subsidiaries of Taxpayer should have properly filed a combined Financial Institutions Tax return for each of the years in question. As a result, Taxpayer was assessed additional tax, interest, and penalty. Taxpayer protested the assessments, and a hearing was held.

I. Financial Institutions Tax--Statute of Limitations

DISCUSSION

Taxpayer's first argument is that the statute of limitations for assessment of additional taxes passed prior to the Department's assessment. In particular, Taxpayer argues that it waived the statute of limitations only for tax years 1996 and 1997; however, for 1992 to 1995, it did not waive the statute of limitations.

In general, a three-year statute of limitations from the later of the due date of the return or the actual filing date of the return applies for all listed taxes. Ind. Code § 6-8.1-5-2. However, if a person's income is understated by at least twenty-five percent, the statute of limitations is extended to six years. If a taxpayer fails to file a return, no statute of limitations for assessment exists.

For the years from 1992 to 1995, Taxpayer filed separate returns for Sub P. It filed regular corporate income tax returns for Sub C and Sub L in 1994 and 1995. The period for assessing income taxes with respect to these entities started with the timely filed returns, and the time was not tolled by agreement between Taxpayer and the Department. Therefore, Taxpayer has provided sufficient information to conclude that the assessments were untimely with respect to Sub P, Sub C, and Sub L for the years in which they filed returns.

However, based on the information provided by Taxpayer, Taxpayer had a net operating loss carryforward from prior years. While Indiana statutes and case law have not dealt with this particular situation, federal law governing net operating losses has dealt with this situation. In *Phoenix Coal Co. v. Comm'r*, 231 F.2d 420 (2d Cir. 1956), a corporation incurred a net operating loss in 1947. The corporation carried back its net operating losses to eliminate its 1945 income and reduce its 1946 income. The corporation incurred a further net operating loss in 1948, which served to eliminate its 1946 income.

The Commissioner reviewed the corporation's returns. Upon review of the corporation's returns, the Commissioner determined that the corporation had underreported its 1945 income. Accordingly, the Commissioner redetermined the amount of net operating losses that could be carried forward to 1946, and assessed additional tax for that year. At the time of the assessment, the statute of limitations for imposition of additional tax for 1945 had passed, though not for 1946. The court held that, though taxes for 1945 could not be assessed due to the passing of the statute of limitations, the income for 1945 could be redetermined to compute the proper amount of net operating losses allowable for 1946. *Id.* at 421-422.

The Department can revisit the determinations of the proper amount of net operating losses, along with carryforwards, for the prior audit period and any previous years solely for purposes of determining the proper amount of income subject to tax for years not subject to the statute of limitations, just as the Commissioner in *Phoenix Coal* recomputed the corporation's income for 1945 to determine the proper income for 1946. This does not permit assessment for Sub P for any year prior to 1996 or for Sub C and Sub

L for 1994 and 1995, just as the Commissioner's redetermination for 1945 did not permit assessment for that year. Thus, the Department can redetermine the net operating loss carryforwards available for the years in question by combining all Taxpayer's entities into one return. However, the Department cannot assess tax for 1992 to 1995 against Sub P or for 1994 and 1995 against Sub C and Sub L by virtue of the newly combined return.

Further, with respect to Sub B, Sub D, and Sub H, these entities did not file Indiana returns for the period from 1992 to 1995. Also, Sub C and Sub L did not file Indiana returns for 1992 and 1993. The Department is not precluded from making assessments with respect to these entities per Ind. Code § 6-8.1-5-2(e). However, the remedial measures may not result in inconsistent results (e.g., the combination of the unfilled entities creating an assessment, then using the same entities to disallow Sub P's net operating losses).

FINDING

Taxpayer's protest is sustained in part and denied in part.

II. Financial Institutions Tax--Unitary filing

DISCUSSION

Taxpayer's second argument is that the financial institutions tax is unconstitutional as applied to Sub B, Sub D, and Sub H under the Commerce Clause of the United States Constitution. Taxpayer cites to *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Taxpayer argues that, because the only contacts Sub B, Sub D, and Sub H had with Indiana were Sub B and Sub D's credit cards and solicitation of credit cards, it did not have sufficient nexus with Indiana to permit taxation. Taxpayer urges the rejection of economic nexus as a basis for imposition of Financial Institutions Tax.

However, the issue here is one of a unitary business, rather than one of nexus. First, Taxpayer has not provided sufficient information to conclude that it was not a unitary business as defined in Ind. Code § 6-5.5-1-18 (amended effective January 1, 1999). For the years in question, the presence of a unitary business was sufficient to impose taxation, rather than the presence of a unitary business plus transacting business in Indiana (the test before 1992 and after 1998).

Second, in the case of a unitary business, entities that are considered to be transacting business in a given state in sense of having property, payroll, and sales in that state, as well as other entities that are not transacting business in that state, are considered to be one large business. See *Container Corp. v. Franchise Tax Board*, 463 U.S. 159 (1983) (unitary filing held to permit subsidiaries doing business outside the United States to be combined on a California corporate tax return); *Exxon Corp. v. Dep't of Revenue of Wisconsin*, 447 U.S. 207 (1980) (though company only had marketing activities in Wisconsin, its other activities conducted outside Wisconsin were part of a unitary business, and thus combining the subsidiaries engaged in the other activities was permissible). The unitary business does not consist of individual entities operating separately; it is a large, interdependent group with varying roles for individual entities. Accordingly, nexus concerns with respect to certain entities are not relevant for unitary analysis; the only concern is whether the businesses are part of one large enterprise, and whether Indiana is taxing its apportioned share of the income of the larger entity. Taxpayer was properly assessed tax on its proportion of Indiana receipts to overall receipts of the overall entity.

Third, even if the issue of nexus was relevant for Sub B, Sub H, and Sub D, Sub B and Sub D conducted their credit card business with Indiana customers at various times during the audit period. By doing so, Taxpayer has sought the benefit of Indiana laws and the business environment that Indiana provides for Taxpayer and Taxpayer's customers. Accordingly, Sub B and Sub D conducted the business of a financial institution in Indiana, and were properly subject to tax during those periods in which they had credit card customers in Indiana.

FINDING

Taxpayer's protest is denied.

III. Financial Institutions Tax—Apportionment Factors

DISCUSSION

Taxpayer argues that only certain members of its unitary group should be included in determining Taxpayer's numerator for apportionment purposes; however, all members of the unitary group, including those that Taxpayer has stated did not conduct business in Indiana, should be included in the denominator.

Under Ind. Code § 6-5.5-2-4:

For a taxpayer filing a combined return for its unitary group, the group's apportioned income for a taxable year consists of:

(1) the aggregate adjusted gross income, from whatever source derived, of the members of the unitary group; multiplied by:

(2) the quotient of:

(A) all the receipts of the taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by

(B) the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions.

Taxpayer concedes that Sub F, Sub C, Sub L, and Sub P engaged in business in Indiana. However, Taxpayer maintains that the Indiana receipts of its credit card companies, Sub B and Sub D, as well as Sub H should not have been included in the numerator of the sales factor on Taxpayer's combined return, but should have been included in the denominator of the sales factor.

When the Financial Institutions Tax (FIT) was enacted effective January 1, 1990, the FIT originally provided that all income

of resident members of a unitary group, plus the apportioned income of the members of a unitary group that transacted the business of a financial institution in Indiana, was subject to Financial Institutions Tax. Thus, a non-resident entity first was required to be a member of a unitary group, and second, the non-resident entity was required to transact business in Indiana.

However, effective in 1992, the scope of taxation was redefined. The scope of taxation was broadened to include unitary entities that did not transact business in Indiana, rather than just those that transacted business in Indiana. Thus, the income of a non-resident entity that did not transact business in Indiana was subject to tax, and the receipts of that entity were added to the denominator of the group's apportionment factor. The scope of the numerator remained the same throughout the period; Indiana could only tax the receipts of the unitary group from Indiana sources. Thus, the term "taxpayer member" (in the numerator) as opposed to "member" (the term in the denominator) was a redundancy that carried over from the 1990 enactment's initial limitations on taxable entities.

Further, while Indiana case law has not addressed the definition of "taxpayer" in a unitary group context when a member had receipts from Indiana but would not have been taxed as a separate entity, California has addressed such a contention in *Citicorp North America Inc. v. Franchise Tax Bd.*, 100 Cal. Rptr. 2d 509 (Cal. Ct. App. 1st Dist. 2000). In that case, Citicorp had several subsidiaries that were taxpayers in California and filed separate returns. Later, Citicorp amended its returns to file as a unitary group. Citibank, a subsidiary included on the unitary return, was not a separate taxpayer for California purposes and had no property or payroll in California. However, Citibank had credit cardholders in California. The issue was whether Citibank's credit card receipts from California cardholders were required to be included in the Citicorp unitary group's sales numerator. The court held that the Citibank's credit card receipts from California cardholders were properly includible in Citicorp's sales numerator for apportionment purposes. In so ruling, the court held that "taxpayer" meant the entire unitary group, rather than just the individual members of the group. *Id.* at 521.

Assuming *arguendo* that Sub B and Sub D were not subject to taxation based on mere solicitation activities, they were still conducting a credit card business in Indiana. Sub B and Sub D were part of a unitary business that included other members of Taxpayer's group. Accordingly, just as the term "taxpayer" in *Citicorp* included a company transacting a credit card business in California when the credit card company was not taxable on a separate company basis, the term "taxpayer member" includes all members of Taxpayer's unitary group transacting business in Indiana, not just those that would have been subject to tax on a separate company basis.

FINDING

Taxpayer's protest is denied.

V. Tax Administration--Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty for all taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2, further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

With respect to this assessment, Indiana's statutes and regulations were clear with respect to the scope of Financial Institutions Tax. Notwithstanding the statutes and regulations, Taxpayer assumed a position contrary to those statutes and regulations. Accordingly, Taxpayer has not provided sufficient information to conclude that penalty waiver is justified.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040121.LOF

LETTER OF FINDINGS: 04-0121**GROSS RETAIL TAX****For 2000 and 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Sales of Goods to Out-of-State Destinations – Gross Retail Tax.**

Authority: IC 6-2.5-2-1(a); IC 6-8.1-5-1(b); 45 IAC 2.2-2-2.

Taxpayer argues that two invoices were included in the audit's sample report that were not subject to sales tax because the two invoices were for items that were sent to out-of-state customers.

STATEMENT OF FACTS

Taxpayer is an in-state company in the business of manufacturing and selling both at retail and wholesale items such as commemorative plaques, certificates, and trophies. The Department of Revenue (Department) conducted an audit review of taxpayer's business records. Due to the large number of sales invoices involved, the audit prepared a sample report for each of the two audit periods. Two individual sales were recorded in the February 2000 sample for which the audit determined that taxpayer should have collected sales tax. The audit did so on the ground that "[b]oth sales were clearly coded on the sales invoice as being held/stored in Indiana." The audit provided taxpayer with an opportunity to supply information showing that the sales were actually made to out-of-state customers. According to the audit, taxpayer "was unable to provide the shipping detail for these two sales."

Taxpayer submitted a protest, the issue was assigned to a hearing officer, an administrative hearing was held, and this Letter of Findings results.

DISCUSSION**I. Sales of Goods to Out-of-State Destinations – Gross Retail Tax.**

As a threshold issue, taxpayer's original protest letter suggested certain other adjustments to which taxpayer felt it was entitled. However, at the administrative hearing, taxpayer only addressed the issue of whether it should have collected sales tax on the two purportedly out-of-state sales invoices.

The audit determined that taxpayer should have collected sales tax on two sales invoices which totaled approximately \$520. Taxpayer disagreed stating that the two sales were for items which had been prepared for – but not shipped to – an out-of-state customer.

IC 6-2.5-2-1(a) states that, "An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana." 45 IAC 2.2-2-2 requires that a retail seller, "[A]cting as an agent for the state of Indiana, must collect the tax."

The audit was unable to agree that the two transactions occurred outside Indiana. To the contrary, the audit concluded that "[b]oth sales were clearly coded on the sales invoice as being held/stored in Indiana." In effect, the audit found that the two invoices evidenced "retail transactions made in Indiana." IC 6-2.5-2-1(a) Because taxpayer failed to charge or collect the sales tax, the audit assessed taxpayer sales tax on the purchase price indicated on each of the two invoices.

IC 6-8.1-5-1(b) states, "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 the proposed assessment is made." (*Emphasis added*).

Taxpayer's representative indicated that documentary evidence would be presented subsequent to the hearing demonstrating that the two invoiced transactions were for sales made to out-of-state customers. Just as it did while the audit was being conducted, taxpayer failed to provide the evidence. Instead, taxpayer seems to rely wholly on its bare assertion that it was not required to collect Indiana sales tax; unfortunately, this bare assertion is – standing alone – insufficient, and taxpayer has failed to meet its burden of "proving that the proposed assessment is wrong...." *Id.*

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0120040196.LOF

LETTER OF FINDINGS NUMBER: 04-0196**Adjusted Gross Income Tax****For the Tax Period 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax – Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-3-2-1, 45 IAC 3.1-1-23(2)

The taxpayers protest the assessment of adjusted gross income tax on unreported gross income.

II. Adjusted Gross Income Tax – Credit for Taxes Paid to other States

Authority: IC 6-3-3-3(a).

The taxpayer protests the lack of credit given them for payment of taxes to other states.

III. Tax Administration – Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

The taxpayers protest the imposition of the penalty.

STATEMENT OF FACTS

The taxpayers are a married couple. They moved to Texas at the end of June, 2002. As a result, they filed an Indiana partial year resident return for 2002. The Indiana Department of Revenue (department) assessed the taxpayers additional Indiana adjusted gross income tax, interest, and penalty. The taxpayers protested the assessment and a hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax – Imposition

DISCUSSION

There is no dispute that the taxpayers changed their domicile from Indiana to Texas at the end of June, 2002. The dispute centers on what income is subject to the Indiana adjusted gross income tax. The taxpayers declared their Indiana 2001 adjusted gross income tax refund and capital gains on assets sold while they lived in Indiana as taxable Indiana income. These amounts totaled \$8,384. The department imposed Indiana adjusted gross income tax on one half of their federally reported \$517,552. The taxpayers protested this assessment.

Indiana Department of Revenue assessments are presumed to be correct. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

Indiana imposes an adjusted gross income tax at IC 6-3-2-1(a) as follows:

Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed... on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The issue of the Indiana adjusted gross taxability of taxpayers who move from Indiana to another state is discussed at 45 IAC 3.1-1-23(2) as follows:

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

The taxpayers also protested the imposition of Indiana adjusted gross income tax on wages of \$50,829. The taxpayers provided documentation indicating that those wages were earned by the husband for performance of a job for a corporation when the family lived in Texas. This income was not earned in Indiana and therefore is not from an Indiana source. It is not subject to the Indiana adjusted gross income tax.

The taxpayers also protested the imposition of Indiana adjusted gross income tax on a capital gain of \$2,854, realized upon the sale of stock on December 16, 2002. The Indiana part year resident adjusted gross income tax return instructions deal with which state to report capital gains to on page 9 as follows:

For part-year residents, the portion of the following types of income received while a nonresident would not be reported Indiana income: interest, dividends, royalties and gains from the sale of capital assets, unless such income results from the conduct of a trade or business.

The taxpayers sold the stock and earned the income while they were residents of Texas. Therefore, the gain from the sale of the stock is not subject to the Indiana adjusted gross income tax.

The final point of protest concerns the partnership income of \$444,187 distributed on September 30, 2006. The husband was a partner in a major accounting firm with a September-September fiscal year. During the year the partners are paid a draw. At the end of the firm's fiscal year, the draws are trued up. Each partner is then paid his final distributive share of the partnership income. If the partner's total draw is less than his total distributive share, the partner receives an additional payment. If the partner's total draw is more than his total distributive share, the partner must reimburse the partnership for the overage paid to him. The taxpayers argued that he did not have final rights to the distributive share and therefore did not earn it until after his move from Indiana to Texas. In essence, the taxpayers argued that the draws were not really income but were more in the nature of nontaxable loans from the partnership to the partners. The taxpayers argued that the total distributive share is taxed at the time it is received like the capital gains

on the sale of stock. In this case, that date would be September 30, 2002, after the taxpayers moved to Texas.

The department agrees that the draws are in the nature of loans not subject to income tax at the time they are paid. The department did not, however, impose tax on the draws at the time they were paid. Rather the department imposed tax on the six months worth or 50% of the distributive share that the husband earned when he worked with the accounting firm in Indianapolis. The taxpayer did not just receive the money in Texas like the proceeds from the sale of stock. Rather, the taxpayer received the money as compensation for the efforts he made throughout the fiscal year on behalf of the partnership. Six months of that effort and work during 2002 were from the Indiana office while the taxpayer was a resident of Indiana. This is Indiana source income subject to the Indiana adjusted gross income tax.

FINDING

The taxpayers' protest is sustained as to the imposition of Indiana adjusted gross income tax on the wages earned in Texas and gain from the sale of stock while residents of Texas. The taxpayers' protest to the imposition of Indiana adjusted gross income tax on half of the distributive share of the partnership is denied.

II. Adjusted Gross Income Tax – Credit for Taxes Paid to other States

DISCUSSION

The taxpayers argued that should they be found liable for Indiana adjusted gross income tax on a portion of the partnership distribution, he should also receive a credit against the tax for taxes paid in other states.

Indiana law provides for credits against Indiana adjusted gross income tax for taxes paid to another state at IC 6-3-3-3(a) as follows: Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under IC 6-3-2, the amount of tax paid by him to the other state shall be credited against the amount of tax payable by him. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment except that such application for credit shall not operate to reduce the tax payable under IC 6-3-2 to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

The statute clearly sets out a credit for taxes paid to another state for no more than the Indiana tax rate. To take this credit, however, the taxpayer must provide the department with evidence that the tax was actually paid to another state.

FINDING

The taxpayers' claim to be allowed to take credits against the Indiana adjusted gross income tax for taxes paid to other states is sustained to the extent that the taxpayer can verify the credits for taxes paid with filed tax returns and receipts for payment of taxes to the other states.

III. Tax Administration – Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

As one spouse is a partner in a major accounting firm, the taxpayers are expected to know and follow the tax laws of the state of Indiana. Their failure to report half of the husband's distributive share of the partnership is a clear situation of failing to use the diligence and reasonable care required of taxpayers. This breach of the taxpayers' duty constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120040399.LOF

LETTER OF FINDINGS NUMBER: 04-0399

Income Tax

For Tax Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication

of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Tax—Individual

Authority: IC 6-3-2-1; IC 6-8.1-5-1

Taxpayer protests the assessment of individual income tax.

II. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an information exchange with the Federal government, the Indiana Department of Revenue ("Department") issued a proposed assessment for individual income tax for 2001. Taxpayer protests the proposed assessment of tax and negligence penalty. Further facts will be supplied as required.

I. Income Tax—Individual

DISCUSSION

Taxpayer protests the imposition of individual income tax. Taxpayer's protest consists of the sentence, "I have received disability social security for many years and have not made enough to file taxes." Taxpayer provides no further explanation or documentation supporting his position.

The Department received information from the Federal government that taxpayer had taxable income for 2001. The Indiana income tax is established in IC 6-3-2-1, which states in relevant part:

(a) Each taxable year, a tax at the rate of three and four-tenths percent []of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The Department issued a proposed assessment on the income reported by the Federal government.

The Department refers to IC 6-8.1-5-1(b), which explains that the burden of proving an assessment wrong rests with the person against whom the assessment is made. In this case, the taxpayer has not provided any explanation or documentation supporting his protest. Taxpayer has not met the burden of proving the assessment wrong, as required by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20050010P.LOF

**LETTER OF FINDINGS NUMBER 05-0010P
TAX ADMINISTRATION (USE TAX)—NEGLIGENCE PENALTIES FOR
THE REPORTING PERIODS COVERING CALENDAR YEARS 2000-01****AND JANUARY 1—NOVEMBER 30, 2002**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the *Indiana Register* and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the *Indiana Register*. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tax Administration—Negligence Penalties—Audit Deficiencies—Good Filing History**

Authority: IC §§ 6-8.1-5-1(b) and -10-2.1 (2004); *State Bd. of Tax Comm'rs v. New Castle Lodge # 147, L.O.O.M.*, 765 N.E.2d 1257, 1264 (Ind. 2002); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024 and 1024-25 (Ind. Tax Ct. 1999); 45 IAC §§ 15-3-2(e), -5-3(b)(8) and -11-2 (2004)

The taxpayer protests the Audit Division's proposed assessment of negligence penalties.

STATEMENT OF FACTS

The Department's Audit Division conducted a field audit of the taxpayer for the tax type and reporting periods set out in the heading of this Letter of Findings. As a result of the audit, the taxpayer incurred tax deficiencies. The Audit Division proposed assessing, and the taxpayer has only protested the proposed, negligence penalties. The Department will provide additional information as needed.

I. Tax Administration—Negligence Penalties—Audit Deficiencies—Good Filing History**DISCUSSION****A. TAXPAYER'S PROTEST**

The taxpayer argues that the Department should waive the negligence penalties because the taxpayer has substantially complied with its tax reporting and remitting duties.

B. ANALYSIS

IC § 6-8.1-10-2.1 (2004) is the statute that authorizes the Department to impose a penalty for any negligence of a taxpayer in failing to comply with the tax laws that the Department administers. These taxes are listed in IC § 6-8.1-1-1 and include the gross retail and use tax. IC § 6-8.1-10-2.1(a)(3) states that "(a) [i]f a person: ... (3) [i]ncurs, upon examination by the department, a deficiency that is due to *negligence*; ... the person is subject to a penalty." *Id.* (Emphasis added). The amount is set by IC § 6-8.1-10-2.1(b)(4), which states that "(b) [e]xcept as provided in subsection (g) [.] [not in issue here], the penalty described in subsection (a) is ten percent (10%) of: ... (4) the amount of deficiency as finally determined by the department[.]" *Id.* However, IC § 6-8.1-10-2.1(d) states that "[i]f a person subject to the penalty imposed under this section can show that the failure to ... pay the deficiency determined by the department was due to *reasonable cause* and not due to willful neglect, the department shall waive the penalty." *Id.* (Emphasis added).

Title 45 IAC § 15-11-2(b) states:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's *carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.* Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Id. (Emphasis added.) The next subsection of the regulation sets out the standard of care a taxpayer must prove pursuant to IC § 6-8.1-10-2.1(e) to establish reasonable cause for failing to meet its tax compliance duties to the Department. Subsection (c) of 45 IAC § 15-11-2 reads in relevant part as follows:

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 [sic][should read IC 6-8.1-10-2, repealed and re-enacted in 1991 as IC 6-8.1-10-2.1] if the taxpayer affirmatively establishes that the failure to ... pay a deficiency was due to reasonable cause and not due to negligence. *In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.*

...

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Id. (Emphasis added.)

Under IC § 6-8.1-5-1(b) (2004) and 45 IAC § 15-5-3(b)(8) (2004), the person against whom a proposed assessment is made has the burden of proving that it is wrong. That burden applies to abatement of penalty assessments, as well as substantive tax assessments. “*A person who wishes to avoid the penalty imposed under [IC § 6-8.1-10-2.1(a) and (b)] must make an affirmative showing of all facts alleged as a reasonable cause for the person’s failure to file the return, pay the amount of tax shown on the person’s return, pay the deficiency, or timely remit tax held in trust[.]*” IC § 6-8.1-10-2.1(e) (emphasis and alterations added). The burden of proof is not on the Department to show negligence, willful or otherwise, by, or the absence of reasonable cause for the actions or inaction of, a taxpayer.

The taxpayer’s argument is in effect that it exercised ordinary care and prudence in filing its returns with and remitting tax to this Department, thereby implying that it had “reasonable cause,” as 45 IAC § 15-11-2(c) defines that term, for incurring the audit deficiencies. That argument does not support the taxpayer’s protest because it does not address the basis on which the negligence penalties were proposed against it. The taxpayer was not penalized by the Compliance Division under IC § 6-8.1-10-2.1(a)(1) or (2) for failing to file returns, for failing to file returns on time, or for failing to pay the full amount of tax shown on those returns. It was penalized by the Audit Division under IC § 6-8.1-10-2.1(a)(3) for “[i]ncur[ring], upon examination by the department, a deficiency that is due to negligence[.]” *Id.* (Alterations added.) The fact that the taxpayer filed its returns promptly and paid all the tax it reported has no tendency to prove that the present deficiencies, resulting from its omissions of tax from those returns, were incurred for reasonable cause.

The taxpayer has failed to make any argument that it had reasonable cause for incurring the audit deficiencies. Indiana law is settled that this state’s taxation hearing officers, and by extension the state-level taxing authorities of which they are agents, “do not have the duty to make a taxpayer’s case.” *Hoogenboom-Nofziger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999), *cited with approval in State Bd. of Tax Comm’rs v. New Castle Lodge # 147, L.O.O.M.*, 765 N.E.2d 1257, 1264 (Ind. 2002). The Tax Court stated the rationale for this rule in *Hoogenboom-Nofziger* as follows:

[T]o allow [a taxpayer] to prevail after it made such a cursory showing at the administrative level would result in a tremendous workload increase for [the Department and] the State Board [now the Indiana Board of Tax Review], ... administrative agenc[ies] that already bear[] ... difficult burden[s] in administering this State’s [listed and] property tax system[s]. If taxpayers could make a de minimis showing and then force [the Department or] the State Board to support its decisions with detailed factual findings, the [Indiana taxing authorities] would be overwhelmed with cases such as this one. This would be patently unfair to other taxpayers who do make detailed presentations to the [taxing authorities] because resolution of their appeals would necessarily be delayed.

715 N.E.2d at 1024-25 (alterations added).

Entertaining the taxpayer’s protest of the negligence penalties, much less granting this protest and refunding those penalties, on substantial compliance grounds would be inappropriate. If the Department were to do so, it could set a bad example. It could imply both to the present taxpayer and to future penalized persons who would learn of any such action that the Department is willing to accept something less than full compliance with the listed tax laws. The risk of leaving taxpayers with such an impression is an unacceptable one. Although the result is unfortunate for this particular taxpayer, the alternative would be worse for tax administration and tax compliance.

FINDING

The taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

0220050048.LOF

LETTER OF FINDINGS NUMBER: 05-0048

Adjusted Gross Income Tax

Tax Period 1999-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department’s official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax-Net Operating Loss

Authority: IC § 6-8.1-5-1(b), IC § 6-3-2-2.6.

The taxpayer protested the department’s failure to carry forward prior year net operating losses to the fiscal year 1999 return.

II. Adjusted Gross Income Tax-Inclusion of Corporations in Combined Return

Authority: IC § 6-3-2-2(m), IC § 6-5.5-1-18, *Container Corporation of America v. Franchise Tax Board.*, 463 U.S. 159, 103 S.Ct.

293 (1983); *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992); *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982).

The taxpayer protested the inclusion of two corporations into its combined return. The taxpayer also protested the exclusion of one corporation from its combined return.

III. Adjusted Gross Income Tax-Loss on Sale of Account Receivables

Authority: IC § 6-3-2-2(m).

The taxpayer protested the disallowance of a loss deduction on the sale of account receivables.

IV. Adjusted Gross Income Tax-Calculation Issues

Authority: IC § 6-8.1-3-12.

The taxpayer protested the method of calculation used in several areas and failure to give credit for payments made.

STATEMENT OF FACTS

The taxpayer is a corporation with several subsidiaries and related corporations in the business of creating, manufacturing, and distributing greeting card products. The Indiana Department of Revenue ("department") audited the corporation for the tax years ending February, 1999 through February, 2002. As a result of the audit, the department assessed additional adjusted gross income tax, interest, and penalty. The taxpayer protested this assessment and a hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax-Net Operating Loss

DISCUSSION

During the audit, the department determined that the taxpayer needed to file a combined return with many of its subsidiaries and related corporations. Two of the corporations included in the combined return had unused separate return net operating losses (NOLs) from periods prior to the fiscal year ending February 1999 combined return. The taxpayer requests that those NOLs be carried forward against the fiscal year 1999 combined Indiana return.

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 allows the utilization of NOLs in computing the adjusted gross income tax liability of corporations reporting on a combined basis. IC § 6-3-2-2.6. The taxpayer provided documentation of its NOLs.

FINDING

The taxpayer's protest is sustained with regards to the net operating loss carryforward. The file will be returned to the audit division to determine the correct Indiana loss amount (if any) available for carryforward into the applicable tax years. The loss will be calculated in accordance with the applicable statute including the application of the separate return year limitation computations if needed.

II. Adjusted Gross Income Tax-Inclusion of Corporations in Combined Return

DISCUSSION

The taxpayer protests the inclusion of two affiliated corporations (corporations A and B) in the combined return. The taxpayer also protests the exclusion of one corporation (Corporation C) from the combined return for the periods the entity did business in Indiana.

Corporation A makes display cabinets and other fixtures. The taxpayer argued that Corporation A should not be included in the unitary return because they are a separate corporation that sells to taxpayer and its related corporations as well as other parties. Corporation A's manufacturing facility and company management are located in North Carolina. The taxpayer buys some of its cabinets from other corporations and is not totally dependent on Corporation A for its fixtures.

Corporation B sells products that are similar but not identical to taxpayer's main product. Corporation B's product is often used in conjunction with taxpayer's primary product. Corporation B's product is sold mainly to unrelated parties. Corporation B had two manufacturing facilities in Tennessee during the audit period. It had no property in Indiana. Corporation B's sales are shipped into Indiana from Tennessee. Corporation B maintains its own customers' list and computer system.

Corporation C was in business for only one year of the audit period, fiscal year 1999. The taxpayer did not own this corporation like it did the others that the department included in the unitary business corporation. Corporation C was not involved in the creation, manufacturing, and distribution of social expression products like the others in the unitary business. Rather, this corporation allowed customers to manufacture personalized product items in retail establishments.

The taxpayer argued that Corporations A and B should not be included in a unitary return for several reasons. First they argued that the corporations A and B did not have sufficient contact with Indiana to be included in a combined return. Secondly, the taxpayer argued against the inclusion of Corporations A and B because they do not meet the definition of "a unitary business" found at IC § 6-5.5-1-18 as follows:

"[U]nitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution.

This statute defines "unitary business" for the Financial Institutions Tax purposes, not adjusted gross income tax. The basic concepts, however, apply to the adjusted gross income tax.

The only Indiana statute dealing with the issue of unitary business for adjusted gross income tax purposes is IC § 6-3-2-2(m) as follows:

In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

Indiana law requires first a determination that the entities are operated as a unitary business. After it has been determined that the entities are unitary, the law requires that the income be reported in such a manner as to “fairly reflect” the Indiana income. The Supreme Court has considered the issue of a unitary relationship for adjusted gross income tax in several cases and with several analyses. The essential characteristic they require for a unitary business is that the individual entities are functionally integrated in a common business. *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 103 S.Ct. 293 (1983).; *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768, 112 S.Ct. 2251 (1992); *ASARCO, Inc. v. Idaho State Tax Comm’n*, 458 U.S. 307 (1982). The Supreme Court found that unitary businesses that were functionally integrated shared many common characteristics. They had common ownership. They had centralized management with a corporate strategy including the various entities. The individual businesses were operated in such a manner as to further a common purpose.

The taxpayer owned corporations A and B. The taxpayer and its related corporations operated businesses creating, manufacturing, and distributing social expression products. There is clear evidence that they operated as a functional whole to achieve these common goals. Management decisions were made to further the common goal of selling all the varieties of greeting card products. The taxpayer’s SEC filings included the names of the taxpayer and Corporations A, B, and C. Several of the corporations used the same related accounts receivable servicing corporation.

Significant percentages of Corporation A’s product (display cabinets and fixtures for the marketing of the social expression products) were sold to the taxpayer and related corporations. Corporation C’s product was displayed with the taxpayer’s and Corporation B’s product on Corporation A’s display cabinets. Labels on Corporation B’s product indicate that Corporation B’s trademark is held by the corporation that also holds taxpayer’s trademarks.

There were substantial intercompany transfers among the various related entities listed in the subsidiary’s Cost of Goods Sold. Each year the taxpayer’s consolidated federal 1120 return included transfer pricing adjustments. These adjustments distorted the taxpayer’s and its subsidiaries Indiana adjusted gross income. To fairly reflect their Indiana adjusted gross income, the taxpayer and corporations A and B must be combined as a unitary business.

The taxpayer did not provide adequate documentation to sustain its burden of proving that Corporation C was part of the unitary business and should have been included in the combined return.

FINDING

The taxpayer’s protest is denied. Corporations A and B are to be included in the combined return. Corporation C is not to be included in the combined return.

III. Adjusted Gross Income Tax-Loss on Sale of Account Receivables

DISCUSSION

Much of the taxpayer’s product is seasonal. It is considered the optimum marketing strategy to have a full selection of seasonal product available for consumers through the last day of any season or holiday. The taxpayer allows retailers to return all unsold seasonal product at the end of the season. There are also discounts for volume purchases, worn or tattered products, outdated products allowances and others. The taxpayer’s liberal return policy and the other types of discounts and credits result in significant discounts to the taxpayer’s accounts receivables.

During the last three years of the audit, the taxpayer sold its discounted accounts receivables to another related corporation (service corporation). This corporation was formed for several reasons including the achievement of cost savings through consolidation of its collection operations and to help the taxpayer obtain financing from external lenders. The service corporation is owned 75 percent by the taxpayer and 25 percent by a Canadian subsidiary of the taxpayer. Therefore, it does not meet the 80 percent rule necessary to file a federal consolidated return.

To determine the fair market value of the receivables for the sale, the invoiced amount of the receivables is discounted to reflect the taxpayer’s historical rate of returned merchandise. The sale of the accounts receivables to the service corporation is without recourse. Therefore the service corporation has no right to reimbursement from the taxpayer for receivables that are not collected in full. The service corporation has no rights in returned merchandise.

The department disallowed the taxpayer’s reporting of losses from the sale of accounts receivable to the service corporation because the sale was not an arms length transaction. The taxpayer protests this disallowance. The taxpayer argues that the service corporation was set up for actual business purposes. Further, it argues that the sale of the taxpayer’s accounts receivables to the service corporation was an arms length transaction. The taxpayer states that the Internal Revenue Service (IRS) has reviewed the losses generated by the sales. In that review, the taxpayer asserts that the IRS approved the structure of the corporations and sales and has merely not determined the appropriate value to be assigned to the sold accounts receivables. The taxpayer also asserts that

the returned merchandise has a value of "0" because the merchandise is destroyed. At most, according to the taxpayer, the value of the returned goods can be no higher than the minimal cost to produce the merchandise. The taxpayer proposes that the department allow the deductions as taken by the taxpayer. The taxpayer asserts that should the IRS determine that the accounts receivables have a value different than that currently reported, the taxpayer would amend its returns and report the adjusted amount to the department as required by statute.

The taxpayer errs in its statement that the service corporation cannot be part of the taxpayer's unitary business for Indiana adjusted gross income tax purposes because it does not qualify to file a federal consolidated return. Indiana does not have the 80 percent ownership rule to be considered a unitary business. The determination as to whether or not a particular corporation is part of a unitary business must be based on the factors discussed in the previous issue.

The taxpayer owns 75 percent of the service corporation. The service corporation was formed by the taxpayer's management to utilize its accounts receivables to obtain bank financing for its business. This function aids the overall group of corporations in achieving its common goal of creating, manufacturing, and distributing of social expression products. The service corporation provides for economies of scale in that it services the accounts of several of the related corporations.

The taxpayer and its related entities sell their accounts receivables to the service corporation, a related corporation. Each of the corporations selling its accounts receivables recognized business losses from the sales of the receivables. These sales and the resulting claims of business losses distorted the results of the Indiana adjusted gross income of the taxpayer and its related corporations. The service corporation would normally be combined with the other members of the unitary business to fairly reflect Indiana adjusted gross income as required by IC § 6-3-2-2(m). However, the taxpayer did not provide the department with sufficient documentation to combine the adjusted gross income tax returns. Therefore the department disallowed the losses reported from the sales of the accounts receivables to the service corporation.

Since the service corporation federal return was not provided for the years of the audit, the department properly made adjustments to disallow losses reported from the sales of accounts receivables to the service corporation.

FINDING

The taxpayer's protest to the adjustments to disallow losses reported from sales of the accounts receivables to the service corporation is denied.

IV. Adjusted Gross Income Tax-Calculation Issues

DISCUSSION

The department audited the taxpayer pursuant to authority granted it at IC § 6-8.1-3-12. During the course of that audit the department's auditor made certain tax calculations. The taxpayer protested the calculation of the elimination entries made in the audit work papers, the payroll apportionment and the fiscal year 2002 bonus depreciation adjustment. After receipt of the protest letter, the department contacted the taxpayer to obtain the additional data that the taxpayer wanted the department to consider. The department then adjusted the calculations based upon the data provided by the taxpayer.

The taxpayer also protested that two corporations' income tax payments were not credited on the combined return. However, the companies in question were not included in the Indiana audit report for gross income tax. They were only included in the audit report for the combined adjusted gross income tax. The companies in question had originally filed separate returns which reflected a gross income tax liability, but they had losses for adjusted gross income tax. Therefore, all tax payments were to pay the gross income tax liability of the two companies in question. Since those two corporations were not included in the Indiana audit report for gross income tax, the credits used to satisfy their separate gross income tax liability cannot be used to offset the Indiana combined adjusted gross income tax liability. To do so would, in effect, give the taxpayer credit twice for the same tax payment.

FINDING

The taxpayer's protest to the original calculations is sustained to the extent that the calculations were adjusted based upon the additional figures supplied by the taxpayer. The taxpayer's protest to the failure to give credit for gross income tax payments made is denied.

DEPARTMENT OF STATE REVENUE

0420050079.LOF

LETTER OF FINDINGS NUMBER 05-0079

SALES AND TAX

For Tax Period 2001-2002

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 specific issues.

ISSUE

I. Sales and Use Tax - Sales Tax on ATVs

Authority: IC § 6-8.1-5-1(b), IC § 6-2.5-2-1(a), IC § 6-2.5-2-1(b), IC § 6-2.5-5-15, 45 IAC 2.2-5-21, 45 IAC 2.2-3-5.

The taxpayer protested the assessment of sales tax on sales of ATVs taken out-of-state immediately upon delivery.

II. Sales and Use Tax – Exemption Certificates

Authority: IC § 6-2.5-8-8, 45 IAC 2.2-8-12.

The taxpayer protested the assessment of sales tax when there is purported to be a valid exemption certificate.

III. Sales and Use Tax – Subcontracted Materials Sales

Authority: IC § 6-2.5-2-1.

The taxpayer protested the assessment of sales tax on materials used in subcontracted repairs of boats.

IV. Tax Administration- Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b), 45 IAC 15-11-2(c).

The taxpayer protested the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is a corporation that sells and services motorcycles and all-terrain vehicles (ATVs). The taxpayer also retrieves racing boats from locations around the country. It then repairs the boats and returns them to the owners. Pursuant to an audit, the Indiana Department of Revenue (department) assessed the corporation with additional sales and use tax, penalty, and interest for the tax period 2001-2002. The taxpayer protested some of the assessments and a hearing was held. This Letter of Findings results.

I. Sales and Use Tax –Sales Tax on ATVs and Motorcycles

DISCUSSION

The department assessed sales tax on sales of ATVs where out-of-state customers came into Indiana, purchased the vehicles, and then immediately took the ATVs out-of-state. The taxpayer protested these assessments.

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 a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). The tax is imposed on the purchaser of the property. The retail merchant collects the tax and holds it in trust until it is remitted to the state. IC § 6-2.5-2-1(b).

The taxpayer argued that the ATVs were exempt from the sales tax pursuant to IC § 6-2.5-5-15 as follows:

Transactions involving motor vehicles, trailers, watercraft, and aircraft are exempt from the state gross retail tax, if:

- (1) upon receiving delivery of the motor vehicle, trailer, watercraft, or aircraft, the person immediately transports it to a destination outside Indiana;
- (2) the motor vehicle, trailer, watercraft, or aircraft is to be titled or registered for use in another state; and
- (3) the motor vehicle, trailer, watercraft, or aircraft is not to be titled or registered for use in Indiana.

The exemption for motor vehicles taken out of state is also discussed at 45 IAC 2.2-5-21 as follows:

The state gross retail tax shall not apply to sales of motor vehicles, trailers, and aircrafts, delivered in Indiana for immediate transportation to a destination outside of Indiana and for licensing or registration for use in another state, and not to be licensed or registered in Indiana.

The exemption upon which the taxpayer based its protest applies to motor vehicles, trailers, watercraft, and aircraft. ATVs are not trailers, watercraft, or aircraft. 45 IAC 2.2-5-21 also exempts “motor vehicles.” “Motor vehicles” are defined at 45 IAC 2.2-3-5 as “vehicle[s] required to be licensed by the state for highway use in Indiana.” There is no requirement that ATVs be licensed for highway use in Indiana. Therefore, ATVs are not motor vehicles. Since they are not motor vehicles, they do not qualify for exemption from the sales tax as motor vehicles taken out-of-state.

The department properly assessed sales tax on the sales of ATVs taken out-of-state.

FINDING

The taxpayer’s protest is denied.

II. Sales and Use Tax – Exemption Certificates

DISCUSSION

At the time of the audit, the taxpayer did not have exemption certificates on file for several purchasers. The taxpayer obtained exemption certificates for some of these purchasers prior to the hearing. The taxpayer protested the tax assessed on sales to purchasers with exemption certificates provided.

IC 6-2.5-8-8 which provides for exemption certificates from sales tax in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof....

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. The taxpayer produced valid exemption certificates after the audit but prior to the hearing. The taxpayer is not obligated to pay the sales tax on the sales covered by those certificates.

FINDING

The taxpayer's protest is sustained.

III. Sales and Use Tax – Subcontracted Materials Sales

DISCUSSION

The taxpayer subcontracted some of its repair jobs. The vendors who actually repaired the motorcycles, boats, and ATVs provided the labor and materials for the repairs. They then invoiced the taxpayer for the repairs. The taxpayer invoiced its customers listing the amount charged by the vendor plus mark-up. The taxpayer did not collect and remit sales tax on any of the materials used in these repairs as required by IC § 6-2.5-2-1. The department assessed these sales taxes and the taxpayer protested the assessment. The taxpayer did not sustain its burden or proving that this assessment was in error.

FINDING

The taxpayer's protest to this assessment is denied.

IV. Tax Administration- Ten Percent Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The department can waive the negligence penalty pursuant to the provisions of 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letter of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer provided substantial documentation indicating that it based its business practices on a previous audit and a previously issued Letter of Findings. After the previous audit, the taxpayer changed its use tax reporting to comply with the law. The totality of the facts in this situation indicate that the taxpayer used reasonable care, caution, and diligence in the filing and remitting of sales and use taxes to the state.

FINDING

The taxpayer's protest to the imposition of the negligence penalty is sustained.

DEPARTMENT OF STATE REVENUE

0120050134.LOF

LETTER OF FINDINGS NUMBER: 05-0134

Adjusted Gross Income Tax

For Tax Period 2001-2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax-Imposition

Authority: IC § 6-3-2-1, IC § 6-8.1-5-1(b), IC § 6-8.1-5-4.

The taxpayer protests the imposition of adjusted gross income tax.

STATEMENT OF FACTS

The taxpayer's deceased husband operated a used car business. The taxpayer and her husband filed joint adjusted gross income tax returns for the years 2001 and 2003. No return was filed for 2002. After an investigation, the Indiana Department of Revenue (department) assessed the taxpayer and her deceased husband additional adjusted gross income tax, interest, and penalty for the tax period 2001-2003. The taxpayer protested and a telephone hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax-Imposition

DISCUSSION

An adjusted gross income tax is imposed upon all Indiana residents. IC § 6-3-2-1. The taxpayer contended that the department erred in calculating the amount of adjusted gross income tax due. The taxpayer alleged that some of the receipts from car sales actually should have been attributed to her brother in law. Further the taxpayer alleged that she and her deceased husband were both disabled during part of the tax period and did not have any taxable earnings for those periods.

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b). Taxpayers are required to maintain adequate records to allow the department to later determine the taxpayer's proper liability by reviewing those records. IC § 6-8.1-5-4. The taxpayer was unable to produce any documentation to demonstrate that the department calculated the adjusted gross income tax liability incorrectly.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050171.LOF

LETTER OF FINDINGS NUMBER: 05-0171

Sales and Use Tax

For the Years 2001-2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax- Imposition

Authority: IC § 6-8.1-5-1 (b), IC § 6-2.5-2-1, IC § 6-2.5-5-8, IC § 6-2.5-8-8, 45 IAC 2.2-8-12.

The taxpayer protests the imposition of sales tax.

STATEMENT OF FACTS

The taxpayer is a corporation that manufactures bedding. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty for the tax period 2000-2002. The taxpayer protested the assessment of sales tax on several of its sales. The taxpayer contended that its sales qualified for exemption because its customers sold the bedding in retail sales. A telephone hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition

DISCUSSION

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).

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state unless the sale qualifies for a statutory exemption. IC 6-2.5-2-1.

Indiana grants an exemption from the sales tax at IC § 6-2.5-5-8 (b) as follows:

Transactions involving tangible personal property... are exempt from the state gross retail tax if the person acquiring the property acquires it for resale... in the ordinary course of the person's business without changing the form of the property.

The taxpayer argued that all of its sales on which the department assessed sales tax qualified for this exemption. Indiana law provides for manufacturers to establish that its sales qualify for exemption at IC § 6-2.5-8-8 as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof.

...

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax.

After the audit, the taxpayer provided valid exemption certificates from two of the customers to whom the taxpayer sold bedding. The taxpayer's protest to these assessments is sustained.

The taxpayer also had several customers who did not provide valid exemption certificates. Therefore, the taxpayer has the burden of proving that the leases to these customers were exempt from the sales tax. The taxpayer provided substantial evidence that three of the customers were actually retail merchants reselling the bedding in their ordinary course of business. As such, sales to those merchants also qualified for exemption from the sales tax.

FINDING

The taxpayer's protest to the assessment on transactions for which the taxpayer provided exemption certificates is sustained. The taxpayer's protest to the assessments on sales to the first, third, and fifth customers listed on Page 10 of the audit is also sustained. The remainder of the protest is denied.

DEPARTMENT OF STATE REVENUE

0120050174.LOF

LETTER OF FINDINGS NUMBER: 05-0174

County Adjusted Gross Income Tax

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.

ISSUE

I. County Option Income Tax-Imposition

Authority: IC 6-8.1-5-1(b); IC § 6-3.5-6-8; IC § 6-3.5-6-1.

The taxpayer protests the imposition of the county adjusted gross income tax.

STATEMENT OF FACTS

The taxpayers are a married couple living in Illinois. In 2001 they received a distribution from an Indiana Sub Chapter S corporation. The Indiana Department of Revenue assessed the County Option Income Tax, penalty, and interest on the distribution. The taxpayers protested this assessment. A hearing was held and this Letter of Findings results.

I. County Option Income Tax-Imposition

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The County Option Income Tax is imposed on county taxpayers. IC § 6-3.5-6-8.

A "county taxpayer" is defined at IC § 6-3.5-6-1 as follows:

"County taxpayer" as it relates to a county, means any individual:

- (1) who resides in that county on the date specified in section 20 of this chapter; or
- (2) who maintains his principal place of business or employment in that county on the date specified in section 20 of this chapter and who does not reside on that same date in another county in which the county option income tax, county adjusted gross income tax, or the county economic development tax is in effect.

The taxpayers did not live in the same county as the Sub Chapter S corporation. Their principal places of business or employment were not in that county. Therefore, they do not meet the definition of a taxpayer subject to the imposition of the County Option Income Tax for the county in which the Sub Chapter S corporation is located. The Indiana Department of Revenue improperly imposed the tax on the taxpayers.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20050240P.LOF

LETTER OF FINDINGS NUMBER 05-0240P TAX ADMINISTRATION—CIVIL FRAUD PENALTIES FOR THE REPORTING PERIODS COVERING 1996—2003

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the *Indiana Register* and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the *Indiana Register*. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Civil Fraud Penalties—Failure to File Returns

II. Tax Administration—Civil Fraud Penalties—Failure to Make Full Tax Payments with Returns

Authority: IC §§ 6-2.5-6-7, -9-3 and -8-1-24 (1993) (1998) (current respective versions at *id.* (2004)); IC §§ 6-8.1-5-1(a) and (e), -2.5, -10-2.1, -10-4 and -10-7 (2004); *State Bd. of Tax Comm'rs v. New Castle Lodge # 147, L.O.O.M.*, 765 N.E.2d 1257 (Ind. 2002); *Ind. Dep't of State Revenue v. Safayan*, 654 N.E.2d 270 (Ind. 1995); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax Ct. 1999); 45 IAC §§ 2.2-6-8(b) and -9-4(a) (1996) (2001) (current respective versions at *id.* (2004)); 45 IAC §§ 15-5-7(f)(3) and -11-4 (2004)

The taxpayer has asked for a waiver or reduction of the 100 percent fraud penalties the Audit Division of the Department has proposed to assess against him.

