

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1623

AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-5-46 IS REPEALED [EFFECTIVE UPON PASSAGE]. (Administrative Rules Review Task Force).

SECTION 2. IC 2-5-53 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 53. Government Reform Task Force

Sec. 1. As used in this chapter, "agency" has the meaning set forth in IC 4-22-2-3.

Sec. 2. As used in this chapter, "council" refers to the legislative council established by IC 2-5-1.1-1.

Sec. 3. As used in this chapter, "rule" has the meaning set forth in IC 4-22-2-3.

Sec. 4. As used in this chapter, "task force" refers to the government reform task force established by section 5 of this chapter.

Sec. 5. The government reform task force is established.

Sec. 6. (a) Except as provided in subsections (b), (c), (d), and (e), IC 2-5-1.2 applies to the task force.

(b) The task force consists of the following ten (10) members of the general assembly:

(1) Three (3) members appointed by the president pro



tempore of the senate.

(2) Two (2) members appointed by the minority leader of the senate.

(3) Three (3) members appointed by the speaker of the house of representatives.

(4) Two (2) members appointed by the minority leader of the house of representatives.

A member of the task force serves at the pleasure of the appointing authority.

(c) The task force shall meet as called by the chair. All meetings of the task force shall be open to the public in accordance with and subject to IC 5-14-1.5. All records of the task force shall be subject to the requirements of IC 5-14-3.

(d) A majority of the members of the task force constitutes a quorum. The affirmative vote of at least a majority of the members at a meeting at which a quorum is present is necessary for the task force to take official action other than to meet and take testimony.

(e) The:

(1) chairman of the legislative council shall designate the chair; and

(2) vice chairman of the legislative council shall designate the vice chair;

of the task force from the members of the task force. The chair and vice chair of the task force serve as chair and vice chair at the pleasure of the appointing authority.

Sec. 7. The task force shall do the following:

(1) Review external policies and standards of procedure implemented by agencies.

(2) Study any other issues related to agency oversight, as determined by the task force.

Sec. 8. The task force may request information or testimony from department or agency heads, or the designee of a department or agency head, as determined necessary by the task force.

Sec. 9. The task force shall:

(1) develop recommendations in a report for the general assembly concerning the issues set forth in section 7 of this chapter; and

(2) not later than November 1, 2023, and before November 1 of each year thereafter, submit the report to the executive director of the legislative services agency for distribution to the members of the general assembly. The report submitted to the executive director of the legislative services agency



under this subdivision must be in an electronic format under IC 5-14-6.

Sec. 10. The legislative services agency shall provide support staff to the task force.

Sec. 11. This chapter expires December 31, 2025.

SECTION 3. IC 4-3-22-13, AS AMENDED BY P.L.5-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 13. (a) Except as provided in subsection (e), the OMB shall perform a cost benefit analysis upon each proposed rule and provide to:

- (1) the governor; and
- (2) the legislative council;

an assessment of the rule's effect on Indiana business. The OMB shall submit the cost benefit analysis to the legislative council in an electronic format under IC 5-14-6.

(b) After June 30, 2005, the cost benefit analysis performed by the OMB under this section with respect to any proposed rule that has an impact of at least five hundred thousand dollars (\$500,000) shall replace and be used for all purposes under IC 4-22-2 in lieu of the fiscal analysis previously performed by the legislative services agency under IC 4-22-2.

(c) **The OMB and the budget agency shall review a regulatory analysis and proposed rule submitted by an agency under IC 4-22-2-22.8.** In preparing a cost benefit reviewing a regulatory analysis **and proposed rule** under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule. A **cost benefit regulatory analysis prepared reviewed** under this section is a public document, subject to the following:

- (1) This ~~subsection~~ **section** does not empower the OMB or an agency to require an interested party or a regulated person to provide any materials, documents, or other information. ~~in connection with a cost benefit analysis under this section.~~ If an interested party or a regulated person voluntarily provides materials, documents, or other information to the OMB or an agency, ~~in connection with a cost benefit analysis under this section,~~ the OMB or the agency, as applicable, shall ensure the adequate protection of any:
 - (A) information that is confidential under IC 5-14-3-4; or
 - (B) confidential and proprietary business plans and other confidential information.



(2) If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims. The OMB and any agency involved in proposing the rule, or in administering the rule upon the rule's adoption, shall exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.

(2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties; regulated persons; and nonprofit corporations whose members may be affected by the proposed rule at least thirty (30) days before presenting the cost benefit analysis to the governor and the legislative council under subsection (a):

(d) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (c), the OMB shall state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis:

(e) If the OMB finds that a proposed rule is:

(1) an adoption or incorporation by reference of a federal law; regulation; or rule that has no substantive effect on the scope or intended application of the federal law or rule; or

(2) a technical amendment with no substantive effect on an existing Indiana rule;

the OMB may not prepare a cost benefit analysis of the rule under this section. The agency shall submit the proposed rule to the OMB with a statement explaining how the proposed rule meets the requirements of this subsection. If the OMB finds that the rule meets the requirements of this subsection, the OMB shall provide its findings to the governor and to the legislative council in an electronic format under IC 5-14-6. If the agency amends or modifies the proposed rule after the OMB finds that a cost benefit analysis may not be prepared for the rule, the agency shall resubmit the proposed rule to the OMB either for a new determination that the rule meets the requirements of this subsection; or for the OMB to prepare a cost benefit analysis of the rule under this section.

SECTION 4. IC 4-12-2-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 4. An agency may not consider the number or amount of fines or civil penalties imposed on regulated entities by an employee in the evaluation or compensation of the employee.**



SECTION 5. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 and the addition of IC 34-52-2-1.5 in the 2023 session of the general assembly only apply to agency actions commenced under IC 4-21.5-3 after June 30, 2023.**

SECTION 6. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter concerning an agency action, the administrative law judge shall order the agency to pay the reasonable attorney's fees incurred in the proceeding by the **prevailing** party challenging the agency action if:

(1) the party challenging the agency action proves, by a preponderance of the evidence, that:

- (1) (A) the agency's action was frivolous or groundless; or
- (2) (B) the agency pursued the action in bad faith;

(2) **the agency action was based on an invalid rule, as provided in IC 4-22-2-44; or**

(3) **the agency has failed to demonstrate that the agency acted within its legal authority.**

SECTION 7. IC 4-22-2-0.1, AS AMENDED BY P.L.53-2014, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 0.1. (a) The amendments made to this chapter by P.L.44-1995 apply as follows:

- (1) The amendments made to sections 13, 19, 23, 25, and 28 of this chapter apply to a rulemaking action that commences after June 30, 1995.
- (2) The addition of sections 23.1 and 46 (repealed) of this chapter applies to a rulemaking action that commences after June 30, 1995.

(b) This chapter (as effective January 1, 2023) continues to apply after June 30, 2023, to a rulemaking action that is commenced under this chapter before July 1, 2023, and is pending on July 1, 2023.

SECTION 8. IC 4-22-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) "Agency" means any officer, board, commission, department, division, bureau, committee, or other governmental entity exercising any of the executive (including the administrative) powers of state government. The term does not include the judicial or legislative departments of state government or a political subdivision as defined in IC 36-1-2-13.

(b) "Rule" means the whole or any part of an agency statement of



general applicability that:

- (1) has or is designed to have the effect of law; and
- (2) implements, interprets, or prescribes:
 - (A) law or policy; or
 - (B) the organization, procedure, or practice requirements of an agency.

The term includes a fee, a fine, a civil penalty, a financial benefit limitation, or another payment amount set by an agency that otherwise qualifies as a rule.

(c) "Rulemaking action" means the process of formulating or adopting a rule. The term does not include an agency action.

(d) "Agency action" has the meaning set forth in IC 4-21.5-1-4.

(e) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(f) "Publisher" refers to the publisher of the Indiana Register and Indiana Administrative Code, which is the legislative council, or the legislative services agency operating under the direction of the council.

(g) The definitions in this section apply throughout this article.

SECTION 9. IC 4-22-2-13, AS AMENDED BY P.L.2-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 13. (a) Subject to subsections (b), (c), and (d), this chapter applies to the addition, amendment, or repeal of a rule in every rulemaking action.

(b) This chapter does not apply to the following agencies:

- (1) Any military officer or board.
- (2) Any state educational institution.

(c) This chapter does not apply to a rulemaking action that results in any of the following rules:

(1) A resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law.

(2) A restriction or traffic control determination of a purely local nature that:

(A) is ordered by the commissioner of the Indiana department of transportation;

(B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or IC 9-20-7; and

(C) applies only to one (1) or more particularly described intersections, highway portions, bridge causeways, or viaduct areas.

(3) A rule adopted by the secretary of state under IC 26-1-9.1-526.



(4) An executive order or proclamation issued by the governor.

(5) A rule adopted by the board of trustees of the Indiana public retirement system, as provided in IC 5-10.5-4-2. However, the board shall submit rules adopted by the board to the publisher for publication in the Indiana Register.

(d) Except as specifically set forth in IC 13-14-9:

(1) IC 13-14-9 provides supplemental procedures for notice and public comment concerning proposed rules for the boards listed in IC 13-14-9-1; and

(2) the department of environmental management and the boards listed in IC 13-14-9-1 shall comply with the procedures in IC 13-14-9 in lieu of complying with sections ~~24~~, 26, 27, and 29 (except section 29(c)) of this chapter. ~~do not apply to rulemaking actions under IC 13-14-9.~~

In adopting rules, all other provisions of IC 4-22-2 apply to these agencies.

SECTION 10. IC 4-22-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking action that this chapter allows or requires an agency to perform, other than final adoption of a rule under section 29, ~~or 37.1, or 37.2~~ of this chapter **or IC 13-14-9**, may be performed by the individual or group of individuals with the statutory authority to adopt rules for the agency, a member of the agency's staff, or another agent of the agency. Final adoption of a rule under section 29, ~~or 37.1, or 37.2~~ of this chapter **or IC 13-14-9**, including readoption of a rule that is subject to sections 24 through 36 or to section 37.1 of this chapter and recalled for further consideration under section 40 of this chapter, may be performed only by the individual or group of individuals with the statutory authority to adopt rules for the agency.

SECTION 11. IC 4-22-2-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) IC 5-14-3 applies to the text of a rule that an agency intends to adopt from the earlier of the date that the agency takes any action under ~~section 24~~ **section 23** of this chapter, otherwise notifies the public of its intent to adopt a rule under any statute, or adopts the rule.

(b) IC 5-14-3 applies both to a rule and to the full text of a matter directly or indirectly incorporated by reference into the rule.

(c) Subject to subsection (e), after June 30, 2023, a public hearing or other public meeting in which an agency receives comments concerning a rulemaking action from the general public must be webcast on the state website during the hearing or meeting for the public to view the proceedings. Webcasts must be archived



as public records on the state website.

(d) Subject to subsection (e), after June 30, 2023, an agency that conducts a public hearing or other public meeting at which the agency receives comments concerning a rulemaking action from the general public must provide a method by which members of the public can attend and comment remotely.

(e) The office of management and budget in consultation with the office of technology and the publisher shall establish how and where webcasts will be available, how agencies will provide opportunities for the general public to attend and comment remotely, and where notices of upcoming webcasts will be posted. The governor, by executive order, may delay the implementation of subsection (c) or (d), or both, for one (1) or more agencies if the governor finds that implementation of subsection (c) or (d), or both, is not technically feasible. The governor shall include specific findings concerning the reasons for a delay in the executive order. A delay under this subsection may not extend beyond December 31, 2025.

(f) Inadequacy or insufficiency of webcasting, archive of webcasting, or remote access under this section or a statement in a notice of the availability of webcasting, archive of webcasting, or remote access does not invalidate a rulemaking action.

SECTION 12. IC 4-22-2-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17.5. (a) The legislative services agency shall provide electronic summaries or electronic copies of documents submitted to the publisher under this article or IC 13-14-9 to legislators and legislative committees in the manner and on the schedule specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council.

(b) If requested in the manner specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council, an agency shall provide to the legislative services agency any data, studies, or analyses relied on by the agency to develop a regulatory analysis or a revised regulatory analysis. The agency shall comply with any policies adopted by the legislative council or the personnel subcommittee of the legislative council governing the format, timing, and manner of delivery of the data, studies, or analyses.

SECTION 13. IC 4-22-2-19, AS AMENDED BY P.L.53-2014, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2023]: Sec. 19. (a) ~~Except as provided in section 23.1 of this chapter,~~ This section does not apply to the adoption of rules

~~(1)~~ required to receive or maintain:

~~(A)~~ **(1)** delegation;

~~(B)~~ **(2)** primacy; or

~~(C)~~ **(3)** approval;

for state implementation or operation of a program established under federal law.

~~(2)~~ that amend an existing rule;

~~(3)~~ required or authorized by statutes enacted before June 30, 1995; or

~~(4)~~ required or authorized by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995; in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

~~(e)~~ However, an agency shall:

(1) begin ~~the a~~ rulemaking process **needed to implement the statutory change** not later than sixty (60) days after the effective date of the statute that authorizes the rule; or

(2) if an agency cannot comply with subdivision (1), provide electronic notice to the publisher stating the reasons for the agency's noncompliance.

(c) For purposes of this section, a rulemaking process is commenced when:

(1) the agency publishes a proposed rule under section 23 or 37.2 of this chapter; or

(2) in the case of a change in a statute described in section 38 of this chapter, the agency files with the publisher a rule document under section 38 of this chapter.

Except as otherwise provided in IC 4-22-2.3, if an interim rulemaking procedure is commenced under section 37.2 of this chapter, the agency shall commence a permanent rulemaking process under section 23 of this chapter before the adopted interim rule expires.

SECTION 14. IC 4-22-2-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19.5. (a) To the extent possible, a rule adopted under this article or ~~under IC 13-14-9.5~~ **IC 13-14-9** shall comply with the following:



- (1) Minimize the expenses to:
 - (A) regulated entities that are required to comply with the rule;
 - (B) persons who pay taxes or pay fees for government services affected by the rule; and
 - (C) consumers of products and services of regulated entities affected by the rule.
- (2) Achieve the regulatory goal in the least restrictive manner.
- (3) Avoid duplicating standards found in state or federal laws.
- (4) Be written for ease of comprehension.
- (5) Have practicable enforcement.

(b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

SECTION 15. IC 4-22-2-19.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: **Sec. 19.6. (a) A rule adopted under this article or IC 13-14-9 that includes a fee, fine, or civil penalty must comply with this section. Subsections (b), (c), and (d) do not apply to a rule that must be adopted in a certain form to comply with federal law.**

(b) For each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty and set forth the amount of the fee, fine, or civil penalty:

- (1) as a specific dollar amount;**
- (2) under a formula by which a specific dollar amount can be reasonably calculated by persons regulated or otherwise affected by the rule; or**
- (3) as a range of potential dollar amounts, stating the factors that the agency will utilize to set a specific dollar amount in an individual case with sufficient certainty that a review of an agency action under IC 4-21.5 or comparable process can evaluate whether the amount was reasonable.**

A rule concerning fines or civil penalties does not prohibit an agency to enter into a settlement agreement with a person against whom a fine or civil penalty is being assessed to determine the fine or civil penalty to be paid for a violation.

(c) The amount of a fee must be reasonably based on the amount necessary to carry out the purposes for which the fee is imposed.

(d) An agency setting a fine or civil penalty shall consider the following:

- (1) Whether the violation has a major or minor impact on the**



health, safety, or welfare of a person, the health or safety of animals or natural resources, or other facts set forth in the agency's rule.

(2) The number of previous violations committed by the offender of laws, rules, or programs administered by the agency.

(3) The need for deterrence of future violations.

(4) Whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense.

