

## **IC 4-22-2**

### **Chapter 2. Adoption of Administrative Rules**

#### **IC 4-22-2-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. 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(2) The addition of sections 23.1 and 46 (repealed) of this chapter applies to a rulemaking action that commences after June 30, 1995.

*As added by P.L.220-2011, SEC.44. Amended by P.L.53-2014, SEC.54.*

#### **IC 4-22-2-0.3**

##### **Legalization of certain rules adopted without approval of fire prevention and building safety commission**

Sec. 0.3. The adoption of any rule by a state agency without the approval of the fire prevention and building safety commission before July 1, 1987, is legalized and validated.

*As added by P.L.220-2011, SEC.45.*

#### **IC 4-22-2-0.5**

##### **Effect to be given to provisions of P.L.229-2011; publication**

Sec. 0.5. The general assembly recognizes that the general assembly has enacted more than one (1) act in the 2011 legislative session amending IC 4-22-2-37.1, including P.L.11-2011, P.L.42-2011, P.L.119-2011, and P.L.175-2011. The general assembly has incorporated the changes made in those acts into the version of IC 4-22-2-37.1 amended by P.L.229-2011. It is the intent of the general assembly that to the extent there is a conflict between the version of IC 4-22-2-37.1 enacted in P.L.229-2011 and an amendment made to IC 4-22-2-37.1 by any other act, the version of IC 4-22-2-37.1 amended by P.L.229-2011 be given effect. The publisher is directed to publish only the version of IC 4-22-2-37.1 enacted in P.L.229-2011 in the Indiana Code.

*As added by P.L.63-2012, SEC.4.*

#### **IC 4-22-2-1**

##### **Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

#### **IC 4-22-2-2**

##### **Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

### **IC 4-22-2-3**

#### **Definitions**

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.

(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. *(Formerly: Acts 1945, c.120, s.3; Acts 1967, c.183, s.1.) As amended by Acts 1977, P.L.38, SEC.2; Acts 1978, P.L.17, SEC.1; Acts 1979, P.L.25, SEC.1; Acts 1980, P.L.74, SEC.6; Acts 1982, P.L.27, SEC.1; P.L.31-1985, SEC.1; P.L.7-1987, SEC.5; P.L.8-1993, SEC.28.*

### **IC 4-22-2-3.2**

#### **Repealed**

*(As added by P.L.291-2013, SEC.4. Repealed by P.L.53-2014, SEC.55.)*

### **IC 4-22-2-4**

#### **Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

### **IC 4-22-2-4.5**

#### **Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

### **IC 4-22-2-5**

#### **Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-5.3**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-5.5**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-6**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-7**

**Repealed**

*(Repealed by Acts 1977, P.L.38, SEC.8.)*

**IC 4-22-2-7.1**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-8**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-9**

**Repealed**

*(Repealed by Acts 1977, P.L.38, SEC.8.)*

**IC 4-22-2-10**

**Repealed**

*(Repealed by Acts 1977, P.L.38, SEC.8.)*

**IC 4-22-2-11**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-12**

**Repealed**

*(Repealed by P.L.31-1985, SEC.50.)*

**IC 4-22-2-13**

**Application of chapter**

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.

(d) Except as specifically set forth in IC 13-14-9, sections 24, 26, 27, and 29 of this chapter do not apply to rulemaking actions under IC 13-14-9.

*As added by P.L.31-1985, SEC.2. Amended by P.L.18-1990, SEC.8; P.L.2-1991, SEC.21; P.L.34-1993, SEC.1; P.L.44-1995, SEC.1; P.L.1-1996, SEC.28; P.L.57-2000, SEC.1; P.L.2-2007, SEC.52.*

#### **IC 4-22-2-14**

##### **Procedural rights and duties**

Sec. 14. This chapter creates only procedural rights and imposes only procedural duties. These procedural rights and duties are in addition to those created and imposed by other law.

*As added by P.L.31-1985, SEC.3.*

#### **IC 4-22-2-15**

##### **Delegation of rulemaking actions**

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 of this chapter, 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 of this chapter, 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.

