

Updated February 13, 2023 (8:22am)

HOUSE BILL No. 1623

AM162305 has been incorporated into introduced printing.

Synopsis: Administrative rulemaking.

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Introduced

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 BILL No. 1623

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

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

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

6 (1) ~~the governor; and~~
7 (2) ~~the legislative council;~~
8 ~~an assessment of the rule's effect on Indiana business. The OMB shall~~
9 ~~submit the cost benefit analysis to the legislative council in an~~
10 ~~electronic format under IC 5-14-6.~~

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

2023

IN 1623—LS 7025/DI 125



DOCUMENT HAS NOT BEEN CHECKED FOR ACCURACY

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

9 (1) This subsection does not empower the OMB or an agency to
 10 require an interested party or a regulated person to provide any
 11 materials, documents, or other information. ~~in connection with~~
 12 ~~a cost benefit analysis under this section.~~ If an interested party or
 13 a regulated person voluntarily provides materials, documents, or
 14 other information to the OMB or an agency, ~~in connection with~~
 15 ~~a cost benefit analysis under this section;~~ the OMB or the
 16 agency, as applicable, shall ensure the adequate protection of
 17 any:

- 18 (A) information that is confidential under IC 5-14-3-4; or
 19 (B) confidential and proprietary business plans and other
 20 confidential information.

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

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

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

- 40 ~~(e) If the OMB finds that a proposed rule is:~~
 41 ~~(1) an adoption or incorporation by reference of a federal law;~~
 42 ~~regulation; or rule that has no substantive effect on the scope or~~

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1 intended application of the federal law or rule; or
 2 (2) a technical amendment with no substantive effect on an
 3 existing Indiana rule;
 4 the OMB may not prepare a cost benefit analysis of the rule under this
 5 section. The agency shall submit the proposed rule to the OMB with a
 6 statement explaining how the proposed rule meets the requirements of
 7 this subsection. If the OMB finds that the rule meets the requirements
 8 of this subsection, the OMB shall provide its findings to the governor
 9 and to the legislative council in an electronic format under IC 5-14-6.
 10 If the agency amends or modifies the proposed rule after the OMB
 11 finds that a cost benefit analysis may not be prepared for the rule, the
 12 agency shall resubmit the proposed rule to the OMB either for a new
 13 determination that the rule meets the requirements of this subsection,
 14 or for the OMB to prepare a cost benefit analysis of the rule under this
 15 section.

16 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 in the**
 19 **2023 session of the general assembly only apply to agency actions**
 20 **commenced under IC 4-21.5-3 after June 30, 2023.**

21 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
 22 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
 24 concerning an agency action, the administrative law judge shall order
 25 the agency to pay the reasonable attorney's fees incurred in the
 26 proceeding by the party challenging the agency action if the party
 27 challenging the agency action proves, by a preponderance of the
 28 evidence, that:

- 29 (1) the agency's action was frivolous or groundless; or
- 30 (2) the agency pursued the action in bad faith;
- 31 **(3) the agency has failed to demonstrate that the agency**
- 32 **action is based on a standard or an interpretation of a**
- 33 **standard that has the force of law; or**
- 34 **(4) the agency has failed to demonstrate that the agency**
- 35 **acted within its legal authority.**

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

- 41 (b) This chapter does not apply to the following agencies:
- 42 (1) Any military officer or board.

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- 1 (2) Any state educational institution.
- 2 (c) This chapter does not apply to a rulemaking action that results
- 3 in any of the following rules:
- 4 (1) A resolution or directive of any agency that relates solely to
- 5 internal policy, internal agency organization, or internal
- 6 procedure and does not have the effect of law.
- 7 (2) A restriction or traffic control determination of a purely local
- 8 nature that:
- 9 (A) is ordered by the commissioner of the Indiana
- 10 department of transportation;
- 11 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or
- 12 IC 9-20-7; and
- 13 (C) applies only to one (1) or more particularly described
- 14 intersections, highway portions, bridge causeways, or
- 15 viaduct areas.
- 16 (3) A rule adopted by the secretary of state under
- 17 IC 26-1-9.1-526.
- 18 (4) An executive order or proclamation issued by the governor.
- 19 **(5) A rule adopted by the board of trustees of the Indiana**
- 20 **public retirement system, as provided in IC 5-10.5-4-2.**
- 21 **However, the board shall submit rules adopted by the board**
- 22 **to the publisher for publication in the Indiana Register.**
- 23 (d) Except as specifically set forth in IC 13-14-9, **IC 13-14-9**
- 24 **provides alternative procedures for notice and public comment**
- 25 **concerning proposed rules for the environmental rules board and**
- 26 **the underground storage tank financial assurance board. The**
- 27 **department of environmental management, the environmental**
- 28 **rules board, and the underground storage tank financial assurance**
- 29 **board shall comply with the procedures in IC 13-14-9 in lieu of**
- 30 **complying with sections 23, 24, 26, 27, and 29 of this chapter. ~~do not~~**
- 31 **apply to rulemaking actions under IC 13-14-9. In adopting rules, all**
- 32 **other provisions of IC 4-22-2 apply to these agencies, including**
- 33 **sections 22.7 and 22.8 of this chapter.**
- 34 SECTION 5. IC 4-22-2-15 IS AMENDED TO READ AS
- 35 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking
- 36 action that this chapter allows or requires an agency to perform, other
- 37 than final adoption of a rule under section 29, ~~or~~ 37.1, **or 37.2** of this
- 38 chapter **or IC 13-14-9**, may be performed by the individual or group of
- 39 individuals with the statutory authority to adopt rules for the agency, a
- 40 member of the agency's staff, or another agent of the agency. Final
- 41 adoption of a rule under section 29, ~~or~~ 37.1, **or 37.2** of this chapter **or**
- 42 **IC 13-14-9**, including readoption of a rule that is subject to sections 24

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1 through 36 or to section 37.1 of this chapter and recalled for further
 2 consideration under section 40 of this chapter, may be performed only
 3 by the individual or group of individuals with the statutory authority to
 4 adopt rules for the agency.

5 SECTION 6. IC 4-22-2-17 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) IC 5-14-3
 7 applies to the text of a rule that an agency intends to adopt from the
 8 earlier of the date that the agency takes any action under ~~section 24~~
 9 **section 23** of this chapter, otherwise notifies the public of its intent to
 10 adopt a rule under any statute, or adopts the rule.

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

13 SECTION 7. IC 4-22-2-17.5 IS ADDED TO THE INDIANA
 14 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2023]: **Sec. 17.5. The legislative services**
 16 **agency shall provide electronic summaries or electronic copies of**
 17 **documents submitted to the publisher under this article or**
 18 **IC 13-14-9 to legislators and legislative committees in the manner**
 19 **and on the schedule specified by the legislative council or the**
 20 **personnel subcommittee of the legislative council acting for the**
 21 **legislative council.**

22 SECTION 8. IC 4-22-2-19.5 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19.5. (a) To the extent
 24 possible, a rule adopted under this article ~~or under IC 13-14-9.5~~ shall
 25 comply with the following:

26 (1) Minimize the expenses to:

27 (A) regulated entities that are required to comply with the
 28 rule;

29 (B) persons who pay taxes or pay fees for government
 30 services affected by the rule; and

31 (C) consumers of products and services of regulated entities
 32 affected by the rule.

33 (2) Achieve the regulatory goal in the least restrictive manner.

34 (3) Avoid duplicating standards found in state or federal laws.

35 (4) Be written for ease of comprehension.

36 (5) Have practicable enforcement.

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

39 SECTION 9. IC 4-22-2-21, AS AMENDED BY P.L.204-2016,
 40 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2023]: Sec. 21. (a) If incorporation of the text in full would be
 42 cumbersome, expensive, or otherwise inexpedient, an agency may

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- 1 incorporate by reference into a rule part or all of any of the following
 2 matters:
- 3 (1) A federal or state statute, rule, or regulation.
 - 4 (2) A code, manual, or other standard adopted by an agent of the
 5 United States, a state, or a nationally recognized organization or
 6 association.
 - 7 (3) A manual of the department of local government finance
 8 adopted in a rule described in IC 6-1.1-31-9.
 - 9 (4) The following requirements:
 - 10 (A) The schedule, electronic formatting, and standard data,
 11 field, and record coding requirements for:
 - 12 (i) the electronic data file under IC 6-1.1-4-25
 13 concerning the parcel characteristics and parcel
 14 assessments of all parcels and personal property return
 15 characteristics and assessments; and
 - 16 (ii) the electronic data file under IC 36-2-9-20
 17 concerning the tax duplicate.
 - 18 (B) The schedule, electronic formatting, and standard data,
 19 field, and record coding requirements for data required to
 20 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.
 - 21 (C) Data export and transmission format requirements for
 22 information described in clauses (A) and (B).
 - 23 (b) Each matter incorporated by reference under subsection (a)
 24 must be fully and exactly described.
 - 25 (c) An agency may refer to a matter that is directly or indirectly
 26 referred to in a primary matter by fully and exactly describing the
 27 primary matter.
 - 28 (d) **Except as otherwise provided in this article**, whenever an
 29 agency submits a rule to the attorney general, the governor, or the
 30 publisher under this chapter, the agency shall also submit a copy of the
 31 full text of each matter incorporated by reference under subsection (a)
 32 into the rule, other than the following:
 - 33 (1) An Indiana statute or rule.
 - 34 (2) A form or instructions for a form numbered by the Indiana
 35 archives and record administration under IC 5-15-5.1-6.
 - 36 (3) The source of a statement that is quoted or paraphrased in
 37 full in the rule.
 - 38 (4) Any matter that has been previously filed with the:
 - 39 (A) secretary of state before July 1, 2006; or
 - 40 (B) publisher after June 30, 2006.
 - 41 (5) Any matter referred to in subsection (c) as a matter that is
 42 directly or indirectly referred to in a primary matter.

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

4 SECTION 10. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014,
 5 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2023]: Sec. 22.5. (a) This section applies to a rule that an
 7 agency intends to:

8 (1) adopt under sections 24 through 36 of this chapter **or section**
 9 **37.3 of this chapter; and**

10 (2) **readopt under IC 4-22-2.6.**

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

13 (1) either:

14 (A) a notice of ~~intent~~ **the first public comment period** has
 15 been published under section 23 **or 37.3** of this chapter; ~~or~~

16 (B) a rulemaking action has been commenced under
 17 IC 13-14-9; ~~and or~~

18 (C) **a rulemaking action has been commenced under**
 19 **IC 4-22-2.6; and**

20 (2) the rule has not become effective under section 36 of this
 21 chapter.

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

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

26 (1) the subject matter of the proposed rule;

27 (2) notices related to the proposed rule, or links to the Indiana
 28 Register where these notices may be viewed;

29 (3) how comments may be made;

30 (4) the time within which comments may be made;

31 (5) where comments and the agency's written response to those
 32 comments may be inspected;

33 (6) the date, time, and place where a public hearing required
 34 under:

35 (A) section 26 of this chapter; ~~or~~

36 (B) IC 13-14-9; ~~or~~

37 (C) **IC 4-22-2.6;**

38 will be held;

39 (7) a description of relevant scientific and technical findings
 40 related to the proposed rule, if applicable; and

41 (8) a reasonable estimate of the timetable for action, updated
 42 periodically as circumstances change, if necessary.