STATEMENT OF FACTS

The taxpayer is an individual retail merchant engaged in the sale at retail of vehicle tires and tire-related accessories. The taxpayer also performs tire installation, alignment and repair services. He had operated his business as an Indiana-chartered corporation from July 15, 1983, according to the records of the Business Services Division of the Indiana Secretary of State's office. That corporation began filing Sales and Use Tax Vouchers (Forms ST-103) with this Department with the reporting period ending July 31, 1983. The Secretary of State administratively dissolved the corporation effective December 31, 1987. Notwithstanding that dissolution, the present individual taxpayer has continued to hold himself out to third parties, including this Department, as being a corporation.

The Department conducted a gross retail (sales) and use tax field audit of the taxpayer's putative corporation for calendar years 1996-2003 (hereinafter "the audit period"). The auditor made no adjustments to the taxpayer's use tax liability for the audit period or to the taxpayer's sales tax liability for 2002. However, the auditor made adjustments to the taxpayer's sales tax liability for every other year of the audit period. The audit Summary states that the taxpayer failed to file Forms ST-103 or to remit collected sales to the Department on several occasions during those years. The auditor also recommended, and the Audit Division proposed, assessing the 100 percent civil fraud penalty on the proposed liabilities resulting from his base tax adjustments. The Audit Division issued the Notices of Proposed Assessment arising from all of these adjustments in the name of the taxpayer's putative corporation rather than the taxpayer individually. The taxpayer, in his individual name, made a timely protest of only the civil fraud penalties.

I. Tax Administration—Civil Fraud Penalties—Failure to File Returns

II. Tax Administration—Civil Fraud Penalties—Failure to Make Full Tax Payments with Returns

DISCUSSION

A. TAXPAYER'S ARGUMENT

The taxpayer states in his protest letter that he should pay a penalty, but that it should be for a reduced percentage of the base tax proposed assessments. In support of his request the taxpayer's only statement, which strictly speaking is not an argument, is that paying the penalties in a reduced percentage "would really help," implying that paying the full amounts of the fraud penalties would be a financial hardship to him. He had indicated to the field auditor that he would be forced into bankruptcy if he had to pay more than a ten percent penalty and would request to be put on a payment plan.

B. ANALYSIS

The sales tax is a trust fund tax. IC § 6-2.5-9-3 (1993) (1998) and 45 IAC § 2.2-9-4(a) (1996) (2001) (current respective versions at *id.* (2004)); *see also Ind. Dep't of State Revenue v. Safayan*, 654 N.E.2d 270, 272 (Ind. 1995) (so stating and quoting IC § 6-2.5-9-

3). A retail merchant is absolutely liable for the sales tax on its total gross retail income from taxable transactions for a reporting period, “regardless of the amount of tax he actually collects.” IC § 6-2.5-6-7 and 45 IAC § 2.2-6-8(b).

IC § 6-8.1-10-4 (2004) is the section of the Tax Administration Act, IC article 6-8.1, that imposes a penalty for civil fraud. That penalty is 100 percent of the full amount of tax due for any period for which the taxpayer fails to file a return, or of the unpaid balance of tax reported on any filed return, if the taxpayer fails to file or pay “with the fraudulent intent of evading the tax[.]” *Id.*(a). One of the implementing regulations, 45 IAC § 15-11-4 (2004), describes “the [kind of] intent required [to constitute fraud as having] the specific purpose of evading tax believed to be owing.” *Id.* Civil tax fraud in Indiana is thus what lawyers call a “specific intent” offense. *Cf.* IC § 6-8-1-24 (requiring intent to defraud the state or to evade payment of tax for certain actions described therein to be criminal tax offenses).

The one hundred percent civil penalty is the maximum penalty the Department can assess. IC § 6-8.1-10-7. It “is imposed in place of and not in addition to the penalty imposed under section 2.1 of this chapter [i.e., IC § 6-8.1-10-2.1 governing the negligence penalty].” IC 6-8.1-10-4(d). Since IC § 6-8.1-10-2.1 thus does not apply to the civil fraud penalty. That being the case, a taxpayer against whom the latter penalty is assessed cannot use the procedure set out in IC § 6-8.1-10-2.1(d) and (e) to prove the existence of such “reasonable cause[.]” *id.*, for the taxpayer’s actions as would require the Department to waive that penalty.

Thus, a taxpayer assessed with a civil fraud penalty must prove that it did not commit fraud at all. Specifically, the taxpayer must submit evidence that disproves the existence of one or more of the material facts (what lawyers call “elements”) that together constitute fraud. Title 45 IAC § 15-5-7(f)(3) lists and describes the elements applicable to fraudulent failure to file a return, and 45 IAC § 15-11-4 does so for fraudulently made tax underpayments. If the taxpayer fails to prove it did not commit civil fraud as described in the applicable regulation/s, the Department has no authority to waive the penalty.

All the present taxpayer has done in this protest is to make a vague plea for the Department to reduce the penalty to a percentage he can bear, a request that is more properly directed to the Department’s Taxpayer Advocate than to the Legal Division. He has submitted no actual evidence whatever, much less evidence that would disprove that he committed fraud, or at the very least evidence that his failures to file returns and pay tax were without fraudulent intent.

Indiana law is settled that this state’s taxation hearing officers, and by extension the state-level taxing authorities of which they are agents, “do not have the duty to make a taxpayer’s case.” *Hoogenboom-Nofziger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999), *cited with approval in State Bd. of Tax Comm’rs v. New Castle Lodge # 147, L.O.O.M.*, 765 N.E.2d 1257, 1264 (Ind. 2002). The Tax Court stated its rationale for this rule in *Hoogenboom-Nofziger* as follows:

[T]o allow [a taxpayer] to prevail after it made such a cursory showing at the administrative level would result in a tremendous workload increase for [the Department and] the State Board [now the Indiana Board of Tax Review],...administrative agenc[ies] that already bear[]...difficult burden[s] in administering this State’s [listed and] property tax system[s]. If taxpayers could make a de minimis showing and then force [the Department or] the State Board to support its decisions with detailed factual findings, the [Indiana taxing authorities] would be overwhelmed with cases such as this one. This would be patently unfair to other taxpayers who do make detailed presentations to the [taxing authorities] because resolution of their appeals would necessarily be delayed.

715 N.E.2d at 1024-25. Considering the total absence of evidence negating fraud, legal relief from the proposed civil fraud penalties is thus impossible. Even if it were possible such relief would be inappropriate given the trust fund nature of the sales tax as discussed at the beginning of this Analysis.

Lastly, the Legal Division notes that the Audit Division issued the Notices of Proposed Assessment to the former corporation, which was dissolved before the audit period began and thus could not be the responsible taxpayer. However, IC § 6-8.1-5-4 permits the Department to issue a new assessment or assessments to the taxpayer that is responsible, and for this purpose makes inapplicable the assessment period of limitations of IC § 6-8.1-5-2(a) that would otherwise govern. In addition, IC § 6-8.1-5-2(e) states in relevant part that if a taxpayer does not file a return (with or without fraudulent intent), there is no period limiting when the Department can issue a proposed assessment against that taxpayer for the reporting period the return would have covered. There is thus no legal impediment to the Audit Division to issue the Demand Notices for the proposed assessments to the individual taxpayer rather than to the former corporation. The Legal Division therefore directs the Audit Division to do so accordingly.

FINDING

The taxpayer’s protest is denied. The file is to be returned to the Audit Division to issue the Demand Notices for the proposed assessments to the individual taxpayer rather than to the former corporation.

DEPARTMENT OF STATE REVENUE

0520050255.LOF

LETTER OF FINDINGS NUMBER: 05-0255

Cigarette Tax and Use Tax For Tax Years 2004 and 2005

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that she does not owe these taxes.

On February 2, 2006, Taxpayer was notified by mail of a hearing to be held on March 1, 2006. However, at the designated time of the hearing, Taxpayer neither appeared at the Department's office nor called the hearing officer assigned to the file, and thus this letter of findings is written based on the information contained in the Department's file. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that she does not owe cigarette tax. Taxpayer argues that the assessment was for a different name, that cigarette taxes were paid to Kentucky, and that the cigarettes were delivered to her son in Indiana while Taxpayer was out of town.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes pursuant to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section,

be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail;

but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

Taxpayer did not file a return with the Department which included the cigarette taxes. The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming Taxpayer—under the alias that was used ten times in a seven month period, at the address that was provided each time—as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with Taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on her purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0520050257.LOF

LETTER OF FINDINGS NUMBER: 05-0257

**Cigarette Tax, Use Tax and Penalty
For Tax Years 2004 and 2005**

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that Taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that he does not owe these taxes.

On February 2, 2006, Taxpayer was notified by mail of a hearing to be held on March 1, 2006. However, at the designated time of the hearing, Taxpayer neither appeared at the Department's office nor called the hearing officer assigned to the file, and thus this letter of findings is written based on the information contained in the Department's file. Further facts will be supplied as required.

I. Cigarette Tax--Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax. Taxpayer argues that the cigarettes were delivered to an Indiana address for his consumption, but the cigarettes were neither bought nor used in Indiana.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes pursuant to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes. Rather than providing a mechanism for which a consumer's identity is shielded, the Jenkins Act provides that the consumer's identity must be revealed to the Department if the sale of cigarettes is in interstate commerce.

Taxpayer did not file a return with the Department which included the cigarette taxes. The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on his purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this

general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

05-20050258.LOF

LETTER OF FINDINGS NUMBER: 05-0258

Cigarette Tax

For Tax Years 2004 and 2005

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.

I. Cigarette Tax--Imposition

Authority: IC 6-8.1-5-1(b); 45 IAC 15-5-3(b); IC 6-7-1-1; 15 U.S.C. §§ 375-378; IC 6-8.1-5-1(a);

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax on cigarettes ordered via the internet/telephone and delivered in Indiana. Taxpayer protests that she does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax—Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer..." 45 IAC 15-5-3(b).

The taxpayer, in correspondence, argues "[t]he cigarettes in question were neither sold nor used in Indiana. I do not live, work, play, or 'use cigarettes' in Indiana." And further, she states:

[W]hen the State of Illinois decided to make it illegal for consumers to have cigarettes purchased out of state and shipped to residences, I requested a co-worker (a resident of Indiana) to accept shipment at her residence in Indiana. (I checked first to ensure there was nothing illegal about this policy.)

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

(*Emphasis added*) As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet/telephone, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department's assessment is based on information received pursuant to the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes.

The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax—Imposition**DISCUSSION**

Regarding the use tax, the taxpayer offers the same arguments as in Issue I. ("I reiterate the fact that not only were the cigarettes not sold in Indiana, but they were not 'used' in Indiana..." Taxpayer also makes an additional argument regarding the number of cartons purchased that were shipped into Indiana). The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a),

which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I., under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use, or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, per IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I. and II., the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer argues that "charging me 'penalties and interest for late payment' is grossly unfair on the grounds that I was totally unaware of this whole matter...." Taxpayer has not affirmatively established that

her failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0520050259.LOF

LETTER OF FINDINGS NUMBER: 05-0259

**Cigarette Tax
For Tax Year 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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax and penalty on cigarettes ordered via the internet and telephone and delivered in Indiana. Taxpayer protests that it does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he/she does not owe cigarette tax. Taxpayer argues that she does not owe cigarette tax, since she did not buy cigarettes for resale and did not know about the tax beforehand.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, telephone or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c). The Department cannot waive the interest, as provided by IC 6-8.1-10-1. The negligence penalty shall be waived.

FINDING

Taxpayer's protest is sustained regarding penalty and denied regarding interest.

DEPARTMENT OF STATE REVENUE

0520050260.LOF

LETTER OF FINDINGS NUMBER: 05-0260

Cigarette Tax

For Tax Year 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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax and penalty on cigarettes ordered via the internet and telephone and delivered in Indiana. Taxpayer protests that he does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax. Taxpayer states that there were no warnings about possible tax liabilities on the website and that he had no way of knowing about the taxes.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the

tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, by telephone or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on its purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has affirmatively established by documentation and explanation that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c). The interest cannot be waived, under IC 6-8.1-10-1. The negligence penalty shall be waived.

FINDING

Taxpayer's protest is sustained regarding penalty and denied regarding interest.

DEPARTMENT OF STATE REVENUE

0520050284.LOF

LETTER OF FINDINGS NUMBER: 05-0284

Cigarette Tax and Use Tax

For Tax Year 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.

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I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that he does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

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(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

Taxpayer did not file a return with the Department which included the cigarette taxes. The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on his purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use, or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20050294.LOF

LETTER OF FINDINGS NUMBER: 05-0294

Gross Income Tax For the Tax Years 2000-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax—Small Business Exemption

Authority: Ind. Code § 6-2.1-3-24.5; I.R.C. § 1361; I.R.C. § 1362.

Taxpayer protests imposition of gross income tax with respect to Taxpayer's parent and subsidiaries.

II. Gross Income Tax—Advertising Fees

Authority: Ind. Code § 6-2.1-1-10; Ind. Code § 6-2.1-2-2; *U-Haul Co. of Ind., Inc. v. Ind. Dep't of State Revenue*, 784 N.E.2d 1078, 1082-1084 (Ind. Tax Ct. 2002).

Taxpayer protests the imposition of gross income tax with respect to funds used to purchase advertising on behalf of its franchisees.

STATEMENT OF FACTS

Taxpayer consists of a group of corporations engaged in the businesses of commercial cleaning and cleaning equipment sales. Taxpayer is comprised of a parent corporation ("Parent") and four wholly-owned subsidiaries ("Subsidiaries"). During the years in question, Taxpayer filed consolidated gross income and adjusted gross income tax returns. Taxpayer claimed an exemption from gross income tax based on the statutory exemption for small business companies. However, upon Department audit, it was discovered that one of Parent's shareholders was a family limited partnership. As a result, the audit determined that Taxpayer was not eligible for the small business exemption, and assessed gross income tax.

In addition, one of the subsidiaries ("Franchise Subsidiary") received monies that were to be used for advertising expenditures on behalf of the franchisors. The Department included those monies as gross income. Taxpayer protested these assessments, and a telephone hearing was held. Additional facts will be supplied as necessary.

I. Gross Income Tax—Small Business Exemption

DISCUSSION

Taxpayer's first contention is with respect to the disallowance of the small business corporation exemption for gross income tax purposes. Under Ind. Code § 6-2.1-3-24.5(b), a corporation which qualifies as a small business corporation is exempt from Gross Income Tax. For Gross Income Tax purposes, a small business corporation is defined as having the same definition that term has in I.R.C. § 1361(b). *See* Ind. Code § 6-2.1-3-24.5(a).

During the audit, the Department indicated that Parent had a multiple-owner partnership that owned a small percentage of Parent's shares. This disqualified Parent from being a small business corporation within the meaning of I.R.C. § 1361(b)(1)(B), which limits shareholders of small business companies to certain entities, of which a multiple-owner partnership was not one of the permissible classes of owners.

Taxpayer argues that the termination of small business status with respect to Parent was inadvertent. I.R.C. § 1362(f)(1)(B) allows small business corporations that inadvertently terminate small business corporation to take remedial steps to permit continued small business corporation status. Indiana does not have a parallel remedial actions provision. Even if remedial actions were appropriate, Taxpayer has not provided sufficient information to conclude that the assessment was improper. While the federal statute provided for remedial actions, the disqualified shareholder has not undertaken remedial actions to permit the Department to reconsider the assessment with respect to Parent.

Regardless of whether Parent was a small business corporation, Subsidiaries were not small business corporations due to the fact that the Subsidiaries had a corporate shareholder, which renders Subsidiaries ineligible for such status under I.R.C. § 1361(b)(1)(B). This section limits the range of permissible shareholders to various persons or entities, but does not permit ownership by another for-profit C corporation. Accordingly, Subsidiaries did not qualify as small business corporations.

FINDING

Taxpayer's protest is denied.

II. Gross Income Tax—Advertising Fees

DISCUSSION

Taxpayer argues that monies received by Franchise Subsidiary from its franchisees for advertising expenses on behalf of the franchisees were not subject to gross income tax. Franchise Subsidiary's arrangement was that a set amount of income from the franchisees was determined to be used for advertising on behalf of the franchisees. The franchisees paid the money to Franchise Subsidiary, which in turn used the funds for advertising expenses incurred on behalf of the franchisees. Prior to being expended, the funds used for advertising were maintained by Franchise Subsidiary in a segregated account. Franchise Subsidiary had some degree of control over the advertising expenses; however, the amounts paid were required to be used for advertising expenses. Franchise Subsidiary earned interest on the amounts deposited for advertising and retained the interest earned.

Under Ind. Code § 6-2.1-2-2(a)(1), the receipt of "the entire taxable gross income of a taxpayer who is not a resident or a

domiciliary of Indiana” was subject to gross income tax. “Receipts” means the gross income of a taxpayer, including cash or notes, for the taxpayer’s benefit. Ind. Code § 6-2.1-1-10.

The legal question is whether the subsidiary was an agent for the franchisees, and thus the funds for franchise expense were not for Franchise Subsidiary’s benefit. Taxpayer indicated that Franchise Subsidiary had some control over the revenues that it received. The ability to exercise control over the agent is the critical element for agency. *See generally U-Haul Co. of Ind., Inc. v. Ind. Dep’t of State Revenue*, 784 N.E.2d 1078, 1082-1084 (Ind. Tax Ct. 2002). Franchise Subsidiary had some degree of control over the advertising funds. Franchise Subsidiary’s control—actual or potential—over the advertising funds was sufficient to permit taxation of the advertising funds received by Franchise Subsidiary.

FINDING

Taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

05-20050336.LOF

LETTER OF FINDINGS NUMBER: 05-0336

Cigarette Tax

For Tax Years 2004 and 2005

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.

I. Cigarette Tax—Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that it does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax—Imposition

DISCUSSION

Before examining the taxpayer’s protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states “[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer....” 45 IAC 15-5-3(b). Here, taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax due to his assertion that he did not purchase the cigarettes in question.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. 15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. In the course of this protest, taxpayer has provided sufficient documentation and explanation to establish that he did not sell, use, consume, handle, or distribute these cigarettes. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has met this burden.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issue I, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer has affirmatively established that it did not owe the deficiency, and was not negligent, as explained by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

05-20050338.LOF

LETTER OF FINDINGS NUMBER: 05-0338

Cigarette Tax For Tax Year 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.

I. Cigarette Tax--Imposition

Authority: IC 6-8.1-5-1(b); 45 IAC 15-5-3(b); IC 6-7-1-1

Taxpayer protests the imposition of cigarette tax.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that she does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor (through the Jenkins Act) naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

Taxpayer argues that she did not purchase cigarettes from the vendor. To that end taxpayer has provided the Department with sufficient documentation and explanation to show that she did not buy, sell, use, consume, handle, or distribute the cigarettes. Taxpayer has met her burden of proof.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Negligence Penalty

DISCUSSION

Regarding the penalty and interest that was assessed under IC 6-8.1-10-2.1 and IC 6-8.1-10-1, since the taxpayer has shown that it did not owe the cigarette tax (*See* Section I, *supra*), the taxpayer prevails on this issue too.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0520050340.LOF

LETTER OF FINDINGS NUMBER: 05-0340

**Cigarette Tax, Use Tax and Penalty
For Tax Years 2004 and 2005**

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that she does not owe these taxes.

Taxpayer was notified of a hearing to be held on March 1, 2006. However, Taxpayer did not wish to participate in the hearing, and thus this letter of findings is written based on the information contained in the Department's file. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that she does not owe cigarette tax. Taxpayer argues that cigarette taxes were paid to Kentucky.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes under the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes. Rather than providing a mechanism for which a consumer's identity is shielded, the Jenkins Act provides that the consumer's identity must be revealed to the Department if the sale of cigarettes is in interstate commerce.

Taxpayer did not file a return with the Department which included the cigarette taxes. The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on her purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this

general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use, or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that her failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0341
Cigarette Tax
For Tax Years 2004 and 2005

0520050341.LOF

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that she does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that she does not owe cigarette tax. Taxpayer states that she believes the vendor paid tax prior to her purchase.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, telephone or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or

transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on its purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department

may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has affirmatively established that her failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c). The Department cannot waive interest, under IC 6-8.1-10-1. The negligence penalty shall be waived.

FINDING

Taxpayer's protest is sustained regarding penalty and denied regarding interest.

DEPARTMENT OF STATE REVENUE

0520050344.LOF

LETTER OF FINDINGS NUMBER: 05-0344

Cigarette Tax, Use Tax and Penalty For Tax Years 2004 and 2005

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that Taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that he does not owe these taxes.

On February 2, 2006, Taxpayer was notified by mail of a hearing to be held on March 1, 2006. However, at the designated time of the hearing, Taxpayer neither appeared at the Department's office nor called the hearing officer assigned to the file, and thus this letter of findings is written based on the information contained in the Department's file. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. In particular, Taxpayer argues that he was unaware of the ramifications of purchasing cigarettes out-of-state, and that the Department had not provided any published guidance with respect to the cigarette tax. Taxpayer makes this argument notwithstanding the fact that the tax at issue was first enacted in 1947, with current Department regulations promulgated in 1982.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes pursuant to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act, first enacted in 1949 and amended to its current language in 1955, states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

Taxpayer did not file a return with the Department which included the cigarette taxes. The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on his purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax, first enacted in 1963, is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0520050408.LOF

LETTER OF FINDINGS NUMBER: 05-0408

Cigarette Tax

For Tax Years 2004 and 2005

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-7-1-24; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax and penalty on cigarettes ordered via the internet and telephone and delivered in Indiana. Taxpayer protests that he does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax. Taxpayer states that there were no warnings about possible tax liabilities on the website and that he had no way of knowing about the taxes.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which

advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, by telephone or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes. Rather than providing a mechanism for which a consumer's identity is shielded, the Jenkins Act merely provides that the consumer's identity must be revealed to the Department if the sale of cigarettes is in interstate commerce.

Taxpayer protests that he believes he is entitled to 1500 cigarettes a year without paying taxes on them. Taxpayer refers to IC 6-7-1-24(d), which states:

The possession of more than one thousand five hundred (1,500) cigarettes in packages not bearing Indiana tax stamps by any person other than a distributor, a common carrier, or an employee of the state or federal government performing his official duties in the enforcement of this chapter constitutes prima facie evidence that the cigarettes are possessed for the purpose of sale.

This means that if a person possesses more than 1,500 cigarettes not bearing Indiana tax stamps, the possession is proof that the cigarettes are possessed for resale. This does not mean that any of the cigarettes are tax-free, even if they are for personal use.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on its purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making

that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has affirmatively established by documentation and explanation that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c). The interest cannot be waived, under IC 6-8.1-10-1. The negligence penalty shall be waived.

FINDING

Taxpayer's protest is sustained regarding penalty and denied regarding interest.

DEPARTMENT OF STATE REVENUE

05-20050410.LOF

LETTER OF FINDINGS NUMBER: 05-0410**Cigarette Tax****For Tax Years 2004 and 2005**

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.

I. Cigarette Tax--Imposition

Authority: IC 6-8.1-5-1(b); 45 IAC 15-5-3(b); IC 6-7-1-1; 15 U.S.C. §§ 375-378; IC 6-8.1-5-1(a)

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that she does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. *Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user.* Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

(*Emphasis added*). As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department's assessment is based on information received pursuant to the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes.

The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

The taxpayer argues in a letter dated August 22, 2005, that she "was never notified from the company that [she] would be

responsible for paying a tax on the cigarettes [she] had purchased.” Further, taxpayer states, “It was my understanding the company would take care of it and therefore your department should be going after them not me, the consumer.” To summarize, taxpayer does not believe she owes the taxes (she believes the vendor does), and she assumed the taxes were paid.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. Despite the taxpayer’s argument, IC 6-7-1-1 makes it clear that “the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the *retail purchaser or ultimate consumer, precollected for convenience and facility only.*” (*Emphasis added*) Thus the taxpayer owes the taxes.

FINDING

Taxpayer’s protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on her purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer’s protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be

expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that her failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120050415.LOF

LETTER OF FINDINGS: 05-0415 Individual Adjusted Gross Income Tax For 2001 through 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Adjusted Gross Income Tax Assessments.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer maintains that the assessments are being protested because the income that has been used in the Department's calculations is incorrect.

STATEMENT OF FACTS

The taxpayer and his spouse are Indiana residents. The Department of Revenue (Department) completed an audit based upon the best information available for the tax years 2001 through 2004. In 2001 and 2002 the taxpayer was a sole proprietor. For the tax years 2003 and 2004 the taxpayer was a shareholder of a Subchapter S corporation.

DISCUSSION

I. Individual Adjusted Gross Income Tax Assessments.

Taxpayer's representative contends that the assessments are being protested because the income that has been used in the calculations is incorrect.

Lacking proper documentation, the Department was forced to base the proposed assessments upon the best information it had available. Indiana law provides as follows: "If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." IC 6-8.1-5-1(a) (*Emphasis added*). In taxpayer's case, the Department believed that the "best information available" consisted of the limited records provided by the taxpayer. After obtaining that information, the Department fulfilled its legal responsibility to make a "proposed assessment." Indiana law provides that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is wrong." IC 6-8.1-5-1(b).

At hearing, the taxpayer's representative provided additional documentation in support of its protest. The representative contends that the assessments are being protested because the income that has been used in the calculations is incorrect. The representative argues that the auditor's computations were based upon all invoices that were mailed during the years in question (accrual basis). However, according to the taxpayer's representative, the returns were filed reporting income on the cash basis of accounting. Therefore, when reviewing the information on the cash basis, there should be no change to the taxpayer's personal return for the years in question.

FINDING

Taxpayer's protest is sustained subject to audit verification of taxpayer's records.

DEPARTMENT OF STATE REVENUE

0520050418.LOF

LETTER OF FINDINGS NUMBER: 05-0418**Cigarette Tax****For Tax Year 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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that taxpayer owed cigarette tax, use tax and penalty on cigarettes ordered via the internet and telephone and delivered in Indiana. Taxpayer protests that he does not owe these taxes. Further facts will be supplied as required.

I. Cigarette Tax--Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax. Taxpayer states that there were no warnings about possible tax liabilities on the website and that he had no way of knowing about the taxes.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, by telephone or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes due to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped

into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes.

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on its purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. With regard to interest, the Department refers to IC 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since taxpayer incurred a deficiency upon a determination by the Department, as explained in Issues I and II, the Department may not waive interest under IC 6-8.1-10-1.

With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has affirmatively established by documentation and explanation that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c). The interest cannot be waived, under IC 6-8.1-10-1. The negligence penalty shall be waived.

FINDING

Taxpayer's protest is sustained regarding penalty and denied regarding interest.

DEPARTMENT OF STATE REVENUE

0420050475.LOF

LETTER OF FINDINGS NUMBER 05-0475

RESPONSIBLE OFFICER

SALES AND WITHHOLDING TAX

For Tax Period 2001-2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE

I. Sales and Withholding Tax -Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-3-4-8(g); IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of corporate withholding taxes against him as a responsible officer.

STATEMENT OF FACTS

The taxpayer was a director of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 2001-2003. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Withholding Tax -Responsible Officer Liability**DISCUSSION**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), 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."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1(b).

The taxpayer contended that he merely loaned the corporation start-up and operating money and was not responsible for the payment of the taxes to the state. Further, he argued that he did not have any involvement with the operation of the corporation or control over the financial affairs of the corporation. The taxpayer offered adequate documentation to sustain his burden of proving that he was not responsible for the remittance of the trust taxes to the state during the tax period at issue.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0520050476.LOF

LETTER OF FINDINGS NUMBER: 05-0476**Cigarette Tax, Use Tax and Penalty****For Tax Years 2004 and 2005**

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.

I. Cigarette Tax--Imposition

Authority: 15 U.S.C. §§ 375-378; IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the imposition of cigarette tax.

II. Use Tax--Imposition

Authority: IC 6-2.5-3-2; IC 6-2.5-3-7; IC 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the imposition of use tax.

III. Tax Administration--Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue determined that Taxpayer owed cigarette tax, use tax, and penalty on cigarettes ordered via the internet and delivered in Indiana. Taxpayer protests that he does not owe these taxes.

On February 2, 2006, Taxpayer was notified by mail of a hearing to be held on March 1, 2006. However, at the designated time of the hearing, Taxpayer neither appeared at the Department's office nor called the hearing officer assigned to the file, and thus this letter of findings is written based on the information contained in the Department's file. Further facts will be supplied as required.

I. Cigarette Tax--Imposition**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC 6-8.1-5-1(b) states

in pertinent 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.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." 45 IAC 15-5-3(b).

Taxpayer protests the imposition of cigarette tax. Taxpayer argues that he does not owe cigarette tax. Taxpayer argues that the cigarettes were delivered to an Indiana address for his consumption, but the cigarettes were neither bought nor used in Indiana.

The cigarette tax is found at IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

As this statute makes clear, this tax applies to all purchases of cigarettes. It does not make a difference if the purchase is over the counter, via the internet, or in any other manner. Just as every person who purchases cigarettes in a store owes cigarette tax, so does the person who purchases cigarettes from an internet vendor.

The Department was informed that taxpayer had purchased cigarettes pursuant to the provisions of the Jenkins Act, 15 U.S.C. §§ 375-378, which is an enforcement mechanism for states to prevent evasion of state cigarette taxes. The Jenkins Act states in relevant part:

(a) Contents. Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such sale or transfer and shipment, shall--

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence. The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

15 U.S.C. § 376

Also of relevance, a distributor is defined by 15 U.S.C. § 375(3) as:

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail;

but such term in no case includes a person who acquires cigarettes for purposes other than resale.

15 U.S.C. § 376 provides that a seller of cigarettes that sells cigarettes from one state to consumers for delivery in another state must provide the tobacco tax administrator of the state into which the cigarettes are distributed certain information. This information includes the name of the person to whom the cigarettes were sold, the brand of cigarettes sold, and the quantity of cigarettes sold. The Department's current assessment was based on information received pursuant to the Jenkins Act. The internet distributor was required by law to provide the names, brands, and quantities of all Indiana purchasers of its cigarettes. The internet distributor provided those names, and the Department sought to collect the tax from the persons to whom the distributor shipped its cigarettes. Rather than providing a mechanism for which a consumer's identity is shielded, the Jenkins Act provides that the consumer's identity must be revealed to the Department if the sale of cigarettes is in interstate commerce.

Taxpayer did not file a return with the Department which included the cigarette taxes. The Department refers to IC 6-8.1-5-1(a), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make

a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department received information from the vendor naming taxpayer as the purchaser of cigarettes. The Department made proposed assessments based on the best information available to it, as provided by IC 6-8.1-5-1(a).

In conclusion, the Department received information under the Jenkins Act which named taxpayer as the purchaser of cigarettes in Indiana. The cigarette tax is imposed on all purchases of cigarettes in Indiana, including those purchases which are delivered into Indiana, as provided by IC 6-7-1-1. The burden of proving the assessment wrong rests with the taxpayer, as provided in IC 6-8.1-5-1(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Use Tax--Imposition

DISCUSSION

Taxpayer protests the imposition of use tax on his purchase of cigarettes ordered via the internet and delivered in Indiana. Taxpayer offers the same arguments as in Issue I. The use tax is complementary to the sales tax and is found at IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is 45 IAC 2.2-3-4, which states:

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.

This means that Indiana use tax is due when Indiana sales tax is not collected. The Department has received no documentation to indicate, let alone establish, that sales tax was collected on the purchase of the cigarettes at issue.

As explained in Issue I, under IC 6-8.1-5-1(b) the burden of proving the assessment wrong rests with the taxpayer. Beyond this general burden is IC 6-2.5-3-7(a), which states:

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, unless the person or the retail merchant can produce evidence to rebut that presumption.

Taxpayer has not produced sufficient evidence to rebut the presumption that the cigarettes were acquired for storage, use or consumption in Indiana. Since Indiana sales tax was not collected on the purchase of the cigarettes, under IC 6-2.5-3-2(a) and 45 IAC 2.2-3-4, Indiana use tax is due on the purchase of the cigarettes. Taxpayer has not met the burden of proving the proposed assessment wrong, as explained under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. With regard to the penalty, the Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that

the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer has not affirmatively established that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0920050490.LOF

LETTER OF FINDINGS: 05-0490

County Innkeeper's Tax

For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. County Innkeeper's Tax

Authority: IC 6-2.5-2-1(b); IC 6-2.5-9-3; IC 6-9-18-3(a); IC 6-9-18-3(c) IC 6-9-18-3(e); 45 IAC 15-11-2(b).

Taxpayer argues that it should not be required to pay the County Innkeeper's Tax which it should have collected from its customers during 2002 because taxpayer was not aware that the tax had been adopted by Shelby County.

STATEMENT OF FACTS

Taxpayer is a hotel located in Shelby County Indiana. The hotel began operations on March 1, 2000.

Taxpayer failed to collect and remit the five percent Innkeeper's Tax from March 2, 2002, through September 30, 2002. The Department of Revenue (Department) conducted an investigation and prepared a report. The report stated that "[County Innkeeper's Tax] is now due in the amount of 5 [percent] of the gross lodging receipts for this period." As a result, the Department sent a notice of proposed assessment.

On the grounds that taxpayer was unaware of the Innkeeper's Tax and had not collected the tax from its customers during this period, taxpayer challenged the proposed assessment by filing a protest. An administrative hearing was conducted during which taxpayer explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. County Innkeeper's Tax

Taxpayer argues that it is not liable for the County Innkeeper's Tax which it should have collected during the seven-month period at issue because taxpayer was unaware that the tax had been imposed and because the tax had not been collected from taxpayer's customers.

IC 6-9-18-3(a) states that, "The fiscal body of a county may levy a tax on every person engaged in the business or renting or furnishing, for periods of less than thirty (30) days, any room or rooms, lodgings, or accommodations in any (1) hotel; (2) motel... (4) inn... or (7) tourist cabin; located in the county." Id.

IC 6-9-18-3(c) sets the maximum rate that a county may set for this tax. "The tax may not exceed the rate of five percent (5 [percent]) on the gross retail income derived from lodging income only and is in addition to the state gross retail tax imposed under IC 6-2.5." Id.

IC 6-9-18-3(e) describes the manner, means, and responsibilities attendant on the collection of the County Innkeeper's Tax. "All the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions and administration are applicable to the imposition and administration of the tax imposed under this section...." Id.

IC 6-9-18-3(e) incorporates by reference the gross retail (sales) tax provisions. Among those is IC 6-2.5-2-1(b) which states that, "The retail merchant shall collect the tax as agent for the state." Also incorporated is IC 6-2.5-9-3 which – in relevant part – states that the retail merchant (the innkeeper), "has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department; [and] 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." (*Emphasis added*).

Nonetheless, taxpayer maintains that it should not now be found liable for the Innkeeper's Tax because it was unaware the tax

had been implemented in Shelby County and that taxpayer only became aware of the tax after a customer pointed out the discrepancy between the rates taxpayer charged and the rates charged by competitors. Taxpayer explained that he called his county treasurer's office which was – according to taxpayer – unaware that Shelby County had adopted this tax. Taxpayer also stated that – after having filled out “zero balance” vouchers for the seven-month period during 2002 – taxpayer heard nothing on the matter until contacted by the Department in 2005.

Essentially, taxpayer argues that it should not be required to pay the Innkeeper's Tax assessment because it did not collect the tax from its customers. In support of this argument, taxpayer presented copies of its financial records which showed that, although taxpayer collected the five percent state sales tax, it did not collect the Innkeeper's Tax from its customers.

The Department cannot explain why – according to taxpayer – the Shelby County Treasurer was unaware that its county had adopted this tax on February 2, 2002. Nevertheless, the Department is not in a position to abate the tax on the ground that taxpayer was unaware of its responsibility to collect and forward the tax to the state. Rather, the Department assumes that both individuals and businesses are aware of their tax responsibilities or will make themselves aware of those responsibilities. “Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.” 45 IAC 15-11-2(b). The Department does not believe that it is reasonable to assume that those persons or businesses which – for whatever reason – remain unaware of their tax responsibilities should be excused from collecting and remitting that tax.

The Department has no reason to doubt taxpayer's good faith or that taxpayer may have been confused as to the applicability of the County Innkeeper's Tax. There is no reason to believe that taxpayer *did* collect tax but then withheld payment to the state. However, the statutory provisions are clear; taxpayer had a duty to collect the tax as an agent for the state and to forward that tax to the state. There is nothing in law or equity permitting the Department to abate this tax liability because taxpayer failed to collect the tax from its customers.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0320050497.LOF

LETTER OF FINDINGS: 05-0497

Withholding Tax

For 2003 Through 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Withholding Tax.

Authority: IC 6-3-4-8

Taxpayer maintains that the Department's assessment for withholding tax is incorrect.

STATEMENT OF FACTS

The taxpayer was a sole proprietorship in 2001 and 2002. Taxpayer became a corporation in 2003. The taxpayer's sales are primarily marketing signs for realty agents, apartment complexes, contractors, property managers, and retail establishments. The audit was for the years January 1, 2003, through June 30, 2005. Some records were provided for 2003 and no records were provided to the Department's auditor for January 1, 2004, through June 30, 2005. In the records that were available during the audit, there were payments made to employees in the first quarter; however these payments were not included in the tax return figures or the general ledgers. The Department issued a “BIA” or best information available assessment. Taxpayer disagreed with the Department's decision and submitted a protest letter to that effect.

DISCUSSION

I. Withholding Tax.

Taxpayer maintains that the Department's assessment for withholding tax is incorrect.

IC 6-3-4-8(a) states in part that each “employer making payments of any wages... shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section....” Pursuant to IC 6-3-4-8(a), if an employer is required by the Internal Revenue Code to withhold federal taxes, that employer must do the same for state income tax purposes.

The taxpayer's representative contends that the amounts shown on the Department's audit summary sheet in the amount of \$957.24 for 2003, \$1,441.94 for 2004, and \$2,059.10 for the period ending June 30, 2005, are incorrect. The representative at hearing provided a calculation and the associated returns received from an automated payroll service. The representative states that the proper

amount of withholding due is \$1,641.08 for 2003, \$2,059.120 for 2004, and \$713.35 for the period ending June 30, 2005.

FINDING

Taxpayer's protest is sustained subject to audit verification. The application of the ten percent negligence penalty will be dependant upon the outcome of audit's review. The ten percent penalty will be applicable to any remaining tax liability.

DEPARTMENT OF STATE REVENUE

04-20050501P.LOF

LETTER OF FINDINGS NUMBER 05-0501P TAX ADMINISTRATION (USE TAX)—NEGLIGENCE PENALTY FOR THE REPORTING PERIOD COVERING DECEMBER 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

I. Tax Administration—Negligence Penalty—Effect of Partial Payment on Liability Tax Administration— Effect of Oral Statement of Department Employee on Liability

Authority: IC §§ 6-8.1-5-1(b), -8-1.5 and -10-2.1(d) and (e) (2004); *State Bd. of Tax Comm'rs v. New Castle Lodge # 147, L.O.O.M.*, 765 N.E.2d 1257, 1264 (Ind. 2002); *Sholes v. Sholes*, 760 N.E.2d 156, 159 (Ind. 2001); *State Bd. of Tax Comm'rs v. Two Market Square Assocs., L.P.*, 679 N.E.2d 882, 885 (Ind. 1997); *Ind. Dep't of State Rev. v. Horizon Bancorp*, 644 N.E.2d 870, 872 (Ind. 1994); *Middleton Motors, Inc. v. Ind. Dep't of State Rev.*, 380 N.E.2d 79, 81 (Ind. 1978); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024 and 1024-25 (Ind. Tax Ct. 1999); 45 IAC §§ 15-3-2(e), -5-3(b)(8) and -8-1 (2004)

The taxpayer protests the Audit Division's proposed assessment of a negligence penalty.

STATEMENT OF FACTS

The Department's Audit Division conducted a field audit of the taxpayer for the tax type and reporting periods set out in the heading of this Letter of Findings. As a result of the audit, the taxpayer incurred a tax deficiency. The field auditor recommended that the Audit Division waive assessing any negligence penalty, but it nevertheless assessed such a penalty. The taxpayer paid the Department the combined amount of the base tax and the accrued interest. The Department will provide additional information as needed.

DISCUSSION

A. TAXPAYER'S PROTEST

The representative's cover letter for the final payment alleges the field auditor advised the taxpayer not to pay the negligence penalty, and asks that the Department consider the assessment to be fully paid. The Department interprets these statements as a request by the taxpayer that the Department waive the negligence penalty imposed pursuant to IC § 6-8.1-10-2.1(a)(3) and (b)(4) (2004), and will analyze the request on that basis.

B. ANALYSIS

The taxpayer's request is based on three assumptions. The first is that the taxpayer can specify the component/s of a proposed assessment to which it wants partial payment/s to be applied. The second is that the Department has the discretion to change the order of application of such payment/s. The third and last is that the oral advice of a Department employee can bind the Department. The following Analysis will show that all three assumptions are wrong.

IC § 6-8.1-8-1.5 (2004), which sets out how the Department is to allocate partial payments on listed taxes, reads as follows:

Sec. 1.5. Whenever a taxpayer makes a partial payment on the taxpayer's tax liability, the department [of state revenue] *shall* apply the partial payment in the following order:

- (1) *To any penalty owed by the taxpayer.*
- (2) *To any interest owed by the taxpayer.*
- (3) *To the tax liability of the taxpayer.*

Id. (Emphasis added.) The implementing regulation, 45 IAC § 15-8-1 (2004), is to the same effect. *See id.* (so stating, adding that the payment "*shall only* be [so] applied" to "the particular billing for a given year and tax[]") (emphasis and alterations added).

In *Indiana Department of State Revenue v. Horizon Bancorp*, 644 N.E.2d 870 (Ind. 1994), the Indiana Supreme Court set out certain general rules of statutory interpretation that bind the Department in applying the above statute and regulation to the present issue:

Nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the statute itself.

.... An unambiguous statute must be held to mean what it plainly expresses, and its plain and obvious meaning may not be

enlarged or restricted. Because a statute which is clear and unambiguous on its face needs no further interpretation beyond the plain and ordinary meaning of the words contained therein, the statute must be applied and enforced as written.

Id. at 872 (citations omitted). “The rules of statutory construction [also] apply to the construction of administrative regulations.” *State Bd. of Tax Comm’rs v. Two Market Square Assocs., L.P.*, 679 N.E.2d 882, 885 (Ind. 1997) (alteration added).

Applying the above rules to IC § 6-8.1-8-1.5 and 45 IAC § 15-8-1, it is clear that the statute and the regulation do not confer any right on, or imply any right of, a taxpayer to tell the Department how to apply partial payment/s to an outstanding assessment. Nor does the statute give the Department discretion to apply partial payment/s to the part/s of an assessment that a taxpayer may request. Instead, IC § 6-8.1-8-1.5 and 45 IAC § 15-8-1 both state that the Department “shall[.]” and 45 IAC § 15-8-1 states that the Department “shall only[.]” *id.*, apply the partial payment to the various components of the liability in the order specified. *Sholes v. Sholes*, 760 N.E.2d 156 (Ind. 2001) states the usual effect of “shall” in a statute as follows:

Indiana case law presumptively treats “shall” as mandatory ... unless it appears clear from the context or the purpose of the statute that the legislature intended a different meaning. ... We see no basis in the [former version of the civil pauper counsel] statute [in issue in *Sholes*, IC § 34-10-1-2 (1998),] to suggest any unusual or stylized meaning of a commonly understood word. Moreover, when a statute is unambiguous, a court must apply the plain and obvious meaning and not resort to other rules of construction.

Id. at 159 (citations and internal quotation marks omitted)(alteration added), *partially superseded on other grounds by statute*, Pub. L. 125-2002, § 1, 2002 Ind. Acts 1887, 1887-88, codified at IC § 34-10-1-2 (Supp. 2002). The supreme court went on to hold in that opinion, among other things, that “[a]s a matter of construction, we agree that the [former civil pauper counsel] statute by its terms confer[red] no discretion on the trial court to deny counsel if its terms [we]re met.” *Id.*

Likewise, the Department has no discretion to ignore the order of assessment components set out in IC § 6-8.1-8-1.5 and 45 IAC § 15-8-1 to which a partial payment is to be applied. There is nothing in IC § 6-8.1-8-1.5 to suggest that the General Assembly intended “shall,” as used in this statute, and the Department did not intend “shall” in 45 IAC § 15-8-1, to have an out-of-the-ordinary meaning. Such being the case, the Department must treat “shall” in IC § 6-8.1-8-1.5 and 45 IAC § 15-8-1 in its usual, mandatory sense. In addition, the word “only” in 45 IAC § 15-8-1 means that the specified order of application of partial payment/s is the sole, exclusive order the Department will use. *See* WEBSTER’S THIRD NEW INT’L DICTIONARY 1577 (4th ed. 1976) (definition 1b, “only” “EXCLUSIVELY, SOLELY”).

It follows that the Department must apply any partial payment/s received so as to satisfy the three components of an assessment in the literal order in which the statute and regulation list them. It follows that in situations like the present one, where a taxpayer makes partial payment/s equal to the base tax and accrued interest, the effect is to satisfy any negligence penalty or penalties imposed, then the accrued interest and a part of the base tax. The result of such payment/s is to leave a reduced base tax deficiency outstanding on which interest will begin accruing anew if it is left unsatisfied.

Turning to the taxpayer’s third assumption, the Department will likewise assume for purposes of discussion, without necessarily finding, that the field auditor gave the advice alleged. That being said, it should be clear from the foregoing discussion that the alleged advice would have had no effect, since the taxpayer would already have satisfied the negligence penalty by the time the auditor allegedly gave that advice. Even if the penalty were still unsatisfied, however, the law is clear that the field auditor’s alleged advice would not have bound the Department. Its own regulation is sufficient to give the taxpayer constructive notice that such would have been the case: “Oral opinions or advice will not be binding upon the department.” 45 IAC § 15-3-2(e) (2004). In addition, the Indiana Supreme Court has ruled to the same effect. In *Middleton Motors, Inc. v. Ind. Dep’t of State Rev.*, 380 N.E.2d 79 (Ind. 1978), *vacating* 366 N.E.2d 226 (Ind. Ct. App. 1977), the named taxpayer had relied on wrong advice of a former deputy director of revenue that the period for bringing suit on a denied claim for refund was substantially longer than that actually set out in the refund nonsuit statute. 366 N.E.2d at 227. The supreme court affirmed the trial court’s dismissal of the untimely refund suit, stating: “All persons are charged with the knowledge of the rights and remedies prescribed by [Indiana’s tax] statute[s].” 380 N.E.2d at 81 (alterations added). Such knowledge necessarily includes whether rights or remedies under those statutes actually exist, if so what conditions are imposed on their availability, what acts will and will not invoke them, and any restrictions on exercising them.

Middleton Motors thus imputes to persons subject to the listed taxes constructive knowledge of IC §§ 6-8.1-8-1.5 and -10-2.1(d) and (e). In particular, regarding the present situation, such knowledge of IC § 6-8.1-8-1.5 includes knowledge that a taxpayer has no right under that statute to specify how the Department is to apply partial payment/s on an assessment of a listed tax. Constructive knowledge of IC § 6-8.1-10-2.1(d) and (e) includes knowledge that the Department may (but is not necessarily required to) waive a negligence penalty only when the person requesting such a waiver complies with the procedures set out in those subsections for doing so. The present taxpayer did not comply with those subsections, and the Department therefore cannot consider, and the taxpayer is not entitled to, relief from the negligence penalty assessed.

As previously noted, the effect of the taxpayer’s partial payment was to leave a reduced base tax deficiency outstanding. The taxpayer has made no argument as to why the base tax assessment is wrong, as IC § 6-8.1-5-1(b) requires. Indiana law is settled that this state’s taxation hearing officers, and by extension the state-level taxing authorities of which they are agents, “do not have the duty to make a taxpayer’s case.” *Hoogenboom-Nofziger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999),

cited with approval in State Bd. of Tax Comm'rs v. New Castle Lodge # 147, L.O.O.M., 765 N.E.2d 1257, 1264 (Ind. 2002). The Tax Court stated the rationale for this rule in *Hoogenboom-Nofziger* as follows:

[T]o allow [a taxpayer] to prevail after it made such a cursory showing at the administrative level would result in a tremendous workload increase for [the Department and] the State Board [now the Indiana Board of Tax Review], ... administrative agenc[ies] that already bear[] ... difficult burden[s] in administering this State's [listed and] property tax system[s]. If taxpayers could make a de minimis showing and then force [the Department or] the State Board to support its decisions with detailed factual findings, the [Indiana taxing authorities] would be overwhelmed with cases such as this one. This would be patently unfair to other taxpayers who do make detailed presentations to the [taxing authorities] because resolution of their appeals would necessarily be delayed.