*As added by P.L.31-1985, SEC.4. Amended by P.L.1-1991, SEC.15.*

#### **IC 4-22-2-16**

##### **"Governing body", "public agency", and "official action" defined**

Sec. 16. For the purposes of this section, "governing body", "public agency", and "official action" have the meanings set forth in IC 5-14-1.5. When a governing body of a public agency performs an official action under this chapter, the agency shall comply with IC 5-14-1.5 (the Open Door Law).

*As added by P.L.31-1985, SEC.5.*

#### **IC 4-22-2-17**

##### **Public access to rules and proposed rules**

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 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.

*As added by P.L.31-1985, SEC.6.*

#### **IC 4-22-2-18**

##### **Joint rules**

Sec. 18. (a) If more than one (1) agency is required by statute to adopt the same rule, the agencies may publish a joint notice of a public hearing and conduct a joint public hearing. However, each agency shall separately draft and adopt a rule that covers the same subject matter.

(b) If an agency is authorized to adopt a rule and one (1) or more agencies are required to approve the rule, only the agency that is authorized to adopt the rule is required to comply with this chapter.

*As added by P.L.31-1985, SEC.7.*

#### **IC 4-22-2-19**

##### **Action preceding effectiveness of authorizing statute**

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) delegation;

(B) primacy; or

(C) 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.

(c) However, an agency shall:

- (1) begin the rulemaking process 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.

*As added by P.L.31-1985, SEC.8. Amended by P.L.44-1995, SEC.2; P.L.215-2005, SEC.1; P.L.123-2006, SEC.2; P.L.53-2014, SEC.56.*

#### **IC 4-22-2-19.1**

##### **Retroactive changes affecting taxpayer liability**

Sec. 19.1. A state agency may not retroactively apply a change in the agency's interpretation of a statute, regulation, or one of the agency's information bulletins, if that change increases a taxpayer's liability for a state tax or a property tax.

*As added by P.L.17-1996, SEC.1.*

#### **IC 4-22-2-19.5**

##### **Standards for rules**

Sec. 19.5. (a) To the extent possible, a rule adopted under this article or under IC 13-14-9.5 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.

*As added by P.L.17-1996, SEC.2.*

#### **IC 4-22-2-19.7**

##### **Agency rules; public comment**

Sec. 19.7. An agency, to the extent feasible and permitted by law, shall afford the public a meaningful opportunity to comment on proposed rules through the agency's Internet web site. An agency shall consider providing a comment period that exceeds the minimum required by law.

*As added by P.L.152-2012, SEC.5.*

#### **IC 4-22-2-20**

### **Submission of rules and other documents; form**

Sec. 20. (a) Whenever an agency submits a rule to the publisher, the attorney general, or the governor under this chapter, the agency shall submit the rule in the form of a written document that:

- (1) is clear, concise, and easy to interpret and to apply; and
- (2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

(b) After June 30, 2006, all documents submitted to the publisher under this chapter must be submitted electronically in the format specified by the publisher.

*As added by P.L.31-1985, SEC.9. Amended by P.L.215-2005, SEC.2; P.L.123-2006, SEC.3; P.L.291-2013, SEC.5; P.L.53-2014, SEC.57.*

### **IC 4-22-2-21 Version a**

#### **Incorporation by reference**

*Note: This version of section effective until 7-1-2016. See also following version of this section, effective 7-1-2016.*

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.

(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) 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.

*As added by P.L.31-1985, SEC.10. Amended by P.L.34-1993, SEC.2; P.L.6-1997, SEC.4; P.L.90-2002, SEC.9; P.L.28-2004, SEC.43; P.L.123-2006, SEC.4; P.L.149-2016, SEC.10.*

#### **IC 4-22-2-21 Version b**

##### **Incorporation by reference**

*Note: This version of section effective 7-1-2016. See also preceding version of this section, effective until 7-1-2016.*

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) 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.