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

8 SECTION 11. IC 4-22-2-22.7 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2023]: **Sec. 22.7. (a) Before complying with**
 11 **section 22.8 of this chapter, an agency shall conduct a regulatory**
 12 **analysis for the proposed rule. The regulatory analysis must**
 13 **evaluate whether the proposed rule does the following:**

14 (1) **Minimizes expenses to:**

15 (A) **regulated entities that are required to comply with**
 16 **the rule;**

17 (B) **persons who pay taxes or pay fees for government**
 18 **services affected by the rule; and**

19 (C) **consumers of products and services of regulated**
 20 **entities affected by the rule.**

21 (2) **Achieves the regulatory goal in the least restrictive**
 22 **manner.**

23 (3) **Has benefits that exceed the fiscal and economic costs of**
 24 **the proposed rule.**

25 (4) **Avoids duplicating and conflicting standards with other**
 26 **federal, state, or local laws, rules, regulations, or ordinances.**

27 (5) **Is written for ease of comprehension.**

28 (6) **Has practicable enforcement.**

29 (b) **The office of management and budget shall set standards**
 30 **for the criteria, analytical method, treatment technology,**
 31 **economic, fiscal, and other background data to be used by an**
 32 **agency in the regulatory analysis. The regulatory analysis,**
 33 **including supporting data, must be submitted in a form that can be**
 34 **easily loaded into commonly used business analysis software and**
 35 **published in the Indiana Register using the format jointly**
 36 **developed by the publisher, the office of management and budget,**
 37 **and the budget agency. The office of management and budget may**
 38 **provide more stringent requirements for rules with fiscal impacts**
 39 **and costs above a threshold amount determined by the office of**
 40 **management and budget. At a minimum, the regulatory analysis**
 41 **must include findings and any supporting data, studies, or analyses**
 42 **prepared for a rule that demonstrate compliance with the**



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1 following:

2 (1) A requirement in IC 4-3-22-13 explaining how the
3 proposed rule meets the cost benefit requirements in
4 IC 4-3-22-13.

5 (2) A requirement in section 19.5 of this chapter to minimize
6 the expenses to regulated entities that are required to comply
7 with the rule.

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

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

10 (B) not expressly required by:

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

13 (ii) any other state or federal law.

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

18 (4) A requirement in IC 4-22-2.1-5 to prepare a statement
19 that describes the annual economic impact of a rule on all
20 small businesses after the rule is fully implemented.

21 (5) A requirement in IC 4-22-2.6 to conduct a review to
22 consider whether there are any alternative methods of
23 achieving the purpose of the rule that are less costly or less
24 intrusive, or that would otherwise minimize the economic
25 impact of the proposed rule on small businesses.

26 (6) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
27 information concerning the fiscal or economic impact of a
28 rule or alternatives to a rule subject to these provisions.

29 (7) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
30 information concerning differences between the rule and
31 federal law or the annual fiscal and economic impact of any
32 element of the proposed rule that imposes a restriction or
33 requirement that is more stringent than a restriction or
34 requirement imposed under federal law or that applies in a
35 subject area in which federal law does not impose
36 restrictions or requirements.

37 (8) A requirement under any other law to conduct an
38 analysis of the cost, benefits, economic impact, or fiscal
39 impact of a rule.

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



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1 SECTION 12. IC 4-22-2-22.8 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2023]: **Sec. 22.8. (a) After conducting a**
 4 **regulatory analysis under section 22.7 of this chapter, an agency**
 5 **may submit a request to the budget agency and the office of**
 6 **management and budget to authorize commencement of the first**
 7 **and second public comment periods under this chapter or**
 8 **IC 13-14-9 (as applicable). The request must include the following:**

9 (1) A general description of the subject matter of the
 10 proposed rule.

11 (2) The full text of the proposed rule (including a copy of any
 12 matter incorporated by reference under section 21 of this
 13 chapter) in the form required by the publisher, including
 14 citations to any related authorizing and affected Indiana
 15 statutes.

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

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

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

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

28 (2) Authorize the commencement of the first and second
 29 public comment periods on one (1) or more of the rules in the
 30 request with or without changes.

31 (3) Disapprove commencement of the first and second public
 32 comment periods on one (1) or more of the rules with a
 33 statement of reasons for the disapproval.

34 (c) If an agency has requested authorization for more than one
 35 (1) rule in the same request, the budget agency and the office of
 36 management and budget may make separate determinations with
 37 respect to some or all of the rules in the request. Approval of a
 38 request shall be treated as a determination that the review
 39 conducted and findings made by the agency comply with the
 40 requirements of section 22.7 of this chapter and this section.

41 (d) Notice of the determination shall be provided to the agency
 42 in an electronic format required by the publisher. The budget



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1 agency and the office of management and budget may return to the
2 agency any copy of a matter incorporated by reference under
3 section 21 of this chapter that was submitted with the request.

4 (e) If an agency revises a proposed rule after the budget
5 agency and the office of management and budget authorize
6 commencement of the first and second public comment periods, the
7 agency shall resubmit to the publisher, the budget agency, and the
8 office of management and budget sufficient information for the
9 budget agency and the office of management and budget to
10 determine the impact the revisions have on the regulatory analysis
11 previously reviewed by the budget agency and the office of
12 management and budget.

13 SECTION 13. IC 4-22-2-23, AS AMENDED BY P.L.152-2012,
14 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules
16 adopted under IC 4-22-2-37.1. An agency may not adopt a proposed
17 rule until the agency has conducted at least two (2) public comment
18 periods, each of which must be at least thirty (30) days in length.

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

27 (1) The full text of the agency's proposed rule (excluding the
28 full text of a matter incorporated by reference under section
29 21 of this chapter). The agency shall submit the rule in the
30 form required by section 20 of this chapter and with the
31 documents required by section 21 of this chapter.

32 (2) The latest version of the regulatory analysis, including
33 supporting data and studies, submitted to the budget agency
34 and the office of management and budget under section 22.8
35 of this chapter.

36 (3) The determination of the budget agency and the office of
37 management and budget authorizing commencement of the
38 first and second public comment periods on the proposed
39 rule.

40 (4) The notice required under subsection (c).

41 (c) The publication notice of the first comment period must
42 include the following:

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- 1 **(1) A general description of the subject matter of the**
 2 **proposed rule.**
 3 **(2) An overview of the intent and scope of the proposed rule and**
 4 **the statutory authority for the rule.**
 5 **(3) The latest version of the regulatory analysis submitted to**
 6 **the budget agency and the office of management and budget**
 7 **under section 22.8 of this chapter, excluding any appendices**
 8 **containing any data, studies, or analysis referenced in the**
 9 **regulatory analysis.**
 10 **(4) Information concerning where, when, and how a person**
 11 **may submit written comments on the proposed rule,**
 12 **including contact information concerning the small business**
 13 **regulatory coordinator required by section 28.1 of this**
 14 **chapter.**
 15 **(5) Information concerning where, when, and how a person**
 16 **may inspect and copy the regulatory analysis, and any data,**
 17 **studies, or analyses referenced under subdivision (3).**
 18 **(6) Information concerning where, when, and how a person**
 19 **may inspect any documents incorporated by reference into**
 20 **the proposed rule under section 21 of this chapter.**
 21 **(7) An indication that the notice is for the first of two (2)**
 22 **thirty (30) day periods in which the public may comment on**
 23 **the proposed rule.**
- 24 **Inadequacy or insufficiency of the published description or**
 25 **regulatory analysis published under this section does not invalidate**
 26 **a rulemaking action.**
- 27 (e) The requirement to publish a notice of intent to adopt a rule
 28 under subsection (b) does not apply to rulemaking under IC 13-14-9.
 29 (d) In addition to the procedures required by this article, an agency
 30 may solicit comments from the public on the need for a rule; the
 31 drafting of a rule; or any other subject related to a rulemaking action;
 32 including members of the public who are likely to be affected because
 33 they are the subject of the potential rulemaking or are likely to benefit
 34 from the potential rulemaking. The procedures that the agency may use
 35 include the holding of conferences and the inviting of written
 36 suggestions, facts, arguments, or views.
 37 (e) The agency shall prepare a written response that contains a
 38 summary of the comments received during any part of the rulemaking
 39 process. The written response is a public document. The agency shall
 40 make the written response available to interested parties upon request.
 41 (d) The publisher shall review materials submitted under this
 42 section and determine the date that the publisher intends to publish



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

8 (1) The notice of the first comment period.

9 (2) The full text of the agency's proposed rule (excluding the
 10 full text of a matter incorporated by reference under section
 11 21 of this chapter).

12 SECTION 14. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006,
 13 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2023]: Sec. 23.1. (a) This section and section 19(b) of this
 15 chapter do not apply to rules adopted under IC 4-22-2-37.1.

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

26 SECTION 15. IC 4-22-2-24, AS AMENDED BY P.L.1-2006,
 27 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its
 29 intention to adopt a rule by complying with the publication
 30 requirements in subsections (b) and (c): provide notice in:

31 (1) one (1) newspaper of general circulation in Marion
 32 County; and

33 (2) the Indiana Register;

34 of the second public comment period required by section 23 of this
 35 chapter.

36 (b) The agency shall cause a notice of a public hearing to be
 37 published once in one (1) newspaper of general circulation in Marion
 38 County, Indiana. To publish the newspaper notice, the agency shall
 39 directly contract with the newspaper. The newspaper notice must
 40 contain the following information:

41 (1) A general description of the subject matter of the
 42 proposed rule.



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- 1 **(2) Information indicating that the text of the proposed rule**
- 2 **has been published in the Indiana Register and where on the**
- 3 **Internet and by what document control number the**
- 4 **proposed rule can be found.**
- 5 **(3) A statement of the date, time, and place at which the**
- 6 **public hearing required by section 26 of this chapter will be**
- 7 **convened.**
- 8 **(4) Information concerning where, when, and how a person**
- 9 **may provide written comments on the proposed rule,**
- 10 **including contact information concerning the small business**
- 11 **regulatory coordinator required by section 28.1 of this**
- 12 **chapter.**
- 13 **(5) Information concerning where, when, and how a person**
- 14 **may inspect and copy the agency's regulatory analysis, and**
- 15 **any supporting data, studies, or analyses for the proposed**
- 16 **rule.**
- 17 **(6) Information concerning where, when, and how a person**
- 18 **may inspect any documents incorporated by reference into**
- 19 **the proposed rule under section 21 of this chapter.**

20 An agency may not contract for the publication of a notice under this
 21 chapter until the agency has received a written or an electronic
 22 authorization to proceed from the publisher under subsection ~~(g)~~: **(f)**.

23 **(c) To publish a notice of the second comment period in the**
 24 **Indiana Register, the agency must submit the following to the**
 25 **publisher:**

- 26 **(1) The agency shall cause a notice of public hearing and The**
- 27 **full text of the agency's proposed rule (excluding the full text of**
- 28 **a matter incorporated by reference under section 21 of this**
- 29 **chapter).~~to be published once in the Indiana Register. To~~**
- 30 **~~publish the notice and proposed rule in the Indiana Register; the~~**
- 31 **~~agency shall submit the text to the publisher in accordance with~~**
- 32 **~~subsection (g).~~ The agency shall submit the rule in the form**
- 33 **required by section 20 of this chapter and with the documents**
- 34 **required by section 21 of this chapter **(if the agency has not****
- 35 ****previously provided the publisher with the documents).** The**
- 36 **publisher shall determine the number of copies of the rule and**
- 37 **other documents to be submitted under this ~~subsection.~~**
- 38 **~~subdivision.~~**
- 39 **(2) Either a statement indicating that no changes in the**
- 40 **regulatory analysis have been made from the version of the**
- 41 **regulatory analysis published under section 23 of this**
- 42 **chapter or the latest version of the regulatory analysis**

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1 (including any appendices containing any data, studies, or
 2 analysis referenced in the regulatory analysis) submitted to
 3 the budget agency and the office of management and budget
 4 under section 22.8 of this chapter, if any changes have been
 5 made in the regulatory analysis after submitting the material
 6 under section 23 of this chapter.