715 N.E.2d at 1024-25 (alterations added).

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20050506.LOF

LETTER OF FINDINGS NUMBER: 05-0506 Gross Income Tax and Adjusted Gross Income Tax For the Years 2001-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax--Interstate Commerce

Authority: 45 IAC 1.1-3-3

Taxpayer protests the assessment of gross income tax on certain sales that Taxpayer maintains were made in interstate commerce.

II. Adjusted Gross Income Tax—Royalty Expenses

Authority: Ind. Code § 6-3-2-2

Taxpayer protests the disallowance of deductions for royalties paid to a sister corporation, along with the disallowance of net operating loss carryforwards from years in which the statute of limitations has passed.

III. Tax Administration--Negligence Penalty

Authority: Ind. Code § 6-3-4-4.1; Ind. Code § 6-8.1-10-2.1

Taxpayer protests penalties based on Taxpayer's failure to make estimated tax payments.

STATEMENT OF FACTS

Taxpayer is a company engaged in the sale of food and food service supplies. Taxpayer operates three sales offices, three transit and delivery stations, and thirteen retail stores in Indiana. Taxpayer has two types of operations, which will be described as grocery-type operations and restaurant-type operations. Taxpayer's grocery-type operations are ones in which customers enter Taxpayer's retail stores and purchase food and other related items for personal or group use. Taxpayer's restaurant-type operations are ones in which Taxpayer delivers items ordered by restaurants, cafeteria, and similar customers. Taxpayer excluded some restaurant-type sales made to Indiana customers from its gross income for gross income tax purposes. However, upon audit of Taxpayer, the Department concluded that the sales were connected with an Indiana business situs and assessed gross income tax.

In addition, Taxpayer deducted payments made to a sister corporation (hereinafter "TP Brands") which Taxpayer paid for the use of intellectual property. For the period from 1998 to 2000, the deduction resulted in a net operating loss that Taxpayer carried forward to 2001 and 2002. The auditor disallowed the net operating loss carryforwards from 1998 to 2000 that Taxpayer used in 2001. For 2001 and 2002, the Department disallowed Taxpayer's deductions for payment to TP Brands and assessed additional adjusted gross income tax.

Further, Taxpayer claimed a deduction for a special depreciation allowance permitted under federal law but not permitted under Indiana law. Taxpayer has conceded this issue.

Finally, Taxpayer protests the imposition of penalties imposed for underpayment of estimated taxes determined to be due. Taxpayer protests that the Department made its penalty assessment based on calculations that used Taxpayer's amount of tax as determined by the Department's audit as a basis for determining the amount of tax due rather than the amount listed on Taxpayer's return as filed. Additional facts will be supplied as necessary.

I. Gross Income Tax—Interstate Commerce

DISCUSSION

Taxpayer argues that the restaurant-type sales were negotiated by out-of-state personnel and accordingly should not be subject to gross income tax. Taxpayer asserts that the sales in question were not connected to an Indiana business situs, and cites 45 IAC 1.1-3-3(c)(5) for the proposition that sales not connected with Taxpayer's business situs should be exempt from gross income tax. That regulation states:

Gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana. The following examples are situations where a sale is not completed in Indiana prior to or after shipment in interstate commerce:

* * *

(5) A sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated, and serviced by out-of-state personnel, and the goods are shipped from out-of-state. The in-state business situs or activities will be considered significantly associated with the sale if the sale is initiated, negotiated, or serviced by in-state personnel.

Also of note is 45 IAC 1.1-3-3(d)(7), which states in relevant part

Gross income derived from the sale of tangible personal property in interstate commerce is subject to the gross income tax if the sale is completed in Indiana. The following examples are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce:

* * *

(7) A sale to an Indiana buyer by a nonresident seller if the sale:

- (A) originated from;
- (B) was channeled through; or
- (C) was otherwise connected with;

an Indiana business situs established by the seller.

As noted in the audit report, Taxpayer has several locations in Indiana, which gave Taxpayer an Indiana business situs. These locations include sales offices, delivery stations, and retail stores. Taxpayer has not provided sufficient information to conclude that the sales in controversy for gross income tax purposes were not associated with Taxpayer's Indiana business situs.

FINDING

Taxpayer's protest is denied.

II. Adjusted Gross Income Tax—Royalty Expense

DISCUSSION

Taxpayer argues that the expenses for royalties paid to TP Brands should be permitted for 2001 and 2002. In particular, Taxpayer notes that the auditor indicated that the assessment was made pursuant to Ind. Code § 6-3-2-2(*l*). Taxpayer states that this section deals with apportionment and allocation rather than the disallowance of deductions. Taxpayer notes that Ind. Code § 6-3-2-2(*m*) is a more appropriate section for the rationale of the Department's assessment. The Department agrees that subsection (*m*) is more appropriate than subsection (*l*) for the disallowance of deductions.

Taxpayer argues that the Department's conclusion—that disallowing the deduction for payments from Taxpayer to TP Brands more fairly reflected Taxpayer's Indiana income—was erroneous.

First, Taxpayer claimed deductions of almost \$76,000,000 in royalties for 2001 and 2002. Taxpayer's income—taking into account the royalty payments—was \$4,000,000 for 2001 and a net *loss* of \$5,000,000 for 2002. Taxpayer and TP Brands' shareholders—the identical shareholders—are in exactly the same position as if Taxpayer had earned a \$75,000,000 profit. In summary, Taxpayer operated a business that *generated* a net profit of \$75,000,000, but *reported* a net loss for tax purposes by virtue of a claimed deduction for royalties to a related party. The arbitrary reduction of income leads to a conclusion that Taxpayer's income was not fairly reflected in its returns as filed, and the Department's disallowance of the royalty deductions for payments to TP Brands more fairly reflected Taxpayer's Indiana income.

Second, Taxpayer argues that the arrangement between Taxpayer and TP Brands had a valid business purpose and substance beyond simply garnering tax benefits. At the hearing, Taxpayer's representative indicated that the Department had not provided notice or guidance with respect to the issue of royalty or intangible income expenses. The Department's auditor sent correspondence to Taxpayer on November 11, 2004. In relevant part, the request for additional information (page 16 of the Department's audit report) requested the following (grammar and punctuation in original):

1. Who are royalties paid to and what for. Where is the recipient of the royalty fees located and what business activities are they engaged in. How is the dollar amount of the royalty fee determined?
2. Who owns [Taxpayer] trademarks? [TP Brands]. Who is responsible for the expense of maintaining and defending the trademarks?

On February 18, 2005, the Department's auditor sent additional information (page 17 of the audit report) requesting the following (grammar and punctuation in original):

1. What are the royalty fees paid for? Specifically, what do any trademarks or intellectual property held by [TP Brands] relate

to? Who developed any trademarks, trade names, patents, etc.?

2. Are the royalty fees pursuant to a licensing agreement? May I please have a copy of this agreement?

3. How and by whom was the amount of the royalty fees determined? How was the value of the intellectual properties determined?

4. I need to know the history of the trademarks and the companies holding them. When and how was [TP Brands] formed? Explain the transactions involved in the formation of this company. Through what transactions did [TP Brands] acquire any intellectual property? Who held the marks prior to the formation of the company currently holding them? Has [Taxpayer] always paid royalty fees for the use of the trademarks? Did [Taxpayer] pay royalty fees prior to [TP Brands]?

5. What is the business purpose of [TP Brands]? What activities does this holding company engage in? What activities does it engaged in related to intellectual property? Is it involved in creating, enhancing, or protecting intellectual properties? How many employees and officers are there and where are they located. What are the employee's and officers' responsibilities? What property does the holding company have. Does the holding company loan money to affiliates. If so, to whom and how much and for what interest charge? Are loan contracts available? What intellectual property does the company hold. Please provide a recent annual financial statement for [TP Brands].

Finally, on July 22, 2005, the Department auditor submitted a final request to Taxpayer for information to be submitted in the final audit report due August 9, 2005. In relevant part, the letter (pages 18 and 19 of the audit report) stated (grammar and punctuation in original):

A. Are there inter-company royalty charges?

1. Who holds the patent and/or trademark?

a. Is it a domestic (U.S.) company?

b. Is it a foreign operating company?

2. Who developed the patent and/or trademark?

3. For what are the patent and/or trademark?

4. How was the value of the patent and/or trademark determined? By whom?

5. How were the patent and/or trademark transferred?

6. When were the patent and/or trademark transferred?

7. Who determined the basis on which to charge royalties and the rate to be charged?

B. Is any income received by the royalty receiving company from unrelated parties? If so,

1. Is it from royalty payments?

2. Is it interest?

C. Does the royalty receiving company have any employees?

1. What are their duties?

2. Who are the officers?

3. Who pays the employees?

4. Who makes the day-to-day operating decisions?

D. Who handles the administrative functions (maintains books and records, prepares financials, prepares tax returns) for the royalty receiving company?

E. Does the royalty receiving company have property other than the patent and/or trademark? If so, what?

F. Income from patent and/or trademark

1. What does the royalty receiving company do with the income generated by the patent and/or trademark?

a. Research and development?

b. Protecting the patent and/or trademark?

c. Patent and/or trademark litigation?

2. Is the income returned to the royalty paying company?

a. Inter-company loans?

i. Is there a loan agreement?

ii. What rate of interest is charged?

iii. Are periodic payments made on this loan?

b. Dividends?

3. Are loans made to unrelated third parties?

The auditor further requested the following information in the July 22, 2005, letter:

A. Minutes of Board of Directors meeting regarding the formation of the royalty receiving company and minutes from meeting concerning the original issue of company's stock.

B. Copy of independent appraisers report determining the value of the patent and/or trademark

C. Copy of Royalty Agreement

D. Copy of all inter-company loan agreements, notes receivable and revolving credit lines.

E. Names, titles and social security numbers of the officers of the royalty receiving company.

Taxpayer never provided this information to the Department despite three requests. At the hearing on March 22, 2006, Taxpayer's representative protested that Taxpayer did not know what information would be considered sufficient to prove their case, notwithstanding the prior correspondence referenced above. The Department's hearing officer reiterated the requests for information, and Taxpayer's representative indicated that Taxpayer would attempt to supply the information by the end of that business day. Taxpayer did not provide any documentation requested by the hearing officer.

Furthermore, the Department attempted to search federal records for intellectual property that might be held by TP Brands. There were no records associated with TP Brands' name; however, Taxpayer's name showed up repeatedly as owner of various items of intellectual property.

The lack of documentation of the royalty arrangement, lack of identifiable intellectual property, along with payments of \$76,000,000 to an entity in a state where Taxpayer has neither a store or even sales (but which state does not impose an income tax on the income of TP Brands), lend further weight to the conclusion that the deductions for royalties paid by Taxpayer to TP Brands were properly disallowed.

With respect to the disallowance of net operating loss carryforwards, the Department is not seeking to reassess the years 1998 to 2000. The Department is seeking to assess 2001 and 2002, and the redetermination of net operating loss carryforwards from 1998 to 2000 is necessary to permit the correct computation of tax for 2001 and 2002. Accordingly, Taxpayer's protest is denied with respect to net operating loss carryforwards from 1998 to 2000.

FINDING

Taxpayer's protest is denied.

III. Tax Administration--Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of penalties under Ind. Code § 6-8.1-10-2.1 for failure to make sufficient estimated payments of tax, as required by Ind. Code § 6-3-4-4.1. Taxpayer argues that the failure to make estimated payments of tax due based on the amount of tax determined due by the Department. Other than an assertion that the penalty is the imposition of a "double penalty," Taxpayer has not sufficiently developed this argument, and accordingly is denied.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050523.LOF

LETTER OF FINDINGS: 05-0523

USE TAX

FOR TAX YEARS 2003-2004

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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax: Collection Letters

Authority: IC 6-8.1-5-1(b); IC 6-2.5-1-1; IC 6-2.5-1-2; IC 6-2.5-4-1; 45 IAC 2.2-1-1; 45 IAC 2.2-4-2; Cowden & Sons Trucking, Inc. v. Indiana Dep't of Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991); Chrome Deposit Corporation v. Indiana Dep't of Revenue, 557 N.E.2d 1110 (Ind. Tax Ct. 1990), aff'd, 578 N.E.2d 643 (Ind. 1991); Galligan v. Indiana Dep't of Revenue, 825 N.E. 2d 467, 481 (Ind. Tax Ct. 2005); Commissioner's Directive Number 21 (January 2004).

Taxpayer protests the assessment of use tax on purchases of collection letters made from an out of state company.

STATEMENT OF FACTS

Taxpayer is an Indiana collection agency that collects delinquent accounts receivables from patients of various healthcare providers. The taxpayer utilizes a combination of standardized mailings and telephoning techniques to make collections. To produce its monthly letters, the taxpayer sends self-composed text and its database of accounts receivable to an out of state company ("Company") via the internet. The Company produces and mails a specified quantity of custom letters to ninety-nine percent (99%) of taxpayer's Indiana addresses. On a monthly basis, the Company bills the taxpayer and itemizes its invoices by quantities multiplied by units of product types. The Indiana Department of Revenue ("Department") conducted an audit review and assessed use tax on the taxpayer's purchases from the Company. The taxpayer submitted a protest challenging the assessment. The Department held a

hearing and now presents this Letter of Findings with additional facts to follow.

DISCUSSION

I. Use Tax: Collection Letters

The audit review viewed the taxpayer's purchase of collection letters as part of a retail unitary transaction and subject to use tax under the provisions of 45 IAC 2.2-1-1. 45 IAC 2.2-1-1(a) provides:

For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction....

I.C. 6-2.5-1-2(b) defines a retail unitary transaction as "a unitary transaction that is also a retail transaction." A unitary transaction is "all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." IC 6.2.5-1-1(a). A retail transaction is "a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1...." IC 6-2.5-1-2(a). IC 6-2.5-4-1 states:

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any services, and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records....

The audit review additionally determined that because the cost of delivery was included in the unit cost charged to the taxpayer, the sales and use tax also applied to the delivery charges for the 2004 tax year. Commissioner's Directive Number 21 (January 2004) clarified the IC 6-2.5-4-1 definition of "selling at retail" to include:

delivery charges in gross retail income and charges by the seller for the preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating and packing.

Indiana Department of Revenue assessments are prima facie evidence the department's claim for unpaid taxes is valid. IC 6-8.1-5-1(b). The taxpayer has the burden of proving whether the department incorrectly imposed the assessment. Id.

The taxpayer explains in its protest letter that "many transactions involve the exchange of a mix of services and tangible personal property for consideration. These so call[ed] 'mixed transactions' are considered transactions of retail merchants selling at retail and are therefore subject to gross retail/use tax." However, if the transaction satisfies 45 IAC 2.2-4-2(a)(1)-(4), collectively referred to as the "true object" test, the transaction is not subject to gross retail/use taxes. Cowden & Sons Trucking, Inc. v. Indiana Dep't of Revenue, 575 N.E.2d 718, 724 (Ind. Tax Ct. 1991).

The taxpayer contends its transaction with the Company satisfied the "true object" test for the following reasons: 1) the transaction was with a professional data processing service provider that processed information into custom letters; 2) the paper and reply envelopes were necessary because the Company could not produce the custom letters without consuming paper and envelopes; 3) taking out the cost of paper and envelopes, the items of tangible personal property only accounted for six percent of the total fees charged by the Company and was inconsequential (did not exceed ten percent) compared with the service charge; and 4) the Company paid sales and use tax on the tangible personal property at the time it acquired the property. The taxpayer further contends its transaction is not subject to use tax under the "but for" test. The "but for" test considers the intent of the parties to determine whether a mixed transaction is one for services or for the sales of goods. Chrome Deposit Corporation v. Indiana Dep't of Revenue, 557 N.E.2d 1110, 1114 (Ind. Tax Ct. 1990), aff'd, 578 N.E.2d 643 (Ind. 1991).

However, based on case law, this is not a persuasive argument. The tax court has previously questioned the validity of regulation 45 IAC 2.2-4-2. Galligan. v. Indiana Dep't of Revenue, 825 N.E. 2d 467, 480 n.16 (Ind. Tax Ct. 2005). The court in Galligan stated:

Services rendered in retail unitary transactions are taxable only ***if the transfer of the property and the rendition of services are inextricable and indivisible***. See Howland, 790 N.E.2d at 629 (citation omitted). Generally, the transfer of property and the rendition of services are inextricable and indivisible when the services are performed before the property was transferred to the transferee... Services provided after a transfer of property, however, indicate a divisible transaction in which the sale is taxed but the services are not... The Court must look to other factors to determine whether the transaction is inextricable and

indivisible, such as the service-provider's records, the overall nature of its business, as well as the nature of the unitary transactions themselves.... Based on the... evidence... th[e] Court [must] find that [the service provider] *intended to treat the transfer of property and the provisions of its services separately*...

Id. at 481 (emphasis added). Using this analysis, the determination of whether a mixed transaction is taxable hinges on whether the rendition of the services is inextricable and indivisible. Moreover, the determination of whether a service is inextricable and indivisible involves determining the intent of the service provider.

The audit review was correct to conclude that the taxpayer's purchases from the Company were part of a retail unitary transaction. The fact that the Company bills the taxpayer by itemizing the invoices by quantities multiplied by the product types, confirms that the Company did not intend to treat the transfer of property and services separately. Moreover, the fact that the Company supplied information breaking into percentages the component parts of how it billed the taxpayer does not affect the nature or taxability of the original transaction. The majority of the components represent postage and tangible property. Therefore, the audit review correctly treated the purchases as a retail unitary transaction subject to use tax.

FINDING

The Department denies the taxpayer's protest.

DEPARTMENT OF STATE REVENUE

0420050528.LOF

LETTER OF FINDINGS NUMBER: 05-0528

Sales and Use Tax For Tax Year 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is 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—Aircraft Purchase

Authority: IC 6-2.5-5-8; IC 6-8.1-5-1; 45 IAC 2.2-5-15

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased a helicopter, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the helicopter was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the helicopter and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the helicopter. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the helicopter. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer protests the denial of a claim for exemption on the purchase of a helicopter. Taxpayer purchased the helicopter in May of 2002, and did not pay sales tax on the purchase. Taxpayer filed a claim for exemption since the helicopter would be leased or rented to others. The exemption for rental and leasing is found at IC 6-2.5-5-8(b), which states:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Also of relevance is 45 IAC 2.2-5-15, which states:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

The Department of Revenue examined taxpayer's claim for the rental and leasing exemption. After examining the information available to it, the Department determined that taxpayer did not qualify for the exemption. The information indicated that taxpayer was not occupationally engaged in the business of renting or leasing the helicopter to others. As a result of this determination, the Department issued a proposed assessment for tax on the purchase of the helicopter.

Taxpayer protested the proposed assessment. The protest letter is little more than a bare statement of protest and an assertion that the Department is wrong. Taxpayer has provided no new documentation and no explanation or analysis of why it does qualify for the rental and leasing exemption.

The Department refers to IC 6-8.1-5-1(b), which states that the taxpayer bears the burden of proving a proposed assessment wrong. As previously explained, taxpayer has not even provided a reason why the Department may be wrong, let alone proven the proposed assessment wrong. Taxpayer has not met the burden imposed by IC 6-8.1-5-1(b).

In conclusion, the Department determined that taxpayer did not qualify for the exemption found in IC 6-2.5-5-8(b). Taxpayer was not renting or leasing the helicopter to others as required by 45 IAC 2.2-5-15. Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050529.LOF

LETTER OF FINDINGS NUMBER: 05-0529

Sales and Use Tax

For Tax Years 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

I. Sales and Use—Aircraft Purchase

Authority: Gregory v. Helvering, 293 U.S. 465 (1935); IC 6-2.5-2-1; IC 6-2.5-5-27; IC 6-6-6.5-9; IC 6-8.1-5-1; 45 IAC 2.2-5-15; 45 IAC 2.2-4-27; Horn v. Commissioner of Internal Revenue, 968 f.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); Black's Law Dictionary (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim that intended use of the aircraft was rental or leasing. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for sales tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer purchased an aircraft for one million, three hundred twenty five thousand dollars (\$1,325,000.00) and claimed a sales tax exemption. The Department examined the claim for exemption and determined that taxpayer was not renting the aircraft and denied the exemption. Taxpayer protests the denial.

Taxpayer offers several arguments in support of its claim for the exemption. First, taxpayer refers to IC 6-6-6.5-9(a)(4), which states:

(a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following;

...

(4) An aircraft owned or operated by a person who is either an air carrier certified under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

Taxpayer states that IC 6-6-6.5-9(a)(4) provides that an aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or an air taxi operator certified under Federal Air Regulation Part 135, is exempt to state sales and use tax. Taxpayer is incorrect.

As plainly stated in IC 6-6-6.5-9(a), "The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following". The chapter referred to is chapter 6.5 of article 6 of title 6 of the Indiana Code. Chapter 6.5 of article 6 of title 6 deals with aircraft license excise tax. IC 6-6-6.5-9(4) only applies to aircraft license taxes, not the sales tax which is the tax at issue in this protest. Therefore, taxpayer's reliance on that subsection is misplaced.

The sales tax is established at IC 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The 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.

Sales tax is due on retail transactions, such as the purchase or rental of an aircraft. Neither taxpayer nor its customer provided documentation establishing exempt use of the aircraft. The Department considered this insufficient to prove that the aircraft was used for renting or leasing. The Department never received any documentation establishing that any other third party used the aircraft. This contributed to the Department's determination that taxpayer was not renting or leasing the aircraft.

Next, taxpayer refers to IC 6-2.5-5-27, which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

Taxpayer claims that this exemption applies to its purchase of the aircraft.

By taxpayer's own explanation, it did not directly use the aircraft in providing public transportation. Taxpayer states that it rented to another business which in turn provided public transportation. The exemption, if applicable at all, would apply to taxpayer's customer since it is the one claiming to directly use the aircraft in public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to taxpayer.

Next, taxpayer states that the aircraft was used for rental to others, and therefore was exempt from sales tax under 45 IAC 2.2-5-15, which states:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that the same individual signed the leasing agreement as both lessor and as lessee. Also, the Department has not received any documentation establishing that taxpayer's leasing business ever showed a profit. While profitability of a business is not normally germane as to the existence of a true lessor/lessee relationship, in this case it does indicate that taxpayer had arranged for its two owner/renter parties to pay much less than a fair market value for the rental of the aircraft. The rental at issue here was not an arms-length transaction. Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not

qualify for the leasing exemption.

Next, taxpayer explains that its customer paid a lower lease rate because it was paying other expenses which, when added to the lease rate, brought the total amount customer paid closer to comparable lease rates. Taxpayer explains that, under the “dry lease”, the lessee was responsible for paying expenses such as insurance, hangar, fuel, maintenance and crew. This supposedly brought the leasing costs to appropriate levels. 45 IAC 2.2-4-27(d) states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

...

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew. This is further evidence that taxpayer’s relationship with its customer was not a valid lessor/lessee relationship.

Next, taxpayer states that it only created the leasing corporation in order to avoid liability in the event of a catastrophic loss. Taxpayer explained that it was difficult if not impossible to purchase enough insurance to cover potential liabilities from a crash, so it created the lessee corporation to shelter the lessor corporation from those potential liabilities. While this may or may not be the case, it is ultimately irrelevant since it does not explain why the rental rate was set at a fraction of the rate charged for comparable aircraft in the area. The fact that the rental rate was so low makes it plain that the rental agreement was set up to avoid sales tax, since the rental rate would have nothing to do with potential liabilities from a crash.

Finally, the Department notes that a lease is defined as “[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration.” Black’s Law Dictionary 898 (7th ed. 1999). The parties’ agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the lease agreement falls squarely within the definition of a “sham transaction.” The “sham transaction” doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id. at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and “[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose.” Id. at 470. The courts have subsequently held that “in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation.” Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert. denied*, 338 U.S. 955 (1950). “[T]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer’s desire to secure the attached tax benefit” but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 f.2d 1229, 1236-7 (D.C. Cir. 1992). The rental/lease rate charged by taxpayer for the aircraft in question here can only be considered a “sham transaction”. The only reason to charge a fraction of the fair market rate for rental/lease of the aircraft and arrange for alternate compensation is to avoid tax. Since taxpayer was not involved in a valid lease or rental agreement with its sole customer, the Department was correct to deny taxpayer’s claim for the rental/lease exemption.

In conclusion, taxpayer’s reference to IC 6-6-6.5-9(a)(4) is inapplicable since it deals with aircraft licensing tax rather than sales tax. Taxpayer was not directly providing public transportation and was not eligible for the exemption described in IC 6-2.5-5-27. Taxpayer was not occupationally engaged in renting to others and does not qualify for the exemption found in 45 IAC 2.2-5-15. It is irrelevant if the leasing corporation was formed to shield taxpayer from liability in the event of a crash, since that would have no influence on the rental rate. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, maintenance and crew, as required by 45 IAC 2.2-4-27(d). Taxpayer’s relationship with its customer was too close and the terms of the rental agreement too generous to establish an arms-length business relationship. The rental/lease arrangement between taxpayer and its customer constitutes a “sham transaction” entered into for the sole purpose of avoiding taxes, as established in Gregory v. Helvering. Without a valid rental/lease agreement, taxpayer is ineligible for the rental exemption on the purchase of the aircraft. The Department notes that IC 6-8.1-5-1(b) places the burden of proving an assessment wrong rests with the taxpayer. In this case, the taxpayer has failed to provide any documentation supporting its case and has failed to prove the assessment wrong.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

4320050539.LOF

LETTER OF FINDINGS NUMBER: 05-0539**Underground Storage Tank Fee
For the Years 1991-1995**

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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Underground Storage Tank Fee-Imposition**

Authority: IC §13-23-12-1, IC §13-12-12-4, IC § 6-8.1-1-1, IC § 6-8.1-5-1 (b).

The taxpayer protests the imposition of the underground storage tank fees.

STATEMENT OF FACTS

The taxpayer owns a convenience store with underground storage tanks. The Indiana Department of Environmental Management (IDEM) determined that the fees had not been paid for the years 1991-1995. The Indiana Department of Revenue (department) assessed the additional underground storage tank fees, interest, and penalty. The taxpayer protested the imposition of the fees, interest, and penalty. A hearing was held and this Letter of Findings results.

I. Underground Storage Tank Fee- Imposition**DISCUSSION**

IC §13-23-12-1 imposes a fee on underground storage tanks. Although IDEM administers the state regulation of underground storage tanks, IC §13-12-12-4 mandates that the department collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "any other tax or fee that the department is required to collect or administer." Since the department, pursuant to statute, must collect the underground storage tank fees, these fees constitute listed taxes. All of the laws and regulations concerning the department's collection of listed taxes apply to the department's collection of the underground storage tank fees. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1 (b).

The fee on underground storage tanks is imposed at IC §13-23-12-1 as follows:

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under IC §13-23-1-2; or

(2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;

shall pay to the department of state revenue an annual registration fee.

Pursuant to the imposition statute, the underground storage tank fee is imposed on all underground storage tanks open and available for use on July 1 of the year. The party who owns the property during the tax period is the person liable for payment of the underground storage tank fees.

The taxpayer produced documentation substantiating that he purchased the convenience store property including the underground storage tanks on which the fees were assessed on January 21, 1999. The taxpayer was not the owner of the underground storage tanks during the tax period 1991-1995. Therefore the taxpayer is not responsible for the payment of the underground storage tank fees due for the years 1991-1995.

FINDING

The taxpayer's protest to the assessment of the underground storage tank fees is sustained.

The taxpayer is admonished that if the underground storage tank fees are not paid in full, the taxpayer will not be eligible for full payments from the Excess Liability Trust Fund in the event that there is a gasoline spill or other environmental problem resulting from the taxpayer's underground storage tanks.

DEPARTMENT OF STATE REVENUE

0320060013P.LOF

LETTER OF FINDINGS NUMBER: 06-0013P**Withholding Tax
For the Calendar Year 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

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of an annual withholding tax return for the calendar year 2004. The taxpayer is an Indiana company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the return was late due to local Post Office procedures.

The U.S. Post Office states the mail procedure in the town where the taxpayer is located is as follows: The Post Office does not postmark the local mail when received. Instead, the local Post Office sends the mail to the regional hub for postmarking. This often results in the mail being postmarked one day late.

The taxpayer states the Post Office procedure is the reason why the annual withholding tax return was not received by the Department on the due date.

The Department points out the annual withholding return was fifteen days late. Therefore, the local Post Office procedures would not be a factor in the abatement of penalty.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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

0320060016P.LOF

LETTER OF FINDINGS NUMBER: 06-0016P

Withholding Tax

For the Calendar Year 2004

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ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of W2s for the calendar year 2004. The W2s were received by the Department five months late. The taxpayer is an Indiana company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the W2s were mailed timely.

The Department did not receive the W2s until August 3, 2005, almost five months late. State tax regulations state the burden

Nonrule Policy Documents

of proof is on the taxpayer as to why the W2s were received late by the Department. As the taxpayer has given no explanation, the taxpayer is deemed to be inattentive in the mailing of the W2s.

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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

0320060017P.LOF

LETTER OF FINDINGS NUMBER: 06-0017P

Withholding Tax

For the Calendar Year 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.

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The taxpayer requests the penalty be abated as the W2s were mailed timely.

The Department did not receive the W2s until August 3, 2005, almost five months late. State tax regulations state the burden of proof is on the taxpayer as to why the W2s were received late by the Department. As the taxpayer has given no explanation, the taxpayer is deemed to be inattentive in the mailing of the W2s.

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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

0120060038.LOF

LETTER OF FINDINGS: 06-0038

Individual Income Tax

For the Years 1995 through 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Proposed Assessment.

Authority: IC 6-3-1-3.5(a); IC 6-8.1-5-1(b); 45 IAC 3.1-1-1; I.R.C. § 61; I.R.C. § 61(a); I.R.C. § 62(a); I.R.C. § 7701(a)(26).

Arguing that the proposed assessments of individual income taxes were erroneous because the Department of Revenue relied upon incorrect information received from the Internal Revenue Service.

II. Gross Income – Adjusted Gross Income Tax.

Authority: IC 6-3-1-3.5(a)(3); IC 6-3-1-3.5(a)(4); IC 6-3-4-1.

Taxpayer maintains that he was not required to file state income tax returns during 1995 through 2004 because he did not receive taxable gross income.

STATEMENT OF FACT

Taxpayer is an Indiana resident who did not file state income tax returns for 1995 through 2004. The Department of Revenue (Department) asked that the taxpayer supply additional information. Afterwards, the Department requested copies of taxpayer's federal returns from the IRS. Based on the information contained within the returns, the Department determined that taxpayer should have been paying state income during the ten years and issued proposed assessments.

Taxpayer responded by sending letters to various state officials including officials at the Department. The Department concluded that taxpayer was protesting the assessments and submitted the matter to a hearing officer. Taxpayer was contacted by letter and offered the opportunity to explain his protest during an administrative hearing. Taxpayer declined the opportunity but provided additional written information purporting to establish that the proposed assessments were erroneous. This Letter of Findings results.

DISCUSSION

I. Proposed Assessment.

As a threshold issue, taxpayer challenges any assertion that he has participated in an "abusive tax scheme." This Letter of Findings takes no position on whether taxpayer's failure to pay Indiana income tax for 10 years is the consequence of a "scheme" because the issues raised in taxpayer's protest can be addressed by duly considering the relevant state and federal law.

Taxpayer maintains that the proposed assessments are incorrect because the assessments were based upon federal returns which are "incorrect and disputed." Taxpayer states that he did not receive a payment of "gains, profits, or income" during the course of a "trade or business" as defined in I.R.C. § 7701(a)(26).

The Department is unable to understand the significance of taxpayer's citation to I.R.C. § 7701(a)(26). In full, the IRC section states that, "The term 'trade or business' includes the performance of the functions of a public office." There is nothing in the information which indicates that the Department proposed the assessments because it believed that taxpayer earned money from performing "the functions of a public office." The Department must conclude that taxpayer's reliance on I.R.C. § 7701(a)(26) is ill-considered because the particular code section on which taxpayer relies is irrelevant.

The Indiana code relies upon federal adjusted gross income as the starting point for calculating the individual taxpayer's Indiana adjusted gross income.

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...." IC 6-3-1-3.5(a). Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

Adjusted Gross Income for Individuals Defined. For Individual, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income. Federal "adjusted gross income" is determined by starting with the taxpayer's "gross income" and subtracting the allowable deductions under the federal tax code. I.R.C. § 62(a).

For federal income tax purposes, "gross income" means all income from whatever source and includes compensation for services. I.R.C. § 61. That portion of I.R.C. § 61 relevant to determining taxpayer's "gross income" states as follows:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived including (but not limited to) the following items:

- (1) Compensation for services including fees, commissions, fringe benefits, and similar items;

- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

Taxpayer's "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." IC 6-8.1-5-1(b). Taxpayer has failed to provide a substantive, legal basis upon which to determine that the taxpayer's income during the 10 years at issue fall outside the purview of I.R.C. § 62 or that this income should not be counted as part of the taxpayer's gross income under 45 IAC 3.1-1-2.

Taxpayer vigorously asserts that he did not receive "gains, profits, or income" during the course of "trade or business." In support of this assertion, taxpayer states that he has "provided [his] sworn testimony to refute the erroneous information the IRS used in preparing the returns. [Taxpayer] reaffirms that testimony."

However, taxpayer's argument misses the mark. The Department concluded that – based upon the information contained within taxpayer's federal returns – taxpayer had received "gross income;" taxpayer received income which fell within the definition of "all income from whatever source derived...." I.R.C. § 61(a). The Department then concluded that there were no grounds for deducting any amounts of taxpayer's "gross income" to arrive at a figure called "adjusted gross income" which was subject to Indiana's personal income tax.

The Department has no reason to doubt taxpayer's sincerity or good faith but taxpayer's "sworn testimony" is insufficient to establish that the proposed assessments were incorrect. The "sworn testimony" does not meet taxpayer's burden under IC 6-8.1-5-1(b) of proving that the proposed assessments were incorrect.

FINDING

Taxpayer's protest is denied.

II. Gross Income.

Taxpayer explains that he was not required to file Indiana tax returns under IC 6-3-4-1. Specifically, taxpayer cites to the language found at IC 6-3-4-1 which states that "Returns with respect imposed by [the adjusted gross income act] shall be made by the following: (1) Every resident individual having for the taxable year gross income in an amount greater than the modifications provided under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4)."

In calculating an Indiana taxpayer's adjusted gross income, IC 6-3-1-3.5(a)(3) permits the Indiana taxpayer to "Subtract one thousand (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000)." In calculating *Indiana* adjusted gross income, taxpayer subtracts a standard deduction from the amount of *federal* adjusted gross income.

In calculating an Indiana taxpayer's adjusted gross income, IC 6-3-1-3.5(a)(4) allows the Indiana taxpayer to "subtract one thousand dollars (\$1,000) for.... each of the exemptions provided by Section 151(c) of the Internal Revenue Code... each additional amount allowable under Section 63(f) of the Internal Revenue Code; and... the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer." IC 6-3-1-3.5(a)(4) is a provision allowing the taxpayer to make certain, specific deductions from the *federal* adjusted gross income amount to arrive at *Indiana* adjusted gross income.

Taxpayer states that he has "submitted sworn testimony as to his lawful and legal requirement to make returns. [Taxpayer] reaffirms that testimony." Even considering taxpayer's sworn testimony to the contrary, there is nothing to substantiate taxpayer's claim that he was not required to file Indiana tax returns during 1995 through 2004. Even a cursory review of the information provided by the IRS unmistakably demonstrates that taxpayer was a "resident individual having for the taxable year gross income in an amount greater than the modifications provided under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4)." IC 6-3-4-1. Taxpayer's "sworn testimony" is insufficient to overcome the plain fact that taxpayer received an amount of income which required him to file Indiana income tax returns from 1995 through 2004 and to correctly report his income on those returns.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420060043.LOF

LETTER OF FINDINGS NUMBER: 06-0043**Sales and Use Tax****For Tax Periods December 2004, February 2005, June 2005**

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-Late Payment Penalty and Interest**

Authority: IC § 6-2.5-6-1, IC § 6-8.1-10-2.1(a)(2), IC § 6-8.1-5-1(b), IC § 6-8.1-5-4, IC § 6-8.1-10-1(e).

The taxpayer protests the imposition of the late payment penalty and interest.

STATEMENT OF FACTS

The taxpayer operates an auto repair business. The Indiana Department of Revenue imposed late payment penalties and interest on the taxpayer's sales tax payments for December 2004, February 2005, and June 2005. The taxpayer protested these assessments. A telephone hearing was held. This Letter of Findings results.

I. Sales and Use Tax-Late Payment Penalty and Interest**DISCUSSION**

The taxpayer's sales tax returns are due to the department on the 20th of the month following the tax period. IC § 6-2.5-6-1. The taxpayer's sales tax returns for the months in question all were postmarked and arrived at the department significantly later than the due dates. The department assessed a late payment penalty on the late payments under authority of IC § 6-8.1-10-2.1(a)(2). The taxpayer argued that penalties were improperly imposed because the returns were mailed on time and misdelivered by the post office.

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b). Taxpayers are required to maintain adequate records to allow the department to later determine the taxpayer's proper liability by reviewing those records. IC § 6-8.1-5-4. The taxpayer was unable to produce any documentation to demonstrate that the returns were actually mailed at the proper times.

The taxpayer did not sustain its burden of proving that the late payment penalties were improperly imposed.

The taxpayer also protested the imposition of interest on the late payments. The department does not have the authority to waive the interest imposed on late payments. IC § 6-8.1-10-1(e).

FINDING

The taxpayer's protests to the imposition of the penalties and interest are denied.

DEPARTMENT OF STATE REVENUE

02-20060054P.LOF

LETTER OF FINDINGS NUMBER: 06-0054P**Corporate Income Tax****For the Calendar Year 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1; IC 6-8.1-3-17(c); 45 IAC 15-11-2

The taxpayer protests the penalty assessed for failure to file its corporate income tax return and remit the tax due by the appropriate date.

STATEMENT OF FACTS

The taxpayer filed its corporate income tax return for the calendar year 2004 after the due date. The calculated amount of tax due was remitted with the return. Accordingly, the department assessed a penalty for the taxpayer's failure to timely remit its tax. In the letter of protest, the taxpayer requested that the penalty be abated due to reasonable cause.

I. Tax Administration – Penalty

The return in question was due on April 15, 2005. It was filed on November 10, 2005. The taxpayer asserts that the penalty

should be waived because the return was filed during the period of the Indiana Tax Amnesty Program. IC 6-8.1-3-17(c) states:

The department shall establish an amnesty program for taxpayers having an unpaid tax liability for a listed tax that was due and payable for a tax period ending before July 1, 2004.

Taxes due for calendar year 2004 were not eligible for inclusion in the Amnesty Program. Hence, reasonable cause has not been established.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer has not established that its failure to timely file the return in question and pay the appropriate tax was due to reasonable cause and not due to negligence.

FINDING

The taxpayer’s protest is denied.

DEPARTMENT OF STATE REVENUE

4520060056P.LOF

LETTER OF FINDINGS NUMBER: 06-0056

Gaming Card Excise Tax

Tax Period 2001-2004

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

I. Gaming Card Excise Tax-Imposition

Authority: IC § 6-8.1-5-1(b), IC § 4-32-15-1, IC § 4-3-2-20(a), IC § 4-32-15-2, IC § 6-8.1-5-4, 45 IAC 18-4-2.

The taxpayer protested the imposition of gaming card excise tax.

II. Tax Administration- Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protested the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is a distributor of gaming paraphernalia such as bingo supplies, pull tabs, punchboards, tip boards, ticket masters (dispensers of pull-tabs), and various games of chance. The taxpayer sold its products from a traditional location and over the internet to both qualified and non qualified organizations. After an audit, the Indiana Department of Revenue (department) assessed additional gaming card excise tax, penalty, and interest against the taxpayer for the years 2001-2004. The taxpayer protested this assessment. A hearing was held and this Letter of Findings results.

I. Gaming Card Excise Tax-Imposition

DISCUSSION

Indiana imposes a gaming card excise tax at IC § 4-32-15-1 as follows:

An excise tax is imposed on the distribution of pull tabs, punchboards, and tip boards in the amount of ten percent (10[percent]) of the price paid by the qualified organization that purchases the pull tabs, punchboards, and tip boards.

A “qualified organization” is defined at IC § 4-3-2-20(a) as follows:

(1) a bona fide religious, educational, senior citizens, veterans, or civic organization operating in Indiana that:

(A) operates without profit to the organization’s members;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) has been continuously in existence in Indiana for at least five (5) years or is affiliated with a parent organization that has been in existence in Indiana for at least five (5) years; income (as defined in Section 527 of the Internal Revenue Code).or

The gaming card excise tax is imposed at the time of the distribution of the gaming devices. IC § 4-32-15-2.

Notices of proposed assessments are prima facie evidence that the department’s claim for unpaid taxes is valid. IC § 6-8.1-5-

1(b). The taxpayer has the burden of proving that the department incorrectly imposed the assessment. id. Taxpayers are required to keep adequate books and records so that the department can determine the proper tax owed to the state. IC § 6-8.1-5-4.

The department set out the records that distributors are required to keep for the gaming excise tax at 45 IAC 18-4-2 as follows:

(a) An entity licensed as a manufacturer or distributor must keep records satisfactory to the department. The records must include the following:

(1) Sales invoices, including the following:

(A) Each licensee must use a general sales invoice which is:

(i) numbered consecutively; and

(ii) prepared in at least two (2) parts, one being issued to the customer and the other retained in an invoice file.

(B) Each licensee must use a general sales invoice which sets out the following information:

(i) The date of the sale.

(ii) The customer name and business address.

(iii) A full description of each item sold, including the serial numbers of the products sold.

(iv) The quantity and sales price of each item.

(v) The manufacturer's or distributor's license number.

(vi) The customer's license number.

(vii) The gaming card excise tax due on the sale.

(2) Credit memoranda prepared in the same detail as sales invoices.

(3) A sales journal containing at least the following, by calendar month:

(A) The date of sale.

(B) The invoice number of the sale.

(C) The customer name or account number.

(D) The total amount of the invoice.

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

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

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

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

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

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

(1) Four (4) years after the year in which they are created.

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

The taxpayer's books and records were not in conformity with the law. The books and records were not adequate to allow the department to determine the correct amount of tax. Therefore, the department had no option but to prepare an estimate based upon the best information available. The taxpayer did not produce any documentation to substantiate its contention that the department's estimate was inaccurate.

FINDING

The taxpayer's protest is denied.

II. Tax Administration- Ten Percent Negligence Penalty

DISCUSSION

The taxpayer protested the imposition of the ten percent (10[percent]) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

During the period of the audit, the taxpayer ignored the law and departmental instructions for the payment of gaming card excise tax. The taxpayer's written protest indicated that the taxpayer knew of his duty to collect and remit the gaming card excise tax during the tax period. The taxpayer's inattention to this duty resulted in the tax assessment. This breach of the taxpayer's duty constituted negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320060089.LOF

LETTER OF FINDINGS NUMBER 06-0089**RESPONSIBLE OFFICER****WITHHOLDING TAX****For Tax Period July 2005-October 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE**I. Withholding Tax -Responsible Officer Liability**

Authority: IC § 6-3-4-8(g); IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate withholding taxes against him as a responsible officer.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not remit withholding taxes to Indiana for the tax period July 2005 through October 2005. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Withholding Tax -Responsible Officer Liability**DISCUSSION**

The proposed withholding taxes were assessed against the taxpayer pursuant to IC § 6-3-4-8(g), 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."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The taxpayer did not dispute that he was a party responsible for remittance of corporate trust taxes to the state. He argued that there was no corporate liability for withholding taxes. The taxpayer offered adequate documentation to sustain his burden of proving that the corporation's last payroll was paid on May 20, 2005. Since the corporation did not collect any withholding taxes after May 20, 2005, it had no obligation to remit withholding taxes to the state for tax periods after that date.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0320060092.LOF

LETTER OF FINDINGS NUMBER 06-0092**RESPONSIBLE OFFICER****WITHHOLDING AND SALES TAX****For Tax Period March 2005-December 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUE**I. Withholding and Sales Tax -Responsible Officer Liability**

Authority: IC § 6-2.5-9-3; IC § 6-3-4-8(g); IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate withholding and sales taxes against her as a responsible officer.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not remit sales and withholding taxes to Indiana for the tax period March 2005 through December 2005. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, sales taxes, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was scheduled. The taxpayer failed to appear. This Letter of Findings is based upon the documentation in the file.

I. Withholding and Sales Tax -Responsible Officer Liability**DISCUSSION**

The proposed sales tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC § 6-3-4-8(g), 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."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The taxpayer did not dispute that she was a party responsible for remittance of corporate sales and withholding trust taxes to the state. She argued that there was no corporate liability for withholding or sales taxes. The taxpayer argued that the corporation ceased operations on February 28, 2005. Since the corporation did not collect any withholding or sales trust taxes after February 28, 2005, it had no obligation to remit trust taxes to the state for tax periods after that date. The taxpayer did not provide adequate documentation to substantiate her contention that the corporation ceased operations on February 28, 2005. Therefore, the department properly assessed the sales and withholding trust taxes for March 2005 through December 2005 against the taxpayer.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420060102.LOF

LETTER OF FINDINGS NUMBER: 06-0102

Sales Tax - Responsible Officer

For the Tax Period 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).

The taxpayer protests the assessment of responsible officer liability for unpaid sales taxes.

STATEMENT OF FACTS

The taxpayer was co-owner of a business that did not remit the proper amount of sales taxes during the tax period 2002. The Indiana Department of Revenue assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that business. The taxpayer protested that she was no longer involved with the business after November of 2002. A hearing was held and this Letter of Findings results.

1. Sales 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 taxpayer produced substantial documentation that she had no duty to collect and remit sales taxes to the state for any periods after November of 2002. Therefore, she is not personally responsible for the payment of the corporate sales taxes for any periods after November of 2002.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420060115P.LOF

LETTER OF FINDINGS NUMBER: 06-0115P**Sales and Use Tax****For the Years 2003-2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Tax Administration- Ten Per Cent Negligence Penalty**

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

The taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is in the business of selling and financing used cars. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested the imposition of the ten percent negligence penalty. A telephone hearing was held and this Letter of Findings results.

I. Tax Administration- Ten Percent Negligence Penalty**DISCUSSION**

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer affirmatively established that in this particular situation its failure to pay the proper amount of sales and use tax was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE**Revenue Ruling #2006-02ST****April 20, 2006**

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**Sales/Use Tax – Public Transportation**

Authority: IC 6-2.5-5-27, 45 IAC 2.2-5-61

Taxpayer #1 requests the Department to rule whether taxpayer #2's purchase of vehicle leases, repairs, fuel and other tangible

personal property directly used in Indiana in its provision of transportation services to taxpayer #1 is exempt from sales/use tax.

STATEMENT OF FACTS

Taxpayer #1 is a retailer. It currently sells and delivers its product using company-leased trucks and employee drivers. For business reasons taxpayer #1 is considering a transfer of its transportation operations to a for-profit, wholly-owned limited liability company ("taxpayer #2") that will operate as a for-hire transportation company. All leases currently in the name of taxpayer #1 would be re-executed in taxpayer #2's name. Taxpayer #2 would obtain proper operating authorities with state and federal government to provide transportation services. Taxpayer #2 would charge taxpayer #1 and/or other clients an arms length rate for transportation services and other administrative services, on a periodic basis as agreed to by both parties. Drivers would remain with the taxpayer #1 and be leased to taxpayer #2. Taxpayer #2 will maintain a separate bank account and accounting system.

DISCUSSION

IC 6-2.5-5-27 provides:

"Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property."

45 IAC 2.2-5-61(b), interpreting IC 6-2.5-5-27, states:

Public transportation shall mean and include the movement, transportation or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers, performing public transportation service for compensation by highway, rail, air or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the Public Service Commission of Indiana, the Interstate Commerce Commission, the Aeronautics Commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc, does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

It is clear then, for a taxpayer to qualify for the public transportation exemption the taxpayer must transport non-owned property for consideration ("consideration" is defined as reasonable charges compared with industry standards) and be operating under the proper governmental authority if so required. From the information submitted by taxpayer #1, taxpayer #2 satisfies the above requirements for the public transportation exemption.

RULING

The Department rules taxpayer #2's purchase of vehicle leases, repairs, fuel and other tangible personal property directly used in Indiana in its provision of transportation services to taxpayer #1 is exempt from sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the 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.