*As added by P.L.31-1985, SEC.10. Amended by P.L.34-1993, SEC.2; P.L.6-1997, SEC.4; P.L.90-2002, SEC.9; P.L.28-2004, SEC.43; P.L.123-2006, SEC.4; P.L.149-2016, SEC.10; P.L.204-2016, SEC.7.*

#### **IC 4-22-2-22**

##### **Attorney general as legal advisor**

Sec. 22. The attorney general is the legal advisor to all agencies in the drafting and preparation of rules.

*As added by P.L.31-1985, SEC.11.*

#### **IC 4-22-2-22.5**

##### **Agency rulemaking docket**

Sec. 22.5. (a) This section applies to a rule that an agency intends to adopt under sections 24 through 36 of this chapter.

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

- (1) either:
  - (A) a notice of intent has been published under section 23 of this chapter; or
  - (B) a rulemaking action has been commenced under IC 13-14-9; 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. 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.

*As added by P.L.152-2012, SEC.6. Amended by P.L.72-2014, SEC.7.*

#### **IC 4-22-2-23**

##### **Notice of intent to adopt rule; solicitation of comments; response**

Sec. 23. (a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) 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. The publication notice must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule.

(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.

*As added by P.L.31-1985, SEC.12. Amended by P.L.44-1995, SEC.3; P.L.1-1996, SEC.29; P.L.215-2005, SEC.3; P.L.152-2012, SEC.7.*

#### **IC 4-22-2-23.1**

##### **Solicitation of comments**

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, 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.

*As added by P.L.44-1995, SEC.4. Amended by P.L.123-2006, SEC.5.*

#### **IC 4-22-2-24**

#### **Notice of public hearing; publication of rule's text; statement justifying requirements and costs**

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).

(c) The agency shall cause a notice of public hearing and 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 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.

(d) The agency shall include the following in the notice required by subsections (b) and (c):

(1) A statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened.

(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.

However, inadequacy or insufficiency of the subject matter description under subdivision (2) or a statement of justification under subdivision (3) in a notice does not invalidate a rulemaking action.

(e) 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) 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) 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 provide a written or an electronic mail authorization to proceed to the agency.

*As added by P.L.31-1985, SEC.13. Amended by P.L.188-2005, SEC.1; P.L.215-2005, SEC.4; P.L.239-2005, SEC.1; P.L.1-2006, SEC.71.*

#### **IC 4-22-2-25**

##### **Limitation on time in which to adopt rule**

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 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 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 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 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.

*As added by P.L.31-1985, SEC.14. Amended by P.L.44-1995, SEC.5; P.L.123-2006, SEC.6; P.L.53-2014, SEC.58; P.L.5-2015, SEC.6.*

#### **IC 4-22-2-26**

##### **Public hearings**

Sec. 26. (a) After the notices and the text of an agency's proposed rule are published under section 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.

(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.

*As added by P.L.31-1985, SEC.15.*

#### **IC 4-22-2-27**

##### **Consideration of comments received at public hearings**

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 at the public hearing required by section 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.

*As added by P.L.31-1985, SEC.16.*

#### **IC 4-22-2-28**

##### **Fiscal impact of rules; review**

Sec. 28. (a) The following definitions apply throughout this section:

(1) "Ombudsman" refers to the small business ombudsman designated under IC 4-4-35-8.

(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.

*As added by P.L.31-1985, SEC.17. Amended by P.L.44-1995, SEC.6; P.L.17-1996, SEC.3; P.L.240-2003, SEC.2; P.L.4-2005, SEC.20; P.L.188-2005, SEC.2; P.L.226-2005, SEC.1; P.L.123-2006, SEC.7; P.L.110-2010, SEC.2; P.L.291-2013, SEC.6; P.L.187-2014, SEC.9; P.L.53-2014, SEC.59; P.L.5-2015, SEC.7.*

#### **IC 4-22-2-28.1**

##### **Small business regulatory coordinator; contact information; guidance to small businesses; record of comments received; annual report**

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) As used in this section, "coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (e).

(c) As used in this section, "director" refers to the director or other administrative head of an agency.

(d) As used in this section, "small business" has the meaning set forth in IC 5-28-2-6.