(e) An agency is not liable for a fee, fine, or civil penalty that is not in conformity with this section if:

(1) the fee, fine, or civil penalty was included in a rule that became effective before January 1, 2023, and that otherwise complies with subsection (b);

(2) the fee, fine, or civil penalty was:

(A) set by an agency before January 1, 2023;

(B) reviewed by the budget committee:

(i) in the case of the department of environmental management, the boards listed in IC 13-14-9-1, the office of environmental adjudication, the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, before December 31, 2023; and

(ii) in the case of an agency not described in item (i), before July 1, 2024; and

(C) included in a rule that complies with this section and becomes effective before:

(i) in the case of the department of environmental management, the boards listed in IC 13-14-9-1, the office of environmental adjudication, the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, December 31, 2024; and

(ii) in the case of an agency not described in item (i), July 1, 2025; or

(3) the agency withdraws or otherwise ceases to enforce or apply the fee, fine, or civil penalty before:

(A) in the case of the department of environmental management, the boards listed in IC 13-14-9-1, the office of environmental adjudication, the natural resources commission, the department of natural resources, the



**Indiana gaming commission, and the Indiana horse racing commission, December 31, 2023; and
(B) in the case of an agency not described in clause (A),
July 1, 2024.**

Readoption without changes under IC 4-22-2.6 of a nonconforming fee, fine, or civil penalty that meets the requirements of subdivision (1) or (2) does not invalidate the nonconforming fee, fine, or civil penalty.

(f) Beginning January 1, 2024, an agency shall post on its website a schedule of fines and civil penalties that apply to violations of laws, rules, and requirements of federal programs administered by the agency.

SECTION 16. IC 4-22-2-21, AS AMENDED BY P.L.204-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 21. (a) If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of any of the following matters:

- (1) A federal or state statute, rule, or regulation.
- (2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.
- (3) A manual of the department of local government finance adopted in a rule described in IC 6-1.1-31-9.
- (4) The following requirements:
 - (A) The schedule, electronic formatting, and standard data, field, and record coding requirements for:
 - (i) the electronic data file under IC 6-1.1-4-25 concerning the parcel characteristics and parcel assessments of all parcels and personal property return characteristics and assessments; and
 - (ii) the electronic data file under IC 36-2-9-20 concerning the tax duplicate.
 - (B) The schedule, electronic formatting, and standard data, field, and record coding requirements for data required to be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.
 - (C) Data export and transmission format requirements for information described in clauses (A) and (B).
- (b) Each matter incorporated by reference under subsection (a) must be fully and exactly described.
- (c) An agency may refer to a matter that is directly or indirectly referred to in a primary matter by fully and exactly describing the



primary matter.

(d) **Except as otherwise provided in this article**, whenever an agency submits a rule to the attorney general, the governor, or the publisher under this chapter, the agency shall also submit a copy of the full text of each matter incorporated by reference under subsection (a) into the rule, other than the following:

- (1) An Indiana statute or rule.
- (2) A form or instructions for a form numbered by the Indiana archives and record administration under IC 5-15-5.1-6.
- (3) The source of a statement that is quoted or paraphrased in full in the rule.
- (4) Any matter that has been previously filed with the:
 - (A) secretary of state before July 1, 2006; or
 - (B) publisher after June 30, 2006.
- (5) Any matter referred to in subsection (c) as a matter that is directly or indirectly referred to in a primary matter.

(e) An agency may comply with subsection (d) by submitting a paper or an electronic copy of the full text of the matter incorporated by reference.

SECTION 17. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 22.5. (a) This section applies to a rule that an agency intends to:

- (1) adopt under sections ~~24~~ **23** through 36 of this chapter **or section 37.2 of this chapter;**
- (2) **adopt under IC 13-14-9; or**
- (3) **readopt under IC 4-22-2.6.**

(b) As used in this section, "pending rulemaking action" means any rulemaking action in which:

- (1) either:
 - (A) a notice of ~~intent~~ **a public comment period** has been published under section 23 **or 37.2** of this chapter; **or**
 - (B) a rulemaking action has been commenced under IC 13-14-9; ~~and~~ **or**
 - (C) **a rulemaking action has been commenced under IC 4-22-2.6; and**
- (2) the rule has not become effective under section 36 of this chapter.

(c) Each agency shall maintain a current rulemaking docket that is indexed.

(d) A current rulemaking docket must list each pending rulemaking action. The docket must state or contain:



- (1) the subject matter of the proposed rule;
- (2) notices related to the proposed rule, or links to the Indiana Register where these notices may be viewed;
- (3) how comments may be made;
- (4) the time within which comments may be made;
- (5) where comments and the agency's written response to those comments may be inspected;
- (6) the date, time, and place where a public hearing required under:
 - (A) section 26 of this chapter; or
 - (B) IC 13-14-9;
 will be held;
- (7) a description of relevant scientific and technical findings related to the proposed rule, if applicable; and
- (8) a reasonable estimate of the timetable for action, updated periodically as circumstances change, if necessary.

(e) The agency shall maintain the rulemaking docket on the agency's ~~Internet web site.~~ **website.** The information must be in an open format that can be easily searched and downloaded. Access to the docket shall, to the extent feasible and permitted by law, provide an opportunity for public comment on the pertinent parts of the rulemaking docket, including relevant scientific and technical findings. Upon request, the agency shall provide a written rulemaking docket.

SECTION 18. IC 4-22-2-22.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 22.7. (a) Before complying with section 22.8 of this chapter, an agency shall conduct a regulatory analysis for the proposed rule that complies with the requirements of this section.**

(b) The office of management and budget shall set standards for the criteria, analytical method, treatment technology, economic, fiscal, and other background data to be used by an agency in the regulatory analysis. The regulatory analysis must be submitted in a form that can be easily loaded into commonly used business analysis software and published in the Indiana Register using the format jointly developed by the publisher, the office of management and budget, and the budget agency. The office of management and budget may provide more stringent requirements for rules with fiscal impacts and costs above a threshold amount determined by the office of management and budget.

(c) At a minimum, the regulatory analysis must include findings and any supporting data, studies, or analyses prepared for a rule



that demonstrate compliance with the following:

- (1) The cost benefit requirements in IC 4-3-22-13.
 - (2) Each of the standards in section 19.5 of this chapter.
 - (3) If applicable, the requirements for fees, fines, and civil penalties in section 19.6 of this chapter.
 - (4) The annual economic impact on small businesses statement required under IC 4-22-2.1-5.
 - (5) If applicable, the information required under IC 13-14-9-4.
 - (6) Any requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule, if applicable.
- (d) The regulatory analysis must include a statement justifying any requirement or cost that is:
- (1) imposed on a regulated entity under the rule; and
 - (2) not expressly required by:
 - (A) the statute authorizing the agency to adopt the rule; or
 - (B) any other state or federal law.

The statement required under this subsection must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

(e) If an agency has made a good faith effort to comply with this section, a rule is not invalid solely because the regulatory analysis for the proposed rule is insufficient or inaccurate.

SECTION 19. IC 4-22-2-22.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 22.8. (a) After conducting a regulatory analysis under section 22.7 of this chapter, if an agency elects to adopt a rule subject to section 23 of this chapter or IC 13-14-9, the agency shall submit a request to the budget agency and the office of management and budget to authorize commencement of the public comment periods under this chapter or IC 13-14-9 (as applicable). The request must include the following:

- (1) A general description of the subject matter of the proposed rule.
- (2) The full text of the proposed rule (including a copy of any matter incorporated by reference under section 21 of this chapter) in the form required by the publisher, including citations to any related authorizing and affected Indiana statutes.



(3) The regulatory analysis, including supporting data, prepared under section 22.7 of this chapter.

(4) Any other information required by the office of management and budget.

(b) The budget agency and the office of management and budget shall expedite the review of the request to adopt a rule. The budget agency and the office of management and budget may do the following:

(1) Return the request to the agency with a statement describing any additional information needed to authorize or disapprove further rulemaking actions on one (1) or more of the rules in the request.

(2) Authorize the commencement of the public comment periods on one (1) or more of the rules in the request with or without changes.

(3) Disapprove commencement of the public comment periods on one (1) or more of the rules with a statement of reasons for the disapproval.

(c) If an agency has requested authorization for more than one (1) rule in the same request, the budget agency and the office of management and budget may make separate determinations with respect to some or all of the rules in the request. Approval of a request shall be treated as a determination that the review conducted and findings made by the agency comply with the requirements of section 22.7 of this chapter and this section. The budget agency and the office of management and budget may not approve any part of a proposed rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposed rule to the budget committee for review.

(d) Notice of the determination shall be provided to the agency in an electronic format required by the publisher. The budget agency and the office of management and budget may return to the agency any copy of a matter incorporated by reference under section 21 of this chapter that was submitted with the request.

(e) If an agency revises a proposed rule after the budget agency and the office of management and budget authorize commencement of the public comment periods, the agency must obtain a new notice of determination under subsection (d). The agency shall resubmit to the budget agency and the office of management and budget the revised proposed rule and a revised regulatory analysis with sufficient information for the budget



agency and the office of management and budget to determine the impact the revisions have on the regulatory analysis previously reviewed by the budget agency and the office of management and budget. After obtaining a new notice of determination, the agency shall submit to the publisher the new notice of determination, the revised proposed rule, and the revised regulatory analysis.

SECTION 20. IC 4-22-2-23, AS AMENDED BY P.L.152-2012, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) (a) At least twenty-eight (28) days before an agency notifies the public of the agency's intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana Register. An agency shall provide notice in the Indiana Register of the first public comment period required by this section. To publish notice of the first public comment period in the Indiana Register, the agency must submit the following to the publisher:

- (1) A statement of the date, time, and place at which the hearing required by section 26 of this chapter will be convened, including information for how to attend the public hearing remotely.
- (2) The full text of the agency's proposed rule in the form required by section 20 of this chapter and the documents required by section 21 of this chapter.
- (3) The latest version of the regulatory analysis submitted to the budget agency and the office of management and budget under section 22.8 of this chapter.
- (4) The determination of the budget agency and the office of management and budget authorizing commencement of the public comment periods.
- (5) If the proposed rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.
- (6) The notice required under subsection (b).

(b) The publication notice of the first public comment period must include the following:

- (1) A general description of the subject matter of the proposed rule.
- (2) An overview of the intent and scope of the proposed rule and



the statutory authority for the rule.

(3) The latest version of the regulatory analysis submitted to the budget agency and the office of management and budget under section 22.8 of this chapter, excluding any appendices containing any data, studies, or analyses referenced in the regulatory analysis.

(4) Information concerning where, when, and how a person may submit written comments on the proposed rule, including contact information concerning the small business regulatory coordinator required by section 28.1 of this chapter.

(5) Information concerning where, when, and how a person may inspect and copy the regulatory analysis, and any data, studies, or analyses referenced under subdivision (3).

(6) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed rule under section 21 of this chapter.

(7) An indication that, if the agency does not receive any substantive comments during the public comment period or public hearing, the agency may adopt a rule that is the same as or does not substantially differ from the text of the proposed rule published under this section.

Inadequacy or insufficiency of the published description or regulatory analysis in a notice published under this section does not invalidate a rulemaking action.

(c) The requirement to publish a notice of intent to adopt a rule under subsection (b) does not apply to rulemaking under IC 13-14-9.

(d) In addition to the procedures required by this article, an agency may solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action, including members of the public who are likely to be affected because they are the subject of the potential rulemaking or are likely to benefit from the potential rulemaking. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views.

(e) The agency shall prepare a written response that contains a summary of the comments received during any part of the rulemaking process. The written response is a public document. The agency shall make the written response available to interested parties upon request.

(c) Although the agency may comply with the publication requirements of this section on different days, the agency must comply with all of the publication requirements of this section at least thirty (30) days before the public hearing required by section



26 of this chapter is convened.

(d) **The publisher shall review materials submitted under this section and determine the date that the publisher intends to publish the text of the proposed rule and the notice in the Indiana Register. If the submitted material complies with this section, the publisher shall establish the intended publication date, assign a document control number to the proposed rule, and provide a written or an electronic mail authorization to proceed to the agency. The publisher shall publish the following in the Indiana Register on the intended publication date:**

- (1) **The notice of the first public comment period, including any information required under IC 13-14-9-4 (if applicable).**
- (2) **The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter).**

SECTION 21. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 23.1. (a) ~~This section and section 19(b) of this chapter do not apply to rules adopted under IC 4-22-2-37.1.~~

(b) ~~Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, submits a request to the budget agency and the office of management and budget under section 22.8 of this chapter,~~ the agency may solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

SECTION 22. IC 4-22-2-24, AS AMENDED BY P.L.1-2006, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 24. (a) ~~An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c):~~

(b) ~~The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper. An agency may not contract for the publication of a notice under this chapter until the agency has received a written or an electronic authorization to proceed from the publisher under subsection (g):~~

(a) **If:**

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(1) an agency receives substantive comments during the first public comment period or the public hearing under section 23 of this chapter; or

(2) the rule establishes a requirement or limitation that is more stringent than an applicable federal requirement or limitation;

the agency must conduct a second public comment period under this section.

~~(c)~~ (b) The agency shall cause a notice of public hearing and To publish a notice of the second public comment period in the Indiana Register, the agency must submit the following to the publisher:

(1) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher in accordance with subsection (g). The agency shall submit the rule in the form required by section 20 of this chapter. ~~and with~~ **The agency also shall submit** the documents required by section 21 of this chapter **(if the agency has not previously provided the publisher with the documents)**. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection: **subdivision.**

(2) **The notice required under subsection (c).**

~~(d)~~ (c) The agency shall include the following in the **second public comment period** notice required by subsections (b) and (c): **published in the Indiana Register:**

(1) A statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened, **including information for how to attend the hearing remotely.**

(2) A general description of the subject matter of the proposed rule.

(3) In a notice published after June 30, 2005, a statement justifying any requirement or cost that is:

(A) imposed on a regulated entity under the rule; and

(B) not expressly required by:

(i) the statute authorizing the agency to adopt the rule; or

(ii) any other state or federal law.

The statement required under this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or



cost is necessary:

(4) an explanation that:

(A) the proposed rule; and

(B) any data, studies, or analysis referenced in a statement under subdivision (3);

may be inspected and copied at the office of the agency:

(3) A summary of the written comments received by the agency during the first public comment period and a summary of the response of the agency to written comments submitted under section 23 of this chapter during the first public comment period.

(4) Either a statement indicating that no changes in the regulatory analysis have been made from the version of the regulatory analysis published under section 23 of this chapter or the latest version of the regulatory analysis (excluding any appendices containing any data, studies, or analyses referenced in the regulatory analysis) submitted to the budget agency and the office of management and budget under section 22.8 of this chapter, if any changes have been made in the regulatory analysis after submitting the material to the publisher under section 23 of this chapter.

(5) An explanation of any differences between the text of the proposed rule published for the first public comment period under section 23 of this chapter and the text of the proposed rule published for the second public comment period under this section.

(6) Information concerning where, when, and how a person may submit written comments on the proposed rule, including contact information concerning the small business regulatory coordinator required by section 28.1 of this chapter.

(7) Information concerning where, when, and how a person may inspect and copy the regulatory analysis and any data, studies, or analyses referenced in a regulatory analysis referenced in subdivision (4).

(8) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed rule under section 21 of this chapter.

(9) An indication that the notice is for the second of two (2) thirty (30) day periods in which the public may comment on the proposed rule and that following the second public comment period the agency may adopt a version of the proposed rule that is the same as or does not substantially



differ from the text of the proposed rule published under this section.

However, Inadequacy or insufficiency of the **subject matter published** description **under subdivision (2) or a statement of justification under subdivision (3) or regulatory analysis** in a notice **published under this section** does not invalidate a rulemaking action.

(e) (d) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least **twenty-one (21) thirty (30)** days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

(g) (e) The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. **After:**

(1) **establishing the intended publication date;** and

(2) **receiving the public hearing information specified in subsection (d) from the agency;**

the publisher shall If the submitted material complies with this section, the publisher shall establish the intended publication date, assign a document control number to the proposed rule, and provide a written or an electronic mail authorization to proceed to the agency. The publisher shall publish the following in the Indiana Register on the intended publication date:

(1) The notice of the second public comment period, including any information required under IC 13-14-9-4 (if applicable).

(2) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter).