Indiana Department of State Revenue

Rules Affected by Volumes 28 and 29

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10 IAC 5	N	05-319	29 IR 1248	*CPH (29 IR 1964)			29 IR 3057	
				25 IAC 2-15-3	R	05-318	29 IR 1596	
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20 IAC 3	RA	05-147	29 IR 1381		25 IAC 2-15-4	A	05-318	29 IR 1593
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TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION				25 IAC 2-15-5	R	05-318	29 IR 1596	
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25 IAC 2-4-1	A	05-318	29 IR 1589				29 IR 3057	
			29 IR 3050	25 IAC 2-17-3	R	05-318	29 IR 1596	
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25 IAC 2-4-3	A	05-318	29 IR 1589				29 IR 3057	
			29 IR 3051	25 IAC 2-17-5	R	05-318	29 IR 1596	
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25 IAC 2-6-3	A	05-318	29 IR 1590				29 IR 3057	
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25 IAC 2-8-1	A	05-318	29 IR 1591				29 IR 3057	
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25 IAC 2-12-1	A	05-318	29 IR 1591		N	05-123	28 IR 3328	29 IR 1202
			29 IR 3053	25 IAC 7	N	06-54	29 IR 2595	
25 IAC 2-13-1	A	05-318	29 IR 1592	TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT				
			29 IR 3053	COMMISSION				
25 IAC 2-13-3	A	05-318	29 IR 1592	28 IAC	N	04-123	28 IR 986	*CPH (28 IR 1498)
			29 IR 3054					
25 IAC 2-13-4	A	05-318	29 IR 1592	TITLE 31 STATE PERSONNEL DEPARTMENT				
			29 IR 3054	31 IAC 1-9-4	A	04-170	27 IR 4049	
25 IAC 2-13-5	A	05-318	29 IR 1592	31 IAC 2-11-4	A	04-170	27 IR 4049	
			29 IR 3054	TITLE 40 STATE ETHICS COMMISSION				
25 IAC 2-14-1	A	05-318	29 IR 1592	40 IAC 2-1-5.5	N	04-198	28 IR 987	*AROC (28 IR 3354)
			29 IR 3054				28 IR 2160	28 IR 3452
25 IAC 2-14-2	A	05-318	29 IR 1593	40 IAC 2-1-6	A	04-198	28 IR 987	*AROC (28 IR 3354)
			29 IR 3055				28 IR 2160	28 IR 3452
25 IAC 2-15-1	A	05-318	29 IR 1593	40 IAC 2-1-7	A	04-198	28 IR 988	*AROC (28 IR 3354)
			29 IR 3055				28 IR 2161	28 IR 3453

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TITLE 42 OFFICE OF THE INSPECTOR GENERAL				65 IAC 4-350	N	04-252	*ER (28 IR 229)
42 IAC	N	05-124	28 IR 3615	*ARR (29 IR 1216)	N	04-284	*ER (28 IR 978)
			29 IR 1205	65 IAC 4-352	R	05-313	*ER (29 IR 829)
TITLE 45 DEPARTMENT OF STATE REVENUE				65 IAC 4-353	N	04-329	*ER (28 IR 1492)
45 IAC 1.3	N	04-125	27 IR 3101	65 IAC 4-354	R	04-249	*ER (28 IR 227)
45 IAC 18	R	04-292	28 IR 1518	65 IAC 4-355	N	05-32	*ER (28 IR 2147)
45 IAC 18-3-7	R	04-255	28 IR 624		R	05-313	*ER (29 IR 829)
45 IAC 18-3-7.1	N	04-255	28 IR 623	*AWR (28 IR 971)	N	05-87	*ER (28 IR 2734)
45 IAC 18-3-8	R	04-255	28 IR 624	*AWR (28 IR 971)	R	04-249	*ER (28 IR 227)
45 IAC 18-3-8.1	N	04-255	28 IR 623	*AWR (28 IR 971)	R	04-249	*ER (28 IR 227)
45 IAC 20	N	04-292	28 IR 1500	*SPE	R	04-249	*ER (28 IR 227)
	N	05-359	29 IR 1596		R	04-249	*ER (28 IR 227)
				65 IAC 4-402	R	04-249	*ER (28 IR 227)
TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE				65 IAC 4-403	R	04-249	*ER (28 IR 227)
50 IAC 4.2-4-3	A	05-252	29 IR 836	*ARR (29 IR 2548)	R	04-249	*ER (28 IR 227)
			29 IR 2597		R	04-249	*ER (28 IR 227)
50 IAC 12	R	05-143	29 IR 1631	*CPH (29 IR 2586)	R	04-249	*ER (28 IR 227)
50 IAC 13	R	05-253	29 IR 584	*AROC (29 IR 3107)	R	04-249	*ER (28 IR 227)
50 IAC 20	N	04-174	27 IR 3603	*AROC (27 IR 3707)	R	04-249	*ER (28 IR 227)
			28 IR 1458	65 IAC 4-437	R	05-313	*ER (29 IR 829)
50 IAC 21	N	02-297	27 IR 4050	28 IR 1452	R	04-249	*ER (28 IR 227)
50 IAC 21-1-3	N	05-142	28 IR 3622	29 IR 2512	R	04-249	*ER (28 IR 227)
50 IAC 21-2-1.5	N	05-142	28 IR 3622	29 IR 2512	R	04-249	*ER (28 IR 227)
50 IAC 21-2-2	A	05-142	28 IR 3622	29 IR 2512	R	04-249	*ER (28 IR 227)
50 IAC 21-2-2.5	N	05-142	28 IR 3622	29 IR 2512	R	04-249	*ER (28 IR 227)
50 IAC 21-2-3	A	05-142	28 IR 3622	29 IR 2512	R	05-313	*ER (29 IR 829)
50 IAC 21-3-3	A	05-142	28 IR 3623	29 IR 2513	R	04-249	*ER (28 IR 227)
50 IAC 21-4-1	A	05-142	28 IR 3623	29 IR 2513	R	04-249	*ER (28 IR 227)
50 IAC 21-4-2	A	05-142	28 IR 3624	29 IR 2514	R	04-249	*ER (28 IR 227)
50 IAC 21-4-3	R	05-142	28 IR 3626	29 IR 2516	R	04-249	*ER (28 IR 227)
50 IAC 21-5-2	A	05-142	28 IR 3624	29 IR 2514	R	04-249	*ER (28 IR 227)
50 IAC 21-6-1	A	05-142	28 IR 3625	29 IR 2515	R	05-313	*ER (29 IR 829)
50 IAC 21-7-1	A	05-142	28 IR 3625	29 IR 2515	R	04-249	*ER (28 IR 227)
50 IAC 21-8-1	A	05-142	28 IR 3625	29 IR 2515	N	05-311	*ER (29 IR 826)
50 IAC 21-9-1	A	05-142	28 IR 3625	29 IR 2515	A	05-36	*ER (28 IR 2153)
50 IAC 21-10-1	A	05-142	28 IR 3626	29 IR 2516	A	05-312	*ER (29 IR 828)
50 IAC 21-11-1	A	05-142	28 IR 3626	29 IR 2516	A	06-75	*ER (29 IR 2208)
50 IAC 22	N	05-144	29 IR 579	*ARR (29 IR 2204)	A	05-352	*ER (29 IR 1563)
			29 IR 2257		A	05-245	*ER (29 IR 41)
50 IAC 23	N	05-143	29 IR 1599	*CPH (29 IR 2586)	A	05-245	*ER (29 IR 42)
					A	05-245	*ER (29 IR 42)
TITLE 65 STATE LOTTERY COMMISSION				65 IAC 5-12-4	A	05-245	*ER (29 IR 43)
65 IAC 1-1-18	A	06-99		65 IAC 5-12-5	A	05-245	*ER (29 IR 43)
			*ER (29 IR 2562)	65 IAC 5-12-6	A	05-245	*ER (29 IR 43)
			*ERR (29 IR 2546)	65 IAC 5-12-9	A	05-245	*ER (29 IR 44)
65 IAC 1-4-5.5	A	04-237		65 IAC 5-12-10	A	05-245	*ER (29 IR 45)
65 IAC 3-3-3	A	06-100		65 IAC 5-12-11	A	05-245	*ER (29 IR 45)
65 IAC 4-2-6	A	05-36		65 IAC 5-12-11.5	A	05-245	*ER (29 IR 46)
	A	05-312		65 IAC 5-12-12	A	05-245	*ER (29 IR 46)
65 IAC 4-3-2	A	06-64		65 IAC 5-12-12.5	A	05-245	*ER (29 IR 47)
65 IAC 4-90	R	04-249		65 IAC 5-13	R	04-249	*ER (28 IR 227)
65 IAC 4-99	R	04-249		65 IAC 5-14	R	04-249	*ER (28 IR 227)
65 IAC 4-205	R	04-249		65 IAC 5-15	R	04-249	*ER (28 IR 227)
65 IAC 4-206	R	05-313		65 IAC 5-16	N	05-28	*ER (28 IR 2142)
65 IAC 4-248	R	04-249		65 IAC 5-16-4	A	05-247	*ER (29 IR 49)
65 IAC 4-272	R	04-249		65 IAC 5-16-5	A	05-247	*ER (29 IR 49)
65 IAC 4-287	R	04-249		65 IAC 5-16-6	A	05-247	*ER (29 IR 49)
65 IAC 4-317	R	04-249		65 IAC 5-16-7	A	05-247	*ER (29 IR 49)
65 IAC 4-319	R	04-249		65 IAC 5-16-8	A	05-247	*ER (29 IR 49)
65 IAC 4-321	R	04-249		65 IAC 5-17	N	05-83	*ER (28 IR 2731)
65 IAC 4-330	R	05-313		65 IAC 5-18	N	05-88	*ER (28 IR 2738)
65 IAC 4-331	R	05-313		65 IAC 5-18-5	A	05-136	*ER (28 IR 2993)
65 IAC 4-332	R	04-249		65 IAC 5-19	N	05-159	*ER (28 IR 3313)
65 IAC 4-339	R	05-313		65 IAC 6-2-6	A	05-36	*ER (28 IR 2154)
65 IAC 4-343	R	04-249					
65 IAC 4-346	R	05-313					
65 IAC 4-348	N	04-241					
	R	05-313					
65 IAC 4-349	N	04-283					
	R	05-313					
TITLE 68 INDIANA GAMING COMMISSION				68 IAC 1-5-1	A	04-103	28 IR 532
				68 IAC 2-3-5	A	04-103	28 IR 533
				68 IAC 2-3-6	A	04-103	28 IR 535

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68 IAC 2-3-9	A	04-103	27 IR 3118	28 IR 535	71 IAC 5-2-1	A	06-78	*ER (29 IR 2211)
68 IAC 2-6-49	A	04-102	27 IR 3109	28 IR 526	71 IAC 5-3-1	A	05-115	*ER (28 IR 2746)
68 IAC 2-7-12	A	04-102	27 IR 3109	28 IR 526	71 IAC 5-3-3	A	06-78	*ER (29 IR 2212)
68 IAC 5-3-2	A	04-102	27 IR 3109	28 IR 526				*ERR (29 IR 2546)
68 IAC 5-3-7	A	04-102	27 IR 3109	28 IR 527	71 IAC 5-3-3.1	N	06-78	*ER (29 IR 2213)
68 IAC 8-1-11	A	04-102	27 IR 3110	28 IR 527		A	06-133	*ER (29 IR 3033)
68 IAC 8-2-29	A	04-102	27 IR 3110	28 IR 527	71 IAC 5.5-1-21	A	06-78	*ER (29 IR 2213)
68 IAC 9-4-8	A	04-102	27 IR 3110	28 IR 527	71 IAC 5.5-2-1	A	06-78	*ER (29 IR 2213)
68 IAC 10-1-5	A	04-102	27 IR 3110	28 IR 527	71 IAC 5.5-3-3	A	06-78	*ER (29 IR 2214)
68 IAC 11-1-8	A	04-102	27 IR 3110	28 IR 528				*ERR (29 IR 2546)
68 IAC 11-3-1	A	04-102	27 IR 3110	28 IR 528	71 IAC 5.5-3-3.1	N	06-78	*ER (29 IR 2215)
68 IAC 12-1-0.5	N	05-199	29 IR 1632			A	06-133	*ER (29 IR 3033)
68 IAC 12-1-1	A	05-199	29 IR 1632		71 IAC 6-1-3	A	05-115	*ER (28 IR 2747)
68 IAC 12-1-1.5	N	05-199	29 IR 1633			A	06-78	*ER (29 IR 2215)
68 IAC 12-1-1.7	N	05-199	29 IR 1633		71 IAC 6-1-4	N	05-115	*ER (28 IR 2748)
68 IAC 12-1-2	A	05-199	29 IR 1633			N	06-78	*ER (29 IR 2217)
68 IAC 12-1-3	A	05-199	29 IR 1634					*ERR (29 IR 2546)
68 IAC 12-1-4	A	05-199	29 IR 1636		71 IAC 7-1-29	A	05-115	*ER (28 IR 2748)
68 IAC 12-1-5	A	05-199	29 IR 1636		71 IAC 7-3-7	A	05-115	*ER (28 IR 2749)
68 IAC 12-1-5.5	N	05-199	29 IR 1637		71 IAC 7-3-13	A	05-115	*ER (28 IR 2750)
68 IAC 12-1-6	A	05-199	29 IR 1638		71 IAC 7-3-18	A	05-115	*ER (28 IR 2750)
68 IAC 12-1-6.5	N	05-199	29 IR 1639		71 IAC 7-3-29	A	05-115	*ER (28 IR 2751)
68 IAC 12-1-7	A	05-199	29 IR 1639		71 IAC 7-3-36	N	05-115	*ER (28 IR 2751)
68 IAC 12-1-8	A	05-199	29 IR 1639		71 IAC 7-5-1	A	05-115	*ER (28 IR 2751)
68 IAC 12-1-9	A	05-199	29 IR 1640		71 IAC 7-5-2	A	05-115	*ER (28 IR 2751)
68 IAC 12-1-10	A	05-199	29 IR 1641		71 IAC 7.5-1-16	N	06-78	*ER (29 IR 2217)
68 IAC 12-1-11	A	05-199	29 IR 1641		71 IAC 7.5-6-3	A	05-27	*ER (28 IR 2154)
68 IAC 12-1-12	A	05-199	29 IR 1641		71 IAC 7.5-8-2	A	06-133	*ER (29 IR 3033)
68 IAC 12-1-13	A	05-199	29 IR 1642		71 IAC 8-1-1	A	06-78	*ER (29 IR 2217)
68 IAC 12-1-14	A	05-199	29 IR 1642					*ERR (29 IR 2546)
68 IAC 12-1-15	A	04-102	27 IR 3111	28 IR 529	71 IAC 8-1-5	A	06-78	*ER (29 IR 2218)
	A	05-199	29 IR 1642		71 IAC 8-5-4	R	06-78	*ER (29 IR 2228)
68 IAC 14-4-8	A	04-102	27 IR 3112	28 IR 529	71 IAC 8-5-5	A	06-78	*ER (29 IR 2219)
68 IAC 14-5-6	A	04-102	27 IR 3112	28 IR 529	71 IAC 8-5-7	R	06-78	*ER (29 IR 2228)
68 IAC 15-1-8	A	04-102	27 IR 3112	28 IR 530	71 IAC 8-5-8	A	06-78	*ER (29 IR 2219)
68 IAC 15-3-3	A	04-179	28 IR 237	28 IR 2014	71 IAC 8-5-9	N	06-78	*ER (29 IR 2219)
68 IAC 15-5-1.5	N	05-107	28 IR 3627	*CPH (29 IR 51)	71 IAC 8-5-10	N	06-78	*ER (29 IR 2220)
				29 IR 1876	71 IAC 8-5-11	N	06-78	*ER (29 IR 2220)
68 IAC 15-5-2	A	04-179	28 IR 237	28 IR 2014	71 IAC 8-5-12	N	06-78	*ER (29 IR 2220)
68 IAC 15-6-2	A	04-179	28 IR 238	28 IR 2015		A	06-133	*ER (29 IR 3034)
68 IAC 15-6-3	A	04-179	28 IR 239	28 IR 2016	71 IAC 8-5-13	N	06-78	*ER (29 IR 2220)
68 IAC 15-6-5	A	04-179	28 IR 240	28 IR 2016	71 IAC 8-6-2	A	06-78	*ER (29 IR 2220)
68 IAC 15-9-4	A	04-102	27 IR 3112	28 IR 530	71 IAC 8-8-1	A	06-78	*ER (29 IR 2221)
68 IAC 15-10-4.1	A	04-102	27 IR 3113	28 IR 530	71 IAC 8-8-2	N	06-78	*ER (29 IR 2222)
68 IAC 15-13-2.5	N	04-102	27 IR 3113	28 IR 531				*ERR (29 IR 2546)
68 IAC 16-1-16	A	04-102	27 IR 3113	28 IR 531	71 IAC 8-9-1	A	06-78	*ER (29 IR 2222)
68 IAC 17-1-5	A	04-102	27 IR 3114	28 IR 531				*ERR (29 IR 2546)
68 IAC 17-2-6	A	04-102	27 IR 3114	28 IR 531	71 IAC 8-10-2	A	06-78	*ER (29 IR 2222)
68 IAC 18-1-2	A	04-102	27 IR 3114	28 IR 531	71 IAC 8.5-1-1	A	06-78	*ER (29 IR 2223)
68 IAC 18-1-6	A	04-102	27 IR 3114	28 IR 532				*ERR (29 IR 2546)
					71 IAC 8.5-1-5	A	06-78	*ER (29 IR 2223)
TITLE 71 INDIANA HORSE RACING COMMISSION								*ERR (29 IR 2546)
71 IAC 1-1-1.5	N	05-246		*ER (29 IR 829)	71 IAC 8.5-4-5	A	06-78	*ER (29 IR 2224)
71 IAC 1-1-75.5	N	05-246		*ER (29 IR 829)	71 IAC 8.5-4-7	A	06-78	*ER (29 IR 2225)
71 IAC 1.5-1-1.5	N	05-246		*ER (29 IR 829)	71 IAC 8.5-4-9	N	06-78	*ER (29 IR 2225)
71 IAC 1.5-1-71.5	N	05-246		*ER (29 IR 829)	71 IAC 8.5-4-10	N	06-78	*ER (29 IR 2225)
71 IAC 3-2-9	A	05-115		*ER (28 IR 2745)	71 IAC 8.5-4-11	N	06-78	*ER (29 IR 2225)
	A	06-24		*ER (29 IR 1955)				*ERR (29 IR 2546)
71 IAC 3-3-11	A	05-115		*ER (28 IR 2746)	71 IAC 8.5-4-12	N	06-78	*ER (29 IR 2225)
71 IAC 3-4-1	A	05-115		*ER (28 IR 2746)		A	06-133	*ER (29 IR 3034)
71 IAC 3-7-3	R	05-115		*ER (28 IR 2751)	71 IAC 8.5-4-13	N	06-78	*ER (29 IR 2225)
71 IAC 3-11-1	A	05-115		*ER (28 IR 2746)	71 IAC 8.5-5-2	A	06-78	*ER (29 IR 2226)
71 IAC 4-4-10	N	06-78		*ER (29 IR 2210)				*ERR (29 IR 2546)
	A	06-133		*ER (29 IR 3032)	71 IAC 8.5-7-1	A	06-78	*ER (29 IR 2227)
71 IAC 4-4-11	N	06-78		*ER (29 IR 2210)	71 IAC 8.5-7-2	N	06-78	*ER (29 IR 2227)
71 IAC 4.5-4-10	N	06-78		*ER (29 IR 2210)				*ERR (29 IR 2546)
	A	06-133		*ER (29 IR 3033)	71 IAC 8.5-10-2	A	06-78	*ER (29 IR 2227)
71 IAC 4.5-4-11	N	06-78		*ER (29 IR 2210)	71 IAC 8.5-13	N	05-221	*ER (28 IR 3599)
71 IAC 5-1-21	A	06-78		*ER (29 IR 2211)	71 IAC 9-1-14	A	05-246	*ER (29 IR 830)

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71 IAC 12-2-15	A	06-71	*ER (29 IR 2208) *ERR (29 IR 2546)	135 IAC 2-7-16	A	05-257	29 IR 610 29 IR 1716	*CPH (29 IR 1965) 29 IR 2939
71 IAC 13.5-3-3	A	05-115	*ER (28 IR 2751)	135 IAC 2-7-17	A	05-257	29 IR 610 29 IR 1717	*CPH (29 IR 1965) 29 IR 2940
71 IAC 14.5-1-3	R	06-133	*ER (29 IR 3035)	135 IAC 2-7-18	A	05-257	29 IR 610 29 IR 1717	*CPH (29 IR 1965) 29 IR 2940
71 IAC 14.5-3-1	A	06-133	*ER (29 IR 3034)	135 IAC 2-7-19	A	05-257	29 IR 611 29 IR 1717	*CPH (29 IR 1965) 29 IR 2940
71 IAC 14.5-5-1	A	06-133	*ER (29 IR 3035)	135 IAC 2-7-20	A	05-257	29 IR 611 29 IR 1717	*CPH (29 IR 1965) 29 IR 2940
TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION				135 IAC 2-7-21	A	05-257	29 IR 611 29 IR 1718	*CPH (29 IR 1965) 29 IR 2941
105 IAC 13	N	05-161	29 IR 59 *CPH (29 IR 832) *CPH (29 IR 1243)	135 IAC 2-7-22	A	05-257	29 IR 612 29 IR 1718	*CPH (29 IR 1965) 29 IR 2941
105 IAC 14	N	05-258	29 IR 588 29 IR 1646 *CPH (29 IR 1964) 29 IR 2864	135 IAC 2-7-23	A	05-257	29 IR 612 29 IR 1718	*CPH (29 IR 1965) 29 IR 2941
TITLE 135 INDIANA FINANCE AUTHORITY				135 IAC 2-7-24	A	05-257	29 IR 612 29 IR 1719	*CPH (29 IR 1965) 29 IR 2942
135 IAC 2-1-1	A	05-257	29 IR 598 29 IR 1680 *CPH (29 IR 1965) 29 IR 2899	135 IAC 2-8-1	A	05-257	29 IR 612 29 IR 1719	*CPH (29 IR 1965) 29 IR 2942
135 IAC 2-2-1	A	05-257	29 IR 600 29 IR 1682 *CPH (29 IR 1965) 29 IR 2901	135 IAC 2-8-3	A	05-257	29 IR 612 29 IR 1719	*CPH (29 IR 1965) 29 IR 2942
135 IAC 2-2-3	A	05-257	29 IR 601 29 IR 1683 *CPH (29 IR 1965) 29 IR 2901	135 IAC 2-8-5	A	05-257	29 IR 613 29 IR 1719	*CPH (29 IR 1965) 29 IR 2942
135 IAC 2-2-5	A	05-257	29 IR 601 29 IR 1683 *CPH (29 IR 1965) 29 IR 2901	135 IAC 2-8-7	A	05-257	29 IR 613 29 IR 1719	*CPH (29 IR 1965) 29 IR 2942
135 IAC 2-2-10	A	05-257	29 IR 601 29 IR 1683 *CPH (29 IR 1965) 29 IR 2902	135 IAC 2-8-11	A	05-257	29 IR 613 29 IR 1720	*CPH (29 IR 1965) 29 IR 2943
135 IAC 2-2-12	A	05-257	29 IR 601 29 IR 1683 *CPH (29 IR 1965) 29 IR 2902	135 IAC 2-10-1	R	05-257	29 IR 614 29 IR 1720	*CPH (29 IR 1965) 29 IR 2943
135 IAC 2-3-1	A	05-257	29 IR 602 29 IR 1684 *CPH (29 IR 1965) 29 IR 2902	135 IAC 2-10-2	A	05-257	29 IR 613 29 IR 1720	*CPH (29 IR 1965) 29 IR 2943
135 IAC 2-3-2	A	05-257	29 IR 602 29 IR 1684 *CPH (29 IR 1965) 29 IR 2902	TITLE 140 BUREAU OF MOTOR VEHICLES				
135 IAC 2-4-1	A	05-257	29 IR 602 29 IR 1684 *CPH (29 IR 1965) 29 IR 2903	140 IAC 3.5-2-15	A	06-126	29 IR 3058	
135 IAC 2-4-2	A	05-257	29 IR 602 29 IR 1684 *CPH (29 IR 1965) 29 IR 2903	140 IAC 4-1-1	A	06-126	29 IR 3059	
135 IAC 2-4-4	A	05-257	29 IR 603 29 IR 1685 *CPH (29 IR 1965) 29 IR 2903	140 IAC 4-1-2	A	06-126	29 IR 3060	
135 IAC 2-5-1	A	05-257	29 IR 603 29 IR 1685 *CPH (29 IR 1965) 29 IR 2903	140 IAC 4-1-3	A	06-126	29 IR 3061	
135 IAC 2-5-2	R	05-257	29 IR 614 29 IR 1720 *CPH (29 IR 1965) 29 IR 2943	140 IAC 4-1-4	A	06-126	29 IR 3062	
135 IAC 2-5-2.1	N	05-257	29 IR 603 29 IR 1685 *CPH (29 IR 1965) 29 IR 2904	140 IAC 4-1-5	A	06-126	29 IR 3062	
135 IAC 2-5-3	A	05-257	29 IR 607 29 IR 1714 *CPH (29 IR 1965) 29 IR 2937	140 IAC 4-1-6	A	06-126	29 IR 3063	
135 IAC 2-5-5	A	05-257	29 IR 607 29 IR 1714 *CPH (29 IR 1965) 29 IR 2937	140 IAC 4-1-7	A	06-126	29 IR 3063	
135 IAC 2-7-1	A	05-257	29 IR 608 29 IR 1714 *CPH (29 IR 1965) 29 IR 2937	140 IAC 4-1-8	A	06-126	29 IR 3063	
135 IAC 2-7-2	A	05-257	29 IR 608 29 IR 1714 *CPH (29 IR 1965) 29 IR 2937	140 IAC 4-1-9	A	06-126	29 IR 3064	
135 IAC 2-7-3	A	05-257	29 IR 608 29 IR 1714 *CPH (29 IR 1965) 29 IR 2937	140 IAC 4-1-10	A	06-126	29 IR 3064	
135 IAC 2-7-5	A	05-257	29 IR 608 29 IR 1715 *CPH (29 IR 1965) 29 IR 2938	140 IAC 4-1-11	A	06-126	29 IR 3064	
135 IAC 2-7-6	A	05-257	29 IR 609 29 IR 1715 *CPH (29 IR 1965) 29 IR 2938	140 IAC 4-1-12	A	06-126	29 IR 3065	
135 IAC 2-7-7	A	05-257	29 IR 609 29 IR 1715 *CPH (29 IR 1965) 29 IR 2938	140 IAC 4-1-13	A	06-126	29 IR 3065	
135 IAC 2-7-8	A	05-257	29 IR 609 29 IR 1715 *CPH (29 IR 1965) 29 IR 2938	140 IAC 4-1-14	A	06-126	29 IR 3067	
135 IAC 2-7-11	A	05-257	29 IR 609 29 IR 1716 *CPH (29 IR 1965) 29 IR 2939	140 IAC 4-4	RA	04-162	28 IR 323	28 IR 1315
135 IAC 2-7-12	A	05-257	29 IR 609 29 IR 1716 *CPH (29 IR 1965) 29 IR 2939	140 IAC 7-4	N	05-237	29 IR 64	29 IR 1534
135 IAC 2-7-13	A	05-257	29 IR 610 29 IR 1716 *CPH (29 IR 1965) 29 IR 2939	140 IAC 8-4	RA	04-162	28 IR 323	28 IR 1315
135 IAC 2-7-14	A	05-257	29 IR 610 29 IR 1716 *CPH (29 IR 1965) 29 IR 2939	TITLE 170 INDIANA UTILITY REGULATORY COMMISSION				
135 IAC 2-7-15	A	05-257	29 IR 610 29 IR 1716 *CPH (29 IR 1965) 29 IR 2939	170 IAC 1-1.1	RA	06-49		29 IR 2670
				170 IAC 1-4	RA	04-163	27 IR 4140	*CPH (28 IR 620) 28 IR 1315
				170 IAC 1-5	RA	04-163	27 IR 4140	*CPH (28 IR 620) 28 IR 1315
				170 IAC 4-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
				170 IAC 4-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
				170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
				170 IAC 4-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
				170 IAC 4-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)

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170 IAC 4-1-23	A	04-68	27 IR 2765	28 IR 789	240 IAC 1-5-5	A	05-287	29 IR 839	
170 IAC 4-1.2	N	04-144	27 IR 4057	*CPH (28 IR 620)				29 IR 1721	29 IR 2178
				*AWR (28 IR 2730)	240 IAC 8	RA	04-164	27 IR 4140	28 IR 677
170 IAC 4-4.1-7	A	05-130	28 IR 3331	29 IR 2169	TITLE 260 STATE DEPARTMENT OF TOXICOLOGY				
170 IAC 4-4.2	N	03-305	27 IR 2312	28 IR 786	260 IAC 1.1-1-1	RA	05-152		29 IR 896
170 IAC 4-4.2-5	A	05-130	28 IR 3332	29 IR 2169	260 IAC 1.1-2-2	RA	05-152		29 IR 896
170 IAC 4-4.3	N	05-130	28 IR 3333	29 IR 2170	TITLE 280 DIVISION OF PREPAREDNESS AND TRAINING				
170 IAC 5-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)	280 IAC 1-1	RA	05-300		29 IR 1381
				*AWR (28 IR 2730)	280 IAC 1-2	RA	05-300		29 IR 1381
	A	05-100	28 IR 3627	29 IR 2164	280 IAC 1-3	RA	05-300		29 IR 1381
170 IAC 5-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)	280 IAC 1-4	RA	05-300		29 IR 1381
				*AWR (28 IR 2730)	TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS				
	A	05-100	28 IR 3630	29 IR 2166	305 IAC 1-1-2	A	06-1	29 IR 3070	
170 IAC 5-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620)	305 IAC 1-1-3	N	06-1	29 IR 3070	
				*AWR (28 IR 2730)	305 IAC 1-2	RA	05-60	28 IR 3052	29 IR 690
170 IAC 5-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620)	305 IAC 1-2-6	A	03-212	27 IR 216	*ARR (28 IR 215)
170 IAC 5-1-17	R	04-144	27 IR 4095	*AWR (28 IR 2730)					28 IR 12
170 IAC 5-1.2	N	04-144	27 IR 4065	*CPH (28 IR 620)	305 IAC 1-3-4	A	03-212	27 IR 216	*ARR (28 IR 215)
170 IAC 6-1-15	R	04-144	27 IR 4095	*AWR (28 IR 2730)					28 IR 12
170 IAC 6-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)	305 IAC 1-3-5	A	06-1	29 IR 3070	
170 IAC 6-1-17	R	04-144	27 IR 4095	*AWR (28 IR 2730)	305 IAC 1-3-5.3	N	06-1	29 IR 3070	
				*CPH (28 IR 620)	305 IAC 1-3-5.5	N	06-1	29 IR 3071	
170 IAC 6-1.1	N	04-268	28 IR 1518	*AWR (28 IR 2730)	305 IAC 1-3-6	A	06-1	29 IR 3071	
				*CPH (28 IR 1710)	305 IAC 1-4-1	A	03-212	27 IR 217	*ARR (28 IR 215)
170 IAC 6-1.2	N	04-144	27 IR 4073	29 IR 456					28 IR 12
				*CPH (28 IR 620)	305 IAC 1-4-2	A	03-212	27 IR 217	*ARR (28 IR 215)
170 IAC 7-1.3-2	A	04-144	27 IR 4080	*AWR (28 IR 2730)					28 IR 13
				*CPH (28 IR 620)	305 IAC 1-5	N	03-212	27 IR 217	*ARR (28 IR 215)
170 IAC 7-1.3-3	A	04-144	27 IR 4081	*AWR (28 IR 2730)					28 IR 13
				*CPH (28 IR 620)	TITLE 312 NATURAL RESOURCES COMMISSION				
170 IAC 7-1.3-8	A	04-144	27 IR 4083	*AWR (28 IR 2730)	312 IAC 2-4-6	A	04-215	28 IR 626	28 IR 2348
170 IAC 7-1.3-9	A	04-144	27 IR 4084	*CPH (28 IR 620)	312 IAC 2-4-12	A	04-67	27 IR 3604	28 IR 1460
				*AWR (28 IR 2730)	312 IAC 2-4-14	N	04-215	28 IR 626	28 IR 2348
170 IAC 7-1.3-10	A	04-144	27 IR 4085	*CPH (28 IR 620)	312 IAC 3-1-7	A	04-263	28 IR 1203	28 IR 2660
				*AWR (28 IR 2730)	312 IAC 3-1-9	A	05-57	28 IR 3003	*DAG (29 IR 1384)
170 IAC 7-6	RA	05-22	28 IR 2458	29 IR 144	312 IAC 4-6-6	A	04-208	28 IR 625	*ARR (28 IR 2140)
170 IAC 7-6-1	A	06-45	29 IR 2599		312 IAC 5-6-5	A	04-84	28 IR 240	28 IR 1680
170 IAC 7-6-2	A	06-45	29 IR 2599		312 IAC 5-6-5.5	N	04-210	28 IR 989	28 IR 2944
170 IAC 7-6-3	A	06-45	29 IR 2600		312 IAC 5-7-5	A	05-263	29 IR 839	29 IR 2945
170 IAC 7-6-4	N	06-45	29 IR 2600		312 IAC 5-9-5	N	05-324	29 IR 1974	
170 IAC 7-6-5	N	06-45	29 IR 2601		312 IAC 5-14-1	A	04-155	27 IR 4100	28 IR 1461
170 IAC 7-6-6	N	06-45	29 IR 2601		312 IAC 5-14-2	A	04-155	27 IR 4100	28 IR 1461
170 IAC 7-7	RA	06-49		29 IR 2670	312 IAC 5-14-4	A	04-155	27 IR 4101	28 IR 1462
170 IAC 8.5-2-1	A	04-144	27 IR 4086	*CPH (28 IR 620)	312 IAC 5-14-5	R	04-155	27 IR 4109	28 IR 1470
				*AWR (28 IR 2730)	312 IAC 5-14-5.1	N	04-155	27 IR 4101	28 IR 1462
170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620)	312 IAC 5-14-6	R	04-155	27 IR 4109	28 IR 1470
				*AWR (28 IR 2730)	312 IAC 5-14-6.1	N	04-155	27 IR 4102	28 IR 1463
170 IAC 8.5-2-4	A	04-144	27 IR 4089	*CPH (28 IR 620)	312 IAC 5-14-7	A	04-155	27 IR 4102	28 IR 1463
				*AWR (28 IR 2730)	312 IAC 5-14-8	A	04-155	27 IR 4102	28 IR 1464
170 IAC 8.5-2-5	A	04-144	27 IR 4092	*CPH (28 IR 620)	312 IAC 5-14-9	A	04-155	27 IR 4103	28 IR 1464
				*AWR (28 IR 2730)	312 IAC 5-14-11	A	04-155	27 IR 4103	28 IR 1464
TITLE 203 VICTIM SERVICES DIVISION					312 IAC 5-14-15	A	04-155	27 IR 4103	28 IR 1465
203 IAC	N	04-63	27 IR 2526	28 IR 6	312 IAC 5-14-16	A	04-155	27 IR 4104	28 IR 1465
TITLE 207 CORONERS TRAINING BOARD					312 IAC 5-14-17	A	04-155	27 IR 4104	28 IR 1465
207 IAC 2	N	04-231	28 IR 624	*ARR (28 IR 2392)	312 IAC 5-14-18	A	04-155	27 IR 4105	28 IR 1466
TITLE 240 STATE POLICE DEPARTMENT					312 IAC 5-14-19	A	04-155	27 IR 4105	28 IR 1467
240 IAC 1-4-3	A	05-287	29 IR 838		312 IAC 5-14-20	A	04-155	27 IR 4106	28 IR 1467
			29 IR 1721	29 IR 2178	312 IAC 5-14-21	A	04-155	27 IR 4106	28 IR 1467
240 IAC 1-4-24.1	A	05-287	29 IR 838		312 IAC 5-14-22	A	04-155	27 IR 4106	28 IR 1468
			29 IR 1721	29 IR 2178	312 IAC 5-14-24	A	04-155	27 IR 4107	28 IR 1468
					312 IAC 5-14-25	A	04-155	27 IR 4108	28 IR 1469
					312 IAC 5-14-26	R	04-155	27 IR 4109	28 IR 1470
					312 IAC 5-14-27	N	04-155	27 IR 4109	28 IR 1470
					312 IAC 6.2	N	04-66	27 IR 3119	28 IR 1459

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312 IAC 6.5	N	04-3	27 IR 2767	28 IR 15	312 IAC 9-6-9	A	03-311	27 IR 1957	28 IR 547
312 IAC 8	RA	03-315	27 IR 2339	28 IR 1315	312 IAC 9-7-2	A	03-311	27 IR 1957	28 IR 547
312 IAC 8-1-4	A	05-18	28 IR 2412	29 IR 461	312 IAC 9-7-6	A	03-311	27 IR 1959	28 IR 549
	A	06-9	29 IR 2269		312 IAC 9-7-13	A	03-311	27 IR 1960	28 IR 550
312 IAC 8-2-3	A	05-18	28 IR 2413	29 IR 461	312 IAC 9-10-5	A	05-214	29 IR 626	*CPH (29 IR 1581)
	A	06-9	29 IR 2270						*ARR (29 IR 3028)
312 IAC 8-2-8	A	05-18	28 IR 2414	29 IR 463	312 IAC 9-10-7	A	06-9	29 IR 2274	
	A	05-344	29 IR 1975		312 IAC 9-10-9	A	03-311	27 IR 1960	28 IR 550
312 IAC 8-2-9	A	06-9	29 IR 2272		312 IAC 9-10-9.5	N	03-311	27 IR 1961	28 IR 551
312 IAC 9-1-9.5	N	03-311	27 IR 1946	28 IR 536	312 IAC 9-10-10	A	03-311	27 IR 1962	28 IR 552
312 IAC 9-1-11.5	N	03-311	27 IR 1946	28 IR 536	312 IAC 9-10-11	A	05-214	29 IR 626	*CPH (29 IR 1581)
312 IAC 9-2-1	A	05-214	29 IR 618	*CPH (29 IR 1581)					*ARR (29 IR 3028)
				*ARR (29 IR 3028)	312 IAC 9-10-12	A	05-214	29 IR 628	*CPH (29 IR 1581)
312 IAC 9-2-14	N	04-253	28 IR 1522						*ARR (29 IR 3028)
	N	05-214	29 IR 618	*CPH (29 IR 1581)	312 IAC 9-10-13.5	N	03-311	27 IR 1963	28 IR 553
				*ARR (29 IR 3028)	312 IAC 9-10-17	A	03-311	27 IR 1964	28 IR 554
312 IAC 9-2-15	N	04-253	28 IR 1522		312 IAC 9-10-21	N	05-261	29 IR 1728	
312 IAC 9-3-2	A	03-311	27 IR 1946	28 IR 536	312 IAC 9-11-1	A	03-311	27 IR 1964	28 IR 554
	A	05-214	29 IR 619	*CPH (29 IR 1581)	312 IAC 9-11-2	A	03-311	27 IR 1965	28 IR 555
				*ARR (29 IR 3028)	312 IAC 9-11-13	A	05-214	29 IR 628	*CPH (29 IR 1581)
	A	05-261	29 IR 1726						*ARR (29 IR 3028)
312 IAC 9-3-2.5	N	05-262	29 IR 1250	29 IR 2943	312 IAC 9-11-14	A	03-311	27 IR 1965	28 IR 555
312 IAC 9-3-3	A	03-311	27 IR 1947	28 IR 538	312 IAC 10-3-6	A	06-9	29 IR 2274	
	A	05-214	29 IR 620	*CPH (29 IR 1581)	312 IAC 10-4-4	A	06-9	29 IR 2275	
				*ARR (29 IR 3028)	312 IAC 11	RA	05-1	28 IR 2203	28 IR 3661
312 IAC 9-3-4	A	03-311	27 IR 1948	28 IR 538	312 IAC 11-2-2	A	05-38	28 IR 2767	29 IR 464
	A	04-253	28 IR 1523	28 IR 2945	312 IAC 11-2-4	A	06-9	29 IR 2275	
312 IAC 9-3-5	A	04-253	28 IR 1523	28 IR 2945	312 IAC 11-2-5	A	04-157	28 IR 1521	28 IR 2660
312 IAC 9-3-10	A	03-311	27 IR 1949	28 IR 539	312 IAC 11-2-7	A	05-38	28 IR 2767	29 IR 464
312 IAC 9-3-11	A	03-311	27 IR 1949	28 IR 539	312 IAC 11-2-11	A	05-38	28 IR 2768	29 IR 464
312 IAC 9-3-12	A	03-311	27 IR 1949	28 IR 539		A	06-9	29 IR 2275	
	A	05-214	29 IR 621	*CPH (29 IR 1581)	312 IAC 11-2-11.5	N	04-94	27 IR 4095	28 IR 1681
				*ARR (29 IR 3028)	312 IAC 11-2-11.8	N	05-38	28 IR 2768	29 IR 464
312 IAC 9-3-13	A	03-311	27 IR 1950	28 IR 540	312 IAC 11-2-14.5	N	05-38	28 IR 2768	29 IR 464
312 IAC 9-3-14	A	03-311	27 IR 1950	28 IR 540		A	06-9	29 IR 2275	
312 IAC 9-3-15	A	03-311	27 IR 1950	28 IR 540	312 IAC 11-2-20	A	05-38	28 IR 2768	29 IR 465
312 IAC 9-3-17	A	03-311	27 IR 1950	28 IR 540	312 IAC 11-2-21	A	06-9	29 IR 2275	
312 IAC 9-3-18.1	N	05-214	29 IR 621	*CPH (29 IR 1581)	312 IAC 11-2-24	A	05-38	28 IR 2768	29 IR 465
				*ARR (29 IR 3028)		A	06-9	29 IR 2275	
312 IAC 9-3-18.2	N	05-214	29 IR 621	*CPH (29 IR 1581)	312 IAC 11-2-25.2	N	05-38	28 IR 2768	29 IR 465
				*ARR (29 IR 3028)	312 IAC 11-2-27	A	06-9	29 IR 2276	
312 IAC 9-3-18.3	N	05-214	29 IR 621	*CPH (29 IR 1581)	312 IAC 11-2-27.5	N	05-38	28 IR 2769	29 IR 465
				*ARR (29 IR 3028)	312 IAC 11-2-28	R	06-9	29 IR 2278	
312 IAC 9-3-18.4	N	05-214	29 IR 621	*CPH (29 IR 1581)	312 IAC 11-3-1	A	04-94	27 IR 4095	28 IR 1681
				*ARR (29 IR 3028)	312 IAC 11-3-3	A	05-38	28 IR 2769	29 IR 465
312 IAC 9-3-18.5	N	05-261	29 IR 1727		312 IAC 11-4-2	A	05-38	28 IR 2770	29 IR 466
312 IAC 9-3-19	A	05-214	29 IR 622	*CPH (29 IR 1581)		A	06-9	29 IR 2276	
				*ARR (29 IR 3028)	312 IAC 11-4-3	A	05-38	28 IR 2770	29 IR 467
312 IAC 9-4-2	A	05-214	29 IR 622	*CPH (29 IR 1581)		A	06-9	29 IR 2276	
				*ARR (29 IR 3028)	312 IAC 11-4-4	A	05-38	28 IR 2771	29 IR 467
312 IAC 9-4-5.5	N	05-214	29 IR 622	*CPH (29 IR 1581)		A	06-9	29 IR 2277	
				*ARR (29 IR 3028)	312 IAC 11-4-5	A	06-9	29 IR 2278	
312 IAC 9-4-7	R	03-311	27 IR 1966	28 IR 556	312 IAC 11-4-6	A	06-9	29 IR 2278	
312 IAC 9-4-10	A	03-311	27 IR 1951		312 IAC 11-5-2	A	05-274	29 IR 1251	*ARR (29 IR 3028)
312 IAC 9-4-11	A	03-311	27 IR 1951	28 IR 541	312 IAC 11-5-3	N	05-38	28 IR 2771	29 IR 468
	A	04-253	28 IR 1524	28 IR 2946	312 IAC 12	RA	05-1	28 IR 2203	28 IR 3661
	A	05-214	29 IR 623	*CPH (29 IR 1581)	312 IAC 13	RA	05-1	28 IR 2203	28 IR 3661
				*ARR (29 IR 3028)	312 IAC 13-8-1	A	05-341	29 IR 2265	
312 IAC 9-4-14	A	03-311	27 IR 1952	28 IR 542	312 IAC 13-8-3	A	05-341	29 IR 2265	
312 IAC 9-5-4	A	03-311	27 IR 1953	28 IR 542	312 IAC 13-10-2	A	05-341	29 IR 2267	
	A	04-253	28 IR 1526	28 IR 2947	312 IAC 16	RA	03-315	27 IR 2339	28 IR 1315
312 IAC 9-5-6	A	03-311	27 IR 1953	28 IR 543	312 IAC 16-1-1	A	05-288	29 IR 1730	
312 IAC 9-5-7	A	03-311	27 IR 1953	28 IR 543	312 IAC 16-1-2.5	N	05-288	29 IR 1730	
	A	04-253	28 IR 1526	28 IR 2948	312 IAC 16-1-28.3	N	05-288	29 IR 1730	
	A	06-9	29 IR 2272		312 IAC 16-1-31.2	N	05-288	29 IR 1730	
312 IAC 9-5-9	A	03-311	27 IR 1955	28 IR 545	312 IAC 16-1-32.5	N	05-288	29 IR 1730	
	A	04-253	28 IR 1528	28 IR 2950	312 IAC 16-1-32.6	N	05-288	29 IR 1730	
312 IAC 9-5-11	N	03-311	27 IR 1956	28 IR 546	312 IAC 16-1-39.6	N	05-288	29 IR 1730	
	A	05-214	29 IR 624	*CPH (29 IR 1581)	312 IAC 16-1-39.8	N	05-288	29 IR 1730	
				*ARR (29 IR 3028)					