7 **(3) The notice required under subsection (d).**

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

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

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

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

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

18 (B) not expressly required by:

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

20 or

21 (ii) any other state or federal law.

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

26 (4) an explanation that:

27 (A) the proposed rule; and

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

30 may be inspected and copied at the office of the agency.

31 **(3) A summary of the response of the agency to written**
 32 **comments submitted under section 23 of this chapter during**
 33 **the first public comment period.**

34 **(4) Either a statement indicating that no changes in the**
 35 **regulatory analysis have been made from the version of the**
 36 **regulatory analysis published under section 23 of this**
 37 **chapter or the latest version of the regulatory analysis**
 38 **(excluding any appendices containing any data, studies, or**
 39 **analysis referenced in the regulatory analysis) submitted to**
 40 **the budget agency and the office of management and budget**
 41 **under section 22.8 of this chapter, if any changes have been**
 42 **made in the regulatory analysis after submitting the material**

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1 to the publisher under section 23 of this chapter.

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

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

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

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

18 **(9) An indication that the notice is for the second of two (2)**
 19 **thirty (30) day periods in which the public may comment on**
 20 **the proposed rule and that following the second comment**
 21 **period the agency may adopt a version of the proposed rule**
 22 **that is the same as or does not substantially differ from the**
 23 **text of the proposed rule published under this section.**

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

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

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

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

38 ~~(1) establishing the intended publication date; and~~

39 ~~(2) receiving the public hearing information specified in~~
 40 ~~subsection (d) from the agency;~~

41 ~~the publisher shall~~ **If the submitted material complies with this**
 42 **section, the publisher shall establish the intended publication date,**

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1 **assign a document control number to the proposed rule, and**
 2 provide a written or an electronic mail authorization to proceed to the
 3 agency. **The publisher shall publish the following in the Indiana**
 4 **Register on the intended publication date:**

5 **(1) The notice of the second comment period.**

6 **(2) The full text of the agency's proposed rule (excluding the**
 7 **full text of a matter incorporated by reference under section**
 8 **21 of this chapter).**

9 SECTION 16. IC 4-22-2-25, AS AMENDED BY P.L.5-2015,
 10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2023]: Sec. 25. (a) An agency has one (1) year from the date
 12 that it publishes a notice of ~~intent to adopt a rule in the Indiana Register~~
 13 ~~under section 23 of this chapter to comply with sections 26 through 33~~
 14 ~~of this chapter the first public comment period under section 23 of~~
 15 **this chapter to comply with sections 23 through 33 of this chapter**
 16 and obtain the approval or deemed approval of the governor. If an
 17 agency determines that a rule cannot be adopted within one (1) year
 18 after the publication of the notice of ~~intent to adopt a rule~~ **the first**
 19 **public comment period** under section 23 of this chapter, the agency
 20 shall, before the two hundred fiftieth day following the publication of
 21 the notice of ~~intent to adopt a rule~~ **the first public comment period**
 22 under section 23 of this chapter, notify the publisher by electronic
 23 means:

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

26 (2) the expected date the rule will be approved or deemed
 27 approved by the governor or withdrawn under section 41 of this
 28 chapter.

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

30 (1) one (1) year after the agency publishes notice of ~~intent to~~
 31 ~~adopt the rule~~ **the first public comment period** under section 23
 32 of this chapter; or

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

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

38 SECTION 17. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,
 39 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout
 41 this section:

42 (1) "Ombudsman" refers to the small business ombudsman

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- 1 designated under IC 5-28-17-6.
- 2 (2) "Total estimated economic impact" means the direct annual
- 3 economic impact of a rule on all regulated persons after the rule
- 4 is fully implemented under subsection (g).
- 5 (b) The ombudsman:
- 6 (1) shall review a proposed rule that
- 7 (A) imposes requirements or costs on small businesses (as
- 8 defined in IC 4-22-2.1-4); and
- 9 (B) is referred to the ombudsman by an agency under
- 10 IC 4-22-2.1-5(c); and
- 11 (2) may review a proposed rule that imposes requirements or
- 12 costs on businesses other than small businesses (as defined in
- 13 IC 4-22-2.1-4).

14 After conducting a review under subdivision (1) or (2), the ombudsman
 15 may suggest alternatives to reduce any regulatory burden that the
 16 proposed rule imposes on small businesses or other businesses. The
 17 agency that intends to adopt the proposed rule shall respond in writing
 18 to the ombudsman concerning the ombudsman's comments or
 19 suggested alternatives before adopting the proposed rule under section
 20 29 of this chapter.

21 (c) Subject to subsection (e) and not later than fifty (50) days
 22 before the public hearing for a proposed rule required by section 26 of
 23 this chapter, an agency shall submit the proposed rule to the office of
 24 management and budget for a review under subsection (d); if the
 25 agency proposing the rule determines that the rule will have a total
 26 estimated economic impact greater than five hundred thousand dollars
 27 (\$500,000) on all regulated persons. In determining the total estimated
 28 economic impact under this subsection, the agency shall consider any
 29 applicable information submitted by the regulated persons affected by
 30 the rule. To assist the office of management and budget in preparing
 31 the fiscal impact statement required by subsection (d), the agency shall
 32 submit, along with the proposed rule, the data used and assumptions
 33 made by the agency in determining the total estimated economic
 34 impact of the rule.

35 (d) Except as provided in subsection (e), before the adoption of the
 36 rule, and not more than forty-five (45) days after receiving a proposed
 37 rule under subsection (c), the office of management and budget shall
 38 prepare, using the data and assumptions provided by the agency
 39 proposing the rule, along with any other data or information available
 40 to the office of management and budget, a fiscal impact statement
 41 concerning the effect that compliance with the proposed rule will have
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1 (1) the state; and
 2 (2) all persons regulated by the proposed rule.
 3 The fiscal impact statement must contain the total estimated economic
 4 impact of the proposed rule and a determination concerning the extent
 5 to which the proposed rule creates an unfunded mandate on a state
 6 agency or political subdivision. The fiscal impact statement is a public
 7 document. The office of management and budget shall make the fiscal
 8 impact statement available to interested parties upon request and to the
 9 agency proposing the rule. The agency proposing the rule shall
 10 consider the fiscal impact statement as part of the rulemaking process
 11 and shall provide the office of management and budget with the
 12 information necessary to prepare the fiscal impact statement, including
 13 any economic impact statement prepared by the agency under
 14 IC 4-22-2.1-5. The office of management and budget may also receive
 15 and consider applicable information from the regulated persons
 16 affected by the rule in preparation of the fiscal impact statement.
 17 (e) With respect to a proposed rule subject to IC 13-14-9:
 18 (1) the department of environmental management shall give
 19 written notice to the office of management and budget of the
 20 proposed date of preliminary adoption of the proposed rule not
 21 less than sixty-six (66) days before that date; and
 22 (2) the office of management and budget shall prepare the fiscal
 23 impact statement referred to in subsection (d) not later than
 24 twenty-one (21) days before the proposed date of preliminary
 25 adoption of the proposed rule.
 26 (f) In determining whether a proposed rule has a total estimated
 27 economic impact greater than five hundred thousand dollars
 28 (\$500,000); the agency proposing the rule shall consider the impact of
 29 the rule on any regulated person that already complies with the
 30 standards imposed by the rule on a voluntary basis.
 31 (g) For purposes of this section, a rule is fully implemented after:
 32 (1) the conclusion of any phase-in period during which:
 33 (A) the rule is gradually made to apply to certain regulated
 34 persons; or
 35 (B) the costs of the rule are gradually implemented; and
 36 (2) the rule applies to all regulated persons that will be affected
 37 by the rule.
 38 In determining the total estimated economic impact of a proposed rule
 39 under this section, the agency proposing the rule shall consider the
 40 annual economic impact on all regulated persons beginning with the
 41 first twelve (12) month period after the rule is fully implemented. The
 42 agency may use actual or forecasted data and may consider the actual

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1 and anticipated effects of inflation and deflation. The agency shall
 2 describe any assumptions made and any data used in determining the
 3 total estimated economic impact of a rule under this section:

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

18 (i) An agency shall provide the legislative council in an electronic
 19 format under IC 5-14-6 with any economic impact or fiscal impact
 20 statement, including any supporting data, studies, or analysis, prepared
 21 for a rule proposed by the agency or subject to readoption by the
 22 agency to comply with:

23 (1) a requirement in section 19.5 of this chapter to minimize the
 24 expenses to regulated entities that are required to comply with
 25 the rule;

26 (2) a requirement in section 24 of this chapter to publish a
 27 justification of any requirement or cost that is imposed on a
 28 regulated entity under the rule;

29 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
 30 describes the annual economic impact of a rule on all small
 31 businesses after the rule is fully implemented;

32 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
 33 consider whether there are any alternative methods of achieving
 34 the purpose of the rule that are less costly or less intrusive, or
 35 that would otherwise minimize the economic impact of the
 36 proposed rule on small businesses;

37 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
 38 information concerning the fiscal impact of a rule or alternatives
 39 to a rule subject to these provisions; or

40 (6) a requirement under any other law to conduct an analysis of
 41 the cost, economic impact, or fiscal impact of a rule;

42 regardless of whether the total estimated economic impact of the



1 proposed rule is more than five hundred thousand dollars (\$500,000);
 2 as soon as practicable after the information is prepared. Information
 3 submitted under this subsection must identify the rule to which the
 4 information is related by document control number assigned by the
 5 publisher.

6 SECTION 18. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017,
 7 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2023]: Sec. 28.1. (a) This section applies to the following:

9 (1) A rule for which the notice required by section 23 of this
 10 chapter or by IC 13-14-9-3 is published by an agency or the
 11 board (as defined in IC 13-13-8-1).

12 (2) A rule for which:

13 (A) the notice required by IC 13-14-9-3; or

14 (B) an appropriate later notice for circumstances described
 15 in subsection (g);

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

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

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

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

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

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

38 (2) in the case of a rule proposed by the department of
 39 environmental management or the board (as defined in
 40 IC 13-13-8-1), the notice published under IC 13-14-9-3 or the
 41 findings published under IC 13-14-9-8(b)(1), whichever applies;
 42 must include the name, address, telephone number, and electronic mail

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1 address of the small business coordinator for the proposed rule, the
 2 name, address, telephone number, and electronic mail address of the
 3 small business ombudsman designated under IC 5-28-17-6, and a
 4 statement of the resources available to regulated entities through the
 5 small business ombudsman designated under IC 5-28-17-6. Subject to
 6 subsection (f), in the case of a rule finally adopted, the final rule, as
 7 published in the Indiana Register, must include the name, address,
 8 telephone number, and electronic mail address of the coordinator.