SECTION 23. IC 4-22-2-25, AS AMENDED BY P.L.5-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 25. (a) An agency has one (1) year from the date that it publishes a notice of intent to adopt a rule in the Indiana Register ~~under section 23 of this chapter to comply with sections 26 through 33 of this chapter~~ **of the first public comment period under section 23 of this chapter to comply with sections 23 through 33 of this chapter** and obtain the approval or deemed approval of the governor. If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice of intent to adopt a rule ~~the first public comment period~~ **the first public comment period** under section 23 of this chapter, the agency shall, before the two hundred fiftieth day following the publication of



the notice of ~~intent to adopt a rule~~ **the first public comment period** under section 23 of this chapter, notify the publisher by electronic means:

- (1) the reasons why the rule was not adopted and the expected date the rule will be completed; and
 - (2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this chapter.
- (b) If a rule is not approved before the later of:
- (1) one (1) year after the agency publishes notice of ~~intent to adopt the rule~~ **the first public comment period** under section 23 of this chapter; or
 - (2) the expected date contained in a notice concerning the rule that is provided to the publisher under subsection (a);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

SECTION 24. IC 4-22-2-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 26. (a) After the notices and the text of an agency's proposed rule are published under ~~section~~ **sections 23 and (if applicable) 24** of this chapter, the agency shall conduct a public hearing on the proposed rule.

(b) The agency shall convene the public hearing on the date and at the time and place stated in its notices **and include an option for remote attendance.**

(c) The agency may conduct the public hearing in any informal manner that allows for an orderly presentation of comments and avoids undue repetition. However, the agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency's proposed rule through the presentation of oral and written facts or argument.

(d) The agency may recess the public hearing and reconvene it on a different date or at a different time or place by:

- (1) announcing the date, time, and place of the reconvened public hearing in the original public hearing before its recess; and
- (2) recording the announcement in the agency's record of the public hearing.

(e) An agency that complies with subsection (d) is not required to give any further notice of a public hearing that is to be reconvened.

SECTION 25. IC 4-22-2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or group of individuals who will finally adopt the rule under section 29 of



this chapter shall fully consider comments received **by the agency during each public comment period and comments received** at the public hearing ~~hearings~~ required by ~~section~~ **sections 23, 24, and 26** of this chapter and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.

SECTION 26. IC 4-22-2-27.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. In addition to the information submitted to the attorney general under section 31 of this chapter, to the governor under section 33 of this chapter, and to the publisher under section 35 of this chapter, an agency shall submit to the attorney general, the governor, and the publisher a summary of the comments received by the agency during each public comment period and public hearing under sections 23, 24, and 26 of this chapter or IC 13-14-9 and a summary of the response of the agency to the comments. The publisher shall publish the summaries with the final adopted and approved rule.**

SECTION 27. IC 4-22-2-28, AS AMENDED BY P.L.237-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout this section:

- (1) "Ombudsman" refers to the small business ombudsman designated under IC 5-28-17-6.
- (2) "Total estimated economic impact" means the direct annual economic impact of a rule on all regulated persons after the rule is fully implemented under subsection (g).

(b) The ombudsman:

- (1) shall review a proposed rule that
 - (A) imposes requirements or costs on small businesses (as defined in IC 4-22-2.1-4); ~~and~~
 - (B) ~~is referred to the ombudsman by an agency under IC 4-22-2.1-5(c); and~~
- (2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).

After conducting a review under subdivision (1) or (2), the ombudsman may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses. The agency that intends to adopt the proposed rule shall respond in writing to the ombudsman concerning the ombudsman's comments or



suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(c) Subject to subsection (e) and not later than fifty (50) days before the public hearing for a proposed rule required by section 26 of this chapter, an agency shall submit the proposed rule to the office of management and budget for a review under subsection (d); if the agency proposing the rule determines that the rule will have a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on all regulated persons: In determining the total estimated economic impact under this subsection, the agency shall consider any applicable information submitted by the regulated persons affected by the rule. To assist the office of management and budget in preparing the fiscal impact statement required by subsection (d), the agency shall submit, along with the proposed rule, the data used and assumptions made by the agency in determining the total estimated economic impact of the rule.

(d) Except as provided in subsection (e), before the adoption of the rule, and not more than forty-five (45) days after receiving a proposed rule under subsection (c), the office of management and budget shall prepare, using the data and assumptions provided by the agency proposing the rule, along with any other data or information available to the office of management and budget, a fiscal impact statement concerning the effect that compliance with the proposed rule will have on:

- (1) the state; and
- (2) all persons regulated by the proposed rule.

The fiscal impact statement must contain the total estimated economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal impact statement is a public document. The office of management and budget shall make the fiscal impact statement available to interested parties upon request and to the agency proposing the rule. The agency proposing the rule shall consider the fiscal impact statement as part of the rulemaking process and shall provide the office of management and budget with the information necessary to prepare the fiscal impact statement, including any economic impact statement prepared by the agency under IC 4-22-2.1-5. The office of management and budget may also receive and consider applicable information from the regulated persons affected by the rule in preparation of the fiscal impact statement.

(e) With respect to a proposed rule subject to IC 13-14-9:

- (1) the department of environmental management shall give



written notice to the office of management and budget of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and

(2) the office of management and budget shall prepare the fiscal impact statement referred to in subsection (d) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

(f) In determining whether a proposed rule has a total estimated economic impact greater than five hundred thousand dollars (\$500,000); the agency proposing the rule shall consider the impact of the rule on any regulated person that already complies with the standards imposed by the rule on a voluntary basis:

(g) For purposes of this section, a rule is fully implemented after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to certain regulated persons; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all regulated persons that will be affected by the rule.

In determining the total estimated economic impact of a proposed rule under this section, the agency proposing the rule shall consider the annual economic impact on all regulated persons beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total estimated economic impact of a rule under this section.

(h) An agency shall provide the legislative council in an electronic format under IC 5-14-6 with any analysis, data, and description of assumptions submitted to the office of management and budget under this section or section 40 of this chapter at the same time the agency submits the information to the office of management and budget. The office of management and budget shall provide the legislative council in an electronic format under IC 5-14-6 any fiscal impact statement and related supporting documentation prepared by the office of management and budget under this section or section 40 of this chapter at the same time the office of management and budget provides the fiscal impact statement to the agency proposing the rule. Information submitted under this subsection must identify the rule to which the information is related by document control number assigned by the publisher.

(i) An agency shall provide the legislative council in an electronic



format under IC 5-14-6 with any economic impact or fiscal impact statement, including any supporting data, studies, or analysis, prepared for a rule proposed by the agency or subject to readoption by the agency to comply with:

- (1) a requirement in section 19.5 of this chapter to minimize the expenses to regulated entities that are required to comply with the rule;
- (2) a requirement in section 24 of this chapter to publish a justification of any requirement or cost that is imposed on a regulated entity under the rule;
- (3) a requirement in IC 4-22-2.1-5 to prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented;
- (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses;
- (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish information concerning the fiscal impact of a rule or alternatives to a rule subject to these provisions; or
- (6) a requirement under any other law to conduct an analysis of the cost, economic impact, or fiscal impact of a rule;

regardless of whether the total estimated economic impact of the proposed rule is more than five hundred thousand dollars (\$500,000); as soon as practicable after the information is prepared. Information submitted under this subsection must identify the rule to which the information is related by document control number assigned by the publisher.

SECTION 28. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 28.1. (a) This section applies to the following:

- (1) A rule for which the notice required by section 23 of this chapter or by IC 13-14-9-3 is published by an agency or the board (as defined in IC 13-13-8-1).
- (2) A rule for which:
 - (A) the notice required by IC 13-14-9-3; or
 - (B) an appropriate later notice for circumstances described in subsection (g);

is published by the department of environmental management after June 30, 2006.

(b) (a) As used in this section, The following definitions apply



throughout this section:

(1) "Coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection ~~(e)~~.
(b).

~~(e)~~ As used in this section; (2) "Director" refers to the director or other administrative head of an agency.

~~(d)~~ As used in this section; (3) "Small business" has the meaning set forth in IC 5-28-2-6.

~~(e)~~ **(b)** For each rulemaking action and rule finally adopted as a result of a rulemaking action by an agency, ~~under this chapter~~, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. ~~Subject to subsection (f):~~

~~(1) in the case of a proposed rule; the notice of intent to adopt the rule~~ **The first public comment period notice** published under section 23 of this chapter ~~or~~

~~(2) in the case of a rule proposed by the department of environmental management or the board (as defined in IC 13-13-8-1); the notice published under IC 13-14-9-3 or the findings published under IC 13-14-9-8(b)(1); whichever applies;~~ must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule, the name, address, telephone number, and electronic mail address of the small business ombudsman designated under IC 5-28-17-6, and a statement of the resources available to regulated entities through the small business ombudsman designated under IC 5-28-17-6. ~~Subject to subsection (f);~~ In the case of a rule finally adopted, the final rule, as published in the Indiana Register, must include the name, address, telephone number, and electronic mail address of the coordinator.

~~(f)~~ **(c)** This subsection applies to a rule adopted by the department of environmental management or the board ~~(as defined in IC 13-13-8-1) under IC 13-14-9. Subject to subsection (g); listed in IC 13-14-9-1. In addition to the information required by subsection (b), the department and a board shall include in the notice provided under IC 13-14-9-3 or in the findings published under IC 13-14-9-8(b)(1); whichever applies; section 23 of this chapter and in the publication of the final rule in the Indiana Register:~~



- (1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3;
- (2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2; **and**
- (3) if applicable, a statement of:
 - (A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and
 - (B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3). **and**

~~(4) the information required by subsection (e).~~

The coordinator assigned to the rule ~~under subsection (e)~~ shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under ~~subsection (h) (d)~~ and IC 13-28-3. If applicable, the coordinator assigned to the rule ~~under subsection (e)~~ shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under ~~subsection (h) this section~~ and IC 13-28-5.

~~(g) If the notice provided under IC 13-14-9-3 is not published as allowed by IC 13-14-9-7, the department of environmental management shall publish in the notice provided under IC 13-14-9-4 the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3. If neither the notice under IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed by IC 13-14-9-8, the department of environmental management shall publish in the commissioner's written findings under IC 13-14-9-8(b) the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3.~~

~~(h) (d)~~ The coordinator assigned to a rule ~~under subsection (e)~~ shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.
- (2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.
- (3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.
- (4) Any other concerns of small businesses with respect to the



rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted ~~under IC 13-14-9~~, **by the department of environmental management or a board listed in IC 13-14-9-1**, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

~~(i)~~ **(e)** The coordinator assigned to a rule ~~under subsection (e)~~ shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3; and
- (2) electronically through electronic gateway access.

~~(j)~~ **(f)** The coordinator assigned to a rule ~~under subsection (e)~~ shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

- (1) not later than ten (10) days after the date on which the rule is submitted to the publisher under section 35 of this chapter; and
- (2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

~~(k)~~ **(g)** Not later than November 1 of each year, the director shall:

- (1) compile the records received from all of the agency's coordinators under subsection ~~(j)~~; **(f)**;
- (2) prepare a report that sets forth:
 - (A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;
 - (B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;
 - (C) the total number of staff serving as coordinators under this



- section during the most recent state fiscal year;
- (D) the agency's costs in complying with this section during the most recent state fiscal year; and
- (E) the projected budget required by the agency to comply with this section during the current state fiscal year; and
- (3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the small business ombudsman designated under IC 5-28-17-6.

SECTION 29. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the department of environmental management or the board (as defined in IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section ~~28.1(d)~~ **28.1(a)** of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under this chapter is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business does the following:

- (1) Provides written notice of the violation to the agency not later than forty-five (45) days after the small business knew or should have known that the violation occurred.
- (2) Corrects the violation within a time agreed to by the agency and the small business. However, the small business shall be given at least ninety (90) days after the date of the notice described in subdivision (1) to correct the violation. The small business may correct the violation at any time before the expiration of the period agreed to under this subdivision.
- (3) Cooperates with any reasonable request by the agency in any investigation initiated in response to the notice.

(d) A small business is not immune from civil or criminal liability relating to a violation of which the small business provides notice under subsection (c) if any of the following apply:

- (1) The violation resulted in serious harm or in imminent and substantial endangerment to the public health, safety, or welfare.
- (2) The violation resulted in a substantial economic benefit that afforded the small business a clear advantage over the small business's competitors.



(3) The small business has a pattern of continuous or repeated violations of the rule at issue or any other rules of the agency.

(e) Information that a small business provides under this section, including actions and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, or welfare or to the environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.

(f) Voluntary notice of an actual or a potential violation of a rule that is provided by a small business under subsection (c) is not admissible as evidence in a proceeding, other than an agency proceeding, to prove liability for the rule violation or the effects of the rule violation.

SECTION 30. IC 4-22-2-29, AS AMENDED BY P.L.237-2017, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 29. (a) As used in this section, "small business ombudsman" refers to the small business ombudsman designated under IC 5-28-17-6.

(b) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

(1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section **23 or (as applicable) 24** of this chapter;

(2) subject to subsection (c), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section **23 or (as applicable) 24** of this chapter and considered under section 27 of this chapter;

(3) subject to subsection (c), adopt part of one (1) or more proposed rules described in subdivision (2) in two (2) or more separate adoption actions; or

(4) subject to subsection (c), adopt a revised version of a proposed rule published under section **23 or (as applicable) 24** of this chapter and include provisions that did not appear in the published version, including any provisions recommended by the small business ombudsman under IC 4-22-2.1-6(a), if applicable.

(c) **Subject to IC 13-14-9-4.5 (if applicable)**, an agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section **23 or 24** of this chapter, **or IC 13-14-9-14 (as applicable)**, unless it is



a logical outgrowth of any proposed rule as supported by any written **and public hearing** comments submitted:

- (1) during the public comment period; or
- (2) by the small business ombudsman under IC 4-22-2.1-6(a), if applicable.

SECTION 31. IC 4-22-2-31, AS AMENDED BY P.L.123-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 31. After an agency has complied with section 29 of this chapter, or ~~with IC 13-14-9-9(1) or IC 13-14-9-9(2)~~, **adopted the rule in conformity with IC 13-14-9**, as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the following to the attorney general:

- (1) The rule in the form required by section 20 of this chapter.
- (2) The documents required by section 21 of this chapter.
- (3) Written authorization to proceed issued by the publisher under ~~section 24(g)~~ **sections 23 and 24** of this chapter or **IC 13-14-9-4, IC 13-14-9-5, or IC 13-14-9-14, as applicable.**
- (4) Any other documents specified by the attorney general.

The attorney general may require the agency to submit any supporting documentation that the attorney general considers necessary for the attorney general's review under section 32 of this chapter. The agency may submit any additional supporting documentation the agency considers necessary.

SECTION 32. IC 4-22-2-32, AS AMENDED BY P.L.1-2006, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 32. (a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

(b) In the review, the attorney general shall determine whether the rule adopted by the agency complies with the requirements under section 29 of this chapter **and (if applicable) IC 13-14-9**. The attorney general shall consider the following:

- (1) The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected.
- (2) The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.
- (3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead.

In the review, the attorney general shall consider whether the adopted



rule may constitute the taking of property without just compensation to an owner.

(c) Except as provided in subsections (d) and (h), the attorney general shall disapprove a rule under this section only if it:

- (1) has been adopted without statutory authority;
- (2) has been adopted without complying with this chapter;
- (3) does not comply with requirements under section 29 of this chapter; or
- (4) violates another law.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(a)(2) of this chapter, the attorney general may:

- (1) disapprove the rule; or
- (2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(a)(2) of this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

- (1) The governor.
- (2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

- (1) submits a rule under section 31 of this chapter; or
- (2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

- (1) shall determine whether the rule adopted by the agency under ~~IC 13-14-9-9(2)~~ **is a IC 13-14-9 meets the appropriate substantial similarity or** logical outgrowth ~~of the proposed rule as published under IC 13-14-9-5(a)(2) and of testimony presented at the board meeting held under IC 13-14-9-5(a)(3);~~ **standard under section 29(c) of this chapter;** and



- (2) may disapprove a rule under this section only if the rule:
- (A) has been adopted without statutory authority;
 - (B) has been adopted without complying with this chapter or IC 13-14-9;
 - (C) is not a logical outgrowth of the proposed rule as published under ~~IC 13-14-9-5(a)(2)~~ and of the testimony presented at the board meeting held under ~~IC 13-14-9-5(a)(3)~~; **does not meet the appropriate substantial similarity or logical outgrowth standard under section 29(c) of this chapter;** or
 - (D) violates another law.

SECTION 33. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule adopted under this section:

- (1) Sections ~~24 23~~ through ~~36 27~~ of this chapter
- ~~(2) or IC 13-14-9 (as applicable).~~
- (2) Sections 28 through 36 of this chapter.**

The amendments to this section made in the 2023 regular session of the general assembly apply to provisional rules that are accepted for filing by the publisher of the Indiana Register after June 30, 2023, regardless of whether the adopting agency initiated official action to adopt the rule by the name of emergency rule or provisional rule before July 1, 2023. An action taken before July 1, 2023, in conformity with this section (as effective after June 30, 2023) is validated to the same extent as if the action was taken after June 30, 2023.