(e) 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 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 4-4-35-8, and a statement of the resources available to regulated entities through the small business ombudsman designated under IC 4-4-35-8. 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) 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), the department 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, 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;
- (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) 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) 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) 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, 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) 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) 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) 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);
- (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 4-4-35-8.

*As added by P.L.239-2005, SEC.2. Amended by P.L.100-2006, SEC.2; P.L.123-2006, SEC.8; P.L.110-2010, SEC.3; P.L.133-2012, SEC.7; P.L.187-2014, SEC.10.*

#### **IC 4-22-2-28.2**

**Notice of rule violation by small businesses; immunity from liability in administrative action; corrective action required;**

**confidentiality of information**

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) 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.

*As added by P.L.239-2005, SEC.3. Amended by P.L.133-2012, SEC.8.*

#### **IC 4-22-2-29**

##### **Adoption of rules; adoption of revised version of proposed rule**

Sec. 29. (a) As used in this section, "small business ombudsman" refers to the small business ombudsman designated under IC 4-4-35-8.

(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 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 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 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) 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 24 of this chapter, unless it is a logical outgrowth of any proposed rule as supported by any written 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.

*As added by P.L.31-1985, SEC.18. Amended by P.L.12-1993, SEC.2; P.L.188-2005, SEC.3; P.L.109-2015, SEC.13.*

#### **IC 4-22-2-30**

##### **Repealed**

*(Repealed by P.L.44-1995, SEC.8.)*

#### **IC 4-22-2-31**

##### **Submission of rules to attorney general for approval**

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), 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) of this chapter.
- (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.

*As added by P.L.31-1985, SEC.20. Amended by P.L.34-1993, SEC.3; P.L.1-1996, SEC.30; P.L.215-2005, SEC.5; P.L.123-2006, SEC.9.*

#### **IC 4-22-2-32**

##### **Review of rule by attorney general; approval or disapproval**

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. 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 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); 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); or
  - (D) violates another law.

*As added by P.L.31-1985, SEC.21. Amended by P.L.36-1989, SEC.1; P.L.34-1993, SEC.4; P.L.12-1993, SEC.3; P.L.1-1996, SEC.31; P.L.1-2006, SEC.72.*

#### **IC 4-22-2-33**

##### **Submission of rules to governor for approval**

Sec. 33. (a) After a rule has been approved or deemed approved under section 32 of this chapter, the agency shall submit the rule to the governor for approval. 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.

(b) The agency shall submit to the governor the copies of the rule and other documents specified in section 31 of this chapter.

*As added by P.L.31-1985, SEC.22. Amended by P.L.215-2005,*

SEC.6.

**IC 4-22-2-34**

**Approval or disapproval of rule by governor**

Sec. 34. (a) The governor may approve or disapprove a rule submitted under section 33 of this chapter with or without cause.

(b) The governor has fifteen (15) days from the date that an agency submits a rule under section 33 of this chapter to approve or disapprove the rule. However, the governor may take thirty (30) days to approve or disapprove the rule if the governor files a statement with the publisher within the first fifteen (15) days after an agency submits the rule that states that the governor intends to take an additional fifteen (15) days to approve or disapprove the rule. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved, and the agency may submit the rule to the publisher without the approval of the governor.  
*As added by P.L.31-1985, SEC.23. Amended by P.L.123-2006, SEC.10.*

**IC 4-22-2-35**

**Submission of rule to publisher for filing**

Sec. 35. (a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the publisher for filing. 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.

(b) The agency shall submit to the publisher the copies of the rule and other documents specified in section 31 of this chapter.

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

(1) accept the rule for filing; and

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

*As added by P.L.31-1985, SEC.24. Amended by P.L.215-2005, SEC.7; P.L.123-2006, SEC.11.*

**IC 4-22-2-36**

**Effective date of rules**

Sec. 36. A rule that has been accepted for filing under section 35 of this chapter takes effect on the latest of the following dates:

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

(2) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 35 of this chapter.

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

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

*As added by P.L.31-1985, SEC.25.*



**IC 4-22-2-37**

**Repealed**

*(Repealed by P.L.1-1990, SEC.35.)*

**IC 4-22-2-37.1**

**Emergency rules; submission to publisher; assignment of document control number; effective date; expiration; extension**

Sec. 37.1. (a) The following do not apply to a rule adopted under this section:

- (1) Sections 24 through 36 of this chapter.
- (2) IC 13-14-9.