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312 IAC 16-1-52	N	05-288	29 IR 1731		315 IAC 1-3-10	A	04-70	28 IR 995	*CPH (28 IR 1498)
312 IAC 16-3-2	A	04-121	27 IR 4097	28 IR 1682					*SPE
312 IAC 16-3-8	A	04-121	27 IR 4099	28 IR 1684		A	05-73	28 IR 2778	29 IR 475
312 IAC 16-5-4	A	05-248	29 IR 1722		315 IAC 1-3-12	A	04-70	28 IR 996	*CPH (28 IR 1498)
312 IAC 16-5-5	A	05-248	29 IR 1723						*SPE
312 IAC 16-5-14	A	04-23	27 IR 2532	28 IR 556		A	05-73	28 IR 2778	29 IR 475
312 IAC 16-5-19	A	05-14	28 IR 2410	29 IR 458	315 IAC 1-3-14	A	04-70	28 IR 996	*CPH (28 IR 1498)
312 IAC 17	RA	03-315	27 IR 2339	28 IR 1315					*SPE
312 IAC 17-3	R	05-99	28 IR 3632	29 IR 1876		A	05-73	28 IR 2779	29 IR 475
312 IAC 17-3-1	A	04-23	27 IR 2532	28 IR 557	315 IAC 1-3-15	N	04-70	28 IR 996	*CPH (28 IR 1498)
312 IAC 17-3-2	A	04-23	27 IR 2532	28 IR 557					*SPE
312 IAC 17-3-3	A	04-23	27 IR 2532	28 IR 557		N	05-73	28 IR 2779	29 IR 476
312 IAC 17-3-4	A	04-23	27 IR 2533	28 IR 558	TITLE 318 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT				
312 IAC 17-3-6	A	04-23	27 IR 2534	28 IR 558	318 IAC	N	06-125	29 IR 3073	
312 IAC 17-3-8	A	04-23	27 IR 2534	28 IR 558	TITLE 326 AIR POLLUTION CONTROL BOARD				
312 IAC 17-3-9	A	04-23	27 IR 2534	28 IR 558	326 IAC 1-1-3	A	02-337	26 IR 1997	*ARR (27 IR 2500)
312 IAC 18-3-12	A	04-270	28 IR 1203	*GRAT (28 IR 3053)					*CPH (27 IR 2521)
				28 IR 2951					28 IR 17
	A	05-213	29 IR 614	*ARR (29 IR 2204)		A	04-299	28 IR 1815	*CPH (28 IR 2406)
			29 IR 2263						29 IR 795
312 IAC 18-3-18	N	04-177	28 IR 1201	28 IR 2942					29 IR 2517
312 IAC 18-3-19	N	04-127	28 IR 1521	28 IR 2942	326 IAC 1-1-3.5	A	05-230	29 IR 632	*ARR (27 IR 2500)
312 IAC 19	RA	03-315	27 IR 2339	28 IR 1315		A	02-337	26 IR 1997	*CPH (27 IR 2521)
312 IAC 23	RA	05-1	28 IR 2203	28 IR 3661					28 IR 18
312 IAC 25-1-57	A	06-68	29 IR 2606			A	04-299	28 IR 1815	*CPH (28 IR 2406)
312 IAC 25-4-87	A	06-68	29 IR 2606						29 IR 795
312 IAC 25-4-102				*ERR (28 IR 214)	326 IAC 1-1-6	N	04-180	28 IR 248	*GRAT (28 IR 2205)
	A	06-67	29 IR 2602						28 IR 2046
312 IAC 25-4-114				*ERR (28 IR 214)	326 IAC 1-2-33.5	A	05-79	28 IR 3005	29 IR 795
312 IAC 25-5-16				*ERR (28 IR 214)		A	06-19	29 IR 2288	
	A	06-68	29 IR 2607		326 IAC 1-2-48	A	05-79	28 IR 3005	29 IR 796
312 IAC 25-6-20				*ERR (28 IR 214)	326 IAC 1-2-52	A	03-228	27 IR 3120	28 IR 1471
	A	06-68	29 IR 2609		326 IAC 1-2-52.2	N	03-228	27 IR 3121	28 IR 1471
312 IAC 25-6-66	A	06-68	29 IR 2612		326 IAC 1-2-52.4	N	03-228	27 IR 3121	28 IR 1471
312 IAC 25-6-143	A	06-67	29 IR 2604		326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)
312 IAC 25-7-1				*ERR (28 IR 214)					*CPH (27 IR 2521)
	A	06-68	29 IR 2613						28 IR 18
312 IAC 26	RA	03-315	27 IR 2339	28 IR 1315	326 IAC 1-2-82.5	N	03-228	27 IR 3121	28 IR 1471
TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION					326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500)
315 IAC 1	RA	04-71	27 IR 2879	28 IR 323					*CPH (27 IR 2521)
315 IAC 1-2-1	A	04-70	28 IR 990	*CPH (28 IR 1498)					28 IR 18
				*SPE		A	05-79	28 IR 3006	29 IR 796
	A	05-73	28 IR 2772	29 IR 469	326 IAC 1-3-4	A	03-228	27 IR 3121	28 IR 1471
315 IAC 1-3-1	A	04-70	28 IR 991	*CPH (28 IR 1498)		A	05-235	29 IR 633	29 IR 2179
				*SPE	326 IAC 1-4-1	A	04-148	27 IR 3606	28 IR 1182
	A	05-73	28 IR 2773	29 IR 469		A	06-18	29 IR 2287	
315 IAC 1-3-2	A	04-70	28 IR 991	*CPH (28 IR 1498)	326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*SPE					*CPH (27 IR 2521)
315 IAC 1-3-2.1	A	05-73	28 IR 2774	29 IR 470					28 IR 19
	N	04-70	28 IR 992	*CPH (28 IR 1498)	326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)
				*SPE					*CPH (27 IR 2521)
315 IAC 1-3-3	N	05-73	28 IR 2775	29 IR 471					28 IR 20
	A	04-70	28 IR 992	*CPH (28 IR 1498)	326 IAC 2-5.1-1	RA	04-44	27 IR 3144	28 IR 791
				*SPE	326 IAC 2-5.1-2	RA	04-44	27 IR 3145	28 IR 791
315 IAC 1-3-4	A	05-73	28 IR 2775	29 IR 471	326 IAC 2-5.5-1	RA	04-44	27 IR 3146	28 IR 792
	A	04-70	28 IR 993	*CPH (28 IR 1498)	326 IAC 2-5.5-2	RA	04-44	27 IR 3146	28 IR 793
				*SPE	326 IAC 2-5.5-3	RA	04-44	27 IR 3146	28 IR 793
315 IAC 1-3-5	A	05-73	28 IR 2776	29 IR 472	326 IAC 2-5.5-4	RA	04-44	27 IR 3147	28 IR 793
	A	04-70	28 IR 994	*CPH (28 IR 1498)	326 IAC 2-5.5-5	RA	04-44	27 IR 3147	28 IR 794
				*SPE	326 IAC 2-5.5-6	RA	04-44	27 IR 3147	28 IR 794
315 IAC 1-3-7	A	05-73	28 IR 2776	29 IR 473	326 IAC 2-6-1	A	05-78	29 IR 1255	
	A	04-70	28 IR 994	*CPH (28 IR 1498)	326 IAC 2-6-3	A	05-78	29 IR 1256	
				*SPE	326 IAC 2-6-4	A	05-78	29 IR 1257	
315 IAC 1-3-8	A	05-73	28 IR 2777	29 IR 473	326 IAC 2-6.1-1	RA	04-44	27 IR 3149	28 IR 795
	A	04-70	28 IR 994	*CPH (28 IR 1498)	326 IAC 2-6.1-2	RA	04-44	27 IR 3149	28 IR 795
				*SPE	326 IAC 2-6.1-3	RA	04-44	27 IR 3149	28 IR 795
315 IAC 1-3-9	A	05-73	28 IR 2777	29 IR 474	326 IAC 2-6.1-4	RA	04-44	27 IR 3150	28 IR 796
	A	04-70	28 IR 995	*CPH (28 IR 1498)					
				*SPE					
	A	05-73	28 IR 2778	29 IR 474					

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326 IAC 2-6.1-5	RA	04-44	27 IR 3150	28 IR 796	326 IAC 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500)
326 IAC 2-6.1-6	RA	04-44	27 IR 3151	28 IR 797					*CPH (27 IR 2521)
326 IAC 2-6.1-7	RA	04-44	27 IR 3154	28 IR 801					28 IR 37
326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)	326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500)
				*CPH (27 IR 2521)					*CPH (27 IR 2521)
				28 IR 20					28 IR 38
326 IAC 2-7-8	A	02-337	26 IR 2006	*ARR (27 IR 2500)	326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500)
				*CPH (27 IR 2521)					*CPH (27 IR 2521)
				28 IR 20					28 IR 40
326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)	326 IAC 3-8	N	04-182	29 IR 1254	*CPH (29 IR 1581)
				*CPH (27 IR 2521)	326 IAC 5-1-2	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				28 IR 21					*CPH (27 IR 2521)
326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)					28 IR 40
				*CPH (27 IR 2521)	326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				28 IR 22					*CPH (27 IR 2521)
326 IAC 2-9-1	RA	04-44	27 IR 3155	28 IR 801					28 IR 41
326 IAC 2-9-2.5	RA	04-44	27 IR 3156	28 IR 802	326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500)
326 IAC 2-9-3	RA	04-44	27 IR 3156	28 IR 803					*CPH (27 IR 2521)
326 IAC 2-9-4	RA	04-44	27 IR 3157	28 IR 803					28 IR 41
326 IAC 2-9-5	RA	04-44	27 IR 3158	28 IR 805	326 IAC 6-1-1	R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-6	RA	04-44	27 IR 3159	28 IR 805	326 IAC 6-1-1.5	R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)	326 IAC 6-1-2	R	02-335	28 IR 1813	28 IR 3550
				*CPH (27 IR 2521)	326 IAC 6-1-3	R	02-335	28 IR 1813	28 IR 3550
				28 IR 23	326 IAC 6-1-4	R	02-335	28 IR 1813	28 IR 3550
	RA	04-44	27 IR 3159	28 IR 805	326 IAC 6-1-5	R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-8	A	02-337	26 IR 2010	*ARR (27 IR 2500)	326 IAC 6-1-6	R	02-335	28 IR 1813	28 IR 3550
				*CPH (27 IR 2521)	326 IAC 6-1-7	R	02-335	28 IR 1813	28 IR 3550
				28 IR 25	326 IAC 6-1-8.1	R	02-335	28 IR 1813	28 IR 3550
	RA	04-44	27 IR 3160	28 IR 806	326 IAC 6-1-9	R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-9	A	02-337	26 IR 2012	*ARR (27 IR 2500)	326 IAC 6-1-10.1	R	02-335	28 IR 1813	28 IR 3550
				*CPH (27 IR 2521)	326 IAC 6-1-10.2	R	02-335	28 IR 1813	28 IR 3550
				28 IR 26	326 IAC 6-1-11.1	R	02-335	28 IR 1813	28 IR 3550
	RA	04-44	27 IR 3162	28 IR 808	326 IAC 6-1-11.2	R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)	326 IAC 6-1-12	A	04-43	28 IR 242	*GRAT (28 IR 2204)
				*CPH (27 IR 2521)					28 IR 2037
				28 IR 27					*ERR (28 IR 2137)
	RA	04-44	27 IR 3163	28 IR 809		R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-11	RA	04-44	27 IR 3164	28 IR 810	326 IAC 6-1-13	A	03-195	27 IR 2318	28 IR 115
326 IAC 2-9-12	RA	04-44	27 IR 3165	28 IR 811		R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500)	326 IAC 6-1-14	R	02-335	28 IR 1813	28 IR 3550
				*CPH (27 IR 2521)	326 IAC 6-1-15	R	02-335	28 IR 1813	28 IR 3550
				28 IR 28	326 IAC 6-1-16	R	02-335	28 IR 1813	28 IR 3550
	RA	04-44	27 IR 3165	28 IR 811	326 IAC 6-1-17	R	02-335	28 IR 1813	28 IR 3550
326 IAC 2-9-14	RA	04-44	27 IR 3167	28 IR 814	326 IAC 6-1-18	R	02-335	28 IR 1813	28 IR 3550
326 IAC 3-4-1	A	02-337	26 IR 2016	*ARR (27 IR 2500)	326 IAC 6-2-1				*ERR (29 IR 819)
				*CPH (27 IR 2521)	326 IAC 6-3-1				*ERR (29 IR 819)
				28 IR 30	326 IAC 6-5-4				*ERR (29 IR 819)
326 IAC 3-4-3	A	02-337	26 IR 2016	*ARR (27 IR 2500)	326 IAC 6-6-1				*ERR (29 IR 819)
				*CPH (27 IR 2521)	326 IAC 6.5	N	02-335	28 IR 1714	28 IR 3454
				28 IR 31					*ERR (29 IR 548)
326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500)	326 IAC 6.5-7-13	A	04-234	28 IR 1814	*CPH (28 IR 2406)
				*CPH (27 IR 2521)					29 IR 476
				28 IR 32	326 IAC 6.8	N	02-335	28 IR 1766	28 IR 3503
326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500)	326 IAC 6.8-2-4	A	04-278	28 IR 3004	29 IR 794
				*CPH (27 IR 2521)	326 IAC 7-1.1-1	A	00-236	28 IR 632	*CPH (28 IR 982)
				28 IR 33					*CPH (28 IR 1710)
326 IAC 3-5-4	A	02-337	26 IR 2019	*ARR (27 IR 2500)					28 IR 2953
				*CPH (27 IR 2521)	326 IAC 7-1.1-2	A	00-236	28 IR 632	*CPH (28 IR 982)
				28 IR 34					*CPH (28 IR 1710)
326 IAC 3-5-5	A	02-337	26 IR 2020	*ARR (27 IR 2500)					28 IR 2953
				*CPH (27 IR 2521)	326 IAC 7-2-1	A	02-337	26 IR 2028	*ARR (27 IR 2500)
				28 IR 34					*CPH (27 IR 2521)
326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500)		A	00-236	28 IR 632	28 IR 42
				*CPH (27 IR 2521)					*CPH (28 IR 982)
				28 IR 36					*CPH (28 IR 1710)
326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500)	326 IAC 7-4-1.1	R	00-236	28 IR 644	28 IR 2953
				*CPH (27 IR 2521)					*CPH (28 IR 982)
				28 IR 37					*CPH (28 IR 1710)
									28 IR 2966

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326 IAC 7-4-3	A	03-195	27 IR 2319	28 IR 117	326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500)
326 IAC 7-4-10	A	02-337	26 IR 2029	*ARR (27 IR 2500)					*CPH (27 IR 2521)
				28 IR 43	326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500)
326 IAC 7-4-13	A	03-282	27 IR 2768	*CPH (27 IR 3591)					*CPH (27 IR 2521)
				*GRAT (28 IR 2204)					28 IR 73
				28 IR 2021	326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500)
326 IAC 7-4.1	N	00-236	28 IR 633	*CPH (28 IR 982)					*CPH (27 IR 2521)
				*CPH (28 IR 1710)					28 IR 74
				28 IR 2954	326 IAC 10-3-3	A	04-200	28 IR 2781	29 IR 1876
326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500)	326 IAC 10-4-1	A	04-200	28 IR 2782	29 IR 1877
				*CPH (27 IR 2521)	326 IAC 10-4-2	A	04-200	28 IR 2783	29 IR 1879
				28 IR 44	326 IAC 10-4-3	A	04-200	28 IR 2790	29 IR 1885
326 IAC 8-1-6	A	05-166	29 IR 1259		326 IAC 10-4-9	A	04-200	28 IR 2791	29 IR 1886
326 IAC 8-4-6	A	02-337	26 IR 2032	*ARR (27 IR 2500)	326 IAC 10-4-13	A	04-200	28 IR 2797	29 IR 1893
				*CPH (27 IR 2521)	326 IAC 10-4-14	A	04-200	28 IR 2801	29 IR 1896
				28 IR 47	326 IAC 10-4-15	A	04-200	28 IR 2801	29 IR 1897
326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500)	326 IAC 10-5	N	04-200	28 IR 2803	29 IR 1899
				*CPH (27 IR 2521)	326 IAC 11-3-4	A	02-337	26 IR 2060	*ARR (27 IR 2500)
				28 IR 49					*CPH (27 IR 2521)
326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500)					28 IR 74
				*CPH (27 IR 2521)	326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500)
				28 IR 51					*CPH (27 IR 2521)
326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500)					28 IR 75
				*CPH (27 IR 2521)	326 IAC 13-1.1-1	A	02-337	26 IR 2062	*ARR (27 IR 2500)
				28 IR 51					*CPH (27 IR 2521)
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500)					28 IR 76
				*CPH (27 IR 2521)	326 IAC 13-1.1-8	A	02-337	26 IR 2063	*ARR (27 IR 2500)
				28 IR 51					*CPH (27 IR 2521)
326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500)					28 IR 77
				*CPH (27 IR 2521)	326 IAC 13-1.1-10	A	02-337	26 IR 2063	*ARR (27 IR 2500)
				28 IR 52					*CPH (27 IR 2521)
326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500)					28 IR 78
				*CPH (27 IR 2521)	326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500)
				28 IR 54					*CPH (27 IR 2521)
326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500)					28 IR 79
				*CPH (27 IR 2521)	326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500)
				28 IR 56					*CPH (27 IR 2521)
326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500)					28 IR 80
				*CPH (27 IR 2521)	326 IAC 13-1.1-16	A	02-337	26 IR 2066	*ARR (27 IR 2500)
				28 IR 58					*CPH (27 IR 2521)
326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500)					28 IR 81
				*CPH (27 IR 2521)	326 IAC 14-1-1	A	02-337	26 IR 2066	*ARR (27 IR 2500)
				28 IR 59					*CPH (27 IR 2521)
326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500)					28 IR 81
				*CPH (27 IR 2521)	326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500)
				28 IR 61					*CPH (27 IR 2521)
326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500)					28 IR 81
				*CPH (27 IR 2521)	326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500)
				28 IR 64					*CPH (27 IR 2521)
326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500)					28 IR 114
				*CPH (27 IR 2521)	326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500)
				28 IR 65					*CPH (27 IR 2521)
326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500)					28 IR 82
				*CPH (27 IR 2521)	326 IAC 14-4-1	A	02-337	26 IR 2067	*ARR (27 IR 2500)
				28 IR 67					*CPH (27 IR 2521)
326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500)					28 IR 82
				*CPH (27 IR 2521)	326 IAC 14-5-1	A	02-337	26 IR 2068	*ARR (27 IR 2500)
				28 IR 68					*CPH (27 IR 2521)
326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500)					28 IR 82
				*CPH (27 IR 2521)	326 IAC 14-7-1	A	02-337	26 IR 2068	*ARR (27 IR 2500)
				28 IR 68					*CPH (27 IR 2521)
326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500)					28 IR 83
				*CPH (27 IR 2521)	326 IAC 14-8-1	A	02-337	26 IR 2068	*ARR (27 IR 2500)
				28 IR 69					*CPH (27 IR 2521)
326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500)					28 IR 83
				*CPH (27 IR 2521)	326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500)
				28 IR 70					*CPH (27 IR 2521)
									28 IR 83

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326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 84	326 IAC 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 103
326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 84		A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2028
326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 84	326 IAC 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 104
326 IAC 14-9-8	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 85		A	03-283	27 IR 3136	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2030
326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 86	326 IAC 18-2-6	A	02-337	26 IR 2096	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 111
326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 87	326 IAC 18-2-7	A	02-337	26 IR 2097	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 112
326 IAC 14-10-2	A	02-337	26 IR 2074	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 88	326 IAC 19-2-1	A	05-80	28 IR 3007	29 IR 797
326 IAC 14-10-3	A	02-337	26 IR 2076	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 91	326 IAC 20-13-1		06-41		*ERR (29 IR 1936)
326 IAC 14-10-4	A	02-337	26 IR 2078	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 93	326 IAC 20-25-1	A	03-264	27 IR 3123	*CPH (27 IR 3590) *GRAT (28 IR 2204) 28 IR 2017
326 IAC 15-1-2	A	02-337	26 IR 2080	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 95	326 IAC 20-25-2	A	03-264	27 IR 3124	*CPH (27 IR 3590) *GRAT (28 IR 2204) 28 IR 2018
326 IAC 15-1-4	A	02-337	26 IR 2083	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 98	326 IAC 20-29	N	05-236	29 IR 635	29 IR 2517
326 IAC 16-3-1	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 98	326 IAC 20-56	N	03-264	27 IR 3126	*CPH (27 IR 3590) *GRAT (28 IR 2204) 28 IR 2020
326 IAC 18-1-1	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2022	326 IAC 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937) 28 IR 119
326 IAC 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 99	326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 119
	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2022	326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 119
326 IAC 18-1-3	A	03-283	27 IR 3130	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2024	326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 119
326 IAC 18-1-4	A	03-283	27 IR 3131	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2025	326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 120
326 IAC 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 101	326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937) 28 IR 120
	A	03-283	27 IR 3132	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2026	326 IAC 20-63	N	03-285	27 IR 2322	28 IR 121
326 IAC 18-1-6	A	03-283	27 IR 3133	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2027	326 IAC 20-64	N	03-285	27 IR 2322	28 IR 121
326 IAC 18-1-7	A	02-337	26 IR 2087	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 102	326 IAC 20-65	N	03-285	27 IR 2322	28 IR 121
326 IAC 18-1-8	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 103	326 IAC 20-66	N	03-285	27 IR 2323	28 IR 122
326 IAC 18-1-9	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) 28 IR 2028	326 IAC 20-67	N	03-285	27 IR 2323	28 IR 122
					326 IAC 20-68	N	03-285	27 IR 2323	28 IR 122
					326 IAC 20-69	N	03-285	27 IR 2323	28 IR 122
					326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937) 28 IR 120
					326 IAC 20-71	N	04-107	27 IR 3168	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2043
					326 IAC 20-72	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2043
					326 IAC 20-73	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2044
					326 IAC 20-74	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2044
					326 IAC 20-75	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2044
									28 IR 2044

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326 IAC 20-76	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2044	327 IAC 2-1.5-2	A	03-129	27 IR 3631	*GRAT (28 IR 2205) 28 IR 2068
326 IAC 20-77	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2045	327 IAC 2-1.5-6	A	03-129	27 IR 3637	*GRAT (28 IR 2205) 28 IR 2074
326 IAC 20-78	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2045	327 IAC 2-1.5-8	A	03-129	27 IR 3638	*GRAT (28 IR 2205) 28 IR 2074 *ERR (29 IR 2546)
326 IAC 20-79	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) 28 IR 2045	327 IAC 2-1.5-10	A	03-129	27 IR 3650	*GRAT (28 IR 2205) 28 IR 2084
326 IAC 20-80	N	04-181	29 IR 2279		327 IAC 2-1.5-11	A	03-129	27 IR 3651	*GRAT (28 IR 2205) 28 IR 2084
326 IAC 20-81	N	04-181	29 IR 2280		327 IAC 2-1.5-16	A	03-129	27 IR 3660	*GRAT (28 IR 2205) 28 IR 2093
326 IAC 20-82	N	04-235	28 IR 997	28 IR 2966	327 IAC 2-1.5-20	A	03-129	27 IR 3662	*ERR (28 IR 3582) *GRAT (28 IR 2205) 28 IR 2096
326 IAC 20-83	N	04-236	28 IR 998	28 IR 2967				06-34	*ERR (29 IR 1936)
326 IAC 20-84	N	04-236	28 IR 998	28 IR 2967	327 IAC 2-4-3	A	03-129	27 IR 3663	*GRAT (28 IR 2205) 28 IR 2097
326 IAC 20-85	N	04-236	28 IR 999	28 IR 2967	327 IAC 2-6.1-7			06-34	*ERR (29 IR 1936)
326 IAC 20-86	N	04-236	28 IR 999	28 IR 2967	327 IAC 2-10-3			06-34	*ERR (29 IR 1936)
326 IAC 20-87	N	04-236	28 IR 999	28 IR 2968	327 IAC 2-10-8			06-34	*ERR (29 IR 1936)
326 IAC 20-88	N	04-236	28 IR 999	28 IR 2968	327 IAC 2-11-3			06-34	*ERR (29 IR 1936)
326 IAC 20-90	N	04-300	28 IR 1816	28 IR 3550	327 IAC 3-1-2			06-117	*ERR (29 IR 2547)
326 IAC 20-91	N	04-300	28 IR 1816	28 IR 3550	327 IAC 3-2.1-2			06-117	*ERR (29 IR 2547)
326 IAC 20-92	N	04-300	28 IR 1817	28 IR 3550	327 IAC 3-2.1-3			06-117	*ERR (29 IR 2547)
326 IAC 20-93	N	04-300	28 IR 1817	28 IR 3551	327 IAC 3-2-1.5	N	04-320	28 IR 2192	28 IR 3551
326 IAC 20-94	N	04-300	28 IR 1817	28 IR 3551	327 IAC 3-2-3.5	N	04-320	28 IR 2192	28 IR 3552
326 IAC 20-95	N	05-23	29 IR 2284		327 IAC 3-2-5.5	N	04-320	28 IR 2193	28 IR 3552
326 IAC 22-1-1	A	02-337	26 IR 2098	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 113	327 IAC 3-6-2			06-117	*ERR (29 IR 2547)
326 IAC 23-1-31	A	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) 28 IR 114	327 IAC 5-1.5-72	A	03-129	27 IR 3663	*GRAT (28 IR 2205) 28 IR 2097
TITLE 327 WATER POLLUTION CONTROL BOARD					327 IAC 5-2-1.5	A	03-129	27 IR 3663	*GRAT (28 IR 2205) 28 IR 2097
327 IAC 1-1-1	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2046	327 IAC 5-2-11.1	A	03-129	27 IR 3664	*ERR (29 IR 1936) *GRAT (28 IR 2205) 28 IR 2097
327 IAC 1-1-2	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2046	327 IAC 5-2-11.2	A	03-129	27 IR 3668	*GRAT (28 IR 2205) 28 IR 2101
327 IAC 1-1-3	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2046	327 IAC 5-2-11.4	A	03-129	27 IR 3669	*GRAT (28 IR 2205) 28 IR 2102
327 IAC 2-1-5	A	03-129	27 IR 3608	*GRAT (28 IR 2205) 28 IR 2047	327 IAC 5-2-11.5	A	03-129	27 IR 3679	*ERR (28 IR 3582) *GRAT (28 IR 2205) 28 IR 2112
327 IAC 2-1-6	A	03-129	27 IR 3609	*GRAT (28 IR 2205) 28 IR 2047 *ERR (29 IR 2546) *ERR (29 IR 3027)	327 IAC 5-2-11.6	A	03-129	27 IR 3689	*GRAT (28 IR 2205) 28 IR 2120
327 IAC 2-1-8	A	03-129	27 IR 3617	*GRAT (28 IR 2205) 28 IR 2055	327 IAC 5-2-13	A	03-129	27 IR 3694	*GRAT (28 IR 2205) 28 IR 2125
327 IAC 2-1-8.1	A	03-129	27 IR 3617	*GRAT (28 IR 2205) 28 IR 2055	327 IAC 5-2-15	A	03-129	27 IR 3694	*GRAT (28 IR 2205) 28 IR 2126
327 IAC 2-1-8.2	A	03-129	27 IR 3618	*GRAT (28 IR 2205) 28 IR 2056	327 IAC 5-3.5	N	03-130	28 IR 650	*CPH (28 IR 1197) 28 IR 2349
327 IAC 2-1-8.3	A	03-129	27 IR 3620	*GRAT (28 IR 2205) 28 IR 2057	327 IAC 5-4-3	A	05-322	29 IR 1982	*ERR (28 IR 3582)
327 IAC 2-1-8.9	N	03-129	27 IR 3621	*GRAT (28 IR 2205) 28 IR 2058 *ERR (28 IR 3582)	327 IAC 5-4-6			06-34	*ERR (29 IR 1936)
327 IAC 2-1-9	A	03-129	27 IR 3622	*GRAT (28 IR 2205) 28 IR 2060	327 IAC 5-17-12			06-34	*ERR (29 IR 1936)
327 IAC 2-1-12	A	03-129	27 IR 3627	*GRAT (28 IR 2205) 28 IR 2064 *ERR (29 IR 1936)	327 IAC 5-18-4			06-34	*ERR (29 IR 1936)
327 IAC 2-1-13	N	03-129	27 IR 3627	*GRAT (28 IR 2205) 28 IR 2065	327 IAC 5-18-5			06-34	*ERR (29 IR 1936)
		06-34			327 IAC 5-18-10			06-34	*ERR (29 IR 1936)
					327 IAC 5-19-6			06-34	*ERR (29 IR 1936)
					327 IAC 5-20-1			06-34	*ERR (29 IR 1936)
					327 IAC 5-20-2			06-34	*ERR (29 IR 1937)
					327 IAC 6.1-2-8			06-34	*ERR (29 IR 1937)
					327 IAC 6.1-2-13			06-34	*ERR (29 IR 1937)
					327 IAC 6.1-4-6			06-34	*ERR (29 IR 1937)
					327 IAC 6.1-4-11			06-34	*ERR (29 IR 1937)
								06-117	*ERR (29 IR 2547)
					327 IAC 6.1-4-13			06-34	*ERR (29 IR 1937)
					327 IAC 6.1-4-14			06-34	*ERR (29 IR 1937)

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327 IAC 6.1-4-15	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-1	A	04-13	28 IR 1268	28 IR 3247
327 IAC 6.1-4-16	06-34		*ERR (29 IR 1937)					*ERR (29 IR 30)
327 IAC 6.1-6-2	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-2	A	04-13	28 IR 1269	28 IR 3248
327 IAC 6.1-7-2	06-34		*ERR (29 IR 1937)					*ERR (28 IR 3583)
327 IAC 6.1-7-3	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	28 IR 3250
327 IAC 6.1-7-4	06-34		*ERR (29 IR 1937)					*ERR (28 IR 3583)
327 IAC 6.1-7-5	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-3	A	04-13	28 IR 1273	28 IR 3252
327 IAC 6.1-7-10	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-4	A	04-13	28 IR 1274	28 IR 3253
327 IAC 6.1-7.5-1	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-5	A	04-13	28 IR 1274	28 IR 3253
327 IAC 6.1-8-6	06-34		*ERR (29 IR 1937)	327 IAC 8-2.6-6	A	05-255	29 IR 2626	
327 IAC 8-1-1	A	04-106	28 IR 2163	327 IAC 8-3-1	A	04-106	28 IR 2165	*ARR (29 IR 31)
			29 IR 2945					29 IR 2948
327 IAC 8-1-2	A	04-106	28 IR 2164	327 IAC 8-3-1.1	A	04-106	28 IR 2166	*ARR (29 IR 31)
			29 IR 2946					29 IR 2948
327 IAC 8-1-3	A	04-106	28 IR 2164	327 IAC 8-3-2	A	04-106	28 IR 2166	*ARR (29 IR 31)
			*ARR (29 IR 31)					29 IR 2949
327 IAC 8-1-4	A	04-106	28 IR 2165	327 IAC 8-3-2.1	N	04-106	28 IR 2167	*ARR (29 IR 31)
			29 IR 2947					29 IR 2950
	06-34		*ERR (29 IR 1937)	327 IAC 8-3-3	A	04-106	28 IR 2168	*ARR (29 IR 31)
327 IAC 8-2-1	A	04-13	28 IR 1206					29 IR 2950
327 IAC 8-2-4	A	04-13	28 IR 1210	327 IAC 8-3-8	A	04-106	28 IR 2168	*ARR (29 IR 31)
327 IAC 8-2-4.1	A	04-13	28 IR 1212					29 IR 2951
327 IAC 8-2-4.2	A	04-13	28 IR 1217			06-34		*ERR (29 IR 1937)
				327 IAC 8-3.1-1	A	04-106	28 IR 2169	*ARR (29 IR 31)
								29 IR 2951
327 IAC 8-2-5.1	A	04-13	28 IR 1220	327 IAC 8-3.1-2	A	04-106	28 IR 2169	*ARR (29 IR 31)
327 IAC 8-2-5.2	A	04-13	28 IR 1222					29 IR 2951
						06-34		*ERR (29 IR 1937)
				327 IAC 8-3.2-1	A	04-106	28 IR 2170	*ARR (29 IR 31)
327 IAC 8-2-5.3		06-34						29 IR 2952
327 IAC 8-2-5.5	A	04-13	28 IR 1225	327 IAC 8-3.2-2	A	04-106	28 IR 2170	*ARR (29 IR 31)
								29 IR 2953
327 IAC 8-2-5.6		06-34				06-34		*ERR (29 IR 1937)
327 IAC 8-2-8.2	A	05-255	29 IR 2615	327 IAC 8-3.2-4	A	04-106	28 IR 2171	*ARR (29 IR 31)
327 IAC 8-2-8.4		06-34						29 IR 2953
327 IAC 8-2-8.5	A	04-13	28 IR 1228	327 IAC 8-3.2-8	A	04-106	28 IR 2171	*ARR (29 IR 31)
327 IAC 8-2-8.7	A	04-13	28 IR 1229					29 IR 2953
				327 IAC 8-3.2-11	A	04-106	28 IR 2173	*ARR (29 IR 31)
327 IAC 8-2-9	A	04-13	28 IR 1230					29 IR 2955
327 IAC 8-2-10.1	A	04-13	28 IR 1230	327 IAC 8-3.2-17	A	04-106	28 IR 2173	*ARR (29 IR 31)
								29 IR 2956
327 IAC 8-2-10.2	A	04-13	28 IR 1233	327 IAC 8-3.2-18	A	04-106	28 IR 2174	*ARR (29 IR 31)
								29 IR 2957
327 IAC 8-2-10.3	N	04-13	28 IR 1237	327 IAC 8-3.2-20	A	04-106	28 IR 2175	*ARR (29 IR 31)
327 IAC 8-2-13	A	04-13	28 IR 1239					29 IR 2957
327 IAC 8-2-21		06-34		327 IAC 8-3.3-4	A	04-106	28 IR 2175	*ARR (29 IR 31)
327 IAC 8-2-34	A	04-13	28 IR 1239					29 IR 2958
327 IAC 8-2-34.1	N	04-13	28 IR 1240	327 IAC 8-3.3-5	A	04-106	28 IR 2176	*ARR (29 IR 31)
327 IAC 8-2-45	A	04-13	28 IR 1240					29 IR 2958
				327 IAC 8-3.3-6	A	04-106	28 IR 2176	*ARR (29 IR 31)
327 IAC 8-2-46	A	04-13	28 IR 1242					29 IR 2959
327 IAC 8-2-1-3	A	04-13	28 IR 1244	327 IAC 8-3.4-1	A	04-106	28 IR 2176	*ARR (29 IR 31)
								29 IR 2959
	06-34					06-34		*ERR (29 IR 1937)
327 IAC 8-2-1-4	A	04-13	28 IR 1247	327 IAC 8-3.4-2	A	04-106	28 IR 2178	*ARR (29 IR 31)
327 IAC 8-2-1-6	A	04-13	28 IR 1248					29 IR 2961
327 IAC 8-2-1-8	A	04-13	28 IR 1255	327 IAC 8-3.4-3	A	04-106	28 IR 2178	*ARR (29 IR 31)
327 IAC 8-2-1-9	A	04-13	28 IR 1256					29 IR 2961
327 IAC 8-2-1-13		06-34		327 IAC 8-3.4-4	A	04-106	28 IR 2179	*ARR (29 IR 31)
		06-117						29 IR 2961
327 IAC 8-2-1-14	A	04-13	28 IR 1257	327 IAC 8-3.4-8	A	04-106	28 IR 2180	*ARR (29 IR 31)
327 IAC 8-2-1-16	A	04-13	28 IR 1257					29 IR 2962
				327 IAC 8-3.4-9	A	04-106	28 IR 2180	*ERR (29 IR 1937)
327 IAC 8-2-1-17	A	04-13	28 IR 1261			06-34		*ARR (29 IR 31)
327 IAC 8-2-5-5		06-34						29 IR 2963
327 IAC 8-2-5-6		06-34				06-34		*ERR (29 IR 1937)
	A	05-255	29 IR 2617	327 IAC 8-3.4-9.1	N	04-106	28 IR 2182	*ARR (29 IR 31)
327 IAC 8-2-5-7	A	05-255	29 IR 2621					29 IR 2965
327 IAC 8-2-5-8	A	05-255	29 IR 2622	327 IAC 8-3.4-12	A	04-106	28 IR 2183	*ARR (29 IR 31)
327 IAC 8-2-5-9	A	05-255	29 IR 2624					29 IR 2965

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327 IAC 8-3.4-13	A	04-106	28 IR 2183	*ARR (29 IR 31) 29 IR 2965	TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD			
327 IAC 8-3.4-14	A	04-106	28 IR 2183	*ARR (29 IR 31) 29 IR 2966	328 IAC 1-1-2	A	02-204	27 IR 2778 *CPH (27 IR 3095) 28 IR 123
327 IAC 8-3.4-16	A	04-106	28 IR 2184	*ARR (29 IR 31) 29 IR 2966	328 IAC 1-1-3	A	02-204	27 IR 2778 *CPH (27 IR 3095) 28 IR 123
327 IAC 8-3.4-17	A	04-106	06-34 28 IR 2185	*ERR (29 IR 1937) *ARR (29 IR 31) 29 IR 2967	328 IAC 1-1-4	A	02-204	27 IR 2778 *CPH (27 IR 3095) 28 IR 124
327 IAC 8-3.4-23	A	04-106	28 IR 2185	*ARR (29 IR 31) 29 IR 2968	328 IAC 1-1-5.1	A	02-204	27 IR 2778 *CPH (27 IR 3095) 28 IR 124
327 IAC 8-3.4-24	A	04-106	06-34 28 IR 2186	*ERR (29 IR 1937) *ARR (29 IR 31) 29 IR 2969	328 IAC 1-1-8	R	02-204	27 IR 2797 *CPH (27 IR 3095) 28 IR 144
327 IAC 8-3.4-25	A	04-106	28 IR 2187	*ARR (29 IR 31) 29 IR 2970	328 IAC 1-1-8.3	N	02-204	27 IR 2779 *CPH (27 IR 3095) 28 IR 124
327 IAC 8-3.4-27	A	04-106	28 IR 2188	*ARR (29 IR 31) 29 IR 2970	328 IAC 1-1-8.5	A	02-204	27 IR 2779 *CPH (27 IR 3095) 28 IR 125
327 IAC 8-3.5-1	A	04-106	28 IR 2188	*ARR (29 IR 31) 29 IR 2971	328 IAC 1-1-9	A	02-204	27 IR 2779 *CPH (27 IR 3095) 28 IR 125
327 IAC 8-3.5-2	A	04-106	28 IR 2189	*ARR (29 IR 31) 29 IR 2971	328 IAC 1-1-10	A	02-204	27 IR 2779 *CPH (27 IR 3095) 28 IR 125
327 IAC 8-3.5-5	A	04-106	06-34 28 IR 2189	*ERR (29 IR 1937) *ARR (29 IR 31) 29 IR 2972	328 IAC 1-2-1	A	02-204	27 IR 2779 *CPH (27 IR 3095) 28 IR 125
327 IAC 8-3.6-4		06-34		*ERR (29 IR 1937)	328 IAC 1-2-3	A	02-204	27 IR 2780 *CPH (27 IR 3095) 28 IR 125
327 IAC 8-4-1	A	04-106	28 IR 2190	*ARR (29 IR 31) 29 IR 2973	328 IAC 1-3-1	A	02-204	27 IR 2780 *CPH (27 IR 3095) 28 IR 126
327 IAC 8-4-2	N	04-106	28 IR 2191	*ARR (29 IR 31) 29 IR 2974	328 IAC 1-3-1.3	N	02-204	27 IR 2780 *CPH (27 IR 3095) 28 IR 126
327 IAC 8-4.1-5		06-34		*ERR (29 IR 1937)	328 IAC 1-3-1.6	N	02-204	27 IR 2781 *CPH (27 IR 3095) 28 IR 127
327 IAC 8-4.1-7		06-34		*ERR (29 IR 1938)	328 IAC 1-3-2	A	02-204	27 IR 2781 *CPH (27 IR 3095) 28 IR 127
327 IAC 8-6-1	A	04-106	28 IR 2191	*ARR (29 IR 31) 29 IR 2974	328 IAC 1-3-3	A	02-204	27 IR 2781 *CPH (27 IR 3095) 28 IR 127
327 IAC 8-10-13		06-34		*ERR (29 IR 1938)	328 IAC 1-3-4	A	02-204	27 IR 2783 *CPH (27 IR 3095) 28 IR 129
327 IAC 8-11-1	A	05-255	29 IR 2627		328 IAC 1-3-5	A	02-204	27 IR 2784 *CPH (27 IR 3095) 28 IR 129
327 IAC 8-12-1	A	05-255	29 IR 2628		328 IAC 1-3-6	A	02-204	27 IR 2791 *CPH (27 IR 3095) 28 IR 137
327 IAC 8-12-2	A	05-255	29 IR 2629		328 IAC 1-4-1	A	02-204	27 IR 2791 *CPH (27 IR 3095) 28 IR 137
327 IAC 8-12-3	A	05-255	29 IR 2630					
327 IAC 8-12-3.2	A	05-255	29 IR 2630		328 IAC 1-4-1.5	N	02-204	
327 IAC 8-12-3.4	A	05-255	29 IR 2633		328 IAC 1-4-3	A	02-204	27 IR 2794 *CPH (27 IR 3095) 28 IR 141
327 IAC 8-12-3.5	N	05-255	29 IR 2633					
327 IAC 8-12-3.6	A	05-255	29 IR 2634					
327 IAC 8-12-4	A	05-255	29 IR 2635					
327 IAC 8-12-4.5	N	05-255	29 IR 2636					
327 IAC 8-12-6	A	05-255	29 IR 2636					
327 IAC 8-12-7	A	05-255	29 IR 2638					
327 IAC 8-12-7.5	A	05-255	29 IR 2638					
327 IAC 15-3-1		06-34		*ERR (29 IR 1938)	328 IAC 1-4-4	N	02-204	27 IR 2795 *CPH (27 IR 3095) 28 IR 141
327 IAC 15-4-3		06-117		*ERR (29 IR 2547)				
327 IAC 15-5-5		06-34		*ERR (29 IR 1938)				
327 IAC 15-6-2		06-34		*ERR (29 IR 1938)	328 IAC 1-4-5	N	02-204	
327 IAC 15-6-4		06-34		*ERR (29 IR 1938)	328 IAC 1-5-1	A	02-204	27 IR 2795 *CPH (27 IR 3095) 28 IR 142
327 IAC 15-6-8.5		06-34		*ERR (29 IR 1938)	328 IAC 1-5-2	A	02-204	27 IR 2796 *CPH (27 IR 3095) 28 IR 142
327 IAC 15-6-12		06-34		*ERR (29 IR 1938)	328 IAC 1-5-3	A	02-204	27 IR 2796 *CPH (27 IR 3095) 28 IR 143
327 IAC 15-7-5		06-34		*ERR (29 IR 1938)	328 IAC 1-6-1	A	02-204	27 IR 2796 *CPH (27 IR 3095) 28 IR 143
327 IAC 15-8-5		06-34		*ERR (29 IR 1938)	328 IAC 1-6-2	A	02-204	27 IR 2796 *CPH (27 IR 3095) 28 IR 143
327 IAC 15-9-5		06-34		*ERR (29 IR 1938)	328 IAC 1-7-2	A	02-204	27 IR 2797 *CPH (27 IR 3095) 28 IR 144
327 IAC 15-10-5		06-34		*ERR (29 IR 1938)	328 IAC 1-7-3	R	02-204	27 IR 2797 *CPH (27 IR 3095) 28 IR 144
327 IAC 15-11-5		06-34		*ERR (29 IR 1938)				
327 IAC 15-12-5		06-34		*ERR (29 IR 1939)				
327 IAC 15-13-9		06-34		*ERR (29 IR 1939)				
327 IAC 15-14				*ERR (28 IR 214)				
327 IAC 15-14-4		06-34		*ERR (29 IR 1939)				
327 IAC 15-15-3		06-34		*ERR (29 IR 1939)				
327 IAC 15-15-5		06-34		*ERR (29 IR 1939)				
327 IAC 15-15-11	A	05-322	29 IR 1987					
327 IAC 15-15-12	A	05-322	29 IR 1987					
327 IAC 17	N	04-228	28 IR 1288	28 IR 2968 *ERR (29 IR 548)				

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329 IAC 3.1-1-7	A	03-312	27 IR 4110	28 IR 2661					*CPH (27 IR 2299)
	A	05-66	29 IR 1261	*CPH (29 IR 1582)					*CPH (27 IR 2300)
329 IAC 3.1-1-9	A	05-66	29 IR 1261	*CPH (29 IR 1582)					*ARR (27 IR 2500)
329 IAC 3.1-1-12.5	N	05-66	29 IR 1262	*CPH (29 IR 1582)				27 IR 3177	*CPH (27 IR 2521)
329 IAC 3.1-1-14.1	A	05-66	29 IR 1262	*CPH (29 IR 1582)	329 IAC 9-1-4	A	01-161	26 IR 1209	28 IR 145
329 IAC 3.1-6-2	A	03-312	27 IR 4111	28 IR 2662					*CPH (26 IR 1962)
329 IAC 3.1-6-3	A	03-312	27 IR 4112	28 IR 2663					*CPH (26 IR 2646)
	A	05-66	29 IR 1264	*CPH (29 IR 1582)					*CPH (26 IR 3073)
329 IAC 3.1-6-6	A	04-318	28 IR 2194	28 IR 3553					*CPH (26 IR 3367)
329 IAC 3.1-6-7	N	05-85	29 IR 843						*CPH (26 IR 3671)
329 IAC 3.1-7-2	A	05-66	29 IR 1264	*CPH (29 IR 1582)					*CPH (27 IR 2299)
329 IAC 3.1-7.5	N	03-312	27 IR 4112	28 IR 2663					*CPH (27 IR 2300)
	R	05-66	29 IR 1268	*CPH (29 IR 1582)					*ARR (27 IR 2500)
329 IAC 3.1-12-2	A	03-312	27 IR 4113	28 IR 2665				27 IR 3177	*CPH (27 IR 2521)
329 IAC 3.1-13-2	A	03-312	27 IR 4114	28 IR 2665	329 IAC 9-1-10.1	R	01-161	26 IR 1239	28 IR 145
329 IAC 4.1-1-1	A	05-219	29 IR 2641						*CPH (26 IR 1962)
329 IAC 4.1-1-2	A	05-219	29 IR 2641						*CPH (26 IR 2646)
329 IAC 4.1-1-3	A	05-219	29 IR 2641						*CPH (26 IR 3073)
329 IAC 4.1-1-4	A	05-219	29 IR 2642						*CPH (26 IR 3367)
329 IAC 4.1-1-5	A	05-219	29 IR 2642						*CPH (26 IR 3671)
329 IAC 4.1-1-6	A	05-219	29 IR 2642						*CPH (27 IR 2299)
329 IAC 4.1-2-1	A	05-219	29 IR 2644						*CPH (27 IR 2300)
329 IAC 4.1-2-2	A	05-219	29 IR 2644						*ARR (27 IR 2500)
329 IAC 4.1-2-3	A	05-219	29 IR 2644					27 IR 3209	*CPH (27 IR 2521)
329 IAC 4.1-2-4	A	05-219	29 IR 2644		329 IAC 9-1-10.2	R	01-161	26 IR 1239	28 IR 177
329 IAC 4.1-2-5	A	05-219	29 IR 2645						*CPH (26 IR 1962)
329 IAC 4.1-2-6	A	05-219	29 IR 2645						*CPH (26 IR 2646)
329 IAC 4.1-2-7	A	05-219	29 IR 2645						*CPH (26 IR 3073)
329 IAC 4.1-2-8	A	05-219	29 IR 2645						*CPH (26 IR 3367)
329 IAC 4.1-2-9	A	05-219	29 IR 2645						*CPH (26 IR 3671)
329 IAC 4.1-3-1	A	05-219	29 IR 2645						*CPH (27 IR 2299)
329 IAC 4.1-4-1	A	05-219	29 IR 2646						*CPH (27 IR 2300)
329 IAC 4.1-4-2	A	05-219	29 IR 2646						*ARR (27 IR 2500)
329 IAC 4.1-5-1	A	05-219	29 IR 2646					27 IR 3209	*CPH (27 IR 2521)
329 IAC 4.1-5-2	A	05-219	29 IR 2646		329 IAC 9-1-10.4	N	01-161	26 IR 1209	28 IR 177
329 IAC 4.1-6-1	A	05-219	29 IR 2646						*CPH (26 IR 1962)
329 IAC 4.1-6-2	A	05-219	29 IR 2647						*CPH (26 IR 2646)
329 IAC 4.1-7-1	A	05-219	29 IR 2647						*CPH (26 IR 3073)
329 IAC 4.1-7-2	A	05-219	29 IR 2647						*CPH (26 IR 3367)
329 IAC 4.1-7-3	A	05-219	29 IR 2647						*CPH (26 IR 3671)
329 IAC 4.1-7-4	A	05-219	29 IR 2648						*CPH (27 IR 2299)
329 IAC 4.1-7-5	A	05-219	29 IR 2648						*CPH (27 IR 2300)
329 IAC 4.1-8-1	A	05-219	29 IR 2648						*ARR (27 IR 2500)
329 IAC 4.1-8-2	A	05-219	29 IR 2648					27 IR 3177	*CPH (27 IR 2521)
329 IAC 4.1-8-3	A	05-219	29 IR 2648		329 IAC 9-1-10.6	N	01-161	26 IR 1209	28 IR 146
329 IAC 4.1-8-4	A	05-219	29 IR 2649						*CPH (26 IR 1962)
329 IAC 4.1-8-5	A	05-219	29 IR 2649						*CPH (26 IR 2646)
329 IAC 4.1-9-1	A	05-219	29 IR 2649						*CPH (26 IR 3073)
329 IAC 4.1-9-2	A	05-219	29 IR 2649						*CPH (26 IR 3367)
329 IAC 4.1-9-3	A	05-219	29 IR 2650						*CPH (26 IR 3671)
329 IAC 4.1-9-4	A	05-219	29 IR 2650						*CPH (27 IR 2299)
329 IAC 4.1-9-5	A	05-219	29 IR 2651						*CPH (27 IR 2300)
329 IAC 4.1-10-1	A	05-219	29 IR 2651						*ARR (27 IR 2500)
329 IAC 4.1-11-1	A	05-219	29 IR 2652					27 IR 3178	*CPH (27 IR 2521)
329 IAC 4.1-11-2	A	05-219	29 IR 2652		329 IAC 9-1-10.8	N	01-161	26 IR 1210	28 IR 146
329 IAC 4.1-11-3	A	05-219	29 IR 2652						*CPH (26 IR 1962)
329 IAC 4.1-11-4	A	05-219	29 IR 2652						*CPH (26 IR 2646)
329 IAC 4.1-12-1	A	05-219	29 IR 2652						*CPH (26 IR 3073)
329 IAC 4.1-13-1	A	05-219	29 IR 2653						*CPH (26 IR 3367)
329 IAC 4.1-13-2	A	05-219	29 IR 2653						*CPH (26 IR 3671)
329 IAC 4.1-13-3	N	05-219	29 IR 2653						*CPH (27 IR 2299)
329 IAC 4.1-13-4	N	05-219	29 IR 2654						*CPH (27 IR 2300)
329 IAC 4.1-13-5	N	05-219	29 IR 2654						*ARR (27 IR 2500)
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)				27 IR 3178	*CPH (27 IR 2521)
				*CPH (26 IR 2646)	329 IAC 9-1-14	A	01-161	26 IR 1210	28 IR 146
				*CPH (26 IR 3073)					*CPH (26 IR 1962)
				*CPH (26 IR 3367)					*CPH (26 IR 2646)
				*CPH (26 IR 3671)					*CPH (26 IR 3073)
									*CPH (26 IR 3367)