9 (f) This subsection applies to a rule adopted by the department of
 10 environmental management or the board (as defined in IC 13-13-8-1)
 11 under IC 13-14-9. Subject to subsection (g), the department shall
 12 include in the notice provided under IC 13-14-9-3 or in the findings
 13 published under IC 13-14-9-8(b)(1), whichever applies, and in the
 14 publication of the final rule in the Indiana Register:

15 (1) a statement of the resources available to regulated entities
 16 through the technical and compliance assistance program
 17 established under IC 13-28-3;

18 (2) the name, address, telephone number, and electronic mail
 19 address of the ombudsman designated under IC 13-28-3-2;

20 (3) if applicable, a statement of:

21 (A) the resources available to small businesses through the
 22 small business stationary source technical assistance
 23 program established under IC 13-28-5; and

24 (B) the name, address, telephone number, and electronic
 25 mail address of the ombudsman for small business
 26 designated under IC 13-28-5-2(3); and

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

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

36 (g) If the notice provided under IC 13-14-9-3 is not published as
 37 allowed by IC 13-14-9-7, the department of environmental
 38 management shall publish in the notice provided under IC 13-14-9-4
 39 the information that subsection (f) would otherwise require to be
 40 published in the notice under IC 13-14-9-3. If neither the notice under
 41 IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed
 42 by IC 13-14-9-8, the department of environmental management shall

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1 publish in the commissioner's written findings under IC 13-14-9-8(b)
 2 the information that subsection (f) would otherwise require to be
 3 published in the notice under IC 13-14-9-3.

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

8 (1) Any requirements imposed by the rule, including any
 9 reporting, record keeping, or accounting requirements.

10 (2) How the agency determines or measures compliance with the
 11 rule, including any deadlines for action by regulated entities.

12 (3) Any penalties, sanctions, or fines imposed for noncompliance
 13 with the rule.

14 (4) Any other concerns of small businesses with respect to the
 15 rule, including the agency's application or enforcement of the
 16 rule in particular situations. However, in the case of a rule
 17 adopted under IC 13-14-9, the coordinator assigned to the rule
 18 may refer a small business with concerns about the application
 19 or enforcement of the rule in a particular situation to the
 20 ombudsman designated under IC 13-28-3-2 or, if applicable,
 21 under IC 13-28-5-2(3).

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

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

31 (2) electronically through electronic gateway access.

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

37 (1) not later than ten (10) days after the date on which the rule is
 38 submitted to the publisher under section 35 of this chapter; and

39 (2) before July 15 of each year during which the rule remains in
 40 effect.

41 The coordinator and the director shall keep confidential any
 42 information concerning a small business to the extent that the

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- 1 information is exempt from public disclosure under IC 5-14-3-4.
- 2 (k) Not later than November 1 of each year, the director shall:
- 3 (1) compile the records received from all of the agency's
- 4 coordinators under subsection (j);
- 5 (2) prepare a report that sets forth:
- 6 (A) the number of comments, complaints, and questions
- 7 received by the agency from small businesses during the
- 8 most recent state fiscal year, categorized by the subject
- 9 matter of the rules involved;
- 10 (B) the number of complaints or questions reported under
- 11 clause (A) that were resolved to the satisfaction of the
- 12 agency and the small businesses involved;
- 13 (C) the total number of staff serving as coordinators under
- 14 this section during the most recent state fiscal year;
- 15 (D) the agency's costs in complying with this section during
- 16 the most recent state fiscal year; and
- 17 (E) the projected budget required by the agency to comply
- 18 with this section during the current state fiscal year; and
- 19 (3) deliver the report to the legislative council in an electronic
- 20 format under IC 5-14-6 and to the small business ombudsman
- 21 designated under IC 5-28-17-6.
- 22 SECTION 19. IC 4-22-2-29, AS AMENDED BY P.L.237-2017,
- 23 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2023]: Sec. 29. (a) As used in this section, "small business
- 25 ombudsman" refers to the small business ombudsman designated under
- 26 IC 5-28-17-6.
- 27 (b) After an agency has complied with sections ~~26, 27, and 22.8~~
- 28 **through** 28 of this chapter, the agency may:
- 29 (1) adopt a rule that is identical to a proposed rule published in
- 30 the Indiana Register under section 24 of this chapter;
- 31 (2) subject to subsection (c), adopt a rule that consolidates part
- 32 or all of two (2) or more proposed rules published in the Indiana
- 33 Register under section 24 of this chapter and considered under
- 34 section 27 of this chapter;
- 35 (3) subject to subsection (c), adopt part of one (1) or more
- 36 proposed rules described in subdivision (2) in two (2) or more
- 37 separate adoption actions; or
- 38 (4) subject to subsection (c), adopt a revised version of a
- 39 proposed rule published under section 24 of this chapter and
- 40 include provisions that did not appear in the published version,
- 41 including any provisions recommended by the small business
- 42 ombudsman under IC 4-22-2.1-6(a), if applicable.

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1 (c) An agency may not adopt a rule that substantially differs from
 2 the version or versions of the proposed rule or rules published in the
 3 Indiana Register under section 24 of this chapter, unless it is a logical
 4 outgrowth of any proposed rule as supported by any written comments
 5 submitted:

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

9 SECTION 20. IC 4-22-2-31, AS AMENDED BY P.L.123-2006,
 10 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2023]: Sec. 31. After an agency has complied with section 29
 12 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as
 13 applicable, the agency shall submit its rule to the attorney general for
 14 approval. The agency shall submit the following to the attorney
 15 general:

- 16 (1) The rule in the form required by section 20 of this chapter.
 17 (2) The documents required by section 21 of this chapter.
 18 (3) Written authorization to proceed issued by the publisher
 19 under ~~section 24(g)~~ **sections 23(d) and 24(f)** of this chapter.
 20 (4) Any other documents specified by the attorney general.

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

26 SECTION 21. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013,
 27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule
 29 adopted under this section:

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

33 **The amendments to this section made in the 2023 regular session**
 34 **of the general assembly apply to emergency rules that are accepted**
 35 **for filing by the publisher of the Indiana Register after June 30,**
 36 **2023, regardless of whether the adopting agency initiated official**
 37 **action to adopt the emergency rule before July 1, 2023. An action**
 38 **taken before July 1, 2023, in conformity with this section (as**
 39 **effective after June 30, 2023) is validated to the same extent as if**
 40 **the action was taken after June 30, 2023.**

41 (b) **An agency may adopt a rule ~~may be adopted under on a~~**
 42 **subject for which the agency has rulemaking authority using the**



1 **procedures in** this section if a statute delegating authority to an agency
2 to adopt rules authorizes adoption of such a rule:

3 (1) under this section; or

4 (2) in the manner provided by this section.

5 **the governor finds that the agency proposing to adopt the rule has**
6 **demonstrated to the satisfaction of the governor that use of**
7 **emergency rulemaking procedures under this section is necessary**
8 **to avoid:**

9 (1) **an imminent and substantial peril to public health, safety,**
10 **or welfare;**

11 (2) **an imminent and material loss of federal funds for an**
12 **agency program;**

13 (3) **an imminent and material deficit; or**

14 (4) **an imminent and substantial violation of a state or federal**
15 **law or the terms of a federal agreement or program.**

16 **To obtain the approval of the governor, an agency must submit to**
17 **the governor the text of the proposed emergency rule, a statement**
18 **justifying the need for emergency rulemaking procedures, and any**
19 **additional information required by the governor in the form and**
20 **in the manner required by the governor. A notice of determination**
21 **by the governor shall include findings that explain the basis for the**
22 **determination. The notice of determination shall be provided to the**
23 **agency in an electronic format. Approval of a request shall be**
24 **treated as a determination that the rule meets the criteria in this**
25 **subsection.**

26 (c) ~~After an agency adopts a rule under this section, the governor~~
27 **approves emergency rulemaking procedures for a rule,** the agency
28 shall submit the rule to the publisher for the assignment of obtain a
29 document control number. The agency shall submit the rule in the form
30 required by section 20 of this chapter and with the documents required
31 by section 21 of this chapter: **from the publisher.** The publisher shall
32 determine the **documents and the** format of the rule and other
33 documents ~~to that must be submitted under this subsection: to the~~
34 **publisher to obtain a document control number.**

35 (d) After the document control number has been assigned **and the**
36 **agency adopts the rule,** the agency shall submit the rule **following** to
37 the publisher for filing:

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

41 (2) **A signature page that indicates that the agency has**
42 **adopted the emergency rule in conformity with all**

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1 **procedures required by law.**

2 **(3) The approval of the governor to use emergency**
3 **rulemaking procedures for the rule.**

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

5 The publisher shall determine the format of the **emergency** rule and
6 other documents to be submitted under this subsection. **The**
7 **substantive text of the adopted emergency rule must be**
8 **substantially similar to the text of the proposed emergency rule**
9 **submitted to the governor. An emergency rule may suspend but not**
10 **repeal a rule approved by the governor under section 34 of this**
11 **chapter.**

12 (e) Subject to **subsection (d) and** section 39 of this chapter, the
13 publisher shall:

14 (1) accept the rule for filing; ~~and~~

15 (2) electronically record the date and time that the rule is
16 accepted; ~~and~~

17 **(3) publish the text of the adopted emergency rule and the**
18 **governor's approval in the Indiana Register.**

19 (f) ~~A~~ **An emergency** rule adopted by an agency under this section
20 takes effect on the latest of the following dates:

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

23 (2) The date and time that the **emergency** rule is accepted for
24 filing under subsection (e).

25 (3) The effective date stated by the adopting agency in the
26 **emergency** rule.

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

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

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

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

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

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



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

2 (B) ~~IC 13-14-9;~~

3 as applicable.

4 (g) An agency may amend an emergency rule with another
5 emergency rule by following the procedures in this section for the
6 amending emergency rule. However, unless otherwise provided by
7 IC 4-22-2.3, an emergency rule and all amendments of an
8 emergency rule by another emergency rule expire not later than
9 one hundred eighty (180) days after the initial emergency rule is
10 accepted for filing under subsection (e). The subject of the
11 emergency rule, including all amendments to the emergency rule,
12 may not be subsequently extended under this section or section
13 37.2 of this chapter. If the governor determines that the emergency
14 that is the basis for using the procedures under this section ceases
15 to exist, the governor may terminate the emergency rule before the
16 lapse of one hundred eighty (180) days. The termination is effective
17 when filed with the publisher. The publisher shall publish the
18 termination notice in the Indiana Register.

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

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

23 (h) Subject to subsection (i), the attorney general or the
24 governor may file an objection to an emergency rule that is
25 adopted under this section not later than forty-five (45) days after
26 the date that an emergency rule or amendment to an emergency
27 rule is accepted for filing under subsection (e). The objection must
28 cite the document control number for the affected emergency rule
29 and state the basis for the objection. When filed with the publisher,
30 the objection has the effect of invalidating the emergency rule or
31 amendment to an emergency rule. The publisher shall publish the
32 objection in the Indiana Register.

33 (i) The attorney general may file a written objection to an
34 emergency rule under subsection (h) only if the attorney general
35 determines that the emergency rule has been adopted:

36 (1) without statutory authority; or

37 (2) without complying with this section.

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

42 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as

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1 applicable).

2 (2) Sections 28 through 36 of this chapter.

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

11 (b) An agency may adopt a rule on a subject for which the
12 agency has rulemaking authority using the procedures in this
13 section if the governor finds that the agency proposing to adopt the
14 rule has demonstrated to the satisfaction of the governor that use
15 of interim rulemaking procedures under this section is necessary
16 to implement:

17 (1) a new state or federal law or program, rule of another
18 state agency, federal regulation, or federal grant or loan
19 agreement, or (if used by the agency to carry out the
20 agency's responsibilities) a building, an equipment, a
21 firefighting, a safety, or a professional code adopted by a
22 nationally recognized organization; or

23 (2) a change in a new state or federal law or program, rule of
24 another state agency, federal regulation, federal grant or
25 loan agreement, or (if used by the agency to carry out the
26 agency's responsibilities) a building, an equipment, a
27 firefighting, a safety, or a professional code adopted by a
28 nationally recognized organization;

29 before the time that a final rule approved by the governor under
30 section 34 of this chapter could reasonably take effect. To obtain
31 the approval of the governor, an agency must submit to the
32 governor the text of the proposed interim rule, a statement
33 justifying the need for interim rulemaking procedures, and any
34 additional information required by the governor in the form and
35 in the manner required by the governor. A notice of determination
36 by the governor shall include findings that explain the basis for the
37 determination. The notice of determination shall be provided to the
38 agency in an electronic format. Approval of a request shall be
39 treated as a determination that the rule meets the criteria in this
40 subsection.