(b) ~~An agency may adopt a rule may be adopted under on a subject for which the agency has rulemaking authority using the procedures in this section if a statute delegating authority to an agency to adopt rules authorizes adoption of such a rule:~~

- ~~(1) under this section; or~~
- ~~(2) in the manner provided by this section:~~

the governor finds that the agency proposing to adopt the rule has demonstrated to the satisfaction of the governor that use of provisional rulemaking procedures under this section is necessary to avoid:

- (1) an imminent and a substantial peril to public health, safety, or welfare;**
- (2) an imminent and a material loss of federal funds for an agency program;**
- (3) an imminent and a material deficit;**



- (4) an imminent and a substantial violation of a state or federal law or the terms of a federal agreement or program;
- (5) injury to the business or interests of the people or any public utility of Indiana as determined under IC 8-1-2-113;
- (6) an imminent and a substantial peril to:
 - (A) wildlife; or
 - (B) domestic animal; health, safety, or welfare; or
- (7) the spread of invasive species, pests, or diseases affecting plants.

To obtain a determination from the governor, an agency must submit to the governor the text of the proposed provisional rule, a statement justifying the need for provisional rulemaking procedures, and any additional information required by the governor in the form and in the manner required by the governor. The governor may not approve provisional rulemaking for any part of a proposed provisional rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposal to the budget committee for review. A notice of determination by the governor shall include findings that explain the basis for the determination. The notice of determination shall be provided to the agency in an electronic format. Approval of a request shall be treated as a determination that the rule meets the criteria in this subsection.

(c) After an agency adopts a rule under this section, ~~the governor approves provisional rulemaking procedures for a rule but before the agency adopts the provisional rule,~~ the agency shall submit the rule to the publisher for the assignment of ~~obtain~~ a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section ~~21~~ of this chapter: ~~from the publisher.~~ The publisher shall determine the ~~documents and the~~ format of the rule and other documents ~~to that must be submitted under this subsection: to the publisher to obtain a document control number.~~ The agency must submit at least the following:

- (1) The full text of the proposed provisional rule in the form required by section 20 of this chapter.
- (2) A statement justifying the need for provisional rulemaking.
- (3) The approval of the governor to use provisional rulemaking procedures required by law.



(4) The documents required by section 21 of this chapter.

An agency may not adopt a proposed provisional rule until after the publisher notifies the agency that the publisher has complied with subsection (d). At least ten (10) regular business days must elapse after the publisher has complied with subsection (d) before the department of natural resources, the natural resources commission, the department of environmental management, or a board that has rulemaking authority under IC 13 adopts a provisional rule.

(d) Upon receipt of documents described in subsection (c), the publisher shall distribute the full text of the proposed provisional rule to legislators and legislative committees in the manner and the form specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council. After distribution has occurred, the publisher shall notify the agency of the date that distribution under this subsection has occurred.

~~(d)~~ (e) After the document control number has been assigned and the agency adopts the provisional rule, the agency shall submit the rule following to the publisher for filing:

(1) **The text of the adopted provisional rule.** The agency shall submit the **provisional** rule in the form required by section 20 of this chapter. ~~and with~~

(2) **A signature page that indicates that the agency has adopted the provisional rule in conformity with all procedures required by law.**

(3) **If the provisional rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.**

(4) The documents required by section 21 of this chapter.

The publisher shall determine the format of the **provisional** rule and other documents to be submitted under this subsection. **The substantive text of the adopted provisional rule must be substantially similar to the text of the proposed provisional rule submitted to the governor. A provisional rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter.**

~~(e)~~ (f) Subject to subsections (c) and (e) and section 39 of this chapter, the publisher shall:

(1) accept the **provisional** rule for filing; ~~and~~



(2) electronically record the date and time that the **provisional rule** is accepted; **and**

(3) publish the text of the adopted provisional rule and the governor's approval in the Indiana Register.

(f) (g) A **provisional rule** adopted by an agency under this section takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the **provisional rule**.

(2) The date and time that the **provisional rule** is accepted for filing under subsection ~~(e)~~: **(f)**.

(3) The effective date stated by the adopting agency in the **provisional rule**.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the **provisional rule**.

(5) The statutory effective date for ~~an emergency a~~ **provisional rule** set forth in the statute authorizing the agency to adopt emergency rules: **law**.

(g) Unless otherwise provided by the statute authorizing adoption of the rule:

(1) a rule adopted under this section expires not later than ninety ~~(90)~~ days after the rule is accepted for filing under subsection ~~(e)~~;

(2) a rule adopted under this section may be extended by adopting another rule under this section; but only for one (1) extension period; and

(3) for a rule adopted under this section to be effective after one (1) extension period; the rule must be adopted under:

(A) sections 24 through 36 of this chapter; or

(B) IC 13-14-9;

as applicable.

(h) An agency may amend a provisional rule with another provisional rule by following the procedures in this section for the amended provisional rule. However, unless otherwise provided by IC 4-22-2.3, a provisional rule and all amendments of a provisional rule by another provisional rule expire not later than one hundred eighty (180) days after the initial provisional rule is accepted for filing under subsection (f). The subject of the provisional rule, including all amendments to the provisional rule, may not be subsequently extended under this section or section 37.2 of this chapter. If the governor determines that the circumstance that is the basis for using the procedures under this section ceases to exist, the governor may terminate the provisional rule before the lapse



of one hundred eighty (180) days. The termination is effective when filed with the publisher. The publisher shall publish the termination notice in the Indiana Register.

~~(h) This section may not be used to readopt a rule under IC 4-22-2.5.~~

~~(i) The publisher of the Indiana administrative code shall annually publish a list of agencies authorized to adopt rules under this section.~~

(i) Subject to subsection (j), the attorney general or the governor may file an objection to a provisional rule that is adopted under this section not later than forty-five (45) days after the date that a provisional rule or amendment to a provisional rule is accepted for filing under subsection (f). The objection must cite the document control number for the affected provisional rule and state the basis for the objection. When filed with the publisher, the objection has the effect of invalidating the provisional rule or amendment to a provisional rule. The publisher shall publish the objection in the Indiana Register.

(j) The attorney general may file a written objection to a provisional rule under subsection (i) only if the attorney general determines that the provisional rule has been adopted:

- (1) without statutory authority; or**
- (2) without complying with this section.**

A notice of objection to a provisional rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format.

SECTION 34. IC 4-22-2-37.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not apply to a rule adopted under this section:

- (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as applicable).**
- (2) Sections 28 through 36 of this chapter.**

This section as added by the 2023 regular session of the general assembly applies to interim rules that are accepted for filing by the publisher of the Indiana Register after June 30, 2023, regardless of whether the adopting agency initiated official action to adopt the interim rule before July 1, 2023. An action taken before July 1, 2023, in conformity with this section (as effective after June 30, 2023) is validated to the same extent as if the action was taken after June 30, 2023.

(b) An agency may only adopt a rule on a subject for which the agency has rulemaking authority using the procedures in this



section if the governor finds that the agency proposing to adopt the rule has demonstrated to the satisfaction of the governor that use of interim rulemaking procedures under this section is necessary to implement:

- (1) a new state or federal law or program, rule of another state agency, federal regulation, or federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization;
- (2) a change in a state or federal law or program, rule of another state agency, federal regulation, federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization; or
- (3) a category of rule authorized under IC 4-22-2.3 to be adopted as an interim rule;

before the time that a final rule approved by the governor under section 34 of this chapter could reasonably take effect.

(c) To obtain a determination from the governor, an agency must submit to the governor the text of the proposed interim rule, a statement justifying the need for interim rulemaking procedures, and any additional information required by the governor in the form and in the manner required by the governor. The governor may not approve interim rulemaking for any part of a proposed interim rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposal to the budget committee for review. A notice of determination by the governor shall include findings that explain the basis for the determination. The notice of determination shall be provided to the agency in an electronic format. Approval of a request shall be treated as a determination that the rule meets the criteria in this subsection.

(d) To publish a notice of interim rulemaking in the Indiana Register, the agency must submit the following to the publisher:

- (1) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter.
- (2) The approval of the governor to use interim rulemaking procedures for the rule.
- (3) If the interim rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule



of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.

(4) The documents required by section 21 of this chapter.

The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After establishing the intended publication date, the publisher shall provide a written or an electronic mail authorization to proceed to the agency.

(e) The agency shall include the following in the notice of the public comment period:

(1) A general description of the subject matter of the proposed interim rule, including the document control number.

(2) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter (excluding the text of a matter incorporated by reference under section 21 of this chapter).

(3) A statement justifying any requirement or cost that is:

(A) imposed on a regulated entity under the interim rule; and

(B) not expressly required by the statute authorizing the agency to adopt rules or any other state or federal law.

The statement required under this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

(4) Information concerning where, when, and how a person may inspect and copy any data, studies, or analyses referenced under subdivision (3).

(5) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed interim rule under section 21 of this chapter.

(6) A date that is thirty (30) days after the notice is published in the Indiana Register by which written comments are due and a statement explaining that any person may submit written comments concerning the proposed interim rule during the public comment period and instructions on when, where, and how the person may submit written comments.

However, inadequacy or insufficiency of the subject matter description under subdivision (1) or a statement of justification under subdivision (3) in a notice does not invalidate a rulemaking action. An agency may continue the public comment period by



publishing a subsequent notice in the Indiana Register extending the public comment period.

(f) Before adopting the interim rule, the agency shall prepare a written response to comments received by the agency, including the reasons for rejecting any recommendations made in the comments.

(g) After an agency has completed the public comment period and complied with subsection (f), the agency may:

- (1) adopt a rule that is identical to a proposed interim rule published in the Indiana Register under this section; or**
- (2) adopt a revised version of a proposed interim rule published under this section and include provisions that did not appear in the initially published proposed version.**

An agency may not adopt an interim rule that substantially differs from the version of the proposed interim rule published in the Indiana Register under this section, unless it is a logical outgrowth of any proposed interim rule as supported by any written comments submitted during the public comment period.

(h) After the agency adopts the interim rule, the agency shall submit the following to the publisher for filing:

- (1) The text of the adopted interim rule. The agency shall submit the full text of the interim rule in the form required by section 20 of this chapter.**
- (2) A summary of the comments received by the agency during the public comment period and the agency's response to the comments.**
- (3) A signature page that indicates that the agency has adopted the interim rule in conformity with all procedures required by law.**
- (4) The documents required by section 21 of this chapter.**

The publisher shall determine the format of the interim rule and other documents to be submitted under this subsection. An interim rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter.

(i) Subject to subsection (h) and section 39 of this chapter, the publisher shall:

- (1) accept the interim rule for filing;**
- (2) electronically record the date and time that the interim rule is accepted; and**
- (3) publish the text of the adopted interim rule and the governor's approval in the Indiana Register.**

(j) An interim rule adopted by an agency under this section takes effect on the latest of the following dates:



(1) The effective date of the statute delegating authority to the agency to adopt the interim rule.

(2) The date and time that the interim rule is accepted for filing under subsection (i).

(3) The effective date stated by the adopting agency in the interim rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the interim rule.

(5) The statutory effective date for an interim rule set forth in law.

(k) An agency may amend an interim rule with another interim rule by following the procedures in this section for adoption of an interim rule. Except as provided in IC 4-22-2.3, an interim rule and all subsequent rules on the same subject adopted under section 37.1 of this chapter or this section expire not later than four hundred twenty-five (425) days after the initial interim rule is accepted for filing under subsection (i).

(l) Subject to subsection (m), the attorney general or the governor may file an objection to an interim rule that is adopted under this section not later than forty-five (45) days after the date that an interim rule or amendment to an interim rule is accepted for filing under subsection (i). The objection must cite the document control number for the affected interim rule and state the basis for the objection. When filed with the publisher, the objection has the effect of invalidating the interim rule or amendment to an interim rule. The publisher shall publish the objection in the Indiana Register.

(m) The attorney general may file a written objection to an interim rule under subsection (l) only if the attorney general determines that the interim rule has been adopted:

(1) without statutory authority; or

(2) without complying with this section.

A notice of objection to an interim rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format.

SECTION 35. IC 4-22-2-38, AS AMENDED BY P.L.123-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) A rule that brings another rule into conformity with section 20



of this chapter.

(2) A rule that amends another rule to replace an inaccurate reference to a statute, rule, regulation, other text, governmental entity, or location with an accurate reference, when the inaccuracy is the result of the rearrangement of a federal or state statute, rule, or regulation under a different citation number, a federal or state transfer of functions from one (1) governmental entity to another, a change in the name of a federal or state governmental entity, or a change in the address of an entity.

(3) A rule correcting any other typographical, clerical, or spelling error in another rule.

(b) Sections 24 through ~~37.1~~ 37.2 of this chapter do not apply to rules described in subsection (a).

(c) Notwithstanding any other statute, an agency may adopt a rule described by subsection (a) without complying with any statutory notice, hearing, adoption, or approval requirement. In addition, the governor may adopt a rule described in subsection (a) for an agency without the agency's consent or action.

(d) A rule described in subsection (a) shall be submitted to the publisher for the assignment of a document control number. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) After a document control number is assigned, the agency (or the governor, for the agency) shall submit the rule to the publisher for filing. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(f) Subject to section 39 of this chapter, the publisher shall:

- (1) accept the rule for filing; and
- (2) electronically record the date and time that it is accepted.

(g) Subject to subsection (h), a rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The date that the rule being corrected by a rule adopted under this section becomes effective.
- (2) The date that is forty-five (45) days from the date and time that the rule adopted under this section is accepted for filing under subsection (f).



(h) The governor or the attorney general may file an objection to a rule that is adopted under this section before the date that is forty-five (45) days from the date and time that the rule is accepted for filing under subsection (f). When filed with the publisher, the objection has the effect of invalidating the rule.

SECTION 36. IC 4-22-2-39, AS AMENDED BY P.L.123-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, **37.2**, or 38 of this chapter, the publisher may accept the rule for filing only if the following conditions are met:

(1) The following documents are submitted to allow the publisher to comply with IC 4-22-7-5:

(A) One (1) electronic copy of the rule.

(B) One (1) copy of any matters incorporated by reference under section 21 of this chapter in the format specified by the publisher.

(C) One (1) copy of any supporting documentation submitted under section 31 of this chapter in the format specified by the publisher.

(2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.

(3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the publisher shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

(b) If a rule includes a statement that the rule is not effective until:

(1) an agency has complied with requirements established by the federal or state government;

(2) a specific period of time has elapsed; or

(3) a date has occurred;

the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the publisher reviews the rule under this section.

(c) The publisher shall take no more than three (3) business days to complete the review of a rule under this section.

SECTION 37. IC 4-22-2-40, AS AMENDED BY P.L.53-2014, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for filing by the publisher under section 35, 37.1, **37.2**, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be



recalled regardless of whether:

- (1) the rule has been disapproved by the attorney general under section 32 of this chapter; or
- (2) the rule has been disapproved by the governor under section 34 of this chapter.

(b) **IC 13-14-9** and sections ~~24~~ **23** through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. **IC 13-14-9** and sections ~~24~~ **23** and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if **IC 13-14-9** or sections ~~24~~ **23** through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter **or IC 13-14-9-9 (as applicable)**.

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

(e) If a rule is:

- (1) subject to sections 31 and 33 of this chapter;
- (2) recalled under subsection (a); and
- (3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval. The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. ~~If the recalled rule was submitted to the office of management and budget under section 28 of this chapter,~~ The agency shall resubmit the readopted version of a recalled rule to the office of management and budget with sufficient information for the office of management and budget to evaluate whether ~~its~~ **the** initial ~~fiscal impact statement regulatory analysis submitted to the office of management and budget~~ **regulatory analysis submitted to the office of management and budget** under section ~~28~~ **22.8** of this chapter needs to be revised. ~~The office of management and budget shall revise a fiscal impact statement under section 28 of this chapter~~ If the fiscal impact of the readopted rule is substantially different from the recalled rule, **the agency shall submit the revised regulatory analysis to the publisher for publication in the Indiana Register with the document control number assigned by the publisher to the rule.** The agency also shall comply with any other applicable approval requirement provided by statute.