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				*CPH (26 IR 3671)	329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (27 IR 2299)					*CPH (26 IR 2646)
				*CPH (27 IR 2300)					*CPH (26 IR 3073)
				*ARR (27 IR 2500)					*CPH (26 IR 3367)
				*CPH (27 IR 2521)					*CPH (26 IR 3671)
		27 IR 3178		28 IR 146					*CPH (27 IR 2299)
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)					*CPH (27 IR 2300)
				*CPH (26 IR 2646)					*ARR (27 IR 2500)
				*CPH (26 IR 3073)					*CPH (27 IR 2521)
				*CPH (26 IR 3367)				27 IR 3209	28 IR 177
				*CPH (26 IR 3671)	329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (27 IR 2299)					*CPH (26 IR 2646)
				*CPH (27 IR 2300)					*CPH (26 IR 3073)
				*ARR (27 IR 2500)					*CPH (26 IR 3367)
				*CPH (27 IR 2521)					*CPH (26 IR 3671)
		27 IR 3209		28 IR 177					*CPH (27 IR 2299)
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962)					*CPH (27 IR 2300)
				*CPH (26 IR 2646)					*ARR (27 IR 2500)
				*CPH (26 IR 3073)					*CPH (27 IR 2521)
				*CPH (26 IR 3367)				27 IR 3179	28 IR 147
				*CPH (26 IR 3671)	329 IAC 9-1-36.5	N	01-161	27 IR 3179	28 IR 147
				*CPH (27 IR 2299)	329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (27 IR 2300)					*CPH (26 IR 2646)
				*ARR (27 IR 2500)					*CPH (26 IR 3073)
				*CPH (27 IR 2521)					*CPH (26 IR 3367)
		27 IR 3178		28 IR 146					*CPH (26 IR 3671)
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962)					*CPH (27 IR 2299)
				*CPH (26 IR 2646)					*CPH (27 IR 2300)
				*CPH (26 IR 3073)					*ARR (27 IR 2500)
				*CPH (26 IR 3367)					*CPH (27 IR 2521)
				*CPH (26 IR 3671)				27 IR 3179	28 IR 147
				*CPH (27 IR 2299)	329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (27 IR 2300)					*CPH (26 IR 2646)
				*ARR (27 IR 2500)					*CPH (26 IR 3073)
				*CPH (27 IR 2521)					*CPH (26 IR 3367)
		27 IR 3178		28 IR 146					*CPH (26 IR 3671)
329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962)					*CPH (27 IR 2299)
				*CPH (26 IR 2646)					*CPH (27 IR 2300)
				*CPH (26 IR 3073)					*ARR (27 IR 2500)
				*CPH (26 IR 3367)					*CPH (27 IR 2521)
				*CPH (26 IR 3671)				27 IR 3209	28 IR 177
				*CPH (27 IR 2299)	329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (27 IR 2300)					*CPH (26 IR 2646)
				*ARR (27 IR 2500)					*CPH (26 IR 3073)
				*CPH (27 IR 2521)					*CPH (26 IR 3367)
		27 IR 3178		28 IR 146					*CPH (26 IR 3671)
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962)					*CPH (27 IR 2299)
				*CPH (26 IR 2646)					*CPH (27 IR 2300)
				*CPH (26 IR 3073)				27 IR 3209	*ARR (27 IR 2500)
				*CPH (26 IR 3367)	329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (27 IR 2521)
				*CPH (26 IR 3671)					28 IR 177
				*CPH (27 IR 2299)					*CPH (26 IR 1962)
				*CPH (27 IR 2300)					*CPH (26 IR 2646)
				*ARR (27 IR 2500)					*CPH (26 IR 3073)
				*CPH (27 IR 2521)					*CPH (26 IR 3367)
		27 IR 3178		28 IR 146					*CPH (26 IR 3671)
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962)					*CPH (27 IR 2299)
				*CPH (26 IR 2646)					*CPH (27 IR 2300)
				*CPH (26 IR 3073)				27 IR 3179	*ARR (27 IR 2500)
				*CPH (26 IR 3367)	329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (27 IR 2521)
				*CPH (26 IR 3671)					28 IR 147
				*CPH (27 IR 2299)					*CPH (26 IR 1962)
				*CPH (27 IR 2300)					*CPH (26 IR 2646)
				*ARR (27 IR 2500)					*CPH (26 IR 3073)
				*CPH (27 IR 2521)					*CPH (26 IR 3367)
		27 IR 3178		28 IR 147					*CPH (26 IR 3671)
								27 IR 3209	28 IR 177

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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 148				27 IR 3188	28 IR 156
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 150				27 IR 3188	28 IR 156
329 IAC 9-2.1-1	A	01-161	26 IR 1215	*ERR (28 IR 608) *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 9-4-3	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)
			27 IR 3183	28 IR 151				27 IR 3189	28 IR 157
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)	329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3184	28 IR 152				27 IR 3189	28 IR 158
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)	329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3187	28 IR 155				27 IR 3190	28 IR 158

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329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)	329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 9-5-3.1	R	01-161	27 IR 3191 26 IR 1239	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	27 IR 3196 26 IR 1229	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	27 IR 3209 26 IR 1223	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	27 IR 3199 26 IR 1239	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	27 IR 3192 26 IR 1239	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	27 IR 3209 26 IR 1230	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 9-5-4.2	N	01-161	27 IR 3209 26 IR 1224	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 9-6-3	A	01-161	27 IR 3200 26 IR 1234	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 9-5-5.1	A	01-161	27 IR 3192 26 IR 1224	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 9-6-4	A	01-161	27 IR 3204 26 IR 1234	28 IR 172 *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	27 IR 3193 26 IR 1226	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 9-6-5	A	01-161	27 IR 3204 26 IR 1235	28 IR 173 *ERR (28 IR 1184) *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 3196	28 IR 164				27 IR 3205	28 IR 173

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345 IAC 9-20-2	A	05-70	28 IR 3650	*GRAT (29 IR 2058) 29 IR 1554
345 IAC 9-21.5	N	05-70	28 IR 3650	*GRAT (29 IR 2058) 29 IR 1554
345 IAC 10-2-5	N	04-135	27 IR 4119	28 IR 1473
345 IAC 10-2.1-1	A	04-135	27 IR 4119	28 IR 1474
	A	05-70	28 IR 3650	*GRAT (29 IR 2058) 29 IR 1554

357 IAC 1-7-4	A	04-159	28 IR 251	28 IR 1687
357 IAC 1-7-5	A	04-159	28 IR 252	28 IR 1688
357 IAC 1-7-6	A	04-159	28 IR 252	28 IR 1688
357 IAC 1-7-7	N	04-159	28 IR 252	28 IR 1688
357 IAC 1-7-8	N	04-159	28 IR 252	28 IR 1689
357 IAC 1-8	RA	05-171		29 IR 1381
357 IAC 1-12	N	05-215	29 IR 853	29 IR 2523

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355 IAC 2-1-1	A	04-312	28 IR 1838	28 IR 3570
355 IAC 2-1-6	A	04-312	28 IR 1838	28 IR 3571
355 IAC 2-2-1	A	04-312	28 IR 1839	28 IR 3571
355 IAC 2-2-1.5	N	04-312	28 IR 1839	28 IR 3571
355 IAC 2-2-6	A	04-312	28 IR 1839	28 IR 3571
355 IAC 2-2-9	A	04-312	28 IR 1839	28 IR 3571
355 IAC 2-2-10	A	04-312	28 IR 1839	28 IR 3571
355 IAC 2-2-13	A	04-312	28 IR 1840	28 IR 3572
355 IAC 2-2-14	A	04-312	28 IR 1840	28 IR 3572
355 IAC 2-2-15	A	04-312	28 IR 1840	28 IR 3572
355 IAC 2-2-17	A	04-312	28 IR 1840	28 IR 3572
355 IAC 2-3-4	A	04-312	28 IR 1840	28 IR 3572
355 IAC 2-3-6	A	04-312	28 IR 1841	28 IR 3573
355 IAC 2-3-8	A	04-312	28 IR 1841	28 IR 3573
355 IAC 2-3-11	A	04-312	28 IR 1841	28 IR 3573
355 IAC 2-3-12	A	04-312	28 IR 1841	28 IR 3573
355 IAC 2-4-1	A	04-312	28 IR 1842	28 IR 3574
355 IAC 2-5-1	A	04-312	28 IR 1842	28 IR 3575
355 IAC 2-5-2	A	04-312	28 IR 1843	28 IR 3575
355 IAC 2-5-3	A	04-312	28 IR 1844	28 IR 3576
355 IAC 2-5-4	A	04-312	28 IR 1844	28 IR 3576
355 IAC 2-5-6	A	04-312	28 IR 1844	28 IR 3576
355 IAC 2-5-8	A	04-312	28 IR 1844	28 IR 3576
355 IAC 2-5-12	A	04-312	28 IR 1845	28 IR 3577
355 IAC 2-5-12.5	A	04-312	28 IR 1845	28 IR 3577
355 IAC 2-5-13	A	04-312	28 IR 1846	28 IR 3578
355 IAC 2-5-14	R	04-312	28 IR 1846	28 IR 3578
355 IAC 2-6-1.5	A	04-312	28 IR 1846	28 IR 3578
355 IAC 2-6-2	R	04-312	28 IR 1846	28 IR 3578
355 IAC 2-8	R	04-312	28 IR 1846	28 IR 3578
355 IAC 2-9-1	A	04-312	28 IR 1846	28 IR 3578
355 IAC 4-2-2	A	04-309	28 IR 1834	29 IR 6
355 IAC 4-2-8	A	04-309	28 IR 1834	29 IR 6
355 IAC 4-5-1	A	04-310	28 IR 1835	29 IR 7
355 IAC 4-5-2	A	04-310	28 IR 1836	29 IR 7
355 IAC 4-5-3	A	04-310	28 IR 1836	29 IR 8
355 IAC 4-5-4	R	04-310	28 IR 1836	29 IR 8
355 IAC 4-5-5	R	04-310	28 IR 1836	29 IR 8
355 IAC 4-5-6	R	04-310	28 IR 1836	29 IR 8
355 IAC 4-5-11	R	04-310	28 IR 1836	29 IR 8
355 IAC 4-6-1	A	04-311	28 IR 1837	29 IR 8
355 IAC 4-6-2	R	04-311	28 IR 1837	29 IR 9
355 IAC 4-6-3	A	04-311	28 IR 1837	29 IR 8
355 IAC 4-6-4	R	04-311	28 IR 1838	29 IR 9
355 IAC 4-6-6	R	04-311	28 IR 1838	29 IR 9
355 IAC 4-6-10	R	04-311	28 IR 1838	29 IR 9

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-6-1	A	04-160	28 IR 253	28 IR 1689
357 IAC 1-6-2	A	04-160	28 IR 254	28 IR 1690
357 IAC 1-6-3	R	04-160	28 IR 257	28 IR 1693
357 IAC 1-6-4	A	04-160	28 IR 256	28 IR 1692
357 IAC 1-6-5	A	04-160	28 IR 256	28 IR 1692
357 IAC 1-6-6	A	04-160	28 IR 256	28 IR 1693
357 IAC 1-6-7	N	04-160	28 IR 257	28 IR 1693
357 IAC 1-6-8	N	04-160	28 IR 257	28 IR 1693
357 IAC 1-7-1	A	04-159	28 IR 249	28 IR 1685
357 IAC 1-7-2	A	04-159	28 IR 250	28 IR 1686
357 IAC 1-7-3	R	04-159	28 IR 252	28 IR 1689

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-1-3.1	N	04-321	28 IR 2196	*NRA (28 IR 3321) 28 IR 3579
405 IAC 1-1-5	A	04-178	28 IR 258	*NRA (28 IR 1497) 28 IR 2129
405 IAC 1-1.5-1	A	04-142	27 IR 3699	*NRA (28 IR 619) 28 IR 815
				*ERR (28 IR 970)
405 IAC 1-1.5-2	A	04-178	28 IR 259	*NRA (28 IR 1497) 28 IR 2131
405 IAC 1-1.6	N	04-142	27 IR 3699	*NRA (28 IR 619) 28 IR 816
				*ERR (28 IR 970)
405 IAC 1-5-1	A	04-219	28 IR 655	*NRA (28 IR 1497) 28 IR 2134
405 IAC 1-11.5-2	A	05-200	29 IR 637	*NRA (29 IR 1580) 29 IR 1901
405 IAC 1-12-27	N	05-113	28 IR 3654	*AWR (29 IR 821)
405 IAC 1-14.5-27	N	05-114	28 IR 3655	*ARR (29 IR 1216)
			29 IR 1269	*AROC (29 IR 2054)
	N	05-112		29 IR 2975
405 IAC 1-14.6-2	A	05-112	29 IR 1731	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2975
405 IAC 1-14.6-5	A	05-112	29 IR 1734	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2978
405 IAC 1-14.6-7	A	05-112	29 IR 1735	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2978
405 IAC 1-14.6-9	A	05-112	29 IR 1737	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2980
405 IAC 1-14.6-18	A	05-112	29 IR 1739	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2982
405 IAC 1-14.6-23	N	05-114	28 IR 3655	*ARR (29 IR 1216)
			29 IR 1269	*AROC (29 IR 2054)
	N	05-112		29 IR 2983
405 IAC 1-14.6-24	N	05-112	29 IR 1740	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2983
405 IAC 1-14.6-25	N	05-112	29 IR 1741	*AROC (29 IR 2054) *NRA (29 IR 2251) 29 IR 2984
405 IAC 2-2-3	A	04-319	28 IR 1847	*NRA (28 IR 2752) 29 IR 9
405 IAC 2-3-10	A	03-263	27 IR 1210	*ARR (27 IR 4024) *NRA (27 IR 4044) 28 IR 178
	A	04-321	28 IR 2196	*NRA (28 IR 3321) 28 IR 3579
405 IAC 2-9-5	A	04-319	28 IR 1848	*NRA (28 IR 2752) 29 IR 10
405 IAC 5-1-5	A	04-178	28 IR 260	*NRA (28 IR 1497) 28 IR 2131
405 IAC 5-3-13	A	04-178	28 IR 260	*NRA (28 IR 1497) 28 IR 2132
	A	05-220	29 IR 639	*NRA (29 IR 1580) 29 IR 1903

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405 IAC 5-4-4	N	05-294	29 IR 1990	*NRA (29 IR 2585)	410 IAC 6-12-3	A	03-276	27 IR 3213	28 IR 818
405 IAC 5-5-1	A	05-220	29 IR 640	*NRA (29 IR 1580)	410 IAC 6-12-3.1	N	03-276	27 IR 3213	28 IR 818
				29 IR 1904	410 IAC 6-12-3.2	N	03-276	27 IR 3213	28 IR 818
405 IAC 5-9-1	A	04-178	28 IR 261	*NRA (28 IR 1497)	410 IAC 6-12-4	A	03-276	27 IR 3213	28 IR 818
				28 IR 2132	410 IAC 6-12-5	R	03-276	27 IR 3216	28 IR 821
405 IAC 5-14-1	A	06-5	29 IR 3095		410 IAC 6-12-6	R	03-276	27 IR 3216	28 IR 821
405 IAC 5-14-3	A	06-5	29 IR 3096		410 IAC 6-12-7	A	03-276	27 IR 3213	28 IR 818
405 IAC 5-19-1	A	04-178	28 IR 261	*NRA (28 IR 1497)	410 IAC 6-12-8	A	03-276	27 IR 3213	28 IR 819
				28 IR 2133	410 IAC 6-12-9	A	03-276	27 IR 3214	28 IR 820
405 IAC 5-19-3	A	03-207	27 IR 267	*AROC (27 IR 2342)	410 IAC 6-12-10	A	03-276	27 IR 3215	28 IR 820
405 IAC 5-19-10	A	04-178	28 IR 262	*NRA (28 IR 1497)	410 IAC 6-12-11	A	03-276	27 IR 3215	28 IR 820
				28 IR 2134	410 IAC 6-12-12	A	03-276	27 IR 3215	28 IR 820
405 IAC 5-22-8	A	05-200	29 IR 638	*NRA (29 IR 1580)	410 IAC 6-12-13	A	03-276	27 IR 3215	28 IR 820
				29 IR 1902	410 IAC 6-12-14	A	03-276	27 IR 3215	28 IR 821
405 IAC 5-24-4	A	05-76	28 IR 3653	*NRA (29 IR 575)	410 IAC 6-12-15	R	03-276	27 IR 3216	28 IR 821
				29 IR 1212	410 IAC 6-12-17	N	03-276	27 IR 3216	28 IR 821
405 IAC 5-24-5	A	05-76	28 IR 3653	*NRA (29 IR 575)	410 IAC 7-20	R	04-60	27 IR 3301	28 IR 906
				29 IR 1212	410 IAC 7-21-34				*ERR (28 IR 1695)
405 IAC 5-26-5	A	04-178	28 IR 262	*NRA (28 IR 1497)	410 IAC 7-22-15	A	05-320	29 IR 3100	
				28 IR 2134	410 IAC 7-23-1	A	04-62	27 IR 3301	28 IR 908
405 IAC 5-38	N	06-29	29 IR 3097		410 IAC 7-24	N	04-60	27 IR 3216	28 IR 822
405 IAC 6-2-5	A	04-95	27 IR 3210	*NRA (27 IR 4044)					*ERR (28 IR 1485)
				28 IR 179	410 IAC 15-1.1-1	A	05-193	29 IR 1742	*AROC (29 IR 2672)
405 IAC 6-3-3	A	04-95	27 IR 3210	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 180	410 IAC 15-1.1-2.5	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-4-2	A	04-95	27 IR 3210	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 180	410 IAC 15-1.1-3.3	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-4-3	A	04-95	27 IR 3211	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 180	410 IAC 15-1.1-3.7	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-5-1	A	04-95	27 IR 3211	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 181	410 IAC 15-1.1-8.5	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-5-2	A	04-95	27 IR 3211	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 181	410 IAC 15-1.1-13.1	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-5-3	A	04-95	27 IR 3211	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 181	410 IAC 15-1.1-13.2	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-5-4	A	04-95	27 IR 3212	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 181	410 IAC 15-1.1-13.3	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-5-6	A	04-95	27 IR 3212	*NRA (27 IR 4044)					*CPH (29 IR 3038)
				28 IR 182	410 IAC 15-1.1-13.4	N	05-193	29 IR 1743	*AROC (29 IR 2672)
405 IAC 6-10	N	05-209	29 IR 854	*NRA (29 IR 2251)					*CPH (29 IR 3038)
				29 IR 2524	410 IAC 15-1.1-13.5	N	05-193	29 IR 1744	*AROC (29 IR 2672)
405 IAC 8	N	05-209	29 IR 856	*NRA (29 IR 2251)					*CPH (29 IR 3038)
				29 IR 2526	410 IAC 15-1.1-13.6	N	05-193	29 IR 1744	*AROC (29 IR 2672)
									*CPH (29 IR 3038)
TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM					410 IAC 15-1.1-14.2	N	05-193	29 IR 1744	*AROC (29 IR 2672)
407 IAC 2-2-3	A	05-155	28 IR 3656	29 IR 1213					*CPH (29 IR 3038)
407 IAC 2-3-1	A	05-156	28 IR 3657	29 IR 1213	410 IAC 15-1.1-15.5	N	05-193	29 IR 1744	*AROC (29 IR 2672)
									*CPH (29 IR 3038)
TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH					410 IAC 15-1.1-20	N	05-193	29 IR 1744	*AROC (29 IR 2672)
410 IAC 1-2.3-47	A	05-189	29 IR 2290	*AROC (29 IR 2671)					*CPH (29 IR 3038)
410 IAC 1-2.3-48	A	05-189	29 IR 2293	*AROC (29 IR 2671)	410 IAC 15-1.1-21	N	05-193	29 IR 1744	*AROC (29 IR 2672)
410 IAC 1-2.3-87	R	05-189	29 IR 2300	*AROC (29 IR 2671)					*CPH (29 IR 3038)
410 IAC 1-2.4	N	04-100	28 IR 2806	*AROC (28 IR 1561)	410 IAC 15-1.1-22	N	05-193	29 IR 1744	*AROC (29 IR 2672)
				29 IR 798					*CPH (29 IR 3038)
410 IAC 1-4-1.1	A	05-259	29 IR 1750	29 IR 2536	410 IAC 15-1.1-23	N	05-193	29 IR 1745	*AROC (29 IR 2672)
410 IAC 1-4-4.3	A	05-259	29 IR 1750	29 IR 2536					*CPH (29 IR 3038)
410 IAC 1-4-8	A	05-259	29 IR 1750	29 IR 2537	410 IAC 15-1.4-2.2	N	05-193	29 IR 1745	*AROC (29 IR 2672)
410 IAC 1-6	RA	05-20	28 IR 2458	28 IR 3661					*CPH (29 IR 3038)
410 IAC 3.6	N	05-19	29 IR 870	*AROC (29 IR 898)	410 IAC 15-2.1	RA	05-20	28 IR 2458	28 IR 3661
				29 IR 2985	410 IAC 15-2.2	RA	05-20	28 IR 2458	28 IR 3661
410 IAC 5-11	R	05-190	29 IR 2311	*AROC (29 IR 2671)	410 IAC 15-2.3	RA	05-20	28 IR 2458	28 IR 3661
410 IAC 5.2	N	05-190	29 IR 2301	*AROC (29 IR 2671)	410 IAC 15-2.4	RA	05-20	28 IR 2458	28 IR 3661
410 IAC 6-7.2-28				*ERR (28 IR 1695)	410 IAC 15-2.4-3	N	05-321	29 IR 2322	
410 IAC 6-7.2-29				*ERR (28 IR 2391)	410 IAC 15-2.5	RA	05-20	28 IR 2458	28 IR 3661
410 IAC 6-9-3				*ERR (28 IR 1695)	410 IAC 15-2.6	RA	05-20	28 IR 2458	28 IR 3661
410 IAC 6-12-0.5	N	03-276	27 IR 3212	28 IR 818	410 IAC 15-2.6-1				*ERR (28 IR 1695)
410 IAC 6-12-1	A	03-276	27 IR 3212	28 IR 818	410 IAC 15-2.7	RA	05-20	28 IR 2458	28 IR 3661
410 IAC 6-12-2	R	03-276	27 IR 3216	28 IR 821	410 IAC 16.2-1.1-19.3	N	04-7	27 IR 2542	28 IR 189

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410 IAC 16.2-3.1-2	A	03-297	27 IR 2536	28 IR 182	TITLE 414 HOSPITAL COUNCIL			
	A	04-7	27 IR 2542	28 IR 189	414 IAC 1-1-3	N	05-95	29 IR 103 *GRAT (29 IR 2372)
410 IAC 16.2-3.1-21				*ERR (28 IR 1695)				29 IR 2538
410 IAC 16.2-3.1-53	N	04-7	27 IR 2545	28 IR 192	414 IAC 1-1-4	N	05-95	29 IR 103 *GRAT (29 IR 2372)
410 IAC 16.2-5-1.1	A	03-297	27 IR 2539	28 IR 185				29 IR 2538
410 IAC 16.2-5-1.4	A	04-7	27 IR 2547	28 IR 193	TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION			
410 IAC 16.2-5-1.5				*ERR (28 IR 1695)	440 IAC 7.5-1-1	A	04-229	28 IR 657 *NRA (28 IR 1497)
410 IAC 16.2-5-1.6				*ERR (28 IR 1695)				28 IR 2356
410 IAC 16.2-5-5.1				*ERR (28 IR 1695)	440 IAC 7.5-2-1	A	04-229	28 IR 660 *NRA (28 IR 1497)
410 IAC 16.2-5-13	N	04-7	27 IR 2548	28 IR 194				28 IR 2359
410 IAC 17-10-1	A	05-260	29 IR 2313		440 IAC 7.5-2-8	A	04-229	28 IR 661 *NRA (28 IR 1497)
410 IAC 17-12-1	A	05-260	29 IR 2316					28 IR 2359
410 IAC 17-12-3	A	05-260	29 IR 2317		440 IAC 7.5-2-12	A	04-229	28 IR 661 *NRA (28 IR 1497)
410 IAC 17-13-1	A	05-260	29 IR 2318					28 IR 2360
410 IAC 17-13-2	N	05-260	29 IR 2319		440 IAC 7.5-2-13	A	04-229	28 IR 662 *NRA (28 IR 1497)
410 IAC 17-13-3	N	05-260	29 IR 2319					28 IR 2361
410 IAC 17-16-1	A	05-260	29 IR 2320		440 IAC 7.5-3-3	A	04-229	28 IR 663 *NRA (28 IR 1497)
410 IAC 21-3-6	R	04-161	28 IR 657	28 IR 2356				28 IR 2362
410 IAC 21-3-7	A	05-256	29 IR 1748	*ARR (29 IR 3028)	440 IAC 7.5-3-4	A	04-229	28 IR 664 *NRA (28 IR 1497)
				*CPH (29 IR 3038)				28 IR 2363
410 IAC 21-3-8	A	04-161	28 IR 656	28 IR 2355	440 IAC 7.5-3-7	A	04-229	28 IR 664 *NRA (28 IR 1497)
410 IAC 21-3-9	A	04-161	28 IR 656	28 IR 2355				28 IR 2363
	A	05-256	29 IR 1748	*ARR (29 IR 3028)	440 IAC 7.5-4-4	A	04-229	*NRA (28 IR 1497)
				*CPH (29 IR 3038)				28 IR 2363
410 IAC 26	N	05-94	29 IR 85	*ARR (29 IR 1940)	440 IAC 7.5-4-7	A	04-229	28 IR 664 *NRA (28 IR 1497)
				*AROC (29 IR 2055)				28 IR 2364
				*GRAT (29 IR 2060)	440 IAC 7.5-4-8	A	04-229	28 IR 665 *NRA (28 IR 1497)
				*GRAT (29 IR 3108)				28 IR 2364
410 IAC 26-1-1	A	05-321	29 IR 2324		440 IAC 7.5-5-1	A	04-229	28 IR 665 *NRA (28 IR 1497)
410 IAC 26-1-3.5	N	05-321	29 IR 2324					28 IR 2364
410 IAC 26-1-4.6	N	05-321	29 IR 2324		440 IAC 7.5-8-1	A	04-229	28 IR 666 *NRA (28 IR 1497)
410 IAC 26-1-4.8	N	05-321	29 IR 2324					28 IR 2365
410 IAC 26-1-9.5	N	05-321	29 IR 2325		440 IAC 7.5-8-2	A	04-229	28 IR 666 *NRA (28 IR 1497)
410 IAC 26-1-12.5	N	05-321	29 IR 2325					28 IR 2365
410 IAC 26-1-12.6	N	05-321	29 IR 2325		440 IAC 7.5-8-3	A	04-229	28 IR 666 *NRA (28 IR 1497)
410 IAC 26-1-12.7	N	05-321	29 IR 2325					28 IR 2365
410 IAC 26-1-12.8	N	05-321	29 IR 2325		440 IAC 7.5-9-1	A	04-229	28 IR 666 *NRA (28 IR 1497)
410 IAC 26-1-12.9	N	05-321	29 IR 2325					28 IR 2365
410 IAC 26-1-13.5	N	05-321	29 IR 2325		440 IAC 7.5-9-2	A	04-229	28 IR 666 *NRA (28 IR 1497)
410 IAC 26-1-17.5	N	05-321	29 IR 2326					28 IR 2366
410 IAC 26-1-17.8	N	05-321	29 IR 2326		440 IAC 7.5-9-3	A	04-229	28 IR 667 *NRA (28 IR 1497)
410 IAC 26-1-19	N	05-321	29 IR 2326					28 IR 2366
410 IAC 26-6-2	N	05-321	29 IR 2326		440 IAC 7.5-10-1	A	04-229	28 IR 667 *NRA (28 IR 1497)
410 IAC 27	N	05-93	29 IR 66	*GRAT (29 IR 2059)				28 IR 2366
				29 IR 1904	440 IAC 7.5-10-2	A	04-229	28 IR 667 *NRA (28 IR 1497)
410 IAC 27-1-1	A	05-321	29 IR 2328					28 IR 2366
410 IAC 27-1-1.5	N	05-321	29 IR 2328		440 IAC 7.5-10-3	N	04-229	28 IR 667 *NRA (28 IR 1497)
410 IAC 27-1-2.5	N	05-321	29 IR 2328					28 IR 2367
410 IAC 27-1-3.5	N	05-321	29 IR 2328		440 IAC 7.5-11	N	04-229	28 IR 667 *NRA (28 IR 1497)
410 IAC 27-1-9.5	N	05-321	29 IR 2328					28 IR 2367
410 IAC 27-1-13.4	N	05-321	29 IR 2328		TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES			
410 IAC 27-1-13.5	N	05-321	29 IR 2328		460 IAC 1-3.4	N	04-75	28 IR 1002 *NRA (28 IR 1497)
410 IAC 27-1-13.6	N	05-321	29 IR 2328					*AROC (28 IR 2461)
410 IAC 27-1-13.7	N	05-321	29 IR 2329		460 IAC 1-8-3	A	04-199	28 IR 1007 *NRA (28 IR 1497)
410 IAC 27-1-13.8	N	05-321	29 IR 2329					28 IR 2690
410 IAC 27-1-13.9	N	05-321	29 IR 2329		460 IAC 1-8-11	N	04-199	28 IR 1007 *NRA (28 IR 1497)
410 IAC 27-1-15.5	N	05-321	29 IR 2329					28 IR 2691
410 IAC 27-1-16.5	N	05-321	29 IR 2329		460 IAC 1-8-12	N	04-199	28 IR 1008 *NRA (28 IR 1497)
410 IAC 27-1-21.5	N	05-321	29 IR 2329					28 IR 2691
410 IAC 27-1-23	N	05-321	29 IR 2329		460 IAC 1-8-13	N	04-199	28 IR 1008 *NRA (28 IR 1497)
410 IAC 27-1-24	N	05-321	29 IR 2330					28 IR 2691
410 IAC 27-6-2	N	05-321	29 IR 2330		460 IAC 1-10	N	03-231	27 IR 3303 *NRA (28 IR 233)
410 IAC 28	N	05-192	29 IR 1271	*AWR (29 IR 2549)				28 IR 910
410 IAC 29	N	05-189	29 IR 2294	*AROC (29 IR 2671)	460 IAC 1-11	N	04-136	28 IR 1004 *NRA (28 IR 1497)
								28 IR 2687
TITLE 412 INDIANA HEALTH FACILITIES COUNCIL								
412 IAC 2-1-2.1	A	05-35	28 IR 3341	29 IR 799				
412 IAC 2-1-10	A	05-35	28 IR 3341	29 IR 800				
412 IAC 2-1-13	R	05-35	28 IR 3342	29 IR 801				
412 IAC 2-1-14	A	05-35	28 IR 3342	29 IR 800				

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460 IAC 1.1	N	03-245	27 IR 2799	*AROC (27 IR 3344) *NRA (28 IR 233) *GRAT (28 IR 2204) 28 IR 912	470 IAC 3-1.1-10	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
460 IAC 1.2	N	05-119	29 IR 1991	*AROC (29 IR 2055)	470 IAC 3-1.1-12	A	04-77	27 IR 2839	*NRA (28 IR 1196)
460 IAC 2-2.1	N	04-76	27 IR 3701	*NRA (28 IR 233) 28 IR 2368					*AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
460 IAC 3.5-2-3	N	04-269	28 IR 1303	*AWR (28 IR 1697)					*AWR (28 IR 2393)
TITLE 465 DEPARTMENT OF CHILD SERVICES									
465 IAC 2-9-31	A	04-316	29 IR 2008	*NRA (29 IR 3036)	470 IAC 3-1.1-12.5	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140)
465 IAC 2-9-32	A	04-316	29 IR 2008	*NRA (29 IR 3036)	470 IAC 3-1.1-13	A	04-77	27 IR 2839	*GRAT (28 IR 2205) *AWR (28 IR 2393)
465 IAC 2-9-57	A	04-316	29 IR 2008	*NRA (29 IR 3036)					*NRA (28 IR 1196)
465 IAC 2-9-58	A	04-316	29 IR 2008	*NRA (29 IR 3036)					*AROC (28 IR 1317) *ARR (28 IR 2140)
465 IAC 2-9-59	A	04-316	29 IR 2009	*NRA (29 IR 3036)					*GRAT (28 IR 2205)
465 IAC 2-10-31	A	04-316	29 IR 2010	*NRA (29 IR 3036)					*AWR (28 IR 2393)
465 IAC 2-10-32	A	04-316	29 IR 2010	*NRA (29 IR 3036)	470 IAC 3-1.1-14	A	04-77	27 IR 2840	*NRA (28 IR 1196)
465 IAC 2-10-57	A	04-316	29 IR 2010	*NRA (29 IR 3036)					*AROC (28 IR 1317) *ARR (28 IR 2140)
465 IAC 2-10-58	A	04-316	29 IR 2011	*NRA (29 IR 3036)					*GRAT (28 IR 2205)
465 IAC 2-10-59	A	04-316	29 IR 2012	*NRA (29 IR 3036)					*AWR (28 IR 2393)
465 IAC 2-12-57	A	04-316	29 IR 2012	*NRA (29 IR 3036)					*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140)
465 IAC 2-13-57	A	04-316	29 IR 2013	*NRA (29 IR 3036)					*GRAT (28 IR 2205)
TITLE 470 DIVISION OF FAMILY RESOURCES									
470 IAC 3-1.1-0.5	A	04-77	27 IR 2837	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-15	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-1	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-16	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-20	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-4	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-20.1	N	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-6	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-22.5	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-7.2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-24	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-7.4	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-28	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-8	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-28.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-9	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-29	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)

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470 IAC 3-1.1-29.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-41	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-32	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-41.1	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-32.1	N	04-77	27 IR 2843	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-41.2	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-33	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-42	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-33.5	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-44	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-34	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-44.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-35	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-45	A	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-36.5	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-45.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-36.6	N	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-46	A	04-77	27 IR 2851	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-37	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-47	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-38	A	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-48	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-38.5	N	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-50	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-39	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.1-51	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-40	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-1.2-2	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)

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470 IAC 3-1.2-3	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-4.8	N	03-232	27 IR 1626	*AROC (27 IR 2882) *NRA (27 IR 4044) 28 IR 196
470 IAC 3-1.2-3.2	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3-18	N	03-233	27 IR 1627	*AROC (27 IR 3345) *NRA (28 IR 233) 28 IR 950
470 IAC 3-1.2-4	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-1-10	A	05-201	29 IR 104	*NRA (29 IR 1580) 29 IR 2181
470 IAC 3-1.2-5	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-1-18	A	05-201	29 IR 104	*NRA (29 IR 1580) 29 IR 2181
470 IAC 3-1.2-6	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-1-25	A	05-201	29 IR 104	*NRA (29 IR 1580) 29 IR 2181
470 IAC 3-1.2-7	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-1-26	A	05-201	29 IR 104	*NRA (29 IR 1580) 29 IR 2181
470 IAC 3-1.2-8	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-3-1	A	05-201	29 IR 105	*NRA (29 IR 1580) 29 IR 2181
470 IAC 3-1.3-1	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-4-2	A	05-201	29 IR 106	*NRA (29 IR 1580) 29 IR 2182
470 IAC 3-1.3-2	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-7-1	A	05-201	29 IR 106	*NRA (29 IR 1580) 29 IR 2183
470 IAC 3-1.3-3	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-7-2	A	05-201	29 IR 107	*NRA (29 IR 1580) 29 IR 2183
470 IAC 3-1.3-4	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-7-3	R	05-201	29 IR 109	*NRA (29 IR 1580) 29 IR 2186
470 IAC 3-1.3-5	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-11-2	A	05-201	29 IR 107	*NRA (29 IR 1580) 29 IR 2184
470 IAC 3-1.3-6	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-11-4	A	05-201	29 IR 107	*NRA (29 IR 1580) 29 IR 2184
470 IAC 3-1.3-7	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)	470 IAC 3.1-12-2	A	05-201	29 IR 108	*NRA (29 IR 1580) 29 IR 2185
					470 IAC 3.1-12-7	A	05-201	29 IR 108	*NRA (29 IR 1580) 29 IR 2185
					470 IAC 3.1-15-10	A	05-201	29 IR 109	*NRA (29 IR 1580) 29 IR 2186
					TITLE 511 INDIANA STATE BOARD OF EDUCATION				
					511 IAC 1-2.5-1				*ERR (28 IR 3306)
					511 IAC 1-3-1	A	04-101	27 IR 3305	28 IR 965
									*ERR (28 IR 3306)
					511 IAC 1-3-2				*ERR (28 IR 3306)
					511 IAC 1-6-1				*ERR (28 IR 3306)
					511 IAC 1-6-2				*ERR (28 IR 3306)
					511 IAC 1-6-3				*ERR (28 IR 3306)
					511 IAC 1-6-4				*ERR (28 IR 3306)
					511 IAC 1-6-5				*ERR (28 IR 3306)
					511 IAC 1-7-1				*ERR (28 IR 3306)
					511 IAC 1-8-2				*ERR (28 IR 3306)
					511 IAC 1-8-7				*ERR (28 IR 3306)
					511 IAC 1-8-11				*ERR (28 IR 3306)

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511 IAC 6.1-1-13.5				*ERR (28 IR 3306)	TITLE 512 DEPARTMENT OF EDUCATION				
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	28 IR 323	512 IAC	N	06-39	29 IR 2332	
511 IAC 6.1-2-4				*ERR (28 IR 3306)					
511 IAC 6.1-2-5				*ERR (28 IR 3306)	TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD				
511 IAC 6.1-5-1				*ERR (28 IR 3306)	514 IAC	N	03-298	27 IR 1634	28 IR 197
511 IAC 6.1-5-2.5				*ERR (28 IR 3306)					
511 IAC 6.1-5-3				*ERR (28 IR 3306)	TITLE 515 PROFESSIONAL STANDARDS, ADVISORY BOARD				
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	28 IR 323	OF THE DIVISION OF				
				*ERR (28 IR 3306)	515 IAC 1-1-89				*ERR (28 IR 3308)
511 IAC 6.1-5-5				*ERR (28 IR 3307)	515 IAC 1-1-93				*ERR (28 IR 3308)
511 IAC 6.1-5.1-1	A	04-317	28 IR 2198	29 IR 1556	515 IAC 1-2-2	R	05-339	29 IR 1754	
511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	28 IR 960	515 IAC 1-2-17				*ERR (28 IR 3308)
511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	28 IR 960	515 IAC 1-2-18				*ERR (28 IR 3308)
511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	28 IR 961	515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610)
511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	28 IR 962					28 IR 1475
511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	28 IR 962					*ERR (28 IR 3308)
511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	28 IR 963	515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610)
511 IAC 6.1-5.1-9	A	04-36	27 IR 2557	28 IR 964					28 IR 1475
	A	04-317	28 IR 2199	29 IR 1557	515 IAC 1-6-1				*ERR (28 IR 3308)
511 IAC 6.1-5.1-10.1	A	04-22	27 IR 2550	28 IR 957	515 IAC 1-6-4				*ERR (28 IR 3308)
	A	04-317	28 IR 2200	29 IR 1558	515 IAC 1-6-6				*ERR (28 IR 3308)
511 IAC 6.1-5.1-11	A	04-317	28 IR 2202	29 IR 1560	515 IAC 1-7-13				*ERR (28 IR 3308)
511 IAC 6.1-6-1				*ERR (28 IR 3307)	515 IAC 1-7-16				*ERR (28 IR 3308)
511 IAC 6.1-6-2				*ERR (28 IR 3307)	515 IAC 2-1-3				*ERR (28 IR 3308)
511 IAC 6.1-8-1				*ERR (28 IR 3307)	515 IAC 2-1-4				*ERR (28 IR 3308)
511 IAC 6.1-8-4				*ERR (28 IR 3307)	515 IAC 4-1-2				*ERR (28 IR 3308)
511 IAC 6.1-9-4				*ERR (28 IR 3307)	515 IAC 4-1-3				*ERR (28 IR 3308)
511 IAC 6.1-10-1				*ERR (28 IR 3307)	515 IAC 4-2-6				*ERR (28 IR 3308)
511 IAC 6.1-10-3				*ERR (28 IR 3307)	515 IAC 4-2-7				*ERR (28 IR 3308)
511 IAC 6.1-10-5				*ERR (28 IR 3307)	515 IAC 5-1-4				*ERR (28 IR 3308)
511 IAC 6.2-1-1				*ERR (28 IR 3307)	515 IAC 8-1-1				*ERR (28 IR 3308)
511 IAC 6.2-2-2				*ERR (28 IR 3307)					
511 IAC 6.2-2-4				*ERR (28 IR 3307)	515 IAC 8-1-21	A	05-338	29 IR 1751	
511 IAC 6.2-2-5				*ERR (28 IR 3307)	515 IAC 8-1-23	A	05-338	29 IR 1752	
511 IAC 6.2-2-6				*ERR (28 IR 3307)		A	03-321	27 IR 2330	*ARR (28 IR 610)
511 IAC 6.2-2-7				*ERR (28 IR 3307)					28 IR 1477
511 IAC 6.2-2-8				*ERR (28 IR 3307)	515 IAC 8-1-35	A	05-338	29 IR 1752	
511 IAC 6.2-2-9				*ERR (28 IR 3307)	515 IAC 8-1-42	A	03-321	27 IR 2330	*ARR (28 IR 610)
511 IAC 6.2-2-11				*ERR (28 IR 3307)					28 IR 1478
511 IAC 6.2-2-12				*ERR (28 IR 3307)	515 IAC 9-1-1				*ERR (28 IR 3308)
511 IAC 6.2-2.5-4				*ERR (28 IR 3307)		A	05-339	29 IR 1753	
511 IAC 6.2-2.5-9				*ERR (28 IR 3307)	515 IAC 9-1-2	A	05-339	29 IR 1754	
511 IAC 6.2-3-1				*ERR (28 IR 3307)	515 IAC 9-1-18				*ERR (28 IR 3309)
511 IAC 6.2-3-3				*ERR (28 IR 3307)	515 IAC 9-1-19				*ERR (28 IR 3309)
511 IAC 6.2-4-1				*ERR (28 IR 3307)	515 IAC 9-1-22	A	03-322	27 IR 2331	*ARR (28 IR 610)
511 IAC 6.2-4-2				*ERR (28 IR 3307)					28 IR 1479
511 IAC 6.2-4-4				*ERR (28 IR 3307)	515 IAC 10	N	04-197	28 IR 263	*ARR (28 IR 2991)
511 IAC 6.2-6-2				*ERR (28 IR 3307)	515 IAC 12	N	04-141	27 IR 3703	28 IR 2135
511 IAC 6.2-6-3				*ERR (28 IR 3307)	515 IAC 12-1-0.5	N	05-340	29 IR 1755	
511 IAC 6.2-6-7				*ERR (28 IR 3307)	515 IAC 12-1-1	A	05-340	29 IR 1755	
511 IAC 6.2-6-10				*ERR (28 IR 3307)	515 IAC 12-1-3	A	05-340	29 IR 1755	
511 IAC 6.2-7-2				*ERR (28 IR 3307)					
511 IAC 7-17-16				*ERR (28 IR 3307)	TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY				
511 IAC 7-18-1				*ERR (28 IR 3307)	540 IAC 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
511 IAC 7-18-2				*ERR (28 IR 3307)					28 IR 324
511 IAC 7-27-4				*ERR (28 IR 3308)	540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096)
511 IAC 8	RA	04-47	27 IR 2879	28 IR 323					28 IR 324
511 IAC 8-1-1				*ERR (28 IR 3308)	TITLE 570 INDIANA COMMISSION ON PROPRIETARY EDUCATION				
511 IAC 9-1-0.5				*ERR (28 IR 3308)	570 IAC 1-1-1	A	05-178	29 IR 111	
511 IAC 9-1-1				*ERR (28 IR 3308)	570 IAC 1-2-3	A	05-178	29 IR 114	
511 IAC 9-1-2				*ERR (28 IR 3308)	570 IAC 1-2-4	A	05-178	29 IR 114	
511 IAC 9-2-2				*ERR (28 IR 3308)	570 IAC 1-3-1	A	05-178	29 IR 114	
511 IAC 9-5-2				*ERR (28 IR 3308)	570 IAC 1-3-2	A	05-178	29 IR 115	
511 IAC 9-5-4				*ERR (28 IR 3308)	570 IAC 1-3-3	A	05-178	29 IR 116	
511 IAC 9-6-1				*ERR (28 IR 3308)	570 IAC 1-4-1	A	05-178	29 IR 116	
511 IAC 10-6-1				*ERR (28 IR 3308)	570 IAC 1-4-2	A	05-178	29 IR 117	
511 IAC 10-6-3				*ERR (28 IR 3308)	570 IAC 1-4-3	A	05-178	29 IR 118	
511 IAC 10-6-5				*ERR (28 IR 3308)	570 IAC 1-4-4	A	05-178	29 IR 119	
511 IAC 11-7-3				*ERR (28 IR 3308)	570 IAC 1-5-2	A	05-178	29 IR 119	
511 IAC 12-2-4				*ERR (28 IR 3308)					

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570 IAC 1-5-3 A 05-178 29 IR 120
 570 IAC 1-5-4 A 05-178 29 IR 120
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 570 IAC 1-5-7 A 05-178 29 IR 121
 570 IAC 1-6-1 A 05-178 29 IR 121
 570 IAC 1-6-2 A 05-178 29 IR 121
 570 IAC 1-6-3 A 05-178 29 IR 121
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 570 IAC 1-6-6 A 05-178 29 IR 122
 570 IAC 1-8-3 A 05-178 29 IR 122
 570 IAC 1-8-4.5 A 05-178 29 IR 123
 570 IAC 1-8-5.5 N 05-178 29 IR 123
 570 IAC 1-8-7 A 05-178 29 IR 123
 570 IAC 1-9-5 A 05-178 29 IR 124
 570 IAC 1-10.1-4 A 05-178 29 IR 124
 570 IAC 1-10.1-6 A 05-178 29 IR 125
 570 IAC 1-11-4 A 05-178 29 IR 125
 570 IAC 1-11-8 A 05-178 29 IR 125
 570 IAC 1-12-1 A 05-178 29 IR 125
 570 IAC 1-12-2 A 05-178 29 IR 126
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575 IAC 1-1-1 *ERR (28 IR 3583)
 575 IAC 1-1-5 *ERR (28 IR 3583)
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 646 IAC 2-1-4 A 05-228 29 IR 643
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28 IR 560

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*ARR (29 IR 820)