41 (c) After the governor approves interim rulemaking
42 procedures for a rule, the agency shall obtain a document control

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1 number from the publisher. The publisher shall determine the
2 documents and the format of documents that must be submitted to
3 the publisher to obtain a document control number.

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

7 (1) The text of the adopted interim rule. The agency shall
8 submit the interim rule in the form required by section 20 of
9 this chapter.

10 (2) A signature page that indicates that the agency has
11 adopted the interim rule in conformity with all procedures
12 required by law.

13 (3) The approval of the governor to use interim rulemaking
14 procedures for the rule.

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

16 The publisher shall determine the format of the interim rule and
17 other documents to be submitted under this subsection. The
18 substantive text of the adopted interim rule must be substantially
19 similar to the text of the proposed interim rule submitted to the
20 governor. An interim rule may suspend but not repeal a rule
21 approved by the governor under section 34 of this chapter.

22 (e) Subject to subsection (d) and section 39 of this chapter, the
23 publisher shall:

24 (1) accept the rule for filing;

25 (2) electronically record the date and time that the rule is
26 accepted; and

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

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

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

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

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

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

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

42 (g) An agency may amend an interim rule with another

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1 interim rule by following the procedures in this section for the
 2 amending interim rule. An interim rule and all amendments of an
 3 interim rule by another interim rule expire not later than four
 4 hundred twenty-five (425) days after the initial interim rule is
 5 accepted for filing under subsection (e). The subject of the interim
 6 rule, including all amendments to the interim rule, may not be
 7 subsequently extended under section 37.1 of this chapter or this
 8 section.

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

19 (i) The attorney general may file a written objection to an
 20 emergency rule under subsection (h) only if the attorney general
 21 determines that the emergency rule has been adopted:

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

24 SECTION 23. IC 4-22-2-37.3 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2023]: Sec. 37.3. (a) The following do not
 27 apply to a rule adopted under this section:

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

31 (b) An agency may adopt a rule on a subject for which the
 32 agency has rulemaking authority with a single comment period of
 33 at least thirty (30) days in length using the procedures in this
 34 section if the governor finds that the agency proposing to adopt the
 35 rule has demonstrated to the satisfaction of the governor that use
 36 of expedited rulemaking procedures under this section is:

- 37 (1) appropriate for a rule described in IC 4-22-2.3; or
- 38 (2) necessary to permit time for a final rule on the same
 39 subject to become effective and the circumstances in section
 40 37.1(b)(1) through 37.1(b)(4) of this chapter and section
 41 37.2(b)(1) through 37.2(b)(2) of this chapter do not apply.

42 To obtain the approval of the governor, an agency must submit to



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1 the office of management and budget the text of the proposed
 2 expedited rule, a statement justifying the need for expedited
 3 rulemaking procedures, and any additional information required
 4 by the office of management and budget in the form and in the
 5 manner required by the office of management and budget. A notice
 6 of determination by the office of management and budget shall
 7 include findings that explain the basis for the determination. The
 8 notice of determination shall be provided to the agency in an
 9 electronic format. Approval of a request shall be treated as a
 10 determination that the rule meets the criteria in this subsection.

11 (c) An agency shall notify the public of its intention to adopt a
 12 rule by complying with the publication requirements in this
 13 section. The agency shall cause a notice of a public comment period
 14 and the full text of the agency's proposed expedited rule (excluding
 15 the full text of a matter incorporated by reference under section 21
 16 of this chapter) to be published once in the Indiana Register. The
 17 publisher shall review materials submitted under this section and
 18 determine the date that the publisher intends to include the
 19 material in the Indiana Register. After establishing the intended
 20 publication date and receiving the public comment period
 21 information from the agency, the publisher shall provide a written
 22 or an electronic mail authorization to proceed to the agency.

23 (d) The agency shall include the following in the notice of the
 24 public comment period:

25 (1) A general description of the subject matter of the
 26 proposed expedited rule, including the document control
 27 number.

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

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

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

33 The statement required under this subdivision must include
 34 a reference to any data, studies, or analyses relied upon by
 35 the agency in determining that the imposition of the
 36 requirement or cost is necessary and where and how a
 37 person may inspect and copy or electronically download the
 38 data, studies, or analysis.

39 (3) A statement explaining that any person may submit
 40 written comments concerning the proposed expedited rule
 41 during the public comment period and instructions on when,
 42 where, and how the person may submit written comments.



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1 However, inadequacy or insufficiency of the subject matter
 2 description under subdivision (1) or a statement of justification
 3 under subdivision (2) in a notice does not invalidate a rulemaking
 4 action.

5 (e) Before adopting the expedited rule, the agency shall
 6 prepare a written response to comments received by the agency,
 7 including the reasons for rejecting any recommendations made in
 8 the comments.

9 (f) After an agency has completed a public comment period of
 10 at least thirty (30) days in length and complied with subsection (e),
 11 the agency may:

- 12 (1) adopt a rule that is identical to a proposed expedited rule
- 13 published in the Indiana Register under this section; or
- 14 (2) adopt a revised version of a proposed expedited rule
- 15 published under this section and include provisions that did
- 16 not appear in the published version.

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

22 (g) After the agency adopts the expedited rule, the agency shall
 23 submit the following to the publisher for filing:

- 24 (1) The text of the adopted expedited rule. The agency shall
- 25 submit the expedited rule in the form required by section 20
- 26 of this chapter.
- 27 (2) A summary of the comments received by the agency
- 28 during the comment period and the agency's response to the
- 29 comments.
- 30 (3) A signature page that indicates that the agency has
- 31 adopted the expedited rule in conformity with all procedures
- 32 required by law.
- 33 (4) The approval of the governor to use expedited
- 34 rulemaking procedures for the rule.
- 35 (5) The documents required by section 21 of this chapter.

36 The publisher shall determine the format of the expedited rule and
 37 other documents to be submitted under this subsection.

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

- 40 (1) accept the expedited rule for filing;
- 41 (2) electronically record the date and time that the expedited
- 42 rule is accepted; and



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- 1 **(3) publish the text of the adopted expedited rule and the**
- 2 **governor's approval in the Indiana Register.**
- 3 **(i) An expedited rule adopted by an agency under this section**
- 4 **takes effect on the latest of the following dates:**
 - 5 **(1) The effective date of the statute delegating authority to**
 - 6 **the agency to adopt the expedited rule.**
 - 7 **(2) The date and time that the expedited rule is accepted for**
 - 8 **filing under subsection (h).**
 - 9 **(3) The effective date stated by the adopting agency in the**
 - 10 **expedited rule.**
 - 11 **(4) The date of compliance with every requirement**
 - 12 **established by law as a prerequisite to the adoption or**
 - 13 **effectiveness of the expedited rule.**
 - 14 **(5) The statutory effective date for an expedited rule set forth**
 - 15 **in law.**
- 16 **(j) An expedited rule that has been accepted for filing under**
- 17 **subsection (h) expires:**
 - 18 **(1) not later than one hundred eighty (180) days after the**
 - 19 **date the rule is accepted for filing under subsection (h); or**
 - 20 **(2) as provided in the applicable provision of IC 4-22-2.3;**
 - 21 **whichever is later.**
- 22 **(k) Subject to subsection (l), the attorney general or the**
- 23 **governor may file an objection to a rule that is adopted under this**
- 24 **section not later than forty-five (45) days after the date and time**
- 25 **that an expedited rule or amendment to an expedited rule is**
- 26 **accepted for filing under subsection (h). The objection must cite the**
- 27 **document control number for the affected expedited rule and state**
- 28 **the basis for the objection. When filed with the publisher, the**
- 29 **objection has the effect of invalidating the expedited rule or**
- 30 **amendment to an expedited rule. The publisher shall publish the**
- 31 **objection in the Indiana Register.**
- 32 **(l) The attorney general may file a written objection to an**
- 33 **emergency rule under subsection (k) only if the attorney general**
- 34 **determines that the emergency rule has been adopted:**
 - 35 **(1) without statutory authority; or**
 - 36 **(2) without complying with this section.**
- 37 **SECTION 24. IC 4-22-2-38, AS AMENDED BY P.L.123-2006,**
- 38 **SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
- 39 **JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action**
- 40 **resulting in any of the following rules:**
 - 41 **(1) A rule that brings another rule into conformity with section**
 - 42 **20 of this chapter.**

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

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

11 (b) Sections 24 through ~~37.1~~ 37.3 of this chapter do not apply to
 12 rules described in subsection (a).

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

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

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

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

33 (1) accept the rule for filing; and

34 (2) electronically record the date and time that it is accepted.

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

37 (1) The date that the rule being corrected by a rule adopted under
 38 this section becomes effective.

39 (2) The date that is forty-five (45) days from the date and time
 40 that the rule adopted under this section is accepted for filing
 41 under subsection (f).

42 (h) The governor or the attorney general may file an objection to



1 a rule that is adopted under this section before the date that is forty-five
 2 (45) days from the date and time that the rule is accepted for filing
 3 under subsection (f). When filed with the publisher, the objection has
 4 the effect of invalidating the rule.

5 SECTION 25. IC 4-22-2-39, AS AMENDED BY P.L.123-2006,
 6 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing
 8 under section 35, 37.1, **37.2, 37.3**, or 38 of this chapter, the publisher
 9 may accept the rule for filing only if the following conditions are met:

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

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

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

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

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

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

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

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

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

31 (3) a date has occurred;

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

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

37 SECTION 26. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,
 38 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for
 40 filing by the publisher under section 35, 37.1, **37.2, 37.3**, or 38 of this
 41 chapter, the agency that adopted the rule may recall it. A rule may be
 42 recalled regardless of whether:

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- 1 (1) the rule has been disapproved by the attorney general under
 2 section 32 of this chapter; or
 3 (2) the rule has been disapproved by the governor under section
 4 34 of this chapter.
- 5 (b) Sections 24 through 38 of this chapter do not apply to a recall
 6 action under this section. However, the agency shall distribute a notice
 7 of its recall action to the publisher for publication in the Indiana
 8 Register. Sections 24 and 26 of this chapter do not apply to a
 9 readoption action under subsection (c).
- 10 (c) After an agency recalls a rule, the agency may reconsider its
 11 adoption action and adopt an identical rule or a revised rule. However,
 12 if sections 24 through 36 of this chapter apply to the recalled rule, the
 13 readopted rule must comply with the requirements under section 29 of
 14 this chapter.
- 15 (d) The recall of a rule under this section voids any approval given
 16 after the rule was adopted and before the rule was recalled.
- 17 (e) If a rule is:
 18 (1) subject to sections 31 and 33 of this chapter;
 19 (2) recalled under subsection (a); and
 20 (3) readopted under subsection (c);
 21 the agency shall resubmit the readopted version of the recalled rule to
 22 the attorney general and the governor for approval. The attorney
 23 general and the governor have the full statutory period to approve or
 24 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~
 25 ~~office of management and budget under section 28 of this chapter;~~ The
 26 agency shall resubmit the readopted version of a recalled rule to the
 27 office of management and budget with sufficient information for the
 28 office of management and budget to evaluate whether ~~its the~~ initial
 29 ~~fiscal impact statement regulatory analysis submitted to the office~~
 30 ~~of management and budget~~ under section ~~28~~ **22.8** of this chapter
 31 needs to be revised. ~~The office of management and budget shall revise~~
 32 ~~a fiscal impact statement under section 28 of this chapter~~ If the fiscal
 33 impact of the readopted rule is substantially different from the recalled
 34 rule, **the agency shall submit the revised regulatory analysis to the**
 35 **publisher for publication in the Indiana Register with the**
 36 **document control number assigned by the publisher to the rule.**
 37 The agency also shall comply with any other applicable approval
 38 requirement provided by statute.
- 39 (f) The readopted version of a recalled rule is effective only after
 40 the agency has complied with section 35, 37.1, **37.2, 37.3**, or 38 of this
 41 chapter.
- 42 SECTION 27. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,

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1 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the
3 publisher for filing under section 35, 37.1, **37.2, 37.3**, or 38 of this
4 chapter, the agency that adopted the rule may withdraw it.