(f) The readopted version of a recalled rule is effective only after the agency has complied with section 35, 37.1, **37.2**, or 38 of this chapter.

SECTION 38. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,



SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the publisher for filing under section 35, 37.1, **37.2**, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) **IC 13-14-9** and sections ~~24~~ **23** through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.

SECTION 39. IC 4-22-2.1-1, AS AMENDED BY P.L.139-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. Except for a rule that is the subject of a rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or IC 22-15, this chapter applies to a rule for which the notice **of the first public comment period** required by IC 4-22-2-23 is published by an agency after June 30, 2005.

SECTION 40. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented. ~~as described in subsection (b):~~ The statement required by this section must include the following:

- (1) An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.
- (2) An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.
- (3) An estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule. ~~The agency is not required to submit the proposed rule to the office of management and budget for a fiscal analysis under IC 4-22-2-28 unless the estimated economic impact of the rule is greater than five hundred thousand dollars (\$500,000) on all regulated entities, as set forth in IC 4-22-2-28.~~
- (4) A statement justifying any requirement or cost that is:
 - (A) imposed on small businesses by the rule; and
 - (B) not expressly required by:



- (i) the statute authorizing the agency to adopt the rule; or
- (ii) any other state or federal law.

The statement required by this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

(5) A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:

- (A) The establishment of less stringent compliance or reporting requirements for small businesses.
- (B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
- (C) The consolidation or simplification of compliance or reporting requirements for small businesses.
- (D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.
- (E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

(b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

- (1) the conclusion of any phase-in period during which:
 - (A) the rule is gradually made to apply to small businesses or certain types of small businesses; or
 - (B) the costs of the rule are gradually implemented; and
- (2) the rule applies to all small businesses that will be affected by the rule.

In determining the total annual economic impact of the rule under subsection (a)(3), the agency shall consider the annual economic impact on all small businesses beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any



assumptions made and any data used in determining the total annual economic impact of a rule under subsection (a)(3):

(c) The agency shall:

- (1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and
- (2) deliver a copy of the statement, along with the proposed rule, to the small business ombudsman not later than the date of publication under subdivision (1):

SECTION 41. IC 4-22-2.1-6, AS AMENDED BY P.L.134-2021, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. (a) Not later than seven (7) days before the date of the public hearing set forth in the agency's notice under IC 4-22-2-24, the small business ombudsman shall do the following:

(1) Review the proposed rule and economic impact statement submitted to the small business ombudsman by the agency under section ~~5(e)~~ 5 of this chapter.

(2) Submit written comments to the agency on the proposed rule and the economic impact statement prepared by the agency under section 5 of this chapter. The small business ombudsman's comments may:

(A) recommend that the agency implement one (1) or more of the regulatory alternatives considered by the agency under section ~~5(a)(5)~~ 5 of this chapter;

(B) suggest regulatory alternatives not considered by the agency under section ~~5(a)(5)~~ 5 of this chapter;

(C) recommend any other changes to the proposed rule that would minimize the economic impact of the proposed rule on small businesses; or

(D) recommend that the agency abandon or delay the rulemaking action until:

(i) more data on the impact of the proposed rule on small businesses can be gathered and evaluated; or

(ii) less intrusive or less costly alternative methods of achieving the purpose of the proposed rule can be effectively implemented with respect to small businesses.

(b) Upon receipt of the small business ombudsman's written comments under subsection (a), the agency shall make the comments available:

(1) for public inspection and copying at the offices of the agency under IC 5-14-3;

(2) electronically through the electronic gateway administered under IC 4-13.1-2-2(a)(6) by the office of technology; and



(3) for distribution at the public hearing required by IC 4-22-2-26.

(c) Before finally adopting a rule under IC 4-22-2-29, and in the same manner that the agency considers public comments under IC 4-22-2-27, the agency must fully consider the comments submitted by the small business ombudsman under subsection (a). After considering the comments under this subsection, the agency may:

- (1) adopt any version of the rule permitted under IC 4-22-2-29; or
- (2) abandon or delay the rulemaking action as recommended by the small business ombudsman under subsection (a)(2)(D), if applicable.

SECTION 42. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. Before an agency may act under ~~IC 4-22-2.5~~ **IC 4-22-2.6** to readopt a rule to which the chapter applies, the agency must conduct the review required under ~~IC 4-22-2.5-3.1.~~ **IC 4-22-2.6-4.**

SECTION 43. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 2.3. Transitional Provisions; Exceptions to Rulemaking Procedures

Sec. 1. (a) This subsection and subsection (b) set an expiration date for rules adopted under IC 4-22-2-37.1 (as effective before July 1, 2023) or IC 4-22-2-37 (before its repeal) that at the time of adoption were permitted by law to continue in effect for an indefinite period of time. The rules to which this subsection applies include rules that were permitted to continue until another emergency rule or a final rule was adopted to replace the emergency rule or the agency repealed the emergency rule. Subject to subsections (b) and (c), the rule expires not later than:

- (1) October 1, 2023; or**
- (2) if the rule is included on a list described in subsection (d), October 1, 2024;**

as applicable. An emergency rule that expires under this subsection may not be renewed under IC 4-22-2-37.1 (as effective after June 30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for adoption as an interim rule, the rule may be adopted under IC 4-22-2-37.2.

(b) The text of an emergency rule adopted under IC 4-22-2-37.1 (as effective before July 1, 2023) or IC 4-22-2-37 (before its repeal) that is:

- (1) incorporated into a provision of the Indiana**



Administrative Code that before July 1, 2023, was amended under the procedures in IC 4-22-2-23 through IC 4-22-2-36 or IC 13-14-9 (as applicable); or

(2) readopted as part of a provision of the Indiana Administrative Code that was readopted under IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before its repeal);

continues in effect to the extent that the text remains part of the provision of the Indiana Administrative Code into which the emergency rule text was incorporated.

(c) An emergency rule adopted under IC 4-22-2-37.1 (as effective before July 1, 2023) of the type described in sections 3 through 9 of this chapter expires as provided in the applicable provisions of sections 3 through 9 of this chapter.

(d) Not later than September 1, 2023, the governor may submit to the publisher a list of rules described in subsection (a) for which the expiration under this section is October 1, 2024, instead of October 1, 2023. The publisher shall publish a list submitted under this subsection in the Indiana Register.

Sec. 2. Before a provisional rule adopted under IC 4-22-2-37.1 (as effective after June 30, 2023) expires, the governor by executive order may authorize the extension of the provisional rule under the interim procedures in IC 4-22-2-37.2 if the governor determines and finds in the executive order that the provisional circumstances justifying the provisional rule continue to exist. A rule adopted under the authority of an extension under this section expires not later than one (1) year after the date on which the rule is published in the Indiana Register.

Sec. 3. The director of the department of natural resources may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 to temporarily modify or suspend a rule described in IC 14-22-2-6 (fish and wildlife rules). An interim rule authorized under this section expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.

Sec. 4. The Indiana state board of education may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 for the provision of special education or related services to an eligible choice scholarship student who receives an amount under IC 20-51-4-4(a)(2). An interim rule authorized under this section expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.



Sec. 5. The department of natural resources (or to the extent permitted by IC 14-10-2, the natural resources commission) may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 to carry out the duties of the department of natural resources under a law listed in IC 14-10-2-5. A rule described in this section may be continued in another interim rule only if the governor determines under IC 4-22-2-37.2(c) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule. A rule adopted concerning the department of natural resources' discharge of duties under a law listed in IC 14-10-2-5(a)(22) expires upon the earlier of the following:

- (1) One (1) year after the rule is accepted by the publisher of the Indiana Register.
- (2) Upon the adoption of a rule under this chapter concerning the department of natural resources' discharge of duties imposed under this article.

Sec. 6. The following apply to the department of financial institutions:

(1) The department of financial institutions shall adopt rules under the interim rule procedures in IC 4-22-2-37.2 announcing:

- (A) sixty (60) days before January 1 of each odd-numbered year in which dollar amounts under IC 24-4.5 (Uniform Consumer Credit Code) are to change, the changes in dollar amounts required by IC 24-4.5-1-106(2);
- (B) promptly after the changes occur, changes in the Index required by IC 24-4.5-1-106(3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index;
- (C) the adjustments required under IC 24-9-2-8 concerning high cost home loans; and
- (D) the adjustments required under IC 34-55-10-2 (bankruptcy exemptions; limitations) or IC 34-55-10-2.5.

A rule described in this subdivision expires not later than January of the next odd-numbered year after the department of financial institutions is required to issue the rule.

(2) The department of financial institutions may adopt a rule under the interim rule procedures in IC 4-22-2-37.2 for a rule



permitted under IC 24-4.4-1-101 (licensing system for creditors and mortgage loan originators) or IC 24-4.5 (Uniform Consumer Credit Code) if the department of financial institutions declares an emergency. A rule described in this subdivision expires not later than two (2) years after the rule is effective.

(3) The department of financial institutions may adopt a rule described in IC 34-55-10-2 (bankruptcy exemptions; limitations) or IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23 through IC 4-22-2-36 or the interim rule procedures in IC 4-22-2-37.2. A rule described in this subdivision adopted under IC 4-22-2-37.2 expires not later than two (2) years after the rule is accepted for filing by the publisher of the Indiana Register.

A rule described in this section may be continued in another interim rule only if the governor determines under section IC 4-22-2-37.2(c) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule.

Sec. 7. The Indiana utility regulatory commission may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 pursuant to its authority under IC 8-1-1-3(g) or IC 8-1-2-113. A rule described in this section expires not later than two (2) years after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.

Sec. 8. The Indiana board of pharmacy may adopt interim rules under IC 4-22-2-37.2 to declare a substance is a synthetic drug if the board finds that the substance:

- (1) has been scheduled or emergency scheduled by the United States Drug Enforcement Administration;
- (2) has been scheduled, emergency scheduled, or criminalized by another state; or
- (3) has:
 - (A) a high potential for abuse; and
 - (B) no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

In making a determination, the Indiana board of pharmacy shall consider the factors described in IC 25-26-13-4.1. Notwithstanding IC 4-22-2-37.2(i), a rule described in this section becomes effective when the rule is published in the Indiana Register. A rule described



in this section expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.

Sec. 9. (a) The Indiana pesticide review board may adopt interim rules under IC 4-22-2-37.2 to classify a pesticide as a restricted use pesticide, if the Indiana pesticide review board finds that adoption of the interim rule is necessary to prevent an undue and immediate hazard to persons, animals, wildlife, lands, or water, other than the pests that the pesticide is intended to prevent, destroy, control, or mitigate.

(b) The Indiana pesticide review board may adopt interim rules under IC 4-22-2-37.2 to impose a restriction or requirement on the storage, distribution, use, application, or record keeping for a restricted use pesticide that is more stringent than the restriction or requirement imposed under federal law if the Indiana pesticide review board finds that weather, soil, or other conditions in Indiana impact the effectiveness or safety of the storage, distribution, use, application, or record keeping of the restricted use pesticide in a manner that differs from federal law generally.

(c) The Indiana pesticide review board may adopt interim rules under IC 4-22-2-37.2 to impose a restriction or requirement on the storage, distribution, use, application, or record keeping for a restricted use or general use pesticide that is more stringent than the restriction or requirement imposed under federal law if the Indiana pesticide review board receives a written request from the registrant of the applicable pesticide.

(d) Unless specifically authorized by Indiana law under IC 15-16-5-72, an interim rule authorized under this section expires on adjournment sine die of the regular session of the general assembly that begins after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.

SECTION 44. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1, 2023]. (Expiration and Readoption of Administrative Rules).

SECTION 45. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 2.6. Expiration and Readoption of Administrative Rules

Sec. 1. (a) Except as provided in this section and section 10 of this chapter, a rule expires January 1 of the fifth year after the year in which the rule takes effect, unless the rule expires or is



repealed on an earlier date. Except for an amendment made under IC 4-22-2-38, the expiration date of a rule under this section is extended each time that a rule amending or readopting an unexpired rule takes effect. The rule, as amended or readopted, expires on January 1 of the fifth year after the year in which the amendment or readoption takes effect.

(b) If the latest version of a rule became effective:

- (1) in calendar year 2017, the rule expires not later than January 1, 2024;
- (2) in calendar year 2018, the rule expires not later than January 1, 2025;
- (3) in calendar year 2019, the rule expires not later than January 1, 2026; or
- (4) in calendar year 2020, the rule expires not later than January 1, 2027.

(c) If the latest version of a rule became effective before January 1, 2017, and:

- (1) the rule was adopted by an agency established under IC 13, the rule expires not later than January 1, 2025;
- (2) the rule was adopted by an agency established under IC 16, the rule expires not later than January 1, 2026; or
- (3) the rule was adopted by an agency not described in subdivision (1) or (2), the rule expires not later than January 1, 2027.

(d) A readoption rulemaking action under IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before its repeal) that became effective before July 1, 2023, is validated to the same extent as if the rulemaking action had been conducted under the procedures in this chapter.

(e) The determination of whether an administrative rule expires under this chapter shall be applied at the level of an Indiana Administrative Code section.

Sec. 2. An agency that has rulemaking authority may readopt a rule in anticipation of a rule's expiration under section 1 of this chapter. To readopt a rule, an agency may readopt the rule either:

- (1) without changes in conformity with the procedures in sections 3 through 9 of this chapter; or
- (2) with or without changes in conformity with the procedures in IC 4-22-2-23 through IC 4-22-2-36 (as modified by IC 13-14-9, when applicable).

Sec. 3. (a) Except as provided in subsection (b), if an agency intends to readopt a rule, the agency shall, not later than January



1 of the fourth year after the year in which the rule takes effect, provide an initial notice of the intended re Adoption in an electronic format designated by the publisher to legislators and legislative committees in the manner and on the schedule specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council.

(b) An agency is not required to provide the initial notice under subsection (a) for a rule described in section 1(b)(1) of this chapter.

Sec. 4. (a) To readopt a rule, an agency must conduct a review of the rule to consider the continued need for the rule and whether the rule, if readopted, will meet each of the standards in IC 4-22-2-19.5 and (if applicable) the requirements for fees, fines, and civil penalties in IC 4-22-2-19.6.

(b) In the review, the agency shall reexamine previous cost benefit, economic impact, fiscal impact, and regulatory burden statements prepared by the agency for the rule under IC 4-3-22-13, IC 4-3-27-12, IC 4-22-2-22.7, IC 4-22-2-22.8, IC 4-22-2-28, IC 4-22-2.1-5, or an executive order and revise the statements to reflect any change in circumstances that affect the analysis. The agency shall identify any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses (as defined in IC 4-22-2.1-4) and other regulated entities. The agency also shall consider the following:

(1) The nature of any complaints or comments received from the public, including small businesses (as defined in IC 4-22-2.1-4), concerning the rule or the rule's implementation by the agency.

(2) The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses (as defined in IC 4-22-2.1-4) or other regulated persons in complying with the rule.

(3) The degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since the last time the rule was reviewed.

(c) The agency shall prepare written findings concerning the agency's determinations under this section.

Sec. 5. (a) If an agency elects to readopt a rule under this chapter, the agency shall submit a notice of proposed re Adoption to the publisher not later than the first regular business day in September of the year preceding the year in which the rule expires



under this chapter for publication in the Indiana Register. A separate notice must be published for each board or other person or entity with rulemaking authority.

(b) The notice must include the following:

- (1) A general description of the subject matter of all rules proposed to be readopted.
- (2) A listing of rules that are proposed to be readopted, listed by their titles and subtitles only.
- (3) A written public comment period of thirty (30) days and instructions on how to submit written comments to the agency.
- (4) A request for comments on whether specific rules should be reviewed through the regular rulemaking process under IC 4-22-2-23 through IC 4-22-2-36 (as modified by IC 13-14-9, when applicable).
- (5) A summary of the agency's findings under section 4 of this chapter.
- (6) Any other information required by the publisher.

(c) The agency shall submit the material in the form required by IC 4-22-2-20. The agency need not resubmit the documents required by IC 4-22-2-21 if the publisher received a copy of the documents when the rule was previously adopted or amended. The publisher shall review the material submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After:

- (1) establishing the intended publication date; and
- (2) receiving the material as required by this section;

the publisher shall assign a document control number, provide an electronic mail authorization to proceed to the agency, and publish the material on the intended publication date.