(b) A rule may be adopted under 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.

(c) After an agency adopts a rule under this section, the agency shall submit the rule to the publisher for the assignment of 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. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the publisher for filing. 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.

(e) 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 the rule is accepted.

(f) A 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 rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.
- (5) The statutory effective date for an emergency rule set forth in the statute authorizing the agency to adopt emergency rules.

(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) 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.

*As added by P.L.1-1990, SEC.36. Amended by P.L.24-1990, SEC.1; P.L.27-1991, SEC.1; P.L.2-1991, SEC.22; P.L.28-1991, SEC.1; P.L.29-1991, SEC.1; P.L.26-1991, SEC.1; P.L.2-1992, SEC.38; P.L.24-1992, SEC.1; P.L.2-1993, SEC.36; P.L.3-1993, SEC.239; P.L.34-1993, SEC.5; P.L.35-1993, SEC.1; P.L.277-1993(ss), SEC.125; P.L.1-1994, SEC.10; P.L.16-1994, SEC.1; P.L.15-1994, SEC.1; P.L.2-1995, SEC.5; P.L.1-1995, SEC.37; P.L.45-1995, SEC.1; P.L.47-1995, SEC.1; P.L.46-1995, SEC.1; P.L.2-1996, SEC.212; P.L.1-1996, SEC.32; P.L.17-1996, SEC.4; P.L.2-1997, SEC.12; P.L.27-1997, SEC.1; P.L.79-1998, SEC.4; P.L.273-1999, SEC.160; P.L.204-2001, SEC.6; P.L.287-2001, SEC.1; P.L.283-2001, SEC.1; P.L.1-2002, SEC.10; P.L.120-2002, SEC.1; P.L.1-2003, SEC.9; P.L.235-2003, SEC.1; P.L.255-2003, SEC.1; P.L.141-2003, SEC.1; P.L.1-2004, SEC.1; P.L.23-2004, SEC.1; P.L.4-2005, SEC.21; P.L.179-2005, SEC.1; P.L.235-2005, SEC.61; P.L.47-2006, SEC.2; P.L.1-2006, SEC.73; P.L.91-2006, SEC.2; P.L.123-2006, SEC.12; P.L.1-2007, SEC.17; P.L.111-2007, SEC.1; P.L.204-2007, SEC.2; P.L.233-2007, SEC.1; P.L.218-2007, SEC.1; P.L.8-2008, SEC.1; P.L.2-2008, SEC.17; P.L.3-2008, SEC.9; P.L.90-2008, SEC.1; P.L.131-2009, SEC.1; P.L.160-2009, SEC.1; P.L.177-2009, SEC.1; P.L.1-2010, SEC.8; P.L.35-2010, SEC.2; P.L.113-2010, SEC.9; P.L.11-2011, SEC.1; P.L.42-2011, SEC.2; P.L.119-2011, SEC.1; P.L.175-2011, SEC.1; P.L.229-2011, SEC.58; P.L.25-2012, SEC.1; P.L.48-2012, SEC.2; P.L.78-2012, SEC.1; P.L.160-2012, SEC.6; P.L.77-2012, SEC.1; P.L.133-2012, SEC.9; P.L.140-2013, SEC.1.*

#### **IC 4-22-2-38**

##### **Certain nonsubstantive rules; adoption; submission to publisher; document control number; effective date; objections**

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 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.

*As added by P.L.31-1985, SEC.27. Amended by P.L.1-1991, SEC.16;*

*P.L.123-2006, SEC.13.*

#### **IC 4-22-2-39**

##### **Acceptance of rule for filing by publisher**

Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, 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.

*As added by P.L.31-1985, SEC.28. Amended by P.L.19-1986, SEC.1; P.L.1-1991, SEC.17; P.L.215-2005, SEC.8; P.L.123-2006, SEC.14.*

#### **IC 4-22-2-40**

##### **Recall of rule; readoption**

Sec. 40. (a) At any time before a rule is accepted for filing by the publisher under section 35, 37.1, 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) Sections 24 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. Sections 24 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 sections 24 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter.