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-1 A 05-249 29 IR 2655
 655 IAC 1-1-1.1 A 05-249 29 IR 2655
 655 IAC 1-1-5.1 A 04-138 28 IR 1009 *AROC (28 IR 1073)
28 IR 2693
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 655 IAC 1-1-6.1 A 05-249 29 IR 2656
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655 IAC 1-2.1-10	A	04-138	28 IR 1016	*AROC (28 IR 1073) 28 IR 2700	655 IAC 1-2.1-108	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2711
655 IAC 1-2.1-11	A	04-138	28 IR 1017	*AROC (28 IR 1073) 28 IR 2701	655 IAC 1-2.1-109	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2711
655 IAC 1-2.1-12	A	04-138	28 IR 1017	*AROC (28 IR 1073) 28 IR 2701	655 IAC 1-2.1-110	N	04-138	28 IR 1027	*AROC (28 IR 1073) 28 IR 2711
655 IAC 1-2.1-13	A	04-138	28 IR 1017	*AROC (28 IR 1073) 28 IR 2701	655 IAC 1-2.1-111	N	04-297	28 IR 2419	*AROC (28 IR 3354) 29 IR 481
655 IAC 1-2.1-14	A	04-138	28 IR 1017	*AROC (28 IR 1073) 28 IR 2701	655 IAC 1-2.1-112	N	04-297	28 IR 2423	*AROC (28 IR 3354) 29 IR 485
655 IAC 1-2.1-15	A	04-138	28 IR 1017	*AROC (28 IR 1073) 28 IR 2701	655 IAC 1-2.1-113	N	04-297	28 IR 2423	*AROC (28 IR 3354) 29 IR 485
655 IAC 1-2.1-20	A	04-138	28 IR 1018	*AROC (28 IR 1073) 28 IR 2702	655 IAC 1-2.1-114	N	04-297	28 IR 2424	*AROC (28 IR 3354) 29 IR 485
655 IAC 1-2.1-22	A	04-138	28 IR 1018	*AROC (28 IR 1073) 28 IR 2702	655 IAC 1-2.1-115	N	04-297	28 IR 2425	*AROC (28 IR 3354) 29 IR 486
655 IAC 1-2.1-23	A	04-138	28 IR 1018	*AROC (28 IR 1073) 28 IR 2702	655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-2.1-23.1	A	04-138	28 IR 1019	*AROC (28 IR 1073) 28 IR 2702	655 IAC 1-4-2	A	04-138	28 IR 1028	*AROC (28 IR 1073) 28 IR 2712
655 IAC 1-2.1-24	A	04-138	28 IR 1019	*AROC (28 IR 1073) 28 IR 2703	TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION				
655 IAC 1-2.1-24.1	A	04-138	28 IR 1019	*AROC (28 IR 1073) 28 IR 2703	675 IAC 12-1.1-1	A	05-108	29 IR 1317	
655 IAC 1-2.1-24.2	A	04-138	28 IR 1019	*AROC (28 IR 1073) 28 IR 2703	675 IAC 12-1.1-2	A	05-108	29 IR 1317	
655 IAC 1-2.1-24.3	A	04-138	28 IR 1019	*AROC (28 IR 1073) 28 IR 2703	675 IAC 12-1.1-3	A	05-108	29 IR 1317	
655 IAC 1-2.1-75	A	04-138	28 IR 1020	*AROC (28 IR 1073) 28 IR 2704	675 IAC 12-1.1-4	A	05-108	29 IR 1317	
655 IAC 1-2.1-75.2	A	04-138	28 IR 1020	*AROC (28 IR 1073) 28 IR 2704	675 IAC 12-1.1-5	A	05-108	29 IR 1318	
655 IAC 1-2.1-75.3	A	04-138	28 IR 1020	*AROC (28 IR 1073) 28 IR 2704	675 IAC 12-3-2	A	05-108	29 IR 1318	
655 IAC 1-2.1-75.4	A	04-138	28 IR 1021	*AROC (28 IR 1073) 28 IR 2705	675 IAC 12-3-6	A	05-108	29 IR 1319	
655 IAC 1-2.1-75.5	A	04-138	28 IR 1021	*AROC (28 IR 1073) 28 IR 2705	675 IAC 12-3-8	A	05-108	29 IR 1320	
655 IAC 1-2.1-76.1	A	04-138	28 IR 1022	*AROC (28 IR 1073) 28 IR 2706	675 IAC 12-3-11	A	05-108	29 IR 1320	
655 IAC 1-2.1-76.2	R	04-138	28 IR 1029	*AROC (28 IR 1073) 28 IR 2712	675 IAC 12-3-13	A	05-108	29 IR 1320	
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655 IAC 1-2.1-96	N	04-138	28 IR 1022	*AROC (28 IR 1073) 28 IR 2706	675 IAC 12-3-15	A	05-108	29 IR 1322	
655 IAC 1-2.1-97	N	04-138	28 IR 1022	*AROC (28 IR 1073) 28 IR 2706	675 IAC 12-4-4	A	05-108	29 IR 1322	
655 IAC 1-2.1-98	N	04-138	28 IR 1023	*AROC (28 IR 1073) 28 IR 2706	675 IAC 12-4-5	A	05-108	29 IR 1322	
655 IAC 1-2.1-99	N	04-138	28 IR 1023	*AROC (28 IR 1073) 28 IR 2707	675 IAC 12-4-7	A	05-108	29 IR 1322	
655 IAC 1-2.1-100	N	04-138	28 IR 1023	*AROC (28 IR 1073) 28 IR 2707	675 IAC 12-4-11	A	05-108	29 IR 1323	
655 IAC 1-2.1-101	N	04-138	28 IR 1024	*AROC (28 IR 1073) 28 IR 2708	675 IAC 12-5-2	A	05-108	29 IR 1324	
655 IAC 1-2.1-102	N	04-138	28 IR 1024	*AROC (28 IR 1073) 28 IR 2708	675 IAC 12-5-4	A	05-108	29 IR 1325	
655 IAC 1-2.1-103	N	04-138	28 IR 1025	*AROC (28 IR 1073) 28 IR 2709	675 IAC 12-5-5	A	05-108	29 IR 1325	
655 IAC 1-2.1-104	N	04-138	28 IR 1025	*AROC (28 IR 1073) 28 IR 2709	675 IAC 12-5-6	A	05-108	29 IR 1326	
655 IAC 1-2.1-105	N	04-138	28 IR 1026	*AROC (28 IR 1073) 28 IR 2710	675 IAC 12-5-9	A	05-108	29 IR 1327	
655 IAC 1-2.1-106	N	04-138	28 IR 1026	*AROC (28 IR 1073) 28 IR 2710	675 IAC 12-6-2	A	05-108	29 IR 1327	
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					675 IAC 12-6-23	A	05-108	29 IR 1340	
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675 IAC 12-8-4	A	05-108	29 IR 1343	675 IAC 13-2.4-40.6	N	04-216	28 IR 1531	*AROC (29 IR 146) 29 IR 497
675 IAC 12-8-5	A	05-108	29 IR 1344	675 IAC 13-2.4-41.5	N	04-216	28 IR 1531	*AROC (29 IR 146) 29 IR 497
675 IAC 12-8-6	A	05-108	29 IR 1344	675 IAC 13-2.4-42.7	N	04-216	28 IR 1531	*AROC (29 IR 146) 29 IR 497
675 IAC 12-8-7	A	05-108	29 IR 1344	675 IAC 13-2.4-43.2	N	04-216	28 IR 1531	*AROC (29 IR 146) 29 IR 497
675 IAC 12-8-8	A	05-108	29 IR 1345	675 IAC 13-2.4-43.6	N	04-216	28 IR 1531	*AROC (29 IR 146) 29 IR 497
675 IAC 12-8-9	A	05-108	29 IR 1345	675 IAC 13-2.4-47	A	04-216	28 IR 1531	*AROC (29 IR 146) 29 IR 497
675 IAC 12-8-10	A	05-108	29 IR 1346	675 IAC 13-2.4-55	A	04-216	28 IR 1533	*AROC (29 IR 146) 29 IR 499
675 IAC 12-8-11	A	05-108	29 IR 1346	675 IAC 13-2.4-55.5	N	04-216	28 IR 1533	*AROC (29 IR 146) 29 IR 499
675 IAC 12-8-12	A	05-108	29 IR 1347	675 IAC 13-2.4-56.5	N	04-216	28 IR 1533	*AROC (29 IR 146) 29 IR 499
675 IAC 12-8-13	A	05-108	29 IR 1347	675 IAC 13-2.4-68		02-115		*ERR (28 IR 1695)
675 IAC 12-8-14	A	05-108	29 IR 1347	675 IAC 13-2.4-96.5	N	04-216	28 IR 1533	*AROC (29 IR 146)
675 IAC 12-8-15	A	05-108	29 IR 1348	675 IAC 13-2.4-105.6	N	04-216	28 IR 1533	*AROC (29 IR 146) 29 IR 500
675 IAC 12-8-17	A	05-108	29 IR 1348	675 IAC 13-2.4-107.3	N	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-8-18	A	05-108	29 IR 1349	675 IAC 13-2.4-107.5	N	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-8-19	A	05-108	29 IR 1349	675 IAC 13-2.4-107.6	N	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-8-20	A	05-108	29 IR 1349	675 IAC 13-2.4-118	A	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-8-21	A	05-108	29 IR 1350	675 IAC 13-2.4-118.4	N	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-9-1	A	05-108	29 IR 1350	675 IAC 13-2.4-121.5	N	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-9-2	A	05-108	29 IR 1350	675 IAC 13-2.4-122	A	04-216	28 IR 1534	*AROC (29 IR 146) 29 IR 500
675 IAC 12-9-3	A	05-108	29 IR 1351	675 IAC 13-2.4-122.5	N	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-9-4	A	05-108	29 IR 1352	675 IAC 13-2.4-131		02-115		*ERR (28 IR 1695)
675 IAC 12-9-5	A	05-108	29 IR 1352	675 IAC 13-2.4-132	A	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-9-6	A	05-108	29 IR 1352	675 IAC 13-2.4-132.3	N	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-9-7	A	05-108	29 IR 1353	675 IAC 13-2.4-132.5	N	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-9-9	A	05-108	29 IR 1353	675 IAC 13-2.4-133.5	N	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-10-8	A	05-108	29 IR 1353	675 IAC 13-2.4-134.5	N	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-10-9	A	05-108	29 IR 1353	675 IAC 13-2.4-143	A	04-216	28 IR 1535	*AROC (29 IR 146) 29 IR 501
675 IAC 12-11-1	A	05-108	29 IR 1354	675 IAC 13-2.4-174		02-115		*ERR (28 IR 1695)
675 IAC 12-11-2	A	05-108	29 IR 1354	675 IAC 13-2.4-180.5	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-3	A	05-108	29 IR 1355	675 IAC 13-2.4-201.5	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-4	A	05-108	29 IR 1355	675 IAC 13-2.4-201.7	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-5	A	05-108	29 IR 1355	675 IAC 13-2.4-210.3	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-6	A	05-108	29 IR 1355	675 IAC 13-2.4-210.5	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-7	R	05-108	29 IR 1360	675 IAC 13-2.4-213.3	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-8	A	05-108	29 IR 1356	675 IAC 13-2.4-213.5	N	04-216	28 IR 1536	*AROC (29 IR 146) 29 IR 502
675 IAC 12-11-9	A	05-108	29 IR 1356					
675 IAC 12-12-1	A	05-108	29 IR 1356					
675 IAC 12-12-2	A	05-108	29 IR 1356					
675 IAC 12-12-3	A	05-108	29 IR 1357					
675 IAC 12-12-4	A	05-108	29 IR 1357					
675 IAC 12-12-5	A	05-108	29 IR 1357					
675 IAC 12-12-6	A	05-108	29 IR 1358					
675 IAC 12-12-7	A	05-108	29 IR 1358					
675 IAC 12-13-2	A	05-108	29 IR 1358					
675 IAC 12-13-3	A	05-108	29 IR 1359					
675 IAC 12-13-4	A	05-108	29 IR 1359					
675 IAC 12-14-1	A	05-108	29 IR 1359					
675 IAC 13-1-4	R	05-104	29 IR 1316					
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675 IAC 13-1-22	R	05-104	29 IR 1316					
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675 IAC 13-2.4-3		02-115						
675 IAC 13-2.4-10	A	04-216	28 IR 1529					
675 IAC 13-2.4-15		02-115						
675 IAC 13-2.4-19	A	04-216	28 IR 1529					
675 IAC 13-2.4-20	A	04-216	28 IR 1530					
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675 IAC 13-2.4-24.3	N	04-216	28 IR 1530					
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675 IAC 13-2.4-214.2	N	04-216	28 IR 1537	*AROC (29 IR 146) 29 IR 503	675 IAC 14-4.3-254.7	N	04-273	28 IR 1855	†† 29 IR 811
675 IAC 13-2.4-214.4	N	04-216	28 IR 1537	*AROC (29 IR 146) 29 IR 503	675 IAC 15-1-1	R	04-227	28 IR 1053	29 IR 29
675 IAC 13-2.4-214.6	N	04-216	28 IR 1537	*AROC (29 IR 146) 29 IR 503	675 IAC 15-1-2	R	04-227	28 IR 1053	29 IR 29
675 IAC 13-2.4-214.7	N	04-216	28 IR 1537	*AROC (29 IR 146) 29 IR 503	675 IAC 15-1-3	R	04-227	28 IR 1053	29 IR 29
675 IAC 13-2.4-222		02-115		*ERR (28 IR 1695)	675 IAC 15-1-5	R	04-227	28 IR 1053	29 IR 29
675 IAC 13-2.4-228.5	N	04-216	28 IR 1538	*AROC (29 IR 146) 29 IR 504	675 IAC 15-1-6	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2	R	04-194	28 IR 312	28 IR 3304	675 IAC 15-1-7	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-3				*ERR (28 IR 970)	675 IAC 15-1-8.1	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-19.5				*ERR (28 IR 970)	675 IAC 15-1-10	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-20.5				*ERR (28 IR 970)	675 IAC 15-1-11	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-21				*ERR (28 IR 970)	675 IAC 15-1-12	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-26.5				*ERR (28 IR 970)	675 IAC 15-1-13	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-29				*ERR (28 IR 970)	675 IAC 15-1-14	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-30	A	04-8	27 IR 2333	28 IR 562	675 IAC 15-1-16	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-53.7				*ERR (28 IR 970)	675 IAC 15-1-17	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-69.5				*ERR (28 IR 970)	675 IAC 15-1-19	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-69.6				*ERR (28 IR 970)	675 IAC 15-1-20	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-73.5				*ERR (28 IR 970)	675 IAC 15-1-21	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-81.2				*ERR (28 IR 970)	675 IAC 15-1-22	R	04-227	28 IR 1054	29 IR 29
675 IAC 14-4.2-89.2	A	04-8	27 IR 2333	28 IR 562	675 IAC 15-1.1	N	04-227	28 IR 1037	29 IR 13
675 IAC 14-4.2-89.6				*ERR (28 IR 970)	675 IAC 15-1.2	N	04-227	28 IR 1039	29 IR 15
675 IAC 14-4.2-89.8				*ERR (28 IR 970)	675 IAC 15-1.3	N	04-227	28 IR 1046	29 IR 21
675 IAC 14-4.2-107				*ERR (28 IR 970)	675 IAC 15-1.4	N	04-227	28 IR 1048	29 IR 23
675 IAC 14-4.3	N	04-194	28 IR 268	28 IR 3256	675 IAC 15-1.5	N	04-227	28 IR 1049	29 IR 25
675 IAC 14-4.3-100	A	05-348	29 IR 2043	*CPH (29 IR 3039)	675 IAC 15-1.6	N	04-227	28 IR 1051	29 IR 26
675 IAC 14-4.3-136.5	N	04-273	28 IR 1850	29 IR 806	675 IAC 15-1.7	N	04-227	28 IR 1052	29 IR 28
675 IAC 14-4.3-155.5	N	04-273	28 IR 1850	†† 29 IR 806	675 IAC 16-1.3	RA	05-3	28 IR 3052	29 IR 896
675 IAC 14-4.3-213	A	04-273	28 IR 1850	†† 29 IR 815	675 IAC 16-2	RA	05-3	28 IR 3052	29 IR 896
675 IAC 14-4.3-214	R	04-273	28 IR 1859	†† 29 IR 807	675 IAC 17-1.6	R	04-273	28 IR 1859	29 IR 815
675 IAC 14-4.3-214.5	N	04-273	28 IR 1850	†† 29 IR 807	675 IAC 17-1.7	N	04-273	28 IR 1855	29 IR 811
675 IAC 14-4.3-215	A	04-273	28 IR 1850	†† 29 IR 807	675 IAC 18-1.4-3		02-116		*ERR (28 IR 1696)
675 IAC 14-4.3-216	A	04-273	28 IR 1851	†† 29 IR 815	675 IAC 18-1.4-10.5	N	04-217	28 IR 1309	*AROC (29 IR 146)
675 IAC 14-4.3-217	R	04-273	28 IR 1859		675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	29 IR 11
675 IAC 14-4.3-219.6	N	04-273	28 IR 1851	†† 29 IR 807	675 IAC 18-1.4-12		02-116		*AROC (29 IR 146)
675 IAC 14-4.3-220.3	N	04-273	28 IR 1851	†† 29 IR 807	675 IAC 18-1.4-27		02-116		*ERR (28 IR 1696)
675 IAC 14-4.3-220.6	N	04-273	28 IR 1851	†† 29 IR 808	675 IAC 18-1.4-32.3	N	04-217	28 IR 1309	*AROC (29 IR 146)
675 IAC 14-4.3-220.7	N	04-273	28 IR 1851	†† 29 IR 808	675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	29 IR 11
675 IAC 14-4.3-220.8	N	04-273	28 IR 1852	†† 29 IR 808	675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	*AROC (29 IR 146)
675 IAC 14-4.3-226.2	N	04-273	28 IR 1852	†† 29 IR 808	675 IAC 19-3	R	05-58	29 IR 2042	29 IR 11
675 IAC 14-4.3-227.1	N	04-273	28 IR 1852	†† 29 IR 808	675 IAC 19-4	N	05-58	29 IR 2014	*CPH (29 IR 3039)
675 IAC 14-4.3-227.5	N	04-273	28 IR 1852	†† 29 IR 808	675 IAC 21-1-10	A	05-50	29 IR 2333	*CPH (29 IR 3039)
675 IAC 14-4.3-227.6	N	04-273	28 IR 1852	†† 29 IR 808	675 IAC 21-3-1	A	05-50	29 IR 2334	*CPH (29 IR 3039)
675 IAC 14-4.3-228	A	04-273	28 IR 1852	†† 29 IR 808	675 IAC 21-3-2	A	05-50	29 IR 2334	*CPH (29 IR 3039)
675 IAC 14-4.3-229.5	N	04-273	28 IR 1852	†† 29 IR 809	675 IAC 21-4-1	A	05-50	29 IR 2339	*CPH (29 IR 3039)
675 IAC 14-4.3-231	A	04-273	28 IR 1853	†† 29 IR 809	675 IAC 21-4-2	A	05-50	29 IR 2339	*CPH (29 IR 3039)
675 IAC 14-4.3-233	A	04-273	28 IR 1853	†† 29 IR 809	675 IAC 21-5-1	A	05-50	29 IR 2341	*CPH (29 IR 3039)
675 IAC 14-4.3-233.5	N	04-273	28 IR 1853	†† 29 IR 809	675 IAC 21-5-3	A	05-50	29 IR 2341	*CPH (29 IR 3039)
675 IAC 14-4.3-234	A	04-273	28 IR 1853	†† 29 IR 810	675 IAC 21-8-1	A	05-50	29 IR 2342	*CPH (29 IR 3039)
675 IAC 14-4.3-235	A	04-273	28 IR 1854	†† 29 IR 810	675 IAC 21-8-2	A	05-50	29 IR 2342	*CPH (29 IR 3039)
675 IAC 14-4.3-239.5	N	04-273	28 IR 1854	†† 29 IR 810	675 IAC 21-9	N	05-50	29 IR 2344	*CPH (29 IR 3039)
675 IAC 14-4.3-241	A	04-273	28 IR 1854	†† 29 IR 810	675 IAC 21-10	N	05-50	29 IR 2344	*CPH (29 IR 3039)
675 IAC 14-4.3-241.5	N	04-273	28 IR 1854	†† 29 IR 810	675 IAC 21-11	N	05-50	29 IR 2345	*CPH (29 IR 3039)
675 IAC 14-4.3-242	A	04-273	28 IR 1854	†† 29 IR 810	675 IAC 22-2.2-3	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-244.5	N	04-273	28 IR 1854	†† 29 IR 810		R	05-104	29 IR 1316	
675 IAC 14-4.3-245	R	04-273	28 IR 1859	†† 29 IR 815	675 IAC 22-2.2-4	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-247	A	04-273	28 IR 1855	†† 29 IR 811		R	05-104	29 IR 1316	
675 IAC 14-4.3-247.5	N	04-273	28 IR 1855	†† 29 IR 811	675 IAC 22-2.2-5	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-248.5	N	04-273	28 IR 1855	†† 29 IR 811		R	05-104	29 IR 1316	
675 IAC 14-4.3-249.5	N	04-273	28 IR 1855	†† 29 IR 811	675 IAC 22-2.2-6	RA	04-19	27 IR 2339	28 IR 324
675 IAC 14-4.3-251	R	04-273	28 IR 1859	†† 29 IR 815		R	05-104	29 IR 1316	
675 IAC 14-4.3-252	R	04-273	28 IR 1859	†† 29 IR 815					
675 IAC 14-4.3-253	R	04-273	28 IR 1859	†† 29 IR 815					

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675 IAC 22-2.2-7	RA	04-19	27 IR 2339	28 IR 324	675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
	R	05-104	29 IR 1316		675 IAC 22-2.2-540	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	28 IR 324					28 IR 2374
	R	05-104	29 IR 1316		675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	28 IR 324					28 IR 2369
	R	05-104	29 IR 1316		675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	28 IR 324					28 IR 2370
	R	05-104	29 IR 1316		675 IAC 22-2.3-36	A	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	28 IR 324					28 IR 2370
675 IAC 22-2.2-12	RA	04-19	27 IR 2339	28 IR 324	675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2370
675 IAC 22-2.2-13	RA	04-19	27 IR 2339	28 IR 324	675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2371
675 IAC 22-2.2-15	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2372
675 IAC 22-2.2-16	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2373
675 IAC 22-2.2-17	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2373
675 IAC 22-2.2-18	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2373
675 IAC 22-2.2-21	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	*CPH (28 IR 982)
	R	05-104	29 IR 1316						28 IR 2373
675 IAC 22-2.2-22	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-148	A	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-23	RA	04-19	27 IR 2340	28 IR 324					28 IR 2374
	R	05-104	29 IR 1316		675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-24	RA	04-19	27 IR 2340	28 IR 324					28 IR 2374
	R	05-104	29 IR 1316		675 IAC 22-2.3-227.1	N	05-127	29 IR 1360	
675 IAC 22-2.2-25	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-228.1	N	05-127	29 IR 1360	
	R	05-104	29 IR 1316		675 IAC 22-2.3-232.1	N	05-127	29 IR 1360	
675 IAC 22-2.2-26	N	04-196	28 IR 1029	*CPH (28 IR 1498)	675 IAC 22-2.3-232.2	N	05-127	29 IR 1361	
				*AROC (28 IR 2461)	675 IAC 22-2.3-232.3	N	05-127	29 IR 1361	
				*ARR (29 IR 31)	675 IAC 22-2.3-232.4	N	05-127	29 IR 1361	
				29 IR 487	675 IAC 22-2.3-232.5	N	05-127	29 IR 1361	
675 IAC 22-2.2-49.5	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 22-2.3-232.6	N	05-127	29 IR 1361	
				28 IR 2374	675 IAC 22-2.3-233.1	N	05-127	29 IR 1361	
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 22-2.3-233.2	N	05-127	29 IR 1362	
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 22-2.3-237.1	N	05-127	29 IR 1362	
				28 IR 2374	675 IAC 22-2.3-237.2	N	05-127	29 IR 1362	
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	28 IR 324	675 IAC 22-2.3-237.3	N	05-127	29 IR 1362	
	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 22-2.3-237.4	N	05-127	29 IR 1362	
				28 IR 2374	675 IAC 22-2.3-237.5	N	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)					28 IR 2374
				28 IR 2374	675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	*CPH (28 IR 982)					28 IR 2374
675 IAC 22-2.2-241.1	R	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 22-2.2-243.1	R	04-56	27 IR 2864	*CPH (28 IR 982)					28 IR 2374
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 25-1-3		02-118		*ERR (28 IR 1696)
				28 IR 2374	675 IAC 25-1-7.2	N	04-218	28 IR 1310	*AROC (29 IR 147)
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
				28 IR 2374	675 IAC 25-1-7.4	N	04-218	28 IR 1310	*AROC (29 IR 147)
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
				28 IR 2374	675 IAC 25-1-7.6	N	04-218	28 IR 1310	*AROC (29 IR 147)
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
				28 IR 2374	675 IAC 25-1-9.1	N	04-218	28 IR 1310	*AROC (29 IR 147)
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 25-1-9.3	N	04-218	28 IR 1310	*AROC (29 IR 147)
				28 IR 2374	675 IAC 25-1-9.5	N	04-218	28 IR 1310	*AROC (29 IR 147)
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
				28 IR 2374	675 IAC 25-1-9.7	N	04-218	28 IR 1310\	*AROC (29 IR 147)
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
				28 IR 2374	675 IAC 25-1-9.9	N	04-218	28 IR 1310	*AROC (29 IR 147)
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	*CPH (28 IR 982)					29 IR 12
				28 IR 2374	675 IAC 26	N	04-196	28 IR 1031	*CPH (28 IR 1498)
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	*CPH (28 IR 982)					*AROC (28 IR 2461)
				28 IR 2374					*ARR (29 IR 31)
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 27	N	04-275	28 IR 1538	29 IR 489
				28 IR 2374					*AROC (29 IR 145)
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	*CPH (28 IR 982)	675 IAC 28	N	05-104	29 IR 1274	29 IR 504

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TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD
685 IAC 1 RA 04-124 27 IR 3343 **28 IR 1072**

TITLE 710 SECURITIES DIVISION

710 IAC 1-14-6 A 05-46 28 IR 3008 *CPH (28 IR 3322)
29 IR 1923

710 IAC 1-22 N 05-81 28 IR 3009 *CPH (28 IR 3322)
29 IR 1924

TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

750 IAC 1-1-1 A 06-80 *ER (29 IR 2583)

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-6.2-1 A 05-133 29 IR 1363 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-1.5 N 05-133 29 IR 1363 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-2 A 05-133 29 IR 1364 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-3 A 05-133 29 IR 1364 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-4 A 05-133 29 IR 1364 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-5 A 05-133 29 IR 1364 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-6 A 05-133 29 IR 1365 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-7 A 05-133 29 IR 1365 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-8 A 05-133 29 IR 1365 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-9 A 05-133 29 IR 1365 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-10 A 05-133 29 IR 1365 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-11 N 05-133 29 IR 1366 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-12 N 05-133 29 IR 1367 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-13 N 05-133 29 IR 1367 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-6.2-14 N 05-133 29 IR 1367 *ARR (29 IR 3028)
*CPH (29 IR 3040)

760 IAC 1-21-2 A 04-140 28 IR 1311 **28 IR 2375**

760 IAC 1-21-3 A 04-140 28 IR 1311 **28 IR 2375**

760 IAC 1-21-4 A 04-140 28 IR 1311 **28 IR 2375**

760 IAC 1-21-5 A 04-140 28 IR 1311 **28 IR 2375**

760 IAC 1-21-8 A 04-140 28 IR 1312 **28 IR 2376**

760 IAC 1-21-10 N 04-140 28 IR 1313 **28 IR 2376**

760 IAC 1-21-11 N 04-140 28 IR 1313 **28 IR 2376**

760 IAC 1-38.1-2 A 05-265 29 IR 2346

760 IAC 1-38.1-2.5 N 05-265 29 IR 2347

760 IAC 1-38.1-3 A 05-265 29 IR 2347

760 IAC 1-38.1-4 R 05-265 29 IR 2354

760 IAC 1-38.1-4.3 N 05-265 29 IR 2347

760 IAC 1-38.1-4.7 N 05-265 29 IR 2347

760 IAC 1-38.1-5 A 05-265 29 IR 2347

760 IAC 1-38.1-5.2 N 05-265 29 IR 2347

760 IAC 1-38.1-5.6 N 05-265 29 IR 2347

760 IAC 1-38.1-5.8 N 05-265 29 IR 2348

760 IAC 1-38.1-7 A 05-265 29 IR 2348

760 IAC 1-38.1-7.5 N 05-265 29 IR 2349

760 IAC 1-38.1-8 A 05-265 29 IR 2349

760 IAC 1-38.1-9 A 05-265 29 IR 2349

760 IAC 1-38.1-10 R 05-265 29 IR 2354

760 IAC 1-38.1-11 A 05-265 29 IR 2349

760 IAC 1-38.1-12 A 05-265 29 IR 2350

760 IAC 1-38.1-13 A 05-265 29 IR 2350

760 IAC 1-38.1-14 A 05-265 29 IR 2351

760 IAC 1-38.1-15 A 05-265 29 IR 2351

760 IAC 1-38.1-15.5 N 05-265 29 IR 2352

760 IAC 1-38.1-16 A 05-265 29 IR 2352

760 IAC 1-38.1-17 A 05-265 29 IR 2352

760 IAC 1-38.1-19 A 05-265 29 IR 2353

760 IAC 1-38.1-20 A 05-265 29 IR 2353

760 IAC 1-38.1-21.2 N 05-265 29 IR 2353

760 IAC 1-38.1-21.6 N 05-265 29 IR 2353

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 1-50-6 RA 05-86

760 IAC 1-50-9 RA 05-86

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760 IAC 1-60-1 RA 04-143 27 IR 3706

760 IAC 1-60-2 RA 04-143 27 IR 3706

760 IAC 1-60-4 RA 04-143 27 IR 3706

760 IAC 1-60-5 A 05-266 29 IR 2354

760 IAC 1-61 RA 05-86

760 IAC 1-64 RA 05-86

760 IAC 1-68-1 A 05-75 29 IR 129

760 IAC 1-68-2 A 05-75 29 IR 130

760 IAC 1-68-4 A 05-75 29 IR 132

760 IAC 1-68-6 A 05-75 29 IR 133

760 IAC 1-68-8 A 05-75 29 IR 134

760 IAC 1-68-9 A 05-75 29 IR 134

760 IAC 1-68-10 A 05-75 29 IR 134

760 IAC 1-70 N 04-39 27 IR 2560

760 IAC 1-71 N 05-26 28 IR 314

760 IAC 1-72 N 05-134 28 IR 2456

760 IAC 2-1-1 A 03-303 28 IR 3044

760 IAC 2-2-1.5 N 03-303 29 IR 649

760 IAC 2-2-3.1 N 03-303 27 IR 3306

760 IAC 2-2-3.2 N 03-303 27 IR 3307

760 IAC 2-2-3.3 N 03-303 27 IR 3307

760 IAC 2-2-3.4 N 03-303 27 IR 3307

760 IAC 2-2-3.5 N 03-303 27 IR 3307

760 IAC 2-2-3.6 N 03-303 27 IR 3307

760 IAC 2-2-3.7 N 03-303 27 IR 3307

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760 IAC 2-3-1 A 03-303 27 IR 3308

760 IAC 2-3-2 A 03-303 27 IR 3308

760 IAC 2-3-4 A 03-303 27 IR 3309

760 IAC 2-3-6 A 03-303 27 IR 3310

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760 IAC 2-4-1 A 03-303 27 IR 3311

760 IAC 2-4-2 N 03-303 27 IR 3312

760 IAC 2-7-1 A 03-303 27 IR 3313

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760 IAC 2-9-1 A 03-303 27 IR 3316

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760 IAC 2-17-1 A 03-303 27 IR 3323

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760 IAC 2-19-2	A	03-303	27 IR 3325	28 IR 582	808 IAC 2-12-4	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-19.5	N	03-303	27 IR 3325	28 IR 582					28 IR 202
760 IAC 2-20-10	A	03-303	27 IR 3329	28 IR 585	808 IAC 2-12-5	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-20-31.1	A	03-303	27 IR 3329	28 IR 586					28 IR 202
760 IAC 2-20-34	A	03-303	27 IR 3329	28 IR 586	808 IAC 2-12-6	N	03-227	27 IR 2567	*ARR (28 IR 215)
760 IAC 2-20-35	A	03-303	27 IR 3332	28 IR 589					28 IR 202
760 IAC 2-20-36.1	A	03-303	27 IR 3332	28 IR 589	808 IAC 2-12-7	N	03-227	27 IR 2568	*ARR (28 IR 215)
760 IAC 2-20-36.2	A	03-303	27 IR 3333	28 IR 590					28 IR 202
760 IAC 2-20-37.2	A	03-303	27 IR 3334	28 IR 590	808 IAC 2-12-8	N	03-227	27 IR 2568	*ARR (28 IR 215)
760 IAC 2-20-37.3	N	03-303	27 IR 3334	28 IR 590	808 IAC 2-18-1	A	03-226	27 IR 2565	28 IR 199
760 IAC 2-20-38.1	A	03-303	27 IR 3334	28 IR 590	808 IAC 2-22-1	A	03-226	27 IR 2565	28 IR 199
760 IAC 2-20-42	A	03-303	27 IR 3335	28 IR 591					
760 IAC 3-1-1	A	05-5	28 IR 2426		TITLE 812 INDIANA AUCTIONEER COMMISSION				
			28 IR 3013	29 IR 517	812 IAC 1-1-2	A	05-37	29 IR 2044	*AROC (29 IR 2056)
760 IAC 3-2-2.5	A	05-5	28 IR 2426		812 IAC 1-1-3	A	05-37	29 IR 2044	*AROC (29 IR 2056)
			28 IR 3013	29 IR 517	812 IAC 1-1-5	R	05-37	29 IR 2047	*AROC (29 IR 2056)
760 IAC 3-2-6.1	A	05-5	28 IR 2426		812 IAC 1-1-6	R	05-37	29 IR 2047	*AROC (29 IR 2056)
			28 IR 3013	29 IR 517	812 IAC 1-1-35	A	05-37	29 IR 2044	*AROC (29 IR 2056)
760 IAC 3-2-6.2	A	05-5	28 IR 2426		812 IAC 1-1-36	R	05-37	29 IR 2047	*AROC (29 IR 2056)
			28 IR 3013	29 IR 517	812 IAC 1-1-41	A	05-37	29 IR 2045	*AROC (29 IR 2056)
760 IAC 3-2-7	A	05-5	28 IR 2426		812 IAC 1-1-42	A	05-37	29 IR 2045	*AROC (29 IR 2056)
			28 IR 3014	29 IR 517	812 IAC 1-1-43	A	05-37	29 IR 2045	*AROC (29 IR 2056)
760 IAC 3-4-1	A	05-5	28 IR 2427		812 IAC 3-1-1	A	05-37	29 IR 2045	*AROC (29 IR 2056)
			28 IR 3014	29 IR 518	812 IAC 3-1-1.1	A	05-37	29 IR 2046	*AROC (29 IR 2056)
760 IAC 3-5-1	A	05-5	28 IR 2427		812 IAC 3-1-6	A	05-37	29 IR 2046	*AROC (29 IR 2056)
			28 IR 3014	29 IR 518	812 IAC 3-1-10	A	05-37	29 IR 2046	*AROC (29 IR 2056)
760 IAC 3-6-1	A	05-5	28 IR 2428		812 IAC 3-1-11	A	05-37	29 IR 2046	*AROC (29 IR 2056)
			28 IR 3016	29 IR 519	812 IAC 3-1-13	A	05-37	29 IR 2047	*AROC (29 IR 2056)
760 IAC 3-7-1	A	05-5	28 IR 2432						
			28 IR 3019	29 IR 523	TITLE 816 BOARD OF BARBER EXAMINERS				
760 IAC 3-8-1	A	05-5	28 IR 2434		816 IAC 1-2-11	A	05-146	29 IR 893	
			28 IR 3021	29 IR 525	816 IAC 1-2-18	A	05-323	29 IR 1756	
760 IAC 3-9-1	A	05-5	28 IR 2437		816 IAC 1-3-1	R	05-146	29 IR 895	
			28 IR 3024	29 IR 528	816 IAC 1-3-4	A	05-146	29 IR 894	
760 IAC 3-9-2	A	05-5	28 IR 2437		816 IAC 1-3-6	A	05-146	29 IR 894	
			28 IR 3024	29 IR 528	816 IAC 1-4-1	A	05-146	29 IR 894	
760 IAC 3-11-1	A	05-5	28 IR 2439		816 IAC 1-5	N	05-146	29 IR 895	
			28 IR 3026	29 IR 530					
				*ERR (29 IR 548)	TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS				
760 IAC 3-12-1	A	05-5	28 IR 2444		820 IAC 2-2-2	R	05-137	29 IR 656	
			28 IR 3031	29 IR 534	820 IAC 4-1-7	A	05-68	28 IR 3045	*AWR (28 IR 3584)
760 IAC 3-14-1	A	05-5	28 IR 2445		820 IAC 4-1-9	A	05-68	28 IR 3045	*AWR (28 IR 3584)
			28 IR 3032	29 IR 535	820 IAC 4-1-11	A	05-68	28 IR 3045	*AWR (28 IR 3584)
760 IAC 3-15-1	A	05-5	28 IR 2453		820 IAC 4-1-12	A	05-68	28 IR 3045	*AWR (28 IR 3584)
			28 IR 3040	29 IR 544	820 IAC 4-3-1	A	04-254	28 IR 1059	28 IR 2382
760 IAC 3-18-1	A	05-5	28 IR 2455		820 IAC 4-4-8	A	05-68	28 IR 3046	*AWR (28 IR 3584)
			28 IR 3043	29 IR 546	820 IAC 4-4-8.1	N	05-68	28 IR 3046	*AWR (28 IR 3584)
				*ERR (29 IR 548)	820 IAC 5-1-20	A	05-137	29 IR 654	
TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS					820 IAC 6	R	06-108	29 IR 3101	
804 IAC 1.1-1-1	A	04-156	28 IR 1054	28 IR 2377	820 IAC 6-1-2	A	05-137	29 IR 654	
804 IAC 1.1-8	N	04-156	28 IR 1055	28 IR 2378	820 IAC 6-1-5	A	05-137	29 IR 655	
					820 IAC 7	N	05-137	29 IR 655	29 IR 2195
TITLE 808 STATE BOXING COMMISSION					TITLE 828 STATE BOARD OF DENTISTRY				
808 IAC 1-3-6	A	03-226	27 IR 2563	28 IR 198	828 IAC 0.5-2-3	A	04-233	28 IR 670	*AROC (28 IR 1073)
808 IAC 1-5-1	A	03-226	27 IR 2563	28 IR 198					28 IR 2713
808 IAC 1-5-2	A	03-226	27 IR 2563	28 IR 198					29 IR 2538
808 IAC 2-1-5	A	03-226	27 IR 2564	28 IR 198	828 IAC 0.5-2-4	A	05-226	29 IR 1371	29 IR 2539
808 IAC 2-1-12	A	03-226	27 IR 2564	28 IR 199	828 IAC 1-1-1	A	05-226	29 IR 1371	29 IR 2539
808 IAC 2-7-14	A	03-226	27 IR 2564	28 IR 199	828 IAC 1-1-2	A	05-226	29 IR 1372	29 IR 2540
808 IAC 2-8-7	R	03-226	27 IR 2566	28 IR 200	828 IAC 1-1-3	A	05-226	29 IR 1372	29 IR 2540
808 IAC 2-9-5	A	03-226	27 IR 2564	28 IR 199	828 IAC 1-1-6	A	05-226	29 IR 1373	29 IR 2541
808 IAC 2-12-0.5	N	03-227	27 IR 2566	*ARR (28 IR 215)	828 IAC 1-1-7	A	05-226	29 IR 1373	29 IR 2541
				28 IR 201	828 IAC 1-1-8	R	05-226	29 IR 1377	29 IR 2545
808 IAC 2-12-2	N	03-227	27 IR 2567	*ARR (28 IR 215)	828 IAC 1-1-12	R	05-226	29 IR 1377	29 IR 2545
				28 IR 201	828 IAC 1-1-21	R	05-226	29 IR 1377	29 IR 2545
808 IAC 2-12-3	N	03-227	27 IR 2567	*ARR (28 IR 215)	828 IAC 1-2-1	A	05-226	29 IR 1373	29 IR 2541
				28 IR 201	828 IAC 1-2-2	A	05-226	29 IR 1374	29 IR 2542
					828 IAC 1-2-3	A	05-226	29 IR 1374	29 IR 2542

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828 IAC 1-2-6	A	05-226	29 IR 1375	29 IR 2543	848 IAC 1-2-7	A	04-65	27 IR 2868	28 IR 596
828 IAC 1-2-7	R	05-226	29 IR 1377	29 IR 2545	848 IAC 1-2-8	A	04-65	27 IR 2868	28 IR 596
828 IAC 1-2-8	R	05-226	29 IR 1377	29 IR 2545	848 IAC 1-2-8.5	N	04-65	27 IR 2868	28 IR 596
828 IAC 1-2-9	R	05-226	29 IR 1377	29 IR 2545	848 IAC 1-2-9	A	04-65	27 IR 2869	28 IR 597
828 IAC 1-2-12	R	05-226	29 IR 1377	29 IR 2545	848 IAC 1-2-10	A	04-65	27 IR 2869	28 IR 597
828 IAC 1-2-14	R	05-226	29 IR 1377	29 IR 2545	848 IAC 1-2-12	A	04-65	27 IR 2870	28 IR 598
828 IAC 1-3-1.1	A	05-226	29 IR 1375	29 IR 2543	848 IAC 1-2-13	A	04-65	27 IR 2870	28 IR 598
828 IAC 1-3-1.5	A	05-226	29 IR 1376	29 IR 2544	848 IAC 1-2-14	A	04-65	27 IR 2870	28 IR 599
828 IAC 1-3-2	A	05-226	29 IR 1377	29 IR 2545	848 IAC 1-2-16	A	04-65	27 IR 2871	28 IR 599
828 IAC 1-5-6	N	04-189	28 IR 669	28 IR 2383	848 IAC 1-2-17	A	04-65	27 IR 2872	28 IR 600
828 IAC 5	N	04-233	28 IR 671	*AROC (28 IR 1073)	848 IAC 1-2-18	A	04-65	27 IR 2872	28 IR 600
				28 IR 2713	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	28 IR 2385
					848 IAC 7	N	05-2	29 IR 135	29 IR 1927
TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD									
830 IAC 1-1	RA	04-6	27 IR 2340	28 IR 325	TITLE 852 INDIANA OPTOMETRY BOARD				
830 IAC 1-2-6	RA	05-11	28 IR 2813	28 IR 3662	852 IAC 1-12-1	A	05-184	29 IR 657	*AWR (29 IR 2549)
TITLE 839 SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, AND MENTAL HEALTH COUNSELOR BOARD									
839 IAC 1-6-1	A	05-223	29 IR 2048		852 IAC 1-16-1	A	05-325	29 IR 1757	
839 IAC 1-6-2	A	05-223	29 IR 2048		852 IAC 1-16-2	A	05-325	29 IR 1757	
839 IAC 1-6-3	A	05-223	29 IR 2050		852 IAC 1-16-3	A	05-325	29 IR 1757	
TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS									
840 IAC 1-1-6	A	05-270	29 IR 2051		852 IAC 1-16-6	A	05-325	29 IR 1758	
840 IAC 2-1	RA	05-12	28 IR 2459	28 IR 3353	852 IAC 1-16-7	N	05-325	29 IR 1758	
TITLE 844 MEDICAL LICENSING BOARD OF INDIANA									
844 IAC 5-5	N	05-91	28 IR 3344	*ARR (29 IR 549)	TITLE 856 INDIANA BOARD OF PHARMACY				
844 IAC 6-1-2	A	03-262	27 IR 1284	28 IR 209	856 IAC 1-30-2	A	04-173	28 IR 317	28 IR 2385
844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300)	856 IAC 1-30-3	A	04-173	28 IR 318	28 IR 2385
				28 IR 203	856 IAC 1-30-4.1	N	04-173	28 IR 318	28 IR 2385
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300)	856 IAC 1-30-4.2	N	04-173	28 IR 318	28 IR 2386
				28 IR 203	856 IAC 1-30-4.3	N	04-173	28 IR 318	28 IR 2386
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300)	856 IAC 1-30-4.4	N	04-173	28 IR 318	28 IR 2386
				28 IR 204	856 IAC 1-30-4.5	N	04-173	28 IR 318	28 IR 2386
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300)	856 IAC 1-30-4.6	N	04-173	28 IR 318	28 IR 2386
				28 IR 204	856 IAC 1-30-6	A	04-173	28 IR 319	28 IR 2386
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300)	856 IAC 1-30-7	A	04-173	28 IR 319	28 IR 2386
				28 IR 205	856 IAC 1-30-8	A	04-173	28 IR 319	28 IR 2387
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300)	856 IAC 1-30-9	A	04-173	28 IR 320	28 IR 2388
				28 IR 205	856 IAC 1-30-14	A	04-173	28 IR 320	28 IR 2388
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)	856 IAC 1-30-17	A	04-173	28 IR 321	28 IR 2389
				28 IR 206	856 IAC 1-30-18	A	04-173	28 IR 321	28 IR 2389
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300)	856 IAC 1-33-1	A	03-326	27 IR 2073	27 IR 3073
				28 IR 209	856 IAC 1-37	N	05-42	28 IR 3047	29 IR 815
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300)	856 IAC 1-38	N	05-138	29 IR 659	*ARR (29 IR 2548)
				28 IR 209					*CPH (29 IR 3040)
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)	856 IAC 1-39	N	05-139	29 IR 139	*ARR (29 IR 3028)
				28 IR 206					*CPH (29 IR 3041)
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300)	856 IAC 1-40	N	05-140	29 IR 142	29 IR 1930
				28 IR 206	856 IAC 3-1-2	N	05-102	28 IR 3346	*ARR (29 IR 820)
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300)					29 IR 2195
				28 IR 207	856 IAC 3-1-3	N	05-102	28 IR 3346	*ARR (29 IR 820)
844 IAC 10-4-1	A	03-329	27 IR 2568	28 IR 211					29 IR 2196
844 IAC 10-4-3	A	06-13	29 IR 2355		856 IAC 3-2-1	R	05-102	28 IR 3348	*ARR (29 IR 820)
844 IAC 12-5-4	A	04-17	28 IR 316	28 IR 1693					29 IR 2198
TITLE 845 BOARD OF PODIATRIC MEDICINE									
845 IAC 1-5-3	A	04-134	28 IR 317	28 IR 2716	856 IAC 3-2-3	A	05-102	28 IR 3346	*ARR (29 IR 820)
TITLE 848 INDIANA STATE BOARD OF NURSING									
848 IAC 1-1-6	A	04-97	28 IR 674	28 IR 2383	856 IAC 3-2-7	R	05-102	28 IR 3348	*ARR (29 IR 820)
848 IAC 1-1-7	A	04-97	28 IR 675	28 IR 2384					29 IR 2198
848 IAC 1-1-2.1	A	04-65	27 IR 2865	28 IR 593	856 IAC 3-2-8	R	05-102	28 IR 3348	*ARR (29 IR 820)
848 IAC 1-2-1	A	04-65	27 IR 2866	28 IR 594					29 IR 2198
848 IAC 1-2-5	A	04-65	27 IR 2866	28 IR 594	856 IAC 3-3	N	05-102	28 IR 3346	*ARR (29 IR 820)
848 IAC 1-2-6	A	04-65	27 IR 2867	28 IR 595					29 IR 2196
					856 IAC 3-4	N	05-102	28 IR 3347	*ARR (29 IR 820)
									29 IR 2196

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856 IAC 3-5	N	05-102	28 IR 3347	*ARR (29 IR 820) 29 IR 2197	865 IAC 1-7-2	A	05-82	29 IR 666	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3004
856 IAC 3-6	N	05-102	28 IR 3347	*ARR (29 IR 820) 29 IR 2197	865 IAC 1-7-3	A	05-82	29 IR 666	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3004
856 IAC 3-7	N	05-102	28 IR 3348	*ARR (29 IR 820) 29 IR 2197	865 IAC 1-7-4	N	05-82	29 IR 667	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3005
TITLE 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE					865 IAC 1-8-1	A	05-82	29 IR 667	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3005
857 IAC 1-2-3	A	05-43	28 IR 3048	29 IR 816	865 IAC 1-9-1	A	05-82	29 IR 668	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
857 IAC 1-3-2	A	05-43	28 IR 3049	29 IR 817	865 IAC 1-10-1	A	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
857 IAC 1-3-3	A	05-43	28 IR 3049	29 IR 817	865 IAC 1-10-2	A	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS					865 IAC 1-10-11	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
864 IAC 1.1-2-4	A	03-301	27 IR 2569	28 IR 603	865 IAC 1-10-12	A	05-82	29 IR 668	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
864 IAC 1.1-4.1-7	A	05-222	29 IR 1378	*AWR (29 IR 2205)	865 IAC 1-10-25	N	05-82	29 IR 668	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
	A	05-295	29 IR 2356		865 IAC 1-11-1	A	03-300	27 IR 2570	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
			29 IR 2665		865 IAC 1-12-2	A	04-175	28 IR 1059	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3006
864 IAC 1.1-4.1-8	A	05-222	29 IR 1378	*AWR (29 IR 2205)	865 IAC 1-12-3	A	05-82	29 IR 668	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3007
	A	05-295	29 IR 2357		865 IAC 1-12-4	A	05-82	29 IR 670	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3009
			29 IR 2666		865 IAC 1-12-5	A	05-82	29 IR 670	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3009
864 IAC 1.1-4.1-9	A	03-301	29 IR 1379	†† 28 IR 603	865 IAC 1-12-7	A	05-82	29 IR 671	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3009
	A	05-222	29 IR 2358	*AWR (29 IR 2205)	865 IAC 1-12-8	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3010
	A	05-295	29 IR 2666		865 IAC 1-12-9	A	05-82	29 IR 672	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3011
864 IAC 1.1-12-1	A	03-301	27 IR 2569	28 IR 604	865 IAC 1-12-10	A	05-82	29 IR 672	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3011
864 IAC 1.1-12-2	N	03-301	27 IR 2570	28 IR 604	865 IAC 1-12-12	A	05-82	29 IR 672	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3011
TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS					865 IAC 1-12-13	A	05-82	29 IR 674	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3011
865 IAC 1-1-1	A	05-82	29 IR 660	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 2998	865 IAC 1-12-14	A	05-82	29 IR 675	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3012
865 IAC 1-1-2	A	05-82	29 IR 661	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 2999	865 IAC 1-12-15	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3014
865 IAC 1-2-1	A	05-82	29 IR 661	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 2999	865 IAC 1-12-16	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3026
865 IAC 1-2-2	A	05-82	29 IR 663	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3001	865 IAC 1-12-17	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3026
865 IAC 1-3-2	A	05-82	29 IR 663	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3001					
865 IAC 1-4-3	A	05-82	29 IR 663	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3002					
865 IAC 1-4-6	A	05-82	29 IR 664	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3002					
865 IAC 1-4-7	A	05-82	29 IR 664	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3002					
865 IAC 1-4-8	A	05-82	29 IR 664	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3003					
865 IAC 1-4-9	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3003					
865 IAC 1-5-1	A	05-82	29 IR 665	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3003					
865 IAC 1-5-2	A	05-82	29 IR 665	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3003					
865 IAC 1-7-1	A	05-82	29 IR 665	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3004					