Sec. 6. (a) The agency shall prepare responses to all comments received during the public comment period.

(b) The agency, after considering the written comments and responses, may do the following:

- (1) Conduct one (1) or more additional public comment periods in the manner provided in section 5 of this chapter on one (1) or more rules within the scope of the notice of proposed readoption. If a person submits to the agency during the initial public comment period under section 5 of this chapter a written request stating a basis for considering a particular rule separately from other rules in the notice of proposed readoption, the agency may not readopt that rule



under this chapter. The agency may readopt that rule with or without changes only through a rulemaking action initiated under IC 4-22-2-23 through IC 4-22-2-36 (as modified by IC 13-14-9, when applicable).

(2) Readopt one (1) or more rules within the scope of the notice of proposed readoption without change.

(3) Repeal one (1) or more rules within the scope of the notice of proposed readoption, if the need for the rule no longer exists. The adopting authority may repeal a rule without additional public comment periods under section 5 of this chapter.

Sec. 7. (a) The agency shall immediately submit the rulemaking document containing the readopted rules to the publisher for filing along with documentation demonstrating that the agency has readopted the rules. The agency shall submit material in the form required by IC 4-22-2-20. The rulemaking document must make reference to the document control number assigned by the publisher.

(b) If the rulemaking document complies with this section, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time the rule is accepted.

Sec. 8. A readopted rule that has been accepted for filing under section 7 of this chapter takes effect on the latest of the following dates:

(1) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 7 of this chapter.

(2) The effective date stated by the agency in the rule.

(3) The date of compliance with every requirement established by law as a prerequisite to the readoption or effectiveness of the rule.

Sec. 9. An agency that terminates a rulemaking action to readopt a rule with or without amendments shall submit a notice of withdrawal of the readoption rulemaking action in the manner provided in IC 4-22-2-41.

Sec. 10. If a rule is not readopted and the governor finds that the failure to readopt the rule causes an emergency to exist, the governor may, by executive order issued before the rule's expiration date, postpone the expiration date of the rule until a date that is not later than one (1) year after the date specified in



section 1 of this chapter.

Sec. 11. The publisher shall remove all rules that have expired under this chapter from the Indiana Administrative Code. However, a rule that has expired but is readopted under this chapter (or IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before its repeal)) may not be removed from the Indiana Administrative Code.

SECTION 46. IC 5-28-17-6, AS AMENDED BY P.L.197-2021, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. The corporation shall act as the small business ombudsman. The small business ombudsman shall carry out the following duties:

- (1) Work with state agencies to permit increased enforcement flexibility and the ability to grant common sense exemptions for first time offenders of state rules and policies, including, notwithstanding any other law, policies for the compromise of interest and penalties related to a listed tax (as defined in IC 6-8.1-1-1) and other taxes and fees collected or administered by a state agency.
- (2) Work with state agencies to seek ways to consolidate forms and eliminate the duplication of paperwork, harmonize data, and coordinate due dates.
- (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform cost benefit analyses.
- (4) Work with state agencies to monitor any outdated, ineffective, or overly burdensome information requests from state agencies to small businesses.
- (5) Carry out the duties specified under IC 4-22-2-28 and IC 4-22-2.1 to review proposed rules and participate in rulemaking actions that affect small businesses.
- (6) Coordinate with the ombudsman designated under IC 13-28-3-2 and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under IC 4-22-2-28.1 and IC 13-28-3.
- (7) Prepare written and electronic information for periodic distribution to small businesses describing the small business services provided by coordinators (as defined in ~~IC 4-22-2-28.1(b)~~ **IC 4-22-2-28.1(a)**) and work with the office of technology established by IC 4-13.1-2-1 to place information concerning the availability of these services on state ~~Internet web sites~~ **websites** that the small business ombudsman or a state agency determines are most likely to be visited by small business



owners and managers.

(8) Assist in training agency coordinators who will be assigned to rules under ~~IC 4-22-2-28.1(e)~~. **IC 4-22-2-28.1(b)**.

(9) Investigate and attempt to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

State agencies shall cooperate with the small business ombudsman to carry out the purpose of this section. The department of state revenue and the department of workforce development shall establish a program to distribute the information described in subdivision (7) to small businesses that are required to file returns or information with these state agencies.

SECTION 47. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under IC 4-22-2 to implement this chapter, the division shall consult with and fully consider any comments submitted by:

- (1) caretakers providing care for a special needs individual under this chapter;
- (2) individuals with special needs receiving care from a caretaker under this chapter;
- (3) area agencies on aging;
- (4) consumers and providers of home and community based services under IC 12-10-10 and IC 12-10-11.5; and
- (5) any other agency, volunteer group, faith based group, or individual that the division considers appropriate;

to ensure that the rule complies with the requirements set forth in subsection (b).

(b) Rules adopted under this chapter must:

- (1) include protections for the rights, safety, and welfare of individuals with special needs receiving care from a caretaker under this chapter, including reasonable monitoring and reporting requirements;
- (2) serve distinct populations, including:
 - (A) the aged;
 - (B) persons with developmental disabilities; and
 - (C) persons with physical disabilities;

in a manner that recognizes, and appropriately responds to, the particular needs of the population;

- (3) not create barriers to the availability of home and community based services under IC 12-10-10 and IC 12-10-11.5 by imposing



costly or unduly burdensome requirements on caretakers or other service providers, including:

- (A) requirements for proof of financial responsibility; and
- (B) monitoring, enforcement, reporting, or other administrative requirements; and
- (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this chapter.

(c) Before submitting a rule adopted under this chapter to the attorney general for final approval under IC 4-22-2-31, the division shall submit to the publisher (as defined in IC 4-22-2-3(f)) for publication in the Indiana Register the division's written response ~~under IC 4-22-2-23~~ to any comments received from the parties described in subsection (a). Submissions to the publisher shall be made in the electronic format specified by the publisher.

SECTION 48. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under IC 4-22-2 to implement this chapter, the division shall consult with and fully consider any comments submitted by:

- (1) continuum of care providers providing care under this chapter;
- (2) individuals receiving care under this chapter;
- (3) area agencies on aging;
- (4) consumers and providers of home and community based services under IC 12-10-10 and IC 12-10-11.5; and
- (5) any other agency, volunteer group, faith based group, or individual that the division considers appropriate;

to ensure that the rule complies with the requirements set forth in subsection (b).

(b) Rules adopted under this chapter must:

- (1) include protections for the rights, safety, and welfare of individuals receiving care under this chapter;
- (2) serve distinct populations, including:
 - (A) the aged;
 - (B) persons with developmental disabilities; and
 - (C) persons with physical disabilities;

in a manner that recognizes, and appropriately responds to, the particular needs of the population;

- (3) not create barriers to the availability of home and community based services under IC 12-10-10 and IC 12-10-11.5 by imposing costly or unduly burdensome requirements on continuum of care providers or other service providers, including:

- (A) requirements for proof of financial responsibility; and



- (B) monitoring, enforcement, reporting, or other administrative requirements; and
- (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this chapter.

(c) Before submitting a rule adopted under this chapter to the attorney general for final approval under IC 4-22-2-31, the division shall submit to the publisher (as defined in IC 4-22-2-3(f)) for publication in the Indiana Register the division's written response ~~under IC 4-22-2-23~~ to any comments received from the parties described in subsection (a). Submissions to the publisher shall be made in the electronic format specified by the publisher.

SECTION 49. IC 13-14-9-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.2. This chapter (as effective January 1, 2023) continues to apply after June 30, 2023, to a rulemaking action that is commenced under this chapter before July 1, 2023.**

SECTION 50. IC 13-14-9-1, AS AMENDED BY P.L.133-2012, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as provided in ~~sections 8 and section 14~~ of this chapter, this chapter applies to the following:

- (1) The board.
- (2) The underground storage tank financial assurance board established by IC 13-23-11-1.

(b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a board may not adopt a rule except in accordance with this chapter.

SECTION 51. IC 13-14-9-2 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 2: Except as provided in sections 4.5, 7, 8, and 14 of this chapter, a board may not adopt a rule under this chapter until the board has conducted at least two (2) public comment periods, each of which must be at least thirty (30) days in length.~~

SECTION 52. IC 13-14-9-3, AS AMENDED BY P.L.100-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. ~~(a) Except as provided in subsection (b);~~ **Before publication of the notice described in IC 4-22-2-23, the department shall may provide notice in the Indiana Register of the first a public comment period required by section 2 of this chapter: regarding potential rulemaking.** A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the



proposed rule. The description required by this subdivision must:

- (A) list all alternatives being considered by the department at the time of the notice;
 - (B) state whether each alternative listed under clause (A) creates:
 - (i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or
 - (ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements;
 - (C) state the extent to which each alternative listed under clause (A) differs from federal law;
 - (D) include any information known to the department about the potential fiscal impact of each alternative under clause (A) that creates:
 - (i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or
 - (ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements;
 and
 - (E) set forth the basis for each alternative listed under clause (A).
- (3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.
- (4) Request the submission of alternative ways to achieve the purpose of the proposed rule.
- (5) Request the submission of comments, including suggestions of specific language for the proposed rule.
- (6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

~~(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.~~

~~(c) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.~~

SECTION 53. IC 13-14-9-4, AS AMENDED BY P.L.218-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section in addition to the requirements of IC 4-22-2-23 and (if applicable) IC 4-22-2-24, the notice of public comment submitted by the



department to the publisher must do the following:

- (1) Contain the full text of the proposed rule; to the extent required under IC 4-22-2-24(c).
- (2) (1) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter, during the first public comment period, if applicable.
- (3) (2) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.
- (4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.
- (5) (3) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that:
 - (A) is more stringent than a restriction or requirement imposed under federal law; or
 - (B) applies in a subject area in which federal law does not impose a restriction or requirement.
- (6) (4) With respect to each element identified under subdivision (5), (3), identify:
 - (A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;
 - (B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and
 - (C) the:
 - (i) estimated fiscal impact; and
 - (ii) expected benefits;
 based on the extent to which the proposed rule is more stringent than the restrictions or requirements of federal law, or on the creation of restrictions or requirements in a subject area in which federal law does not impose restrictions or requirements.
- (7) (5) For any element of the proposed rule that imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law or that applies in a subject area in which federal law does not impose restrictions or requirements, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:
 - (A) health criteria;
 - (B) analytical methods;



- (C) treatment technology;
- (D) economic impact data;
- (E) environmental assessment data;
- (F) analyses of methods to effectively implement the proposed rule; and
- (G) other background data.

(b) The notice required under subsection (a):

- (1) shall be published electronically in the Indiana Register under procedures established by the publisher; and
- (2) if any element of the proposed rule to which the notice relates imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law, shall be submitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency, who shall present the notice to the legislative council established by IC 2-5-1.1-1.

(c) (b) If the notice provided by the department concerning a proposed rule identifies under subsection (a)(5), an element of the proposed rule that imposes a restriction or requirement more stringent than a restriction or requirement imposed under federal law, the proposed rule shall not become effective under this chapter until the adjournment sine die of the regular session of the general assembly that begins after the department provides the notice.

(d) (c) Subsections (b)(2) and (c) do **Subsection (b) does** not prohibit or restrict the commissioner, the department, or the board from:

- (1) adopting **emergency provisional** rules under IC 4-22-2-37.1;
- (2) taking emergency action under IC 13-14-10; or
- (3) temporarily:
 - (A) altering ordinary operating policies or procedures; or
 - (B) implementing new policies or procedures;

in response to an emergency situation.

SECTION 54. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the date of preliminary adoption of a proposed rule by a board, the department shall make available to the board the **fiscal impact statement latest version of the regulatory analysis prepared by the office of management and budget with respect to for** the proposed rule. ~~under IC 4-22-2-28(e).~~

SECTION 55. IC 13-14-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a rule



(~~1~~) that has been preliminarily adopted by a board in a form that is:

(~~A~~) (1) identical to; or

(~~B~~) (2) not substantively different from;

the proposed rule published in a ~~second~~ notice under ~~section 4~~ of this chapter; or

(2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter; **IC 4-22-2-23 or (if applicable) IC 4-22-2-24,**

a board may not adopt a rule under this chapter until the board has conducted a ~~third~~ **an additional** public comment period that is at least ~~twenty-one (21)~~ **thirty (30)** days in length.

(b) The department shall publish notice of a ~~third~~ **an additional** public comment period with the

(1) text;

(2) summary; and

(3) fiscal analysis;

information that ~~are~~ **is** required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a ~~third~~ public comment period that must be published in the Indiana Register under subsection (b) must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a ~~second~~ notice under section 4 of this chapter.

SECTION 56. IC 13-14-9-5, AS AMENDED BY P.L.123-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the following occur:

(1) The board holds a board meeting on the proposed rule.

(2) The department, after approval of the proposed rule by the board under subsection (c), publishes the ~~following~~ **information** in the Indiana Register as ~~provided in IC 4-22-2-24(c):~~

(~~A~~) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).

(~~B~~) A summary of the response of the department to all comments received at the meeting held under subdivision (1).

(~~C~~) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000); a copy of the office of management and



~~budget fiscal analysis required under IC 4-22-2-28.~~ **required by section 4 of this chapter. However, a notice of an additional public comment period under section 4.5 of this chapter must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in the immediately preceding notice under section 4 or (if applicable) 4.5 of this chapter.**

(3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.

(4) ~~If a third~~ **an additional** public comment period is required under section 4.5 of this chapter, the department publishes notice of the ~~third~~ **additional** public comment period in the Indiana Register.

(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

(1) proceed to publication under subsection (a)(2);

(2) be subject to additional comments under section ~~3 or 4~~ **4.5** of this chapter; ~~considering any written finding made by the commissioner under section 7 or 8 of this chapter;~~ or

(3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 57. IC 13-14-9-6, AS AMENDED BY P.L.123-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of this chapter,~~ The department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

(1) The full text of the proposed rule, as most recently prepared by the department.

(2) The written responses of the department to all comments received:

(A) during the immediately preceding **public** comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a ~~third~~ **an additional** public comment period is not required under section 4.5 of this



chapter; or

(C) during:

(i) ~~a third~~ **an additional** public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a ~~second~~ notice under section 4 of this chapter; and

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a ~~third~~ **an additional** public comment period is required under section 4.5 of this chapter.

(3) The full text of the ~~office of management and budget fiscal latest version of the regulatory~~ analysis if a fiscal analysis is required under ~~IC 4-22-2-28~~. **provided to the budget agency and the office of management and budget under IC 4-22-2-22.8.**

SECTION 58. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY 1, 2023]. Sec. 7. (a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, section 3 of this chapter does not apply to a rulemaking action if the commissioner determines that the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under section 3 of this chapter would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule.

(b) If the commissioner makes a determination under subsection (a); the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be included in the public notice provided under section 4 of this chapter.

SECTION 59. IC 13-14-9-8, AS AMENDED BY P.L.6-2012, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in subsection (g); unless a board determines that a proposed rule should be subject to additional comments or makes a determination described in subsection (f); sections 2 through 7 and sections 9 through 14 of this chapter do not apply to a rulemaking action if the commissioner determines that:

(1) the proposed rule constitutes:

(A) an adoption or incorporation by reference of a federal law; regulation; or rule that:



- (i) is or will be applicable to Indiana; and
- (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
- (B) a technical amendment with no substantive effect on an existing Indiana rule; or
- (C) an amendment to an existing Indiana rule; the primary and intended purpose of which is to clarify the existing rule; and
- (2) the proposed rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in section 7(a)(2) of this chapter from the following:
 - (A) Exposing the proposed rule to diverse public comment under section 3 or 4 of this chapter.
 - (B) Affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter.
 - (C) Affording interested or affected parties the opportunity to develop evidence in the record collected under sections 3 and 4 of this chapter.
- (b) If the commissioner makes a determination under subsection (a); the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be included in:
 - (1) the notice of adoption of the proposed rule; and
 - (2) the written materials to be considered by the board at the public hearing held under this section.
- (c) The notice of adoption of a proposed rule under this section must:
 - (1) be published in the Indiana Register; and
 - (2) include the following:
 - (A) Draft rule language that includes the language described in subsection (a)(1).
 - (B) A written comment period of at least thirty (30) days.
 - (C) A notice of public hearing before the appropriate board.
- (d) The department shall include the following in the written materials to be considered by the board at the public hearing referred to in subsection (c):
 - (1) The full text of the proposed rule as most recently prepared by the department.
 - (2) Written responses of the department to written comments received during the comment period referred to in subsection (c).
 - (3) The commissioner's findings under subsection (b).
- (e) At the public hearing referred to in subsection (c); the board may:



- (1) adopt the proposed rule;
- (2) adopt the proposed rule with amendments;
- (3) reject the proposed rule;
- (4) determine that additional public comment is necessary; or
- (5) determine to reconsider the proposed rule at a subsequent board meeting.