(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 initial fiscal impact statement under section 28 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 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, or 38 of this chapter. *As added by P.L.31-1985, SEC.29. Amended by P.L.1-1991, SEC.18; P.L.12-1993, SEC.4; P.L.123-2006, SEC.15; P.L.291-2013, SEC.7; P.L.53-2014, SEC.60.*

#### **IC 4-22-2-41**

##### **Withdrawal of rule**

Sec. 41. (a) At any time before a rule is accepted by the publisher for filing under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) Sections 24 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.

*As added by P.L.31-1985, SEC.30. Amended by P.L.1-1991, SEC.19; P.L.123-2006, SEC.16.*

**IC 4-22-2-42**

**Establishment of publishing format**

Sec. 42. The publisher, with the assistance of the code revision commission, shall establish a format, a numbering system, standards, and techniques for agencies to use whenever they draft and prepare rules under this chapter.

*As added by P.L.31-1985, SEC.31.*

**IC 4-22-2-43**

**Rules interpreting, implementing, or supplementing this chapter**

Sec. 43. (a) Subject to section 42 of this chapter, the attorney general may adopt rules under this chapter to interpret or implement this chapter.

(b) An agency may adopt rules under this chapter to supplement the procedures in this chapter for its own rulemaking actions.

*As added by P.L.31-1985, SEC.32.*

**IC 4-22-2-44**

**Failure to comply with provisions of this chapter; exception**

Sec. 44. Except as provided in section 44.3 of this chapter, a rulemaking action that does not conform with this chapter is invalid, and a rule that is the subject of a noncomplying rulemaking action does not have the effect of law until it is adopted in conformity with this chapter. However, the failure of an agency to comply with section 20(a)(2) of this chapter does not invalidate the rulemaking action.

*As added by P.L.31-1985, SEC.33. Amended by P.L.36-1989, SEC.2; P.L.1-2006, SEC.74; P.L.220-2011, SEC.46.*

**IC 4-22-2-44.3**

**Exceptions to section 44 of chapter**

Sec. 44.3. (a) Notwithstanding the addition of section 44 of this chapter by P.L.31-1985, a rule that is in effect on August 31, 1985, is not invalidated by the passage of P.L.31-1985.

(b) Notwithstanding the addition of section 44 of this chapter by P.L.31-1985, a rule that is the subject of a rulemaking action before September 1, 1985, and:

(1) is not accepted for filing by the secretary of state before September 1, 1985; or

(2) is accepted for filing by the secretary of state before September 1, 1985, but is not effective before September 1, 1985;

is effective if it is adopted in conformity with the law in effect on August 31, 1985, or with this chapter, as in effect on the date of adoption of the rule.

(c) The format, numbering system, standards, and techniques that were developed by the legislative council for the drafting and preparation of rules before September 1, 1985, continue to apply to the drafting and preparation of rules until changed under P.L.31-1985.

*As added by P.L.220-2011, SEC.47.*

#### **IC 4-22-2-45**

##### **Invalidity of rule; assertion; limitation**

Sec. 45. A:

- (1) claim; or
- (2) defense;

that asserts that a rule is invalid on procedural grounds may not be asserted if the claim or defense is based on rulemaking procedures that were followed or should have been followed by a board described in IC 13-14-9-1 or the department in adopting a rule under this chapter unless the claim or defense that asserts the procedural defect is filed not more than two (2) years after the date the rule becomes effective. However, a claim may be filed or a defense raised at any time for an alleged procedural defect that is alleged to have caused substantial harm to the due process rights of an individual.

*As added by P.L.34-1993, SEC.6. Amended by P.L.1-1996, SEC.33.*

#### **IC 4-22-2-46**

##### **Repealed**

*(As added by P.L.44-1995, SEC.7. Amended by P.L.17-1996, SEC.6; P.L.291-2013, SEC.8. Repealed by P.L.53-2014, SEC.61.)*