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865 IAC 1-12-18	A	05-82	29 IR 676	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3014	865 IAC 1-14-15	A	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3025
865 IAC 1-12-19	R	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3026	865 IAC 1-14-16	A	05-82	29 IR 687	*CPH (29 IR 1244) *AROC (29 IR 1383) 29 IR 3026
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25 IAC 2-8-1	29 IR 1591		28 IR 101		28 IR 86
	29 IR 3052	Asbestos license; qualifications	27 IR 3131	Test methods and procedures	26 IR 2071
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25 IAC 2-6-3	29 IR 1590	326 IAC 18-1-9	28 IR 2028		28 IR 93
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COMMISSION, STATE**

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865 IAC 1-8-1	29 IR 667		29 IR 2516	65 IAC 5-12-11.5	29 IR 46
	29 IR 3005	Review of Neighborhood Delineations and Land Values		Odds of winning	
Roster		Review of land values		65 IAC 5-12-12	29 IR 46
Publication and contents of rosters		50 IAC 21-4-2	28 IR 3624	Payment of prizes	
865 IAC 1-9-1	29 IR 668		29 IR 2514	65 IAC 5-12-11	29 IR 45
	29 IR 3006	Review of neighborhood delineations		Payment options	
Rules of Professional Conduct		50 IAC 21-4-1	28 IR 3623	65 IAC 5-12-5	29 IR 43
Agreement to abide by IC 25-21.5 and rules			29 IR 2513	Power Play promotion	
865 IAC 1-10-2	29 IR 3006	Time		65 IAC 5-12-12.5	29 IR 47
Disclosure of conflict of interest		Time		Prize amounts	
865 IAC 1-10-12	29 IR 668	50 IAC 21-7-1	28 IR 3625	65 IAC 5-12-10	29 IR 45
	29 IR 3006		29 IR 2515	Procedure for playing	
Revocation or suspension of license in another jurisdiction; effect		Transfer of Data to the Department of Local Government Finance		65 IAC 5-12-4	29 IR 42
865 IAC 1-10-25	29 IR 668	Transfer of data		Ticket price	
	29 IR 3006	50 IAC 21-9-1	28 IR 3625	65 IAC 5-12-3	29 IR 42
LOCAL GOVERNMENT FINANCE, DEPARTMENT OF			29 IR 2515	Hoosier Lottery TV Bingo	
LSA Document #06-89(E)	29 IR 2550	ASSESSMENT OF TANGIBLE PERSONAL PROPERTY		65 IAC 5-17	28 IR 2731
ANNUAL ADJUSTMENTS		Valuation of Depreciable Tangible Personal Property		Hoosier Lotto	
50 IAC 21	27 IR 4050	Fully depreciated, retired, or nominally valued property; computer equipment; report and valuation		Payment options	
	28 IR 1452	50 IAC 4.2-4-3	29 IR 836	65 IAC 5-10-4	29 IR 1563
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Agricultural property		COMPUTER STANDARDS FOR A UNIFORM AND COMMON PROPERTY TAX MANAGEMENT SYSTEM		65 IAC 5-18	28 IR 2738
50 IAC 21-6-1	28 IR 3625	50 IAC 23	29 IR 1599	Prize	
	29 IR 2515	INVESTMENT DEDUCTION		65 IAC 5-18-5	28 IR 2993
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50 IAC 21-5-2	28 IR 3624	50 IAC 20	27 IR 3603	65 IAC 5-3-2	29 IR 2208
	29 IR 2514		28 IR 1458	PULL-TAB GAMES	
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"Commissioner" defined		DRAW GAMES		Disputes	
50 IAC 21-2-1.5	28 IR 3622	50/50 Raffle		65 IAC 6-2-6	28 IR 2154
	29 IR 2512	65 IAC 5-16	28 IR 2142	Specific Pull-Tab Games	
"Contract" defined		Determination of winning number		Pull-tab game 020	
50 IAC 21-2-2	28 IR 3622	65 IAC 5-16-6	29 IR 49	LSA Document #04-250(E)	28 IR 227
	29 IR 2512			Pull-tab game 021	
"Department" defined				LSA Document #04-251(E)	28 IR 228
50 IAC 21-2-2.5	28 IR 3622			Pull-tab game 022	
	29 IR 2512			LSA Document #04-265(E)	28 IR 613
				Pull-tab game 023	
				LSA Document #04-266(E)	28 IR 614
				Pull-tab game 024	
				LSA Document #04-306(E)	28 IR 1192
				Pull-tab game 025	
				LSA Document #04-305(E)	28 IR 1191

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Pull-tab game 026		Instant Game 756		Scratch-Off Game 746	
LSA Document #04-331(E)	28 IR 1495	LSA Document #05-98(E)	28 IR 2743	LSA Document #05-9(E)	28 IR 1704
Pull-tab game 027		Instant Game 758		Scratch-Off Game 747	
LSA Document #04-332(E)	28 IR 1496	LSA Document #05-97(E)	28 IR 2742	LSA Document #05-6(E)	28 IR 1698
Pull-tab game 028		Instant Game 762		LSA Document #05-10(E)	28 IR 1704
LSA Document #05-16(E)	28 IR 1708	LSA Document #05-170(E)	28 IR 3318	Scratch-Off Game 748	
Pull-tab game 029		Instant Game 763		LSA Document #05-30(E)	28 IR 2144
LSA Document #05-17(E)	28 IR 1709	LSA Document #05-208(E)	28 IR 3596	Scratch-Off Game 749	
Pull-tab game 030		Instant Game 767		LSA Document #05-31(E)	28 IR 2145
LSA Document #05-34(E)	28 IR 2152	LSA Document #05-206(E)	28 IR 3594	Scratch-Off Game 750	
Pull-tab game 031		Instant Game 768		LSA Document #05-61(E)	28 IR 2395
LSA Document #05-29(E)	28 IR 2143	LSA Document #05-207(E)	28 IR 3595	Scratch-Off Game 752	
Pull-tab game 033		Instant Game 771		LSA Document #05-65(E)	28 IR 2401
LSA Document #05-62(E)	28 IR 2397	LSA Document #05-243(E)	29 IR 40	Scratch-Off Game 753	
Pull-tab game 038		Instant Game 773		LSA Document #05-158(E)	28 IR 3311
LSA Document #05-186(E)	28 IR 3589	LSA Document #05-241(E)	29 IR 37	Scratch-Off Game 754	
Pull-tab game 039		Payment of Prizes		LSA Document #05-63(E)	28 IR 2398
LSA Document #05-187(E)	28 IR 3590	Claiming prizes from the commission		Scratch-Off Game 755	
Pull-tab game 040		65 IAC 4-3-2	29 IR 2207	65 IAC 4-355	28 IR 2147
LSA Document #05-239(E)	29 IR 34	Scratch-Off Game 723		Scratch-Off Game 757	
Pull-tab game 045		LSA Document #04-238(E)	28 IR 217	LSA Document #05-96(E)	28 IR 2740
LSA Document #05-281(E)	29 IR 561	Scratch-Off Game 724		Scratch-Off Game 759	
Pull-tab game 056		LSA Document #04-239(E)	28 IR 218	LSA Document #05-205(E)	28 IR 3592
LSA Document #05-238(E)	29 IR 33	Scratch-Off Game 725		Scratch-Off Game 760	
Pull-tab game 057		LSA Document #04-240(E)	28 IR 219	LSA Document #05-169(E)	28 IR 3316
LSA Document #05-282(E)	29 IR 562	Scratch-Off Game 726		Scratch-Off Game 761	
Pull-tab game 059		65 IAC 4-348	28 IR 221	LSA Document #05-64(E)	28 IR 2399
LSA Document #05-302(E)	29 IR 569	Scratch-Off Game 727		Scratch-Off Game 764	
Pull-tab game 060		LSA Document #04-242(E)	28 IR 223	LSA Document #05-33(E)	28 IR 2150
LSA Document #05-303(E)	29 IR 569	Scratch-Off Game 728		Scratch-Off Game 765	
Pull-tab game 063		LSA Document #04-243(E)	28 IR 224	65 IAC 4-356	28 IR 2734
LSA Document #05-301(E)	29 IR 568	Scratch-Off Game 729		Scratch-Off Game 766	
Pull-tab game 064		65 IAC 4-350	28 IR 229	LSA Document #05-160(E)	28 IR 3315
LSA Document #05-304(E)	29 IR 570	Scratch-Off Game 730		Scratch-Off Game 770	
Pull-tab game 065		LSA Document #04-244(E)	28 IR 226	LSA Document #05-204(E)	28 IR 3590
LSA Document #05-343(E)	29 IR 1223	Scratch-Off Game 731		Scratch-Off Game 772	
Pull-tab game 066		LSA Document #04-280(E)	28 IR 972	LSA Document #05-242(E)	29 IR 38
LSA Document #05-342(E)	29 IR 1222	Scratch-Off Game 732		Scratch-Off Game 774	
Pull-tab game 067		LSA Document #04-281(E)	28 IR 973	LSA Document #05-240(E)	29 IR 34
LSA Document #05-357(E)	29 IR 1570	Scratch-Off Game 733		Scratch-Off Game 775	
Pull-tab game 068		LSA Document #04-282(E)	28 IR 974	LSA Document #05-278(E)	29 IR 557
LSA Document #05-358(E)	29 IR 1570	Scratch-Off Game 734		Scratch-Off Game 776	
Pull-tab game 069		65 IAC 4-349	28 IR 975	LSA Document #05-279(E)	29 IR 558
LSA Document #06-21(E)	29 IR 1946	Scratch-Off Game 735		Scratch-Off Game 777	
Pull-tab game 070		65 IAC 4-352	28 IR 978	LSA Document #05-280(E)	29 IR 559
LSA Document #06-22(E)	29 IR 1946	Scratch-Off Game 736		Scratch-Off Game 778	
Pull-tab game 071		LSA Document #04-301(E)	28 IR 1186	LSA Document #05-292(E)	29 IR 563
LSA Document #06-52(E)	29 IR 2206	Scratch-Off Game 737		Scratch-Off Game 779	
Pull-tab game 072		LSA Document #04-302(E)	28 IR 1187	LSA Document #05-306(E)	29 IR 822
LSA Document #06-53(E)	29 IR 2206	Scratch-Off Game 738		Scratch-Off Game 780	
Pull-tab game 073		LSA Document #04-303(E)	28 IR 1188	LSA Document #05-309(E)	29 IR 823
LSA Document #06-104(E)	29 IR 2566	Scratch-Off Game 739		Scratch-Off Game 781	
Pull-tab game 074		LSA Document #04-304(E)	28 IR 1189	LSA Document #05-299(E)	29 IR 566
LSA Document #06-102(E)	29 IR 2564	Scratch-Off Game 740		Scratch-Off Game 782	
Pull-tab game 075		LSA Document #04-326(E)	28 IR 1488	LSA Document #05-305(E)	29 IR 571
LSA Document #06-137(E)	29 IR 3031	Scratch-Off Game 741		Scratch-Off Game 783	
Pull-tab game 076		LSA Document #04-327(E)	28 IR 1489	LSA Document #05-310(E)	29 IR 824
LSA Document #06-136(E)	29 IR 3031	Scratch-Off Game 742		Scratch-Off Game 784	
RETAILERS		LSA Document #04-328(E)	28 IR 1491	LSA Document #05-334(E)	29 IR 1219
Retailer Contracts		Scratch-Off Game 743		Scratch-Off Game 785	
Award of contracts		65 IAC 4-353	28 IR 1492	LSA Document #05-336(E)	29 IR 1221
65 IAC 3-3-3	29 IR 2562	Scratch-Off Game 744		Scratch-Off Game 786	
SCRATCH-OFF GAMES		LSA Document #05-7(E)	28 IR 1701	LSA Document #05-335(E)	29 IR 1220
General Provisions		Scratch-Off Game 745		Scratch-Off Game 788	
Disputes		LSA Document #05-8(E)	28 IR 1702	LSA Document #05-333(E)	29 IR 1218
65 IAC 4-2-6	28 IR 2153 29 IR 828				

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Scratch-Off Game 789		OCCUPATIONAL THERAPISTS AND OCCU-	Fire and Life Safety Standards for Congregate
LSA Document #05-356(E)	29 IR 1568	PATIONAL THERAPY ASSISTANTS	Residences for Persons with a Psychiatric
Scratch-Off Game 790		Certification	Disorder or an Addiction
LSA Document #05-353(E)	29 IR 1563	Mandatory registration; renewal	Adoption by reference
Scratch-Off Game 791		844 IAC 10-4-1	440 IAC 7.5-10-3
LSA Document #05-354(E)	29 IR 1565		28 IR 667
Scratch-Off Game 792		Reinstatement of delinquent certificate	Application
LSA Document #05-355(E)	29 IR 1566	844 IAC 10-4-3	440 IAC 7.5-10-2
Scratch-Off Game 793		29 IR 2355	28 IR 667
LSA Document #06-2(E)	29 IR 1574	PHYSICAL THERAPISTS AND PHYSICAL	28 IR 2366
Scratch-Off Game 794		THERAPISTS' ASSISTANTS	Scope
LSA Document #06-3(E)	29 IR 1575	Admission to Practice	440 IAC 7.5-10-1
Scratch-Off Game 795		Applications for licensure as a physical thera-	28 IR 667
LSA Document #06-15(E)	29 IR 1942	pist or certification as a physical therapist's	28 IR 2366
Scratch-Off Game 796		assistant	Adoption by reference
LSA Document #06-16(E)	29 IR 1943	844 IAC 6-3-4	440 IAC 7.5-8-3
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LSA Document #06-28(E)	29 IR 1950		440 IAC 7.5-8-2
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Scratch-Off Game 800		27 IR 1636	Scope
LSA Document #06-62(E)	29 IR 1953	28 IR 204	440 IAC 7.5-8-1
Scratch-Off Game 801		Social Security numbers	28 IR 666
LSA Document #06-83(E)	29 IR 2554	844 IAC 6-3-6	28 IR 2365
Scratch-Off Game 802		27 IR 1638	Fire and Life Safety Standards for One and Two
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Scratch-Off Game 803		Temporary permits	atric Disorder or an Addiction
LSA Document #06-82(E)	29 IR 2553	844 IAC 6-3-5	Adoption by reference
Scratch-Off Game 804		27 IR 1637	440 IAC 7.5-9-3
LSA Document #06-87(E)	29 IR 2558	28 IR 205	28 IR 667
Scratch-Off Game 805		General Provisions	28 IR 2366
LSA Document #06-90(E)	29 IR 2560	Accreditation of educational programs	Application
Scratch-Off Game 806		844 IAC 6-1-4	440 IAC 7.5-9-2
LSA Document #06-127(E)	29 IR 3030	27 IR 1635	28 IR 666
Scratch-Off Game 809		28 IR 203	28 IR 2366
LSA Document #06-101(E)	29 IR 2563	Definitions	Scope
Scratch-Off Game 814		844 IAC 6-1-2	440 IAC 7.5-9-1
65 IAC 4-454	29 IR 826	27 IR 1284	28 IR 666
Scratch-Off Game 815		28 IR 209	28 IR 2365
LSA Document #05-298(E)	29 IR 565	Registration of Licensed Physical Therapists	Fire and Life Safety Standards for Secure or
Scratch-Off Game 816		and Physical Therapists' Assistants	Locked Sub-Acute Facilities for Persons with
LSA Document #05-364(E)	29 IR 1571	Reinstatement of delinquent license	a Psychiatric Disorder or an Addiction That
Scratch-Off Game 817		844 IAC 6-4-3	Meets the Fire Prevention and Building
LSA Document #06-85(E)	29 IR 2556	27 IR 1638	Safety Commission Requirements for an I-3
Scratch-Off Game 818		28 IR 206	Occupancy
LSA Document #06-61(E)	29 IR 1952	Reinstatement of Suspended License	440 IAC 7.5-11
Scratch-Off Game 820		Duties of suspended licensees, certificate	28 IR 667
LSA Document #06-86(E)	29 IR 2557	holders	28 IR 2367
THE COMMISSION		844 IAC 6-6-3	Requirements for All Residential Living Facili-
Ethics		Protection of patients' interest	ties in This Article
Contractor ethics restrictions		844 IAC 6-6-4	General overview
65 IAC 1-4-5.5	28 IR 217	27 IR 1639	440 IAC 7.5-2-1
General Provisions		28 IR 206	28 IR 660
Fees		Standards of Professional Conduct	28 IR 2359
65 IAC 1-1-18	29 IR 2562	Standards of professional conduct and com-	Physical requirements
MANUFACTURED HOME INSTALLER LI-		petent practice	440 IAC 7.5-2-12
CENSING BOARD		844 IAC 6-7-2	28 IR 661
879 IAC	28 IR 1548	STANDARDS OF PROFESSIONAL CONDUCT	28 IR 2360
	28 IR 2981	AND COMPETENT PRACTICE OF MEDI-	Resident health and treatment
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844 IAC 12-5-4	28 IR 316		440 IAC 7.5-2-13
	28 IR 1693		28 IR 662
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			Requirements Specific for Managed Care Pro-
			viders and Community Mental Health Centers
			Allowable expenses
			440 IAC 7.5-3-7
			28 IR 664
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			Calculation of resident living allowance
			440 IAC 7.5-3-4
			28 IR 664
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Resident living allowance 440 IAC 7.5-3-3	28 IR 663 28 IR 2362	NATURAL RESOURCES COMMISSION ADJUDICATORY PROCEEDINGS Procedural Rules Defaults, dismissals, and uncontested orders 312 IAC 3-1-9	28 IR 3003	LSA Document #05-203(E)	28 IR 3604
Sub-Acute and Supervised Group Living Facilities		Filing and service of pleadings and documents 312 IAC 3-1-7	28 IR 1203 28 IR 2660	LSA Document #05-308(E)	29 IR 830
Certification procedure 440 IAC 7.5-4-4	28 IR 2363	COAL MINING AND RECLAMATION OPERATIONS Bonding Liability Insurance Performance bond release; requirements 312 IAC 25-5-16	29 IR 2607	Birds Endangered and threatened species; birds 312 IAC 9-4-14	27 IR 1952 28 IR 542
Requirements specific to a sub-acute facility 440 IAC 7.5-4-7	28 IR 664 28 IR 2364	Definitions "Government-financed construction" defined 312 IAC 25-1-57	29 IR 2606	Geese LSA Document #04-308(E)	28 IR 1194
Requirements specific to a supervised group living facility 440 IAC 7.5-4-8	28 IR 665 28 IR 2364	Inspection and Enforcement Procedures Inspections of sites 312 IAC 25-7-1	29 IR 2613	LSA Document #05-363(E)	29 IR 1577
Transitional Residential Facilities for Individuals with a Psychiatric Disorder or an Addiction		Performance Standards Prime farmland; special performance standards; revegetation and restoration of soil productivity 312 IAC 25-6-143	29 IR 2604	Migratory birds and waterfowl LSA Document #05-132(E)	28 IR 2994
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		Underground mining permit applications; reclamation plan for siltation structures, impoundments, dams, embankments, and refuse piles 312 IAC 25-4-87	29 IR 2606	Mute swans 312 IAC 9-4-5.5	29 IR 622
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Interim plates; restrictions on use 140 IAC 3.5-2-15	29 IR 3058	LSA Document #05-307(E)	29 IR 830	LSA Document #06-131(E)	29 IR 3035
DRIVER EXAMINER DIVISION		LSA Document #05-317(E)	29 IR 831	312 IAC 9-4-11	27 IR 1951 28 IR 541
Commercial Driver Training Schools and Instructors		LSA Document #06-88(E)	29 IR 2567		28 IR 1524 28 IR 2946
Application for school license 140 IAC 4-1-2	29 IR 3060	Control of the emerald ash borer LSA Document #06-23(E)	29 IR 1957		29 IR 623
Contracts with students 140 IAC 4-1-9	29 IR 3064	LSA Document #06-51(E)	29 IR 2228	Definitions "Ice fishing shelter" defined 312 IAC 9-1-9.5	27 IR 1946 28 IR 536
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License term; transfer; display; replacement; changes; renewal 140 IAC 4-1-3	29 IR 3061	Control of the giant African land snail LSA Document #05-212(E)	28 IR 3608	Bobcats 312 IAC 9-3-18.1	29 IR 621
Location of school 140 IAC 4-1-4	29 IR 3062	312 IAC 18-3-19	28 IR 1521 28 IR 2942	Commercial processing of deer 312 IAC 9-3-10	27 IR 1949 28 IR 539
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Ownership of more than one school 140 IAC 4-1-7	29 IR 3063			Foxes, coyotes, and skunks 312 IAC 9-3-12	27 IR 1949 28 IR 539
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Vehicle standards 140 IAC 4-1-11	29 IR 3064			General requirements for deer; exemptions; tagging; tree blinds; maximum taking of antlered deer in a calendar year LSA Document #04-259(E)	28 IR 615
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Hunting deer by bow and arrows by authority of an extra deer license 312 IAC 9-3-5	28 IR 1523 28 IR 2945	Possession of endangered species of mammals, nonmigratory birds, reptiles, amphibians, fish, and crayfish 312 IAC 9-2-15	28 IR 1522	FLOOD PLAIN MANAGEMENT Flood Plain Delineations and Management Local approval of activities within a floodway 312 IAC 10-3-6	29 IR 2274
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 - 329 IAC 3.1-1-14.1 29 IR 1262
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- Mailing address for notifications
 - 329 IAC 3.1-1-12.5 29 IR 1262

Identification and Listing of Hazardous Waste

- Exceptions and additions; identification and listing of hazardous waste
 - 329 IAC 3.1-6-2 27 IR 4111
 - 28 IR 2662**
- Indiana additions; listing of hazardous waste
 - 329 IAC 3.1-6-3 27 IR 4111
 - 28 IR 2663**
 - 29 IR 1264

- Waste excluded from regulation; General Motors Corporation, Fort Wayne Assembly Plant, Fort Wayne, Indiana
 - 329 IAC 3.1-6-7 29 IR 843

- Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana
 - 329 IAC 3.1-6-6 28 IR 2194
 - 28 IR 3552**

Land Disposal Restrictions

- Exceptions and additions; land disposal restrictions
 - 329 IAC 3.1-12-2 27 IR 4113
 - 28 IR 2665**

Rejection of Hazardous Waste

- 329 IAC 3.1-7.5 27 IR 4112
- 28 IR 2663**

Standards Applicable to Generators of Hazardous Waste

- Exceptions and additions; generator standards
 - 329 IAC 3.1-7-2 29 IR 1264

State Administered Permit Program

- Exceptions and additions; permit program
 - 329 IAC 3.1-13-2 27 IR 4114
 - 28 IR 2665**

REGULATION OF WASTES CONTAINING

PCBS

Alternative Disposal Facilities

- Applicability
 - 329 IAC 4.1-9-1 29 IR 2649

General

- 329 IAC 4.1-9-2 29 IR 2649
- Location restrictions
 - 329 IAC 4.1-9-3 29 IR 2650
- Notice of activity
 - 329 IAC 4.1-9-5 29 IR 2651
- Public notice and public participation
 - 329 IAC 4.1-9-4 29 IR 2650

Chemical Waste Landfills

- Applicability
 - 329 IAC 4.1-8-1 29 IR 2648

General

- 329 IAC 4.1-8-2 29 IR 2648
- Location restrictions
 - 329 IAC 4.1-8-3 29 IR 2648
- Notice of activity
 - 329 IAC 4.1-8-5 29 IR 2649
- Public notice and public participation
 - 329 IAC 4.1-8-4 29 IR 2649

Contingency Plan

- Contingency plan
 - 329 IAC 4.1-11-2 29 IR 2652
- Emergency coordinator
 - 329 IAC 4.1-11-4 29 IR 2652
- Incorporation by reference; contingency plan
 - 329 IAC 4.1-11-1 29 IR 2652
- Use of contingency plan
 - 329 IAC 4.1-11-3 29 IR 2652

Conversion of Terms

- Conversion of federal terms
 - 329 IAC 4.1-3-1 29 IR 2645

Definitions

- “Alternative disposal facility” defined
 - 329 IAC 4.1-2-3 29 IR 2644
- Applicability; incorporation by reference
 - 329 IAC 4.1-2-1 29 IR 2644
- “EPA” defined
 - 329 IAC 4.1-2-4 29 IR 2644
- Exceptions and additions
 - 329 IAC 4.1-2-2 29 IR 2644
- “Mobile facility” defined
 - 329 IAC 4.1-2-5 29 IR 2645
- “Municipal solid waste landfill” defined
 - 329 IAC 4.1-2-6 29 IR 2645
- “Municipal solid waste landfill unit” or “MSWLF unit” defined
 - 329 IAC 4.1-2-7 29 IR 2645
- “Nonmunicipal solid waste landfill” defined
 - 329 IAC 4.1-2-8 29 IR 2645
- “Single location” defined
 - 329 IAC 4.1-2-9 29 IR 2645

Disposal of Wastes Containing or Contaminated with PCBs in Solid Waste Land Disposal Facilities Regulated under 329 IAC 10

- Disposal in MSWLF units or nonmunicipal solid waste landfill units
 - 329 IAC 4.1-13-1 29 IR 2652
- Disposal in other solid waste land disposal facilities
 - 329 IAC 4.1-13-2 29 IR 2653
- Disposal of waste containing PCBs; state authorization
 - 329 IAC 4.1-13-3 29 IR 2653
- Disposal of fluorescent light ballasts containing PCBs
 - 329 IAC 4.1-13-5 29 IR 2654

- Disposal of wastes; notification to landfills
 - 329 IAC 4.1-13-4 29 IR 2654

Financial Assurance

- General
 - 329 IAC 4.1-12-1 29 IR 2652

General Provisions

- Applicability
 - 329 IAC 4.1-1-1 29 IR 2641
- Dilution
 - 329 IAC 4.1-1-5 29 IR 2642
- Enforcement
 - 329 IAC 4.1-1-2 29 IR 2641
- Incorporation by reference
 - 329 IAC 4.1-1-6 29 IR 2642
- Penalties
 - 329 IAC 4.1-1-3 29 IR 2641
- Variances
 - 329 IAC 4.1-1-4 29 IR 2642

Incinerators and High Efficiency Boilers

- Applicability
 - 329 IAC 4.1-7-1 29 IR 2647
- General
 - 329 IAC 4.1-7-2 29 IR 2647
- Location restrictions
 - 329 IAC 4.1-7-3 29 IR 2647
- Notice of activity
 - 329 IAC 4.1-7-5 29 IR 2648
- Public notice and public participation
 - 329 IAC 4.1-7-4 29 IR 2648

Mobile Facilities

- Mobile facilities
 - 329 IAC 4.1-10-1 29 IR 2651

PCB Spill Cleanup Policy

- Exceptions and additions
 - 329 IAC 4.1-5-2 29 IR 2646
- PCB spill cleanup policy incorporated by reference
 - 329 IAC 4.1-5-1 29 IR 2646

PCB Waste Disposal Records and Reports

- Exceptions and additions
 - 329 IAC 4.1-6-2 29 IR 2647
- Requirements for PCB waste disposal records and reports incorporated by reference
 - 329 IAC 4.1-6-1 29 IR 2646

Requirements for Disposal of Waste Containing PCBs

- Exceptions and additions
 - 329 IAC 4.1-4-2 29 IR 2646
- Requirements for storage and disposal incorporated by reference
 - 329 IAC 4.1-4-1 29 IR 2645

SOLID WASTE LAND DISPOSAL FACILITIES

Application Procedure for All Solid Waste Land Disposal Facilities

- Research, development, and demonstration minor modification application
 - 329 IAC 10-11-6.5 28 IR 1301
 - 28 IR 2670**

Definitions

- “Minor modification of solid waste land disposal facilities” defined
 - 329 IAC 10-2-112 28 IR 1301
 - 28 IR 2670**

CITATIONS TO FINAL RULES ARE IN **BOLD TYPE**

SOLID WASTE MANAGEMENT ACTIVITY REGISTRATION					
Solid Waste Facility Operator Testing Requirements				Corrective action plan	26 IR 1227
Examination requirements for Category II certification	27 IR 3696	“Piezometer” defined	27 IR 3179	329 IAC 9-5-7	27 IR 3196
329 IAC 12-8-4	28 IR 2127	329 IAC 9-1-36.5	28 IR 177		28 IR 165
Examination requirements for Category III certification	27 IR 3697	“Removal closure” defined	26 IR 1211	Free product removal	26 IR 1224
329 IAC 12-8-5	28 IR 2128	329 IAC 9-1-39.5	27 IR 3179	329 IAC 9-5-4.2	27 IR 3192
Solid Waste Facility Operator Training Requirements		“SARA” defined	28 IR 147		28 IR 160
Accredited training course requirements for recertification	27 IR 3698	329 IAC 9-1-41.5	26 IR 1211	Further site investigations for soil and ground water cleanup	26 IR 1226
329 IAC 12-9-2	28 IR 2128	“Underground release” defined	27 IR 3179	329 IAC 9-5-6	27 IR 3196
UNDERGROUND STORAGE TANKS		329 IAC 9-1-47	26 IR 1211		28 IR 164
Applicability; definitions		“Underground storage tank” defined	27 IR 3179	Initial abatement measures and site check	26 IR 1223
“Agency” defined	26 IR 1209	329 IAC 9-1-47.1	28 IR 147	329 IAC 9-5-3.2	27 IR 3191
329 IAC 9-1-4	27 IR 3177				28 IR 160
	28 IR 145	Closure		Initial response	26 IR 1223
Applicability		Applicability		329 IAC 9-5-2	27 IR 3191
329 IAC 9-1-1	26 IR 1209	329 IAC 9-6-1	26 IR 1229		28 IR 160
	27 IR 3177		27 IR 3199	Initial site characterization	26 IR 1224
	28 IR 145	Applicability to previously closed UST systems	28 IR 168	329 IAC 9-5-5.1	27 IR 3193
“Change-in-service” defined	26 IR 1209	329 IAC 9-6-3	26 IR 1234		28 IR 161
329 IAC 9-1-10.4	27 IR 3177		27 IR 3204	Performance Standards	
	28 IR 146	Closure procedure	28 IR 172	New UST systems	26 IR 1211
“Chemical of concern” defined	26 IR 1209	329 IAC 9-6-2.5	26 IR 1230	329 IAC 9-2-1	27 IR 3179
329 IAC 9-1-10.6	27 IR 3178		27 IR 3200		28 IR 147
	28 IR 146	Closure records	28 IR 168	Notification requirements	26 IR 1214
“Closure” defined	26 IR 1210	329 IAC 9-6-4	26 IR 1234	329 IAC 9-2-2	27 IR 3182
329 IAC 9-1-10.8	27 IR 3178		27 IR 3204		28 IR 150
	28 IR 146	Temporary closure	28 IR 173	Release Detection	
“Consumptive use” defined	26 IR 1210	329 IAC 9-6-5	26 IR 1235	General requirements for all UST systems	26 IR 1235
329 IAC 9-1-14	27 IR 3178		27 IR 3205	329 IAC 9-7-1	27 IR 3205
	28 IR 146	General Operating Requirements	28 IR 173		28 IR 173
“Contaminant” defined	26 IR 1210	Compatibility	26 IR 1219	Methods of release detection for piping	27 IR 3209
329 IAC 9-1-14.3	27 IR 3178	329 IAC 9-3.1-3	27 IR 3188	329 IAC 9-7-5	28 IR 177
	28 IR 146		28 IR 156	Methods of release detection for tanks	26 IR 1237
“Corrective action” defined	26 IR 1210	Operation and maintenance of corrosion protection	26 IR 1219	329 IAC 9-7-4	27 IR 3206
329 IAC 9-1-14.5	27 IR 3178	329 IAC 9-3.1-2	27 IR 3187		28 IR 175
	28 IR 146		28 IR 155	Requirements for petroleum UST systems	26 IR 1236
“Corrective action plan” defined	26 IR 1210	Repairs and maintenance allowed	26 IR 1219	329 IAC 9-7-2	27 IR 3206
329 IAC 9-1-14.7	27 IR 3178	329 IAC 9-3.1-4	27 IR 3188		28 IR 174
	28 IR 146		28 IR 156	Releases	
“Hazardous substance UST system” defined	26 IR 1210	Spill and overfill control	26 IR 1218	Release investigations and confirmation steps	26 IR 1220
329 IAC 9-1-25	27 IR 3178	329 IAC 9-3.1-1	27 IR 3187	329 IAC 9-4-3	27 IR 3189
	28 IR 146		28 IR 155		28 IR 157
“Hydraulic lift tank” defined	26 IR 1210	Initial Response, Site Investigation, and Corrective Action	26 IR 1221	Reporting and cleanup of spills and overfills	26 IR 1221
329 IAC 9-1-27	27 IR 3178	Applicability for release response and corrective action	27 IR 3190	329 IAC 9-4-4	27 IR 3189
	28 IR 147	329 IAC 9-5-1	28 IR 158		28 IR 158
“Petroleum UST system” defined	26 IR 1210			Reporting and Record Keeping	
329 IAC 9-1-36	27 IR 3179			Electronic reporting and submittal	26 IR 1218
	28 IR 147			329 IAC 9-3-2	27 IR 3187
					28 IR 155
				Reporting and record keeping	26 IR 1216
				329 IAC 9-3-1	27 IR 3184
					28 IR 152

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Upgrading of Existing UST Systems					
Upgrading of existing UST systems					
329 IAC 9-2.1-1	26 IR 1215				
	27 IR 3183				
	28 IR 151				
USED OIL MANAGEMENT					
Applicability					
Applicability					
329 IAC 13-3-1	26 IR 1673				
	27 IR 3978				
	27 IR 4115				
	28 IR 2666				
	29 IR 1265				
Marketing used oil containing any quantifiable level of PCB					
329 IAC 13-3-4	27 IR 4116				
	28 IR 2668				
Used Oil Burners Who Burn Off-Specification					
Used Oil for Energy Recovery					
Rebuttable presumption for used oil					
329 IAC 13-8-4	29 IR 1268				
Used Oil Fuel Marketers					
Tracking					
329 IAC 13-9-5	27 IR 4117				
	28 IR 2669				
Used Oil Processors and Re-Refiners					
Rebuttable presumption for used oil					
329 IAC 13-7-4	29 IR 1267				
Used Oil Transporter and Transfer Facilities					
Rebuttable presumption for used oil					
329 IAC 13-6-5	29 IR 1267				
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD					
GENERAL PROVISIONS					
Definitions; Licensure; Ethics; Continuing Education					
Accepted colleges and universities					
880 IAC 1-1-1.5	29 IR 2359				
Application for license as an audiologist					
880 IAC 1-1-2.5	29 IR 2360				
Application for license as a speech-language pathologist					
880 IAC 1-1-2	29 IR 2359				
Clinical fellowship					
880 IAC 1-1-3.1	29 IR 2361				
Definitions					
880 IAC 1-1-1	29 IR 2359				
Denial, suspension, and revocation of licenses; unprofessional conduct; conviction of crime; disciplinary action					
880 IAC 1-1-6	29 IR 2362				
Fees					
880 IAC 1-1-5	29 IR 2362				
Renewal of License; Continuing Education					
Renewal of license					
880 IAC 1-3.1-1	29 IR 2368				
Responsibilities					
880 IAC 1-3.1-3	29 IR 2368				
Support Personnel					
Activities prohibited by the SLP support personnel					
880 IAC 1-2.1-7	29 IR 2365				
Application for registration					
880 IAC 1-2.1-4	29 IR 2364				
Definitions					
880 IAC 1-2.1-1	29 IR 2363				
Educational requirements for SLP aide					
880 IAC 1-2.1-2	29 IR 2363				
Educational requirements for SLP assistant					
880 IAC 1-2.1-3.1	29 IR 2364				
Educational requirements for SLP associate					
880 IAC 1-2.1-3	29 IR 2363				
Renewal of registration					
880 IAC 1-2.1-6	29 IR 2365				
SLP aides previously registered under 880 IAC 1-2					
880 IAC 1-2.1-10	29 IR 2368				
Social Security numbers					
880 IAC 1-2.1-4.1	29 IR 2365				
Supervisors; responsibilities					
880 IAC 1-2.1-9	29 IR 2366				
Tasks that may be delegated to the SLP support personnel					
880 IAC 1-2.1-8	29 IR 2366				
TAX REVIEW, INDIANA BOARD OF					
LSA Document #04-261(E)	28 IR 612				
LSA Document #04-330(E)	28 IR 1487				
LSA Document #05-54(E)	28 IR 2394				
LSA Document #05-172(E)	28 IR 3310				
LSA Document #05-277(E)	29 IR 555				
TRANSPORTATION, INDIANA DEPARTMENT OF					
TOLL ROADS					
105 IAC 14	29 IR 588				
	29 IR 1646				
	29 IR 2864				
UTILITY RELOCATIONS ON CONSTRUCTION CONTRACTS					
105 IAC 13	29 IR 59				
UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD					
PAYMENT OF CORRECTIVE ACTION AND THIRD PARTY LIABILITY CLAIMS FROM THE EXCESS LIABILITY TRUST FUND					
Claims					
Applications for payment of reimbursable costs					
328 IAC 1-5-1	27 IR 2795				
	28 IR 142				
Deemed approved; reimbursement of costs					
328 IAC 1-5-3	27 IR 2796				
	28 IR 143				
Fund payment procedures; eligibility preapproval					
328 IAC 1-5-2	27 IR 2796				
	28 IR 142				
Definitions and References					
"Administrator" defined					
328 IAC 1-1-2	27 IR 2778				
	28 IR 123				
"Corrective action" defined					
328 IAC 1-1-3	27 IR 2778				
	28 IR 123				
"Deductible amount" defined					
328 IAC 1-1-4	27 IR 2778				
	28 IR 124				
"Emergency measures" defined					
328 IAC 1-1-5.1	27 IR 2778				
	28 IR 124				
"Off-site" defined					
328 IAC 1-1-7.5	27 IR 2779				
	28 IR 124				
"Reasonable" defined					
328 IAC 1-1-8.3	27 IR 2779				
	28 IR 124				
"Site characterization" defined					
328 IAC 1-1-8.5	27 IR 2779				
	28 IR 125				
"Substantial compliance" defined					
328 IAC 1-1-9	27 IR 2779				
	28 IR 125				
"Third party liability" defined					
328 IAC 1-1-10	27 IR 2779				
	28 IR 125				
Financial Assurance					
Termination of financial assurance					
328 IAC 1-7-2	27 IR 2797				
	28 IR 144				
Fund Coverage and Eligibility					
Amount of coverage					
328 IAC 1-3-4	27 IR 2783				
	28 IR 129				
Cost effectiveness of corrective action					
328 IAC 1-3-1.3	27 IR 2780				
	28 IR 126				
Costs					
328 IAC 1-3-5	27 IR 2784				
	28 IR 129				
Eligibility requirements					
328 IAC 1-3-3	27 IR 2781				
	28 IR 127				
Fund access					
328 IAC 1-3-1	27 IR 2780				
	28 IR 126				
Fund disbursement					
328 IAC 1-3-2	27 IR 2781				
	28 IR 127				
Limitation of liability					
328 IAC 1-3-6	27 IR 2791				
	28 IR 137				
Preapproval of costs					
328 IAC 1-3-1.6	27 IR 2781				
	28 IR 127				
Prioritization of Claims					
Discontinuation of prioritization					
328 IAC 1-4-5	28 IR 141				
General procedure for prioritization					
328 IAC 1-4-1	27 IR 2791				
	28 IR 137				
Monthly reimbursement					
328 IAC 1-4-4	27 IR 2795				
	28 IR 141				
Recategorization of releases					
328 IAC 1-4-3	27 IR 2794				
	28 IR 140				
Transition to the prioritization procedure under this rule					
328 IAC 1-4-1.5	28 IR 140				
Scope and Fund Management					
Applicability					
328 IAC 1-2-1	27 IR 2779				
	28 IR 125				
Obligation of monies					
328 IAC 1-2-3	27 IR 2780				
	28 IR 125				

CITATIONS TO FINAL RULES ARE IN **BOLD TYPE**

Third Party Liability Claims		Notice to the commission; notice to customers		INDUSTRIAL WASTEWATER PRETREATMENT PROGRAMS AND NPDES	
Applications for payment of third party liability claims		170 IAC 7-6-3	29 IR 2600	Basic NPDES Requirements	
328 IAC 1-6-1	27 IR 2796	Policy and scope		Establishment of water quality-based effluent limitations for dischargers not discharging to waters within the Great Lakes system	
	28 IR 143	170 IAC 7-6-1	29 IR 2599	327 IAC 5-2-11.1	27 IR 3664
Fund payment procedures for third party liability		Relinquishment of service by a LEC		28 IR 2097	
328 IAC 1-6-2	27 IR 2796	170 IAC 7-6-5	29 IR 2601	Great Lakes system dischargers determination of reasonable potential to exceed water quality standards	
	28 IR 143	Revocation of certificate of territorial authority		327 IAC 5-2-11.5	27 IR 3679
UTILITY REGULATORY COMMISSION, INDIANA		170 IAC 7-6-6	29 IR 2601	28 IR 2112	
ELECTRIC UTILITIES		Telecommunications Customer Service Rights and Responsibilities		Great Lakes system dischargers establishment of water quality-based effluent limitations (WQBELs)	
Cogeneration and Alternate Energy Production Facilities		Creditworthiness of residential customer; deposit; refund		327 IAC 5-2-11.6	27 IR 3689
Interconnections; metering; costs		170 IAC 7-1.3-3	27 IR 4081	28 IR 2120	
170 IAC 4-4.1-7	28 IR 3331	Customer complaints to the commission		Great Lakes system dischargers total maximum daily loads; wasteload allocations for point sources; load allocations for nonpoint sources; preliminary wasteload allocations	
	29 IR 2169	170 IAC 7-1.3-9	27 IR 4084	327 IAC 5-2-11.4	27 IR 3669
Customer-Generator Interconnection Standards		Customer complaints to the utility		28 IR 2102	
170 IAC 4-4.3	28 IR 3333	170 IAC 7-1.3-8	27 IR 4083	Incorporation by reference	
	29 IR 2170	Customer payments		327 IAC 5-2-1.5	27 IR 3663
Electric Customer Service Rights and Responsibilities		170 IAC 7-1.3-10	27 IR 4085	28 IR 2097	
170 IAC 4-1.2	27 IR 4057	Definitions		Monitoring	
Net Metering		170 IAC 7-1.3-2	27 IR 4080	327 IAC 5-2-13	27 IR 3694
170 IAC 4-4.2	27 IR 2312	WATER UTILITIES		28 IR 2125	
	28 IR 786	Distribution System Improvement Charges (DSIC)		Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; implementation of antidegradation; alternate mixing zone demonstrations; variances	
Interconnection		170 IAC 6-1.1	28 IR 1518	327 IAC 5-2-11.2	27 IR 3668
170 IAC 4-4.2-5	28 IR 3332	29 IR 456		28 IR 2101	
	29 IR 2169	Water Customer Service Rights and Responsibilities		Reporting requirements	
Standards of Service		170 IAC 6-1.2	27 IR 4073	327 IAC 5-2-15	27 IR 3694
Interruptions of service; timing; records		VETERINARY MEDICAL EXAMINERS, INDIANA BOARD OF PROFESSIONAL COMPETENCE		28 IR 2126	
170 IAC 4-1-23	27 IR 2765	Application for License as a Veterinarian		Definitions	
	28 IR 789	Application content; examination applicant; application deadline		"Waters of the state of Indiana" or "waters of the state" defined	
GAS UTILITIES		888 IAC 1.1-6-1	27 IR 2875	327 IAC 5-1.5-72	27 IR 3663
Gas Customer Service Rights and Responsibilities			28 IR 607	28 IR 2097	
170 IAC 5-1.2	27 IR 4065		27 IR 3704	Special NPDES Programs	
Standards of Service			28 IR 607	Concentrated animal feeding operations	
Creditworthiness of customer; deposit; refund				327 IAC 5-4-3	29 IR 1982
170 IAC 5-1-15	28 IR 3627			Streamlined Mercury Variance Requirements and Application Process	
	29 IR 2164			327 IAC 5-3.5	28 IR 650
Disconnection of service; prohibited disconnections; reconnection				28 IR 2349	
170 IAC 5-1-16	28 IR 3630			NPDES GENERAL PERMIT RULE PROGRAM	
	29 IR 2166			Concentrated Animal Feeding Operations	
SEWAGE DISPOSAL SERVICES				Nutrient management requirements	
Customer Rights and Responsibilities				327 IAC 15-15-12	29 IR 1987
Applicability and scope; billing for service				Soil conservation practice plan	
170 IAC 8.5-2-1	27 IR 4086			327 IAC 15-15-11	29 IR 1987
Complaints and review				PUBLIC WATER SUPPLY	
170 IAC 8.5-2-5	27 IR 4092			Approval of Public Water Supply Plans	
Creditworthiness guidelines; deposit to ensure payment of bill				Construction requirements at noncommunity public water systems serving 250 or fewer individuals	
170 IAC 8.5-2-3	27 IR 4087			327 IAC 8-4-2	28 IR 2191
Disconnection and prohibited disconnections				29 IR 2973	
170 IAC 8.5-2-4	27 IR 4089			Public water system plans; approval by board	
TELEPHONE UTILITIES				327 IAC 8-4-1	28 IR 2190
Disconnection of a Local Exchange Carrier by Another Local Exchange Carrier; Notice of Bankruptcy; Relinquishment of Service; Revocation of Certificate of Territorial Authority				29 IR 2973	
Definitions					
170 IAC 7-6-2	29 IR 2599				
Notice of bankruptcy					
170 IAC 7-6-4	29 IR 2600				

CITATIONS TO FINAL RULES ARE IN **BOLD TYPE**

Classification of Community Public Water System and Nontransient Noncommunity Public Water System Treatment Plants and Distribution Systems; Examination and Certification of Operators		Disinfectants and Disinfection		Maximum contaminant level goals; radionuclides	
Certificates and certification cards; renewal; duplicates		Compliance requirements; disinfectants and disinfection byproducts		327 IAC 8-2-34.1	28 IR 1240
327 IAC 8-12-7	29 IR 2638	327 IAC 8-2.5-7	29 IR 2620		28 IR 3218
Certification; reciprocity; provisional certificate		Monitoring requirements; disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors		Monitoring frequency for radioactivity; community water systems	
327 IAC 8-12-6	29 IR 2636	327 IAC 8-2.5-6	29 IR 2617	327 IAC 8-2-10.2	28 IR 1233
Certified operator grades		Reporting and record keeping requirements; disinfectants and disinfection byproducts			28 IR 3212
327 IAC 8-12-3.2	29 IR 2630	327 IAC 8-2.5-8	29 IR 2622	Radium-226, radium-228, gross alpha particle radioactivity, and uranium; maximum contaminant levels	
Certified operator in responsible charge		Treatment techniques for control of disinfection byproducts precursors		327 IAC 8-2-9	28 IR 1230
327 IAC 8-12-3.6	29 IR 2634	327 IAC 8-2.5-9	29 IR 2624		28 IR 3209
Classification of water distribution systems and water treatment plants		Drinking Water Standards		Reporting requirements; lead and copper	
327 IAC 8-12-2	29 IR 2629	Analytical and monitoring requirements; fecal coliform, total coliform, turbidity, disinfection		327 IAC 8-2-46	28 IR 1242
Continuing education requirements		327 IAC 8-2-8.7	28 IR 1229		28 IR 3220
327 IAC 8-12-7.5	29 IR 2638		28 IR 3207	Reporting requirements; test results and failure to comply	
Definitions		Analytical methods for inorganic chemical testing		327 IAC 8-2-13	28 IR 1239
327 IAC 8-12-1	29 IR 2628	327 IAC 8-2-4.2	28 IR 1217		28 IR 3217
Demonstration of proficiency for applicants to become a site-specific operator			28 IR 3195	Requirement for filtration and disinfection	
327 IAC 8-12-4.5	29 IR 2636	Analytical methods for organic chemical testing other than volatile organic compounds and total trihalomethanes		327 IAC 8-2-8.5	28 IR 1228
Examination of applicants to become a certified operator of a water treatment plant or water distribution system		327 IAC 8-2-5.2	28 IR 1222		28 IR 3206
327 IAC 8-12-4	29 IR 2635		28 IR 3200	Sanitary surveys	
Grandparenting		Analytical methods for radioactivity		327 IAC 8-2-8.2	29 IR 2615
327 IAC 8-12-3.4	29 IR 2633	327 IAC 8-2-10.1	28 IR 1230	Enhanced Filtration and Disinfection	
Qualifications of a certified operator			28 IR 3209	Disinfection profiling and benchmarking for systems serving a population of at least 10,000 individuals	
327 IAC 8-12-3	29 IR 2630	Analytical methods; lead and copper		327 IAC 8-2.6-2	28 IR 1269
Site-specific operator		327 IAC 8-2-45	28 IR 1240		28 IR 3248
327 IAC 8-12-3.5	29 IR 2633		28 IR 3218	Disinfection profiling and benchmarking for systems serving a population of fewer than 10,000 individuals beginning January 1, 2005	
Consumer Confidence Reports		Best available technologies, small systems compliance technologies (SSCTs), and compliance technologies by system size category for radionuclides		327 IAC 8-2.6-2.1	28 IR 1271
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