(f) If the board determines under subsection (e) that additional public comment is necessary, the department shall publish a second notice in accordance with section 4 of this chapter and complete the rulemaking in accordance with this chapter.

(g) If the board adopts the proposed rule with amendments under subsection (e)(2), the amendments must meet the logical outgrowth requirements of section 10 of this chapter, except that the board, in determining whether the amendments are a logical outgrowth of comments provided to the board, and in considering whether the language of comments provided to the board fairly apprised interested persons of the specific subjects and issues contained in the amendments, shall consider the comments provided to the board at the public hearing referred to in subsection (c)(2)(C).

(h) This subsection applies to that part of a rule adopted under this section that directly corresponds to and is based on a federal law, rule, or regulation that is stayed or repealed, invalidated, vacated, or otherwise nullified by a legislative, an administrative, or a judicial action described in subdivision (1), (2), or (3). If:

- (1) a proposed rule is adopted by a board under subsection (e)(1) based on a determination by the commissioner under subsection (a)(1)(A) and the federal law, rule, or regulation on which the adopted rule is based is later repealed or otherwise nullified by legislative or administrative action, then that part of the adopted rule that corresponds to the repealed or nullified federal law, rule, or regulation is void as of the effective date of the legislative or administrative action repealing or otherwise nullifying the federal law, rule, or regulation;
- (2) a board adopts a proposed rule under subsection (e)(1) that is based on a determination by the commissioner under subsection (a)(1)(A) and the federal law, rule, or regulation on which the adopted rule is based is later invalidated, vacated, or otherwise nullified by a judicial decree, order, or judgment of a state or federal court whose decisions concerning such matters have force and effect in Indiana:

(A) then that part of the rule that corresponds to the invalidated, vacated, or otherwise nullified federal law, rule,



or regulation shall not be enforced by the commissioner or any other person during the time in which an appeal of the judicial decree, order, or judgment can be commenced or is pending; and

(B) either:

- (i) that part of the adopted rule that corresponds to the invalidated, vacated, or otherwise nullified federal law, rule, or regulation is void as of the date that the judicial decree, order, or judgment becomes final and unappealable; or
- (ii) enforcement of the adopted rule is restored if the judicial decree, order, or judgment is reversed, vacated, or otherwise nullified on appeal; and

(3) **the If the commissioner determines that a federal law, regulation, or rule:**

- (1) **that is the basis of a rule that is adopted under subsection (e)(1) by the board; and based on a determination by the commissioner under subsection (a)(1)(A)**
- (2) is stayed by an administrative or a judicial order pending an administrative or a judicial action regarding the validity of the federal law, rule, or regulation;

the commissioner may suspend the enforcement of that part of the adopted rule that corresponds to the stayed federal law, rule, or regulation while the stay is in force.

SECTION 60. IC 13-14-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying with sections ~~2~~ **4** through ~~8~~ **6** of this chapter, the board may, at the board meeting held under section 5(a)(3) of this chapter:

- (1) adopt a rule that is identical to the proposed rule published under section 5(a)(2) of this chapter **or with amendments that meet the substantially similar or logical outgrowth requirements of IC 4-22-2-29(c);**
- (2) adopt the proposed rule with amendments that meet the criteria set forth in section ~~10~~ of this chapter;
- (3) **(2)** recommend amendments to the proposed rule; **that do not meet the criteria set forth in section ~~10~~ of this chapter;**
- (4) **(3)** reject the proposed rule; or
- (5) **(4)** reconsider the proposed rule at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 61. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY 1, 2023]. Sec. ~~10~~: (a) **A board may amend a proposed rule at a board meeting held under section 5(a)(3) of this chapter and adopt the amended rule under section 9(2) of this chapter if the amendments are**



a logical outgrowth of:

- (1) the proposed rule as published under section 5(a)(2) of this chapter; and
- (2) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter.

(b) In determining, for the purposes of this section, whether an amendment is a logical outgrowth of the proposed rule and any comments, the board shall consider:

- (1) whether the language of:
 - (A) the proposed rule as published under section 5(a)(2) of this chapter; and
 - (B) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter;
 fairly apprised interested persons of the specific subjects and issues contained in the amendment; and
- (2) whether the interested parties were allowed an adequate opportunity to be heard by the board.

SECTION 62. IC 13-14-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board recommends amendments to a proposed rule under section ~~9(3)~~ **9(2)** of this chapter, the full text of the proposed rule and accompanying amendments shall be published in accordance with section 5(a)(2) of this chapter. After that publication, the board shall hold another board meeting on the proposed rule under section 5(a)(3) of this chapter.

SECTION 63. IC 13-14-9-12, AS AMENDED BY P.L.204-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under section ~~9(4)~~ **9** of this chapter if one (1) of the following conditions exists:

- (1) The following occurs or has occurred:
 - (A) under section 8 of this chapter, sections 3 and 4 of this chapter did not apply to the proposed rule; and
 - (B) either:
 - (i) **(1)** The board determines that necessary amendments to the proposed rule will affect persons that reasonably require an opportunity to comment under section 4 of this chapter, considering the criteria set forth in section 8(a)(2) of this chapter; or
 - (ii) **(2)** The board determines that due to the fundamental or inherent structure or content of the proposed rule, the only reasonably anticipated method of developing a rule acceptable to the board is to require the department to



redraft the rule and to obtain ~~the~~ public comments under section 4 of this chapter.

~~(2) The following occurs or has occurred:~~

~~(A) the proposed rule was subject to sections 3 and 4 of this chapter; and~~

~~(B) either:~~

~~(i) the board makes a determination set forth in subdivision (1)(B)(i) or (1)(B)(ii); or~~

~~(ii) (3) The board determines that, due to a procedural or other defect in the implementation of **the applicable rulemaking** requirements, ~~under sections 3 and 4 of this chapter~~, an interested or affected party will be unfairly and substantially prejudiced if the public comment period under section 4 of this chapter is not again afforded and that no reasonable alternative method to obtain public comments is available to the interested or affected party other than the public comment period under section 4 of this chapter.~~

SECTION 64. IC 13-14-9-14, AS AMENDED BY P.L.133-2012, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g), sections 1 through 13 of this chapter do not apply to a rule adopted under this section.

(b) The board may use the procedures in this section to adopt a rule to establish new water quality standards for a community served by a combined sewer that has:

- (1) an approved long term control plan; and
- (2) an approved use attainability analysis that supports the use of a CSO wet weather limited use subcategory established under IC 13-18-3-2.5.

(c) After the department approves the long term control plan and use attainability analysis, the department shall publish in the Indiana Register a notice of adoption of a proposed rule to establish a CSO wet weather limited use subcategory for the area defined by the approved use attainability analysis.

(d) The notice under subsection (c) must include the following:

- (1) Suggested rule language that amends the designated use to allow for a CSO wet weather limited use subcategory in accordance with IC 13-18-3-2.5.
- (2) A written comment period of at least thirty (30) days.
- (3) A notice of public hearing before the board.

(e) The department shall include the following in the written materials to be considered by the board at the public hearing referred



to in subsection (d)(3):

- (1) The full text of the proposed rule as most recently prepared by the department.
- (2) Written responses of the department to written comments received during the comment period referred to in subsection (d)(2).
- (3) The letter prepared by the department approving the long term control plan and use attainability analysis.

(f) At the public hearing referred to in subsection (d)(3), the board may:

- (1) adopt the proposed rule to establish a new water quality standard amending the designated use to allow for a CSO wet weather limited use subcategory;
- (2) adopt the proposed rule with amendments;
- (3) reject the proposed rule; or
- (4) determine to reconsider the proposed rule at a subsequent board meeting.

(g) If the board adopts the proposed rule with amendments under subsection (f)(2), the amendments must meet the **substantially similar or** logical outgrowth requirements of ~~section 10 of this chapter, except that IC 4-22-2-29(c)~~. The board, in determining whether the amendments are a logical outgrowth of comments provided to the board, and in considering whether the language of comments provided to the board fairly apprised interested persons of the specific subjects and issues contained in the amendments, shall consider the comments provided to the board at the public hearing referred to in subsection (d)(3).

(h) The department shall submit a new water quality standard established in a rule adopted under subsection (f) to the United States Environmental Protection Agency for approval.

SECTION 65. IC 13-14-9-15 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance with this chapter by the department of environmental management or a board that has rulemaking authority under this title expire as provided in IC 4-22-2.6.**

SECTION 66. IC 13-14-9-16 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 16. (a) For a rule document subject to this chapter, the one (1) year period established under IC 4-22-2-25 in which to adopt a rule and obtain the approval or deemed approval of the governor commences on the date that the**



initial public comment period notice for the rule document is published in the Indiana Register under section 4 of this chapter.

(b) If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice, the department shall, before two hundred fifty (250) days following the publication of the notice, notify the publisher by electronic means:

(1) the reasons why the rule was not adopted and the expected date the rule will be completed; and

(2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under IC 4-22-2-41.

(c) If a rule is not approved before the later of:

(1) one (1) year after the department publishes the initial notice of intent under this chapter; or

(2) the expected date contained in a notice concerning the rule that is provided to the publisher under subsection (b);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

SECTION 67. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY 1, 2023]. (Expiration and Readoption of Administrative Rules).

SECTION 68. IC 13-19-3-3, AS AMENDED BY P.L.120-2022, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1 of this chapter, "coal combustion residuals" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(b) ~~As used in~~ **The following definitions apply throughout this section:**

(1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the federal standards for the disposal of coal combustion residuals in landfills and surface impoundments.

(2) **"Legacy generation resource" means an electric generating facility that is directly or indirectly owned by a corporation that was originally formed for the purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests. The term includes the Ohio Valley Electric Corporation.**

(c) ~~The board may~~ **shall** adopt rules under section 1(a)(1) of this chapter **concerning coal combustion residuals. The rules adopted under this subsection:**

(1) ~~that are~~ **shall be** consistent with the regulations of the United



States Environmental Protection Agency concerning standards for the disposal of coal combustion residuals in landfills and surface impoundments, as set forth in the federal CCR rule;

(2) shall not impose a restriction or requirement that is more stringent than the corresponding restriction or requirement imposed under the federal CCR rule; and

(3) shall not impose a restriction or requirement that is not imposed by the federal CCR rule.

(d) The department shall do the following:

(1) Establish a state permit program under Section 2301 of the federal Water Infrastructure Improvements for the Nation Act (42 U.S.C. 6945(d)) for the implementation in Indiana of the federal CCR rule.

(2) Submit to the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6945(d)(1)(A) evidence of the state permit program.

(3) Take other necessary or appropriate actions to obtain approval of the state permit program.

(e) Not later than May 15, 2021, the department shall notify the United States Environmental Protection Agency of its intention to establish a state permit program described in subsection (d)(1) and to seek approval of the state permit program under 42 U.S.C. 6945(d)(1).

(f) Under IC 4-22-2 and IC 13-14-9:

(1) the department shall initiate rulemaking for the establishment of the state permit program not more than sixty (60) days after the effective date of the SECTION of Senate Enrolled Act 271-2021 amending this section; and

(2) the board shall adopt a final rule for the establishment of the state permit program not more than sixteen (16) months after initiation of the rulemaking under subdivision (1).

(g) The state permit program established under this section must not establish requirements for any surface impoundment of coal combustion residuals unless and until the state permit program is approved by the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the department to establish requirements under the state permit program established under this section is the only authority the department has to establish requirements for a surface impoundment of coal combustion residuals located on the grounds of a legacy generation resource.**

(h) The definitions set forth in Section 257.53 of the federal CCR rule, as in effect January 1, 2021, apply throughout subsection (i).



(i) The department shall charge the following fees under the state permit program established under this section:

(1) An initial one (1) time permit fee of twenty thousand five hundred dollars (\$20,500) for each surface impoundment of coal combustion residuals regulated under the state permit program.

(2) An annual fee of twenty thousand five hundred dollars (\$20,500) for each surface impoundment of coal combustion residuals regulated under the state permit program that has not completed closure in accordance with Section 257.102 of the federal CCR rule. The duty to pay the fee established by this subdivision does not apply on an annual basis until three hundred sixty-five (365) days after the initial one (1) time permit fee established by subdivision (1) has been assessed.

(3) An annual fee of ten thousand dollars (\$10,000) for each surface impoundment of coal combustion residuals regulated under the state permit program that has been closed and for which post-closure care has been initiated and is still required in accordance with Section 257.104 of the federal CCR rule. The duty to pay the fee established by this subdivision does not apply on an annual basis until three hundred sixty-five (365) days after the initial one (1) time permit fee established by subdivision (1) has been assessed.

Fees collected under this subsection shall be deposited in the CCR program fund established by section 3.2 of this chapter.

(j) Not later than July 1, 2027, and before the end of each succeeding period of five (5) years, the board shall review the:

(1) costs to the department of operating the state permit program established under this section; and

(2) revenue from the fees charged under subsection (i);

as provided in IC 13-16-1-4. If the board determines that the revenue described in subdivision (2) is inadequate or excessive in relation to the costs described in subdivision (1), the board shall, under IC 13-16-1-2, change the amount of one (1) or more of the fees established under subsection (i).

(k) Upon the effective date that the board adopts rules to implement the federal CCR rule and subject to subsection (i), annual fees for CCR landfills that were previously regulated as restricted waste sites shall be deposited in the CCR program fund established by section 3.2 of this chapter.

SECTION 69. IC 14-10-2-5, AS AMENDED BY HEA 1626-2023, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) The department may adopt ~~emergency~~ rules



under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to carry out the duties of the department under the following:

- (1) IC 14-9.
- (2) This article.
- (3) IC 14-11.
- (4) IC 14-12-2.
- (5) IC 14-14.
- (6) IC 14-15.
- (7) IC 14-17-3.
- (8) IC 14-18, except IC 14-18-6 and IC 14-18-8.
- (9) IC 14-19-1 and IC 14-19-8.
- (10) IC 14-21.
- (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- (12) IC 14-23-1.
- (13) IC 14-24.
- (14) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.
- (15) IC 14-26.
- (16) IC 14-27.
- (17) IC 14-28.
- (18) IC 14-29.
- (19) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- (20) IC 14-37.
- (21) IC 14-38, except IC 14-38-3.
- (22) IC 14-39.

(b) ~~▲~~ **An emergency rule** adopted under subsection (a) **(as effective before July 1, 2023)** expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register.

(c) A person who violates:

- (1) an emergency rule adopted by the department **under IC 4-22-2-37.1 before July 1, 2023; or**
- (2) **an interim rule adopted by the department under IC 4-22-2-37.2 after June 30, 2023;**

to carry out a provision described in subsection (a) commits a Class C infraction, unless otherwise specified under state law.

SECTION 70. IC 15-16-4-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 0.3. The definitions in IC 15-16-5 apply throughout this chapter.**

SECTION 71. IC 15-16-4-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 15.5. As used in this chapter, "general use pesticide" means a pesticide that is not a restricted**



use pesticide.