5 (b) Sections 24 through 40 of this chapter do not apply to a
6 withdrawal action. However, the withdrawing agency shall distribute
7 a notice of the withdrawal to the publisher for publication in the
8 Indiana Register.

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

12 SECTION 28. IC 4-22-2.1-1, AS AMENDED BY P.L.139-2007,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2023]: Sec. 1. Except for a rule that is the subject of a
15 rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or
16 IC 22-15, this chapter applies to a rule for which the notice **of the first**
17 **public comment period** required by IC 4-22-2-23 is published by an
18 agency after June 30, 2005.

19 SECTION 29. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,
20 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency intends to adopt a rule under
22 IC 4-22-2 that will impose requirements or costs on small businesses,
23 the agency shall prepare a statement that describes the annual
24 economic impact of a rule on all small businesses after the rule is fully
25 implemented. ~~as described in subsection (b):~~ The statement required by
26 this section must include the following:

27 (1) An estimate of the number of small businesses, classified by
28 industry sector, that will be subject to the proposed rule.

29 (2) An estimate of the average annual reporting, record keeping,
30 and other administrative costs that small businesses will incur to
31 comply with the proposed rule.

32 (3) An estimate of the total annual economic impact that
33 compliance with the proposed rule will have on all small
34 businesses subject to the rule. ~~The agency is not required to~~
35 ~~submit the proposed rule to the office of management and budget~~
36 ~~for a fiscal analysis under IC 4-22-2-28 unless the estimated~~
37 ~~economic impact of the rule is greater than five hundred~~
38 ~~thousand dollars (\$500,000) on all regulated entities, as set forth~~
39 ~~in IC 4-22-2-28:~~

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

41 (A) imposed on small businesses by the rule; and

42 (B) not expressly required by:

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

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

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

13 (A) The establishment of less stringent compliance or
 14 reporting requirements for small businesses.

15 (B) The establishment of less stringent schedules or
 16 deadlines for compliance or reporting requirements for
 17 small businesses.

18 (C) The consolidation or simplification of compliance or
 19 reporting requirements for small businesses.

20 (D) The establishment of performance standards for small
 21 businesses instead of design or operational standards
 22 imposed on other regulated entities by the rule.

23 (E) The exemption of small businesses from part or all of
 24 the requirements or costs imposed by the rule.

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

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

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

39 In determining the total annual economic impact of the rule under
 40 subsection (a)(3), the agency shall consider the annual economic
 41 impact on all small businesses beginning with the first twelve (12)
 42 month period after the rule is fully implemented. The agency may use

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1 actual or forecasted data and may consider the actual and anticipated
 2 effects of inflation and deflation. The agency shall describe any
 3 assumptions made and any data used in determining the total annual
 4 economic impact of a rule under subsection (a)(3):

5 (c) The agency shall:

6 (1) publish the statement required under subsection (a) in the
 7 Indiana Register as required by IC 4-22-2-24; and

8 (2) deliver a copy of the statement, along with the proposed rule,
 9 to the small business ombudsman not later than the date of
 10 publication under subdivision (1):

11 SECTION 30. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005,
 12 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 7. Before an agency may act under ~~IC 4-22-2.5~~
 14 **IC 4-22-2.6** to readopt a rule to which the chapter applies, the agency
 15 must conduct the review required under ~~IC 4-22-2.5-3.1.~~
 16 **IC 4-22-2.6-4.**

17 SECTION 31. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2023]:

20 **Chapter 2.3. Transitional Provisions; Exceptions to**
 21 **Rulemaking Procedures**

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

31 (1) **October 1, 2023; or**

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

34 **as applicable. An emergency rule that expires under this subsection**
 35 **may not be renewed under IC 4-22-2-37.1 (as effective after June**
 36 **30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for**
 37 **adoption as an interim rule, the rule may be readopted under**
 38 **IC 4-22-2-37.2.**

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

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



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

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

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

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

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

19 **Sec. 2.** Before an emergency rule adopted under IC 4-22-2-37.1
 20 (as effective after June 30, 2023) expires, the governor by executive
 21 order may authorize the extension of the emergency rule under the
 22 expedited procedures in IC 4-22-2-37.3 if the governor determines
 23 and finds in the executive order that the emergency circumstances
 24 justifying the emergency rule continue to exist. A rule adopted
 25 under the authority of an extension under this section, expires not
 26 later than June 30 of the year following the year in which the rule
 27 is accepted for filing by the publisher of the Indiana Register.

28 **Sec. 3.** The office of the secretary of family and social services
 29 may adopt rules under IC 4-22-2-37.3 to implement IC 12-13-16-13
 30 (211 dialing code services). The rule expires not later than one (1)
 31 year after the adopted rule is accepted for filing under
 32 IC 4-22-2-37.3.

33 **Sec. 4.** The department of natural resources (or to the extent
 34 permitted by IC 14-10-2, the natural resources commission) may
 35 adopt rules under IC 4-22-2-37.3 to carry out the duties of the
 36 department of natural resources under a law listed in IC 14-10-2-5.
 37 The rule expires not later than one (1) year after the adopted rule
 38 is accepted for filing by the publisher of the Indiana Register. A
 39 person who violates the rule commits a Class C infraction, unless
 40 otherwise specified under state law.

41 **Sec. 5.** The director of the department of natural resources
 42 may temporarily modify or suspend a rule described in



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1 IC 14-22-2-6 (fish and wildlife rules) under the procedures in
 2 IC 4-22-2-37.3. The adopted rule expires not later than one (1) year
 3 after the rule is accepted for filing by the publisher of the Indiana
 4 Register.

5 Sec. 6. The Indiana education employment relations board
 6 may adopt rules under IC 4-22-2-37.3 to implement IC 20-29-6-6.1
 7 (review of collective bargaining agreement). The rule expires not
 8 later than one (1) year after the adopted rule is accepted for filing
 9 by the publisher of the Indiana Register.

10 Sec. 7. The Indiana state board of education may adopt rules
 11 under IC 4-22-2-37.3 for the provision of special education or
 12 related services to an eligible choice scholarship student who
 13 receives an amount under IC 20-51-4-4(a)(2). The rule expires not
 14 later than one (1) year after the adopted rule is accepted for filing
 15 by the publisher of the Indiana Register.

16 Sec. 8. (a) The department of financial institutions shall adopt
 17 rules under IC 4-22-2-37.3 announcing:

18 (1) sixty (60) days before January 1 of each odd-numbered
 19 year in which dollar amounts under IC 24-4.5 (Uniform
 20 Consumer Credit Code) are to change, the changes in dollar
 21 amounts required by IC 24-4.5-1-106(2); and

22 (2) promptly after the changes occur, changes in the Index
 23 required by IC 24-4.5-1-106(3), including, when applicable,
 24 the numerical equivalent of the Reference Base Index under
 25 a revised Reference Base Index and the designation or title
 26 of any index superseding the Index.

27 The rule expires not later than January 1 of the next
 28 odd-numbered year that the department of financial institutions is
 29 required to issue the rule.

30 (b) The department of financial institutions may adopt a rule
 31 permitted under IC 24-4.5 (Uniform Consumer Credit Code) under
 32 IC 4-22-2-37.3 if the department of financial institutions declares
 33 an emergency. The rule expires not later than two (2) years after
 34 the adopted rule is accepted for filing by the publisher of the
 35 Indiana Register.

36 Sec. 9. The Indiana board of pharmacy may adopt rules under
 37 IC 4-22-2-37.3 to declare that a substance is a synthetic drug if the
 38 board finds that the substance:

39 (1) has been scheduled or emergency scheduled by the United
 40 States Drug Enforcement Administration;

41 (2) has been scheduled, emergency scheduled, or
 42 criminalized by another state; or

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1 (3) has:

2 (A) a high potential for abuse; and

3 (B) no accepted medical use in treatment in the United
4 States or lacks accepted safety for use in treatment
5 under medical supervision.

6 In making a determination, the Indiana board of pharmacy shall
7 consider the factors described in IC 25-26-13-4.1. Notwithstanding
8 IC 4-22-2-37.3, the rule becomes effective when the adopted rule is
9 published in the Indiana Register. The rule expires not later than
10 June 30 of the year following the year in which the rule is accepted
11 for filing by the publisher of the Indiana Register.

12 SECTION 32. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,
13 2023]. (Expiration and Readoption of Administrative Rules).

14 SECTION 33. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE
15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2023]:

17 **Chapter 2.6. Expiration and Readoption of Administrative
18 Rules**

19 **Sec. 1. (a) Except as provided in this section and section 10 of
20 this chapter, a rule expires January 1 of the fifth year after the
21 year in which the rule takes effect, unless the rule expires or is
22 repealed on an earlier date. Except for an amendment made under
23 IC 4-22-2-38, the expiration date of a rule under this section is
24 extended each time that a rule amending or readopting an
25 unexpired rule takes effect. The rule, as amended or readopted,
26 expires on January 1 of the fifth year after the year in which the
27 amendment or readoption takes effect.**

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

29 **(1) in calendar year 2017, the rule expires not later than
30 January 1, 2024;**

31 **(2) in calendar year 2018, the rule expires not later than
32 January 1, 2025;**

33 **(3) in calendar year 2019, the rule expires not later than
34 January 1, 2026; or**

35 **(4) in calendar year 2020, the rule expires not later than
36 January 1, 2027.**

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

39 **(1) the rule was adopted by an agency established under
40 IC 13, the rule expires not later than January 1, 2025;**

41 **(2) the rule was adopted by an agency established under
42 IC 16, the rule expires not later than January 1, 2026; or**



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- 1 (3) the rule was adopted by an agency not described in
- 2 subdivision (1) or (2), the rule expires not later than January
- 3 1, 2027.
- 4 (d) A readoption rulemaking action under IC 4-22-2.5 (before
- 5 its repeal) or IC 13-14-9.5 (before its repeal) that became effective
- 6 before July 1, 2023, is validated to the same extent as if the
- 7 rulemaking action had been conducted under the procedures in
- 8 this chapter.
- 9 (e) The determination of whether an administrative rule
- 10 expires under this chapter shall be applied at the level of an
- 11 Indiana Administrative Code section.
- 12 Sec. 2. An agency that has rulemaking authority may readopt
- 13 a rule in anticipation of a rule's expiration under section 1 of this
- 14 chapter. To readopt a rule, an agency may readopt the rule either:
- 15 (1) without changes in conformity with the procedures in
- 16 sections 3 through 9 of this chapter; or
- 17 (2) with or without changes in conformity with the
- 18 procedures in IC 4-22-2-23 through IC 4-22-2-36 (as
- 19 modified by IC 13-14-9, when applicable).
- 20 Sec. 3. (a) Except as provided in subsection (b), if an agency
- 21 intends to readopt a rule, the agency shall, not later than January
- 22 1 of the fourth year after the year in which the rule takes effect,
- 23 provide an initial notice of the intended readoption in an electronic
- 24 format designated by the publisher to legislators and legislative
- 25 committees in the manner and on the schedule specified by the
- 26 legislative council or the personnel subcommittee of the legislative
- 27 council acting for the legislative council.
- 28 (b) An agency is not required to provide the initial notice
- 29 under subsection (a) for a rule described in section 1(b)(1) of this
- 30 chapter.
- 31 Sec. 4. (a) To readopt a rule, an agency must conduct a review
- 32 of the rule to consider the continued need for the rule and whether
- 33 the rule, if readopted, will do the following:
- 34 (1) Minimize expenses to:
- 35 (A) regulated entities that are required to comply with
- 36 the rule;
- 37 (B) persons who pay taxes or pay fees for government
- 38 services affected by the rule; and
- 39 (C) consumers of products and services of regulated
- 40 entities affected by the rule.
- 41 (2) Achieve the regulatory goal in the least restrictive
- 42 manner.