SECTION 72. IC 15-16-4-31 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 31. As used in this chapter, "pesticide for use by prescription only" means any pesticide that the board has found to be more hazardous than a restricted use pesticide so that any specific use and application must be determined and prescribed by a qualified pest management specialist approved by the state chemist.~~

SECTION 73. IC 15-16-4-37, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use pesticide" means **the following:**

- (1) Any pesticide classified as a restricted use pesticide by the administrator of the United States Environmental Protection Agency. ~~or~~
- (2) A pesticide designated as a restricted use pesticide in a law enacted by the general assembly.**
- ~~(2)~~ **(3) Subject to section 50 of this chapter,** a pesticide that the board has determined to be unduly hazardous to persons, animals, plants, wildlife, waters, or lands other than the pests it is intended to prevent, destroy, control, or mitigate.
- (4) All formulations containing methomyl (Chemical Abstracts Service Reg. No. 16752-77-5).**
- (5) Any dicamba containing pesticide product that:**
 - (A) contains a dicamba active ingredient concentration greater than or equal to six and one-half percent (6.5%); and**
 - (B) is intended for agricultural production uses but is not labeled solely for use on turf or other nonagricultural use sites.**

SECTION 74. IC 15-16-4-50, AS AMENDED BY P.L.99-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 50. (a) ~~The board may adopt rules under IC 4-22-2 to do the following: (1) Establish a list of~~ **recommend to the general assembly the addition, deletion, or reclassification of pesticides by submitting in an electronic format under IC 5-14-6 a report of the recommendations to the legislative council. In making a determination to add or reclassify a pesticide as a restricted use pesticides and pesticides for use by prescription only pesticide for all of Indiana or designated areas within Indiana, if the board finds must find that the characteristics of a pesticide require that rules restricting the:**

- ~~(A)~~ **(1) sale;**



~~(B)~~ (2) distribution; or

~~(C)~~ (3) use;

of the pesticide by any person are necessary to prevent undue hazards to persons, animals, wildlife, lands, or waters, other than the pests that they are intended to prevent, destroy, control, or mitigate. **The board shall publish the board's findings in the Indiana Register.**

~~(2)~~ (b) **The board may adopt rules under IC 4-22-2 to do the following:**

(1) Provide for the safe:

(A) handling;

(B) transportation;

(C) storage;

(D) display;

(E) distribution;

(F) disposal; and

(G) production;

of pesticide products and pesticide containers.

~~(3)~~ (2) Restrict or prohibit the use of certain types of containers or packages for specific pesticides. The restrictions may apply to the:

(A) type of construction;

(B) strength; or

(C) size;

to alleviate danger of spillage, breakage, or misuse.

~~(b)~~ **The board may adopt by reference the restricted use classification of a pesticide that is maintained by the United States Environmental Protection Agency:**

~~(c)~~ **The board may adopt rules to do the following:**

~~(1)~~ (3) Determine the time and conditions of the:

(A) sale;

(B) distribution; or

(C) use;

of pesticide products.

~~(2)~~ (4) Require that any or all pesticide products be purchased, possessed, or used only under:

(A) permit;

(B) certificate;

(C) license; or

(D) registration;

of the state chemist or under certain conditions or in certain quantities or concentrations.

~~(3)~~ (5) Require all persons issued:



- (A) permits;
- (B) certificates;
- (C) licenses; or
- (D) registrations;

under this subsection to maintain records as to the use of the pesticide products.

(c) The state chemist shall maintain a list of each class of pesticides adopted by Indiana law or board rule on the website for the state chemist. Failure to include a pesticide on the list does not exempt a person from compliance with a law or rule for a pesticide designated by law or rule.

SECTION 75. IC 15-16-4-52, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under IC 4-22-2 to administer this chapter, including rules providing for the following:

- (1) The collection and examination of samples of pesticide products.
- (2) Determining whether a pesticide product is highly toxic to humans or wildlife.
- (3) The issuance of permits to purchase, possess, or use "restricted use pesticides". ~~and "pesticides for use by prescription only".~~
- (4) Determining standards of coloring or discoloring for pesticide products and to subject pesticide products to the requirements of section 57 of this chapter.

SECTION 76. IC 15-16-4-52.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 52.5. (a) Neither the board nor the state chemist may by rule or otherwise impose a requirement or limitation on the storage, distribution, use, application, or record keeping of a general use pesticide by:**

- (1) a certified applicator;**
- (2) a commercial applicator;**
- (3) a licensed applicator for hire;**
- (4) a licensed applicator not for hire;**
- (5) a licensed pesticide business;**
- (6) a licensed public applicator; or**
- (7) a private applicator;**

that is more stringent than the requirements and limitations applicable under federal law, federal regulations, or Indiana statutory law to the general use pesticide or a pesticide product



containing a general use pesticide and no restricted use pesticide.

(b) A rule or other requirement or limitation of the board in effect on June 30, 2023, that does not comply with this section is voided on July 1, 2023, to the extent it conflicts with this section.

SECTION 77. IC 15-16-4-57, AS AMENDED BY P.L.99-2012, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 57. Except as provided in section 58 of this chapter, a person may not produce, distribute, display, sell, or offer for sale within Indiana or deliver for transportation or transport in intrastate commerce or between points within Indiana through any point outside Indiana any of the following:

- (1) Any pesticide product that has not been registered under section 61 of this chapter.
- (2) Any pesticide product if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.
- (3) A pesticide product if the composition of the product differs from the composition as represented in connection with its registration. However, at the discretion of the state chemist, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.
- (4) Any pesticide product (except a bulk pesticide or a pesticide in a container designed and constructed to accommodate the return and refill of the container) unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to that container, and to any outside container or wrapper of the retail package through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (A) the name and address of the manufacturer, registrant, or person for whom manufactured;
 - (B) the name, brand, or trademark under which the pesticide product is sold; and
 - (C) the net weight or measure of the content, subject, however, to reasonable variations as the state chemist may permit.
- (5) Any pesticide product that is adulterated or misbranded.
- (6) Any pesticide product in containers violating rules adopted under section ~~50(a)(3)~~ **50(b)(2)** of this chapter. Pesticides found in containers that are unsafe due to damage may be seized and impounded.
- (7) A highly volatile herbicide except on written permission by the state chemist.



(8) Any bulk pesticide unless it is accompanied in all transfers of custody or ownership by or held in storage vessels to which is affixed a label bearing the information specified in subdivision (4).

(9) Any pesticide that violates the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations adopted under the Act.

SECTION 78. IC 15-16-5-72 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 72. (a) Except as provided in IC 4-22-2.3-9, a rule adopted under this chapter that becomes effective after June 30, 2023, may not impose a restriction or requirement concerning pesticides more stringent than a restriction or requirement imposed under federal law unless the restriction or requirement is specifically authorized by Indiana law.**

(b) Restrictions or requirements specifically authorized to be more stringent than a restriction or requirement imposed under federal law include the following:

(1) Commercial termite control applicators (category 7b) must complete a practical hands-on training program to become certified.

(2) Commercial applicators must have access to the pesticide label when applying pesticides.

(3) Commercial for hire general use pesticide application businesses are required to show proof of having minimum liability insurance coverage.

(4) Commercial for hire general use pesticide applicators (category 7b) must disclose to customers any omissions from label required termite control applications.

(5) Commercial applicators and school employees applying general use pesticides at schools:

(A) may not apply when students are present;

(B) must notify students, parents, and staff of planned and conducted applications;

(C) must store pesticides safely;

(D) must keep students and staff out of treated areas until spray has dried; and

(E) may only apply rodenticide baits in areas inaccessible to students.

(6) Commercial and private applicators must store and contain general use pesticide portable refillable containers



(minibulks) safely to prevent releases to the environment.

(7) Commercial and private applicators may not store, mix, or load general use pesticides within two hundred (200) feet of a community public drinking water well.

(8) Commercial and private applicators must store general use pesticide containers on impervious surfaces within a wellhead protection area zone.

(9) Commercial and private applicators must clean up general use pesticide spills within a wellhead protection area immediately upon discovery.

(10) Commercial and private applicators may not open burn general use pesticide containers.

SECTION 79. IC 25-1-5-4, AS AMENDED BY HEA 1460-2023, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) The agency shall employ necessary staff, including specialists and professionals, to carry out the administrative duties and functions of the boards, including but not limited to:

- (1) notice of board meetings and other communication services;
- (2) recordkeeping of board meetings, proceedings, and actions;
- (3) recordkeeping of all persons licensed, regulated, or certified by a board;
- (4) administration of examinations; and
- (5) administration of license or certificate issuance or renewal.

(b) In addition, the agency:

- (1) shall prepare a consolidated statement of the budget requests of all the boards described in IC 25-0.5-5;
- (2) may coordinate licensing or certification renewal cycles, examination schedules, or other routine activities to efficiently utilize agency staff, facilities, and transportation resources, and to improve accessibility of board functions to the public;
- (3) may consolidate, where feasible, office space, recordkeeping, and data processing services;
- (4) shall operate and maintain the electronic registry of professions established under IC 25-1-5.5;
- (5) shall post each board's public meeting agenda on the applicable board's website not less than seventy-two (72) hours before a board's public meeting;
- (6) shall post each board's public meeting minutes on the applicable board's website not more than fourteen (14) calendar days after adoption of the minutes by the board;
- (7) shall post any vacancy on a board on the applicable board's website within fourteen (14) calendar days of the vacancy;



(8) notwithstanding any other law:

(A) **shall** prescribe the application form and manner for each board; and

(B) **shall** make any new application form publicly available on the applicable board's website for sixty (60) calendar days before being adopted by the agency; and

(9) shall send notification of incomplete items in an application to the applicant every fourteen (14) calendar days after the applicant initiates the application until the earlier of **the following:**

(A) **The date** the application is completed. ~~or~~

(B) One (1) calendar year after the applicant initiates the application.

(c) In administering the renewal of licenses or certificates under this chapter, the agency shall send a notice of the upcoming expiration of a license or certificate to each holder of a license or certificate at least ninety (90) days before the expiration of the license or certificate. The notice must inform the holder of the license or certificate of the need to renew and the requirement of payment of the renewal fee. If this notice of expiration is not sent by the agency, the holder of the license or certificate is not subject to a sanction for failure to renew if, once notice is received from the agency, the license or certificate is renewed within forty-five (45) days after receipt of the notice.

(d) In administering an examination for licensure or certification, the agency shall make the appropriate application forms available at least thirty (30) days before the deadline for submitting an application to all persons wishing to take the examination.

(e) The agency may require an applicant for license renewal to submit evidence proving that:

(1) the applicant continues to meet the minimum requirements for licensure; and

(2) the applicant is not in violation of:

(A) the statute regulating the applicant's profession; or

(B) rules adopted by the board regulating the applicant's profession.

(f) The agency shall process an application for renewal of a license or certificate:

(1) not later than ten (10) days after the agency receives all required forms and evidence; or

(2) within twenty-four (24) hours after the time that an applicant for renewal appears in person at the agency with all required forms and evidence.



This subsection does not require the agency to issue a renewal license or certificate to an applicant if subsection (g) applies.

(g) The agency may delay issuing a license renewal for up to one hundred twenty (120) days after the renewal date for the purpose of permitting the board to investigate information received by the agency that the applicant for renewal may have committed an act for which the applicant may be disciplined. If the agency delays issuing a license renewal, the agency shall notify the applicant that the applicant is being investigated. Except as provided in subsection (h), before the end of the one hundred twenty (120) day period, the board shall do one (1) of the following:

- (1) Deny the license renewal following a personal appearance by the applicant before the board.
- (2) Issue the license renewal upon satisfaction of all other conditions for renewal.
- (3) Issue the license renewal and file a complaint under IC 25-1-7.
- (4) Upon agreement of the applicant and the board and following a personal appearance by the applicant before the board, renew the license and place the applicant on probation status under IC 25-1-9-9.

(h) If an individual fails to appear before the board under subsection (g), the board may take action on the applicant's license allowed under subsection (g)(1), (g)(2), or (g)(3).

(i) The applicant's license remains valid until the final determination of the board is rendered unless the renewal is denied or the license is summarily suspended under IC 25-1-9-10.

(j) The license of the applicant for a license renewal remains valid during the one hundred twenty (120) day period unless the license renewal is denied following a personal appearance by the applicant before the board before the end of the one hundred twenty (120) day period. If the one hundred twenty (120) day period expires without action by the board, the license shall be automatically renewed at the end of the one hundred twenty (120) day period.

(k) The board's renewal of a license does not preclude the board from imposing sanctions on the licensee as a result of a complaint filed by the attorney general after renewal of the license.

(l) Notwithstanding any other statute, the agency may stagger license or certificate renewal cycles. However, if a renewal cycle for a specific board or committee is changed, the agency must obtain the approval of the affected board or committee.

(m) An application for a license, certificate, registration, or permit is abandoned without an action of the board, if the applicant does not



complete the requirements to complete the application within one (1) year after the date on which the application was filed. However, the board may, for good cause shown, extend the validity of the application for additional thirty (30) day periods. An application submitted after the abandonment of an application is considered a new application.

SECTION 80. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 5.3. Failure to Enact Licensure Rules

Sec. 1. The following definitions apply throughout this chapter:

- (1) "Agency" has the meaning set forth in IC 25-1-5-2.
- (2) "Applicant" has the meaning set forth in IC 25-1-5-11.
- (3) "Board" has the meaning set forth in IC 25-1-5-2.
- (4) "Compliant", with respect to a licensure rule, means a licensure rule that the agency or a board has adopted.
- (5) "Enactment date" means the date on which a statute requires rulemaking for a licensure rule to become effective or otherwise requires rulemaking to commence.
- (6) "Executive director" refers to the individual described in IC 25-1-5-5.
- (7) "Licensee" has the meaning set forth in IC 25-1-5-11.
- (8) "Licensure rule" means a rule that:
 - (A) relates to the issuance of a license, certificate, registration, or permit, or a requirement or prerequisite for obtaining a license, or keeping a license in good standing; and
 - (B) is required by statute with an enactment date after January 1, 2023, to be adopted by the agency or a board.
- (9) "Material detriment" means:
 - (A) an inability to obtain a license, certification, permit, or other credential from the agency or a board;
 - (B) an inability to:
 - (i) practice;
 - (ii) perform a procedure; or
 - (iii) engage in a particular professional activity in Indiana or another jurisdiction; or
 - (C) any other substantial burden to professional or business interests.
- (10) "Noncompliant", with respect to a licensure rule, means a licensure rule that the agency or a board has not adopted as an interim rule under IC 4-22-2-37.2 within six (6) months of the enactment date.



Sec. 2. (a) If a licensee or applicant believes that the agency or a board has failed to adopt a licensure rule within six (6) months of the enactment date, an applicant or licensee who has suffered a material detriment as a result of a noncompliant licensure rule may seek damages from the agency or board by bringing an action in a court of competent jurisdiction.

(b) A court shall not certify a class in any matter seeking damages under this section.

(c) In a matter seeking damages under this section, a court may order the following:

(1) An injunction requiring adoption of a compliant interim licensure rule not earlier than six (6) months from the date of the order.

(2) Damages equal to the amount of the material detriment caused by the noncompliant licensure rule, including prospective damages through the date established under subdivision (1).

(3) Court costs and attorney's fees.

(d) IC 34-13-3 applies to an action brought under this section.

SECTION 81. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. (a) The department shall adopt ~~emergency~~ rules under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to implement this chapter. The rules must include a requirement that health payer data sources submit necessary information to the administrator. Rules enacted under this subsection must cover all health payer data sources as follows:

(1) The department shall adopt rules that apply to health payers regulated under IC 27.

(2) The office of the secretary of family and social services shall adopt rules that apply to health payers regulated under IC 12.

(b) The department shall adopt ~~emergency~~ **provisional** rules under IC 4-22-2-37.1 establishing a fee formula for data licensing and the collection and release of claims data.

(c) The department may impose a civil penalty on a health payer that is required to submit information under this chapter and fails to comply. A civil penalty collected under this section must be deposited in the department of insurance fund created by IC 27-1-3-28.

SECTION 82. IC 34-52-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 1.5. (a) In a proceeding under IC 4-21.5-5 to judicially review a final order made by a state agency, the court shall apply the same standard as an**



administrative law judge under IC 4-21.5-3-27.5 regarding an order for the payment of attorney's fees.

(b) An order for the payment of attorney's fees under this section is not subject to sections 2 and 4 of this chapter.

SECTION 83. [EFFECTIVE UPON PASSAGE] (a) After June 30, 2023, a rule may be adopted as a provisional rule only for the purposes and through the procedures in IC 4-22-2-37.1 (as effective after June 30, 2023). Any additional authority in a statute outside IC 4-22 to adopt rules through the emergency rulemaking procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or after June 30, 2023) is void. The code revision commission shall provide in calendar year 2023 for the preparation of a bill for introduction in the 2024 regular session of the general assembly that removes language outside IC 4-22 permitting the adoption of emergency rules.

(b) This SECTION expires January 1, 2024.

SECTION 84. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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