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- 1 **(3) Have benefits that exceed the fiscal and economic costs of**
- 2 **the rule.**
- 3 **(4) Avoid duplicating and conflicting standards with other**
- 4 **federal, state, or local laws, rules, regulations, or ordinances.**
- 5 **(5) Be written for ease of comprehension.**
- 6 **(6) Have practicable enforcement.**
- 7 **(b) In the review, the agency shall reexamine previous cost**
- 8 **benefit, economic impact, fiscal impact, and regulatory burden**
- 9 **statements prepared by the agency for the rule under IC 4-3-22-13,**
- 10 **IC 4-3-27-12, IC 4-22-2-28, IC 4-22-2.1-5, or an executive order**
- 11 **and revise the statements to reflect any change in circumstances**
- 12 **that affect the analysis. The agency shall identify any alternative**
- 13 **methods of achieving the purpose of the rule that are less costly or**
- 14 **less intrusive, or that would otherwise minimize the economic**
- 15 **impact of the proposed rule on small businesses (as defined in**
- 16 **IC 4-22-2.1-4) and other regulated entities. The agency also shall**
- 17 **consider the following:**
- 18 **(1) The nature of any complaints or comments received from**
- 19 **the public, including small businesses (as defined in**
- 20 **IC 4-22-2.1-4), concerning the rule or the rule's**
- 21 **implementation by the agency.**
- 22 **(2) The complexity of the rule, including any difficulties**
- 23 **encountered by:**
- 24 **(A) the agency in administering the rule; or**
- 25 **(B) small businesses (as defined in IC 4-22-2.1-4) or**
- 26 **other regulated persons in complying with the rule.**
- 27 **(3) The degree to which technology, economic conditions, or**
- 28 **other factors have changed in the area affected by the rule**
- 29 **since the last time the rule was reviewed.**
- 30 **(c) The agency shall prepare written findings concerning the**
- 31 **agency's determinations under this section.**
- 32 **Sec. 5. (a) If an agency elects to readopt a rule under this**
- 33 **chapter, the agency shall submit a notice of proposed readoption**
- 34 **to the publisher for publication in the Indiana Register. A separate**
- 35 **notice must be published for each board or other person or entity**
- 36 **with rulemaking authority.**
- 37 **(b) The notice must include the following:**
- 38 **(1) A general description of the subject matter of all rules**
- 39 **proposed to be readopted.**
- 40 **(2) A listing of rules that are proposed to be readopted, listed**
- 41 **by their titles and subtitles only.**
- 42 **(3) A written comment period of at least thirty (30) days and**

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- 1 instructions on how to submit written comments to the
2 agency.
- 3 (4) A request for comments on whether specific rules should
4 be reviewed through the regular rulemaking process under
5 IC 4-22-2-23 through IC 4-22-2-36 (as modified by
6 IC 13-14-9, when applicable).
- 7 (5) A summary of the agency's findings under section 4 of
8 this chapter.
- 9 (6) Any other information required by the publisher.
- 10 (c) The agency shall submit the material in the form required
11 by IC 4-22-2-20. The agency need not resubmit the documents
12 required by IC 4-22-2-21 if the publisher received a copy of the
13 documents when the rule was previously adopted or amended. The
14 publisher shall review the material submitted under this section
15 and determine the date that the publisher intends to include the
16 material in the Indiana Register. After:
- 17 (1) establishing the intended publication date; and
18 (2) receiving the material as required by this section;
- 19 the publisher shall assign a document control number, provide an
20 electronic mail authorization to proceed to the agency, and publish
21 the material on the intended publication date.
- 22 Sec. 6. (a) The agency shall prepare responses to all comments
23 received during the comment period.
- 24 (b) The agency, after considering the written comments and
25 responses, may do the following:
- 26 (1) Conduct one (1) or more additional comment periods in
27 the manner provided in section 5 of this chapter on one (1) or
28 more rules within the scope of the notice of proposed
29 readoption. If a person submits to the agency during the
30 initial comment period a written request stating a basis for
31 considering a particular rule separately from other rules in
32 the notice of proposed readoption, the agency may not
33 readopt that rule under this chapter. The agency may
34 readopt that rule with or without changes only through a
35 rulemaking action initiated under IC 4-22-2-23 through
36 IC 4-22-2-36 (as modified by IC 13-14-9, when applicable).
- 37 (2) Readopt one (1) or more rules within the scope of the
38 notice of proposed readoption without change.
- 39 (3) Repeal one (1) or more rules within the scope of the
40 notice of proposed readoption, if the need for the rule no
41 longer exists. The adopting authority may repeal a rule
42 without additional comment periods under section 5 of this

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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 re adoption 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 re adoption 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 34. 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

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1 IC 4-22-2 to implement this chapter, the division shall consult with and
 2 fully consider any comments submitted by:
 3 (1) caretakers providing care for a special needs individual under
 4 this chapter;
 5 (2) individuals with special needs receiving care from a
 6 caretaker under this chapter;
 7 (3) area agencies on aging;
 8 (4) consumers and providers of home and community based
 9 services under IC 12-10-10 and IC 12-10-11.5; and
 10 (5) any other agency, volunteer group, faith based group, or
 11 individual that the division considers appropriate;
 12 to ensure that the rule complies with the requirements set forth in
 13 subsection (b).
 14 (b) Rules adopted under this chapter must:
 15 (1) include protections for the rights, safety, and welfare of
 16 individuals with special needs receiving care from a caretaker
 17 under this chapter, including reasonable monitoring and
 18 reporting requirements;
 19 (2) serve distinct populations, including:
 20 (A) the aged;
 21 (B) persons with developmental disabilities; and
 22 (C) persons with physical disabilities;
 23 in a manner that recognizes, and appropriately responds to, the
 24 particular needs of the population;
 25 (3) not create barriers to the availability of home and community
 26 based services under IC 12-10-10 and IC 12-10-11.5 by
 27 imposing costly or unduly burdensome requirements on
 28 caretakers or other service providers, including:
 29 (A) requirements for proof of financial responsibility; and
 30 (B) monitoring, enforcement, reporting, or other
 31 administrative requirements; and
 32 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 33 chapter.
 34 (c) Before submitting a rule adopted under this chapter to the
 35 attorney general for final approval under IC 4-22-2-31, the division
 36 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for
 37 publication in the Indiana Register the division's written response ~~under~~
 38 ~~IC 4-22-2-23~~ to any comments received from the parties described in
 39 subsection (a). Submissions to the publisher shall be made in the
 40 electronic format specified by the publisher.
 41 SECTION 35. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,
 42 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under
 2 IC 4-22-2 to implement this chapter, the division shall consult with and
 3 fully consider any comments submitted by:

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

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

14 (b) Rules adopted under this chapter must:

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

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

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

- 28 (A) requirements for proof of financial responsibility; and
 29 (B) monitoring, enforcement, reporting, or other
 30 administrative requirements; and

31 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 32 chapter.

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

40 SECTION 36. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,
 41 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2023]: Sec. 1. (a) Except as provided in sections 8 and 14 of

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1 this chapter, this chapter applies to the following:

2 (1) The board.

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

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

7 **(c) This chapter (as effective January 1, 2023) continues to**
8 **apply after June 30, 2023, to a rulemaking action that is**
9 **commenced under this chapter before July 1, 2023.**

10 SECTION 37. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,
11 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2023]: Sec. 3. (a) ~~Except as provided in subsection (b),~~ The
13 department shall provide notice in the Indiana Register of the first
14 public comment period required by section 2 of this chapter.

15 **(b) To publish notice of the first public comment period in the**
16 **Indiana Register, the agency must submit the following to the**
17 **publisher:**

18 **(1) The full text of the agency's proposed rule (excluding the**
19 **full text of a matter incorporated by reference under**
20 **IC 4-22-2-21). The agency shall submit the rule in the form**
21 **required by IC 4-22-2-20 and with the documents required**
22 **by IC 4-22-2-21.**

23 **(2) The latest version of the regulatory analysis (including**
24 **any appendices containing any data, studies, or analysis**
25 **referenced in the regulatory analysis) submitted to the**
26 **budget agency and the office of management and budget**
27 **under IC 4-22-2-22.8,**

28 **(3) The determination of the**
29 **budget agency and the office of**
30 **management and budget**
31 **authorizing commencement of**
32 **the first and second public**
33 **comment periods on the proposed**
34 **rule under IC 4-22-2-22.8.**

35 **(4) The notice required under subsection (c).**

36 **(c) A notice provided under this section must do the following:**

37 (1) Identify the authority under which the proposed rule is to be
38 adopted.

39 (2) Describe the subject matter and the basic purpose of the
40 proposed rule. The description required by this subdivision must:

41 (A) list all alternatives being considered by the department
42 at the time of the notice;

(B) state whether each alternative listed under clause (A)

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- 1 creates:
- 2 (i) a restriction or requirement more stringent than a
- 3 restriction or requirement imposed under federal law;
- 4 or
- 5 (ii) a restriction or requirement in a subject area in
- 6 which federal law does not impose restrictions or
- 7 requirements;
- 8 (C) state the extent to which each alternative listed under
- 9 clause (A) differs from federal law;
- 10 (D) include any information known to the department about
- 11 the potential fiscal impact of each alternative under clause
- 12 (A) that creates:
- 13 (i) a restriction or requirement more stringent than a
- 14 restriction or requirement imposed under federal law;
- 15 or
- 16 (ii) a restriction or requirement in a subject area in
- 17 which federal law does not impose restrictions or
- 18 requirements; and
- 19 (E) set forth the basis for each alternative listed under
- 20 clause (A).
- 21 (3) Describe the relevant statutory or regulatory requirements or
- 22 restrictions relating to the subject matter of the proposed rule
- 23 that exist before the adoption of the proposed rule.
- 24 (4) Request the submission of alternative ways to achieve the
- 25 purpose of the proposed rule.
- 26 (5) Request the submission of comments, including suggestions
- 27 of specific language for the proposed rule.
- 28 (6) Include a detailed statement of the issue to be addressed by
- 29 adoption of the proposed rule.
- 30 **(7) Include the latest version of the regulatory analysis**
- 31 **(excluding any appendices containing any data, studies, or**
- 32 **analysis referenced in the regulatory analysis) submitted to**
- 33 **the budget agency and the office of management and budget**
- 34 **under IC 4-22-2-22.8.**
- 35 **(8) Include information concerning where, when, and how a**
- 36 **person may submit written comments on the proposed rule,**
- 37 **including contact information concerning the small business**
- 38 **regulatory coordinator required by IC 4-22-2-28.1.**
- 39 **(9) Include information concerning where, when, and how a**
- 40 **person may inspect and copy any data, studies, or analyses**
- 41 **referenced in a regulatory analysis under subdivision (7).**
- 42 **(10) Include information concerning where, when, and how**

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1 a person may inspect any documents incorporated by
2 reference into the proposed rule under IC 4-22-2-21.

3 **(11) Include an indication that the notice is for the first of**
4 **two (2) thirty (30) day periods in which the public may**
5 **comment on the proposed rule.**

6 **Inadequacy or insufficiency of the published description or**
7 **regulatory analysis does not invalidate a rulemaking action.**

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

10 ~~(c)~~ **(e)** The notice required under subsection (a) shall be published
11 electronically in the Indiana Register under procedures established by
12 the publisher. **The publisher shall review materials submitted under**
13 **this section and determine the date that the publisher intends to**
14 **publish the text of the proposed rule and the notice in the Indiana**
15 **Register. If the submitted material complies with this section, the**
16 **publisher shall establish the intended publication date, assign a**
17 **document control number to the proposed rule, and provide a**
18 **written or an electronic mail authorization to proceed to the**
19 **agency. The publisher shall publish the following in the Indiana**
20 **Register on the intended publication date:**

21 **(1) The notice of the first comment period.**

22 **(2) The full text of the agency's proposed rule (excluding the**
23 **full text of a matter incorporated by reference under**
24 **IC 4-22-2-21).**

25 SECTION 38. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the
28 Indiana Register of the second public comment period required by
29 section 2 of this chapter.

30 **(b) To publish a notice of the second public comment period in**
31 **the Indiana Register, the agency must submit the following to the**
32 **publisher:**

33 **(1) The full text of the agency's proposed rule (excluding the**
34 **full text of a matter incorporated by reference under**
35 **IC 4-22-2-21). The agency shall submit the rule in the form**
36 **required by IC 4-22-2-20 and with the documents required**
37 **by IC 4-22-2-21, if these documents have not already been**
38 **submitted to the publisher.**

39 **(2) Either a statement indicating that no changes in the**
40 **regulatory analysis have been made from the version of the**
41 **regulatory analysis published under section 3 of this chapter**
42 **or the latest version of the regulatory analysis (including any**

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1 **appendices containing any data, studies, or analysis**
 2 **referenced in the regulatory analysis) submitted to the**
 3 **budget agency and the office of management and budget**
 4 **under IC 4-22-2-22.8, if any changes have been made in the**
 5 **regulatory analysis after submitting the material under**
 6 **section 3 of this chapter.**

7 **(3) The notice required under subsection (c).**

8 **(c) A notice provided under this section must do the following:**

9 **(1) Contain the full text of the proposed rule, to the extent**
 10 **required under IC 4-22-2-24(c).**

11 **(2) (1) Contain a summary of the response of the department to**
 12 **written comments submitted under section 3 of this chapter**
 13 **during the first public comment period.**

14 **(3) (2) Request the submission of comments, including**
 15 **suggestions of specific amendments to the language contained**
 16 **in the proposed rule and indicate where, when, and how a**
 17 **person may submit written comments on the proposed rule,**
 18 **including contact information concerning the small business**
 19 **regulatory coordinator required by IC 4-22-2-28.1.**

20 **(4) (3) Contain the full text of the commissioner's written**
 21 **findings under section 7 of this chapter, if applicable. Include a**
 22 **statement indicating the date, time, and place at which the**
 23 **public hearing on the proposed rule will be convened.**

24 **(5) (4) Identify each element of the proposed rule that imposes**
 25 **a restriction or requirement on persons to whom the proposed**
 26 **rule applies that:**

27 (A) is more stringent than a restriction or requirement
 28 imposed under federal law; or

29 (B) applies in a subject area in which federal law does not
 30 impose a restriction or requirement.

31 **(6) (5) With respect to each element identified under subdivision**
 32 **(5); (4), identify:**

33 (A) the environmental circumstance or hazard that dictates
 34 the imposition of the proposed restriction or requirement to
 35 protect human health and the environment;

36 (B) examples in which federal law is inadequate to provide
 37 the protection referred to in clause (A); and

38 (C) the:

39 (i) estimated fiscal impact; and

40 (ii) expected benefits;

41 based on the extent to which the proposed rule is more
 42 stringent than the restrictions or requirements of federal

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1 law, or on the creation of restrictions or requirements in a
 2 subject area in which federal law does not impose
 3 restrictions or requirements.

4 ~~(7)~~ (6) For any element of the proposed rule that imposes a
 5 restriction or requirement that is more stringent than a restriction
 6 or requirement imposed under federal law or that applies in a
 7 subject area in which federal law does not impose restrictions or
 8 requirements, describe the availability for public inspection of
 9 all materials relied upon by the department in the development
 10 of the proposed rule, including, if applicable:

- 11 (A) health criteria;
- 12 (B) analytical methods;
- 13 (C) treatment technology;
- 14 (D) economic impact data;
- 15 (E) environmental assessment data;
- 16 (F) analyses of methods to effectively implement the
- 17 proposed rule; and
- 18 (G) other background data.

19 **(7) Either a statement indicating that no changes in the**
 20 **regulatory analysis have been made from the version of the**
 21 **regulatory analysis published under section 3 of this chapter**
 22 **or the latest version of the regulatory analysis (excluding any**
 23 **appendices containing any data, studies, or analysis**
 24 **referenced in the regulatory analysis) submitted to the**
 25 **budget agency and the office of management and budget**
 26 **under IC 4-22-2-22.8, if any changes have been made in the**
 27 **regulatory analysis after submitting the material under**
 28 **section 3 of this chapter.**

29 **(8) Include an explanation of any differences between the**
 30 **text of the proposed rule published for the first comment**
 31 **period under section 3 of this chapter and the text of the**
 32 **proposed rule published for the second comment period**
 33 **under this section.**

34 **(9) Include information concerning where, when, and how a**
 35 **person may inspect and copy the regulatory analysis and any**
 36 **data, studies, or analyses referenced in subdivision (7).**

37 **(10) Include information concerning where, when, and how**
 38 **a person may inspect any documents incorporated by**
 39 **reference into the proposed rule under IC 4-22-2-21.**

40 **(11) Include an indication that the notice is for the second of**
 41 **two (2) thirty (30) day periods in which the public may**
 42 **comment on the proposed rule and that following the second**

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1 comment period the agency may adopt a version of the
2 proposed rule that is the same as or does not substantially
3 differ from the text of the proposed rule published under this
4 section.

5 **Inadequacy or insufficiency of the subject matter description or**
6 **summary of the regulatory analysis in the published notice does**
7 **not invalidate a rulemaking action.**

8 ~~(b)~~ (d) The notice required under subsection (a):

9 (1) shall be published electronically in the Indiana Register
10 under procedures established by the publisher; and

11 (2) if any element of the proposed rule to which the notice
12 relates imposes a restriction or requirement that is more stringent
13 than a restriction or requirement imposed under federal law,
14 shall be submitted in an electronic format under IC 5-14-6 to the
15 executive director of the legislative services agency; who shall
16 present the notice to the legislative council established by
17 ~~IC 2-5-1.1-1.~~

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

27 (1) The notice of the second comment period.

28 (2) The full text of the agency's proposed rule (excluding the
29 full text of a matter incorporated by reference under
30 IC 4-22-2-21).

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

38 ~~(d)~~ (f) Subsections ~~(b)(2)~~ and Subsection ~~(c)~~ (e) ~~do~~ does not
39 prohibit or restrict the commissioner, the department, or the board
40 from:

41 (1) adopting emergency rules under IC 4-22-2-37.1;

42 (2) taking emergency action under IC 13-14-10; or

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1 (3) temporarily:

2 (A) altering ordinary operating policies or procedures; or

3 (B) implementing new policies or procedures;

4 in response to an emergency situation.

5 SECTION 39. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,
6 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the
8 date of preliminary adoption of a proposed rule by a board, the
9 department shall make available to the board the ~~fi~~~~seal~~ ~~impact~~
10 ~~statement latest version of the regulatory analysis prepared by the~~
11 ~~office of management and budget with respect to~~ ~~for~~ the proposed rule.
12 ~~under IC 4-22-2-28(e).~~

13 SECTION 40. IC 13-14-9-4.5 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a
15 rule

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

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

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

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

22 ~~(2)~~ for which the commissioner has made a determination and
23 prepared written findings under section 7 or 8 of this chapter;

24 a board may not adopt a rule under this chapter until the board has
25 conducted a third public comment period that is at least twenty-one
26 (21) days in length.

27 (b) The department shall publish notice of a third public comment
28 period with the

29 ~~(1)~~ text;

30 ~~(2)~~ summary; and

31 ~~(3)~~ fiscal analysis;

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

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

41 SECTION 41. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,
42 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the
2 following occur:

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

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

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

10 (B) A summary of the response of the department to all
11 comments received at the meeting held under subdivision
12 (1):

13 (C) For a proposed rule with an estimated economic impact
14 on regulated entities that is greater than five hundred
15 thousand dollars (\$500,000); a copy of the office of
16 management and budget fiscal analysis required under
17 IC 4-22-2-28: **required by section 4 of this chapter.**
18 **However, a notice of a third public comment period**
19 **under section 4.5 of this chapter must request the**
20 **submission of comments, including suggestions of**
21 **specific amendments, that concern only the portion of**
22 **the preliminarily adopted rule that is substantively**
23 **different from the language contained in the proposed**
24 **rule published in a second notice under section 4 of this**
25 **chapter.**

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

28 (4) If a third public comment period is required under section 4.5
29 of this chapter, the department publishes notice of the third
30 public comment period in the Indiana Register.

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

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

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

37 (2) be subject to additional comments under section 3 or 4 of this
38 chapter, considering any written finding made by the
39 commissioner under section 7 or 8 of this chapter; or

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

42 SECTION 42. IC 13-14-9-6, AS AMENDED BY P.L.123-2006,



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1 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of~~
3 ~~this chapter~~, The department shall include the following in the written
4 materials to be considered at the board meetings held under section
5 5(a)(1) and 5(a)(3) of this chapter:

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

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

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

12 (B) during the immediately preceding board meeting under
13 section 5(a)(1) of this chapter for a board meeting held
14 under section 5(a)(3) of this chapter if a third public
15 comment period is not required under section 4.5 of this
16 chapter; or

17 (C) during:

18 (i) a third public comment period that address the
19 portion of the preliminarily adopted rule that is
20 substantively different from the language contained in
21 the proposed rule published in a second notice under
22 section 4 of this chapter; and

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

25 for a board meeting held under section 5(a)(3) of this
26 chapter if a third public comment period is required under
27 section 4.5 of this chapter.

28 (3) The full text of the ~~office of management and budget fiscal~~
29 ~~latest version of regulatory~~ analysis if a ~~fiscal analysis is~~
30 ~~required under IC 4-22-2-28~~; **prepared under IC 4-22-2-22.7.**

31 SECTION 43. IC 13-14-9-15 IS ADDED TO THE INDIANA
32 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance**
34 **with this chapter by the department of environmental management**
35 **or a board that has rulemaking authority under IC 13 expire as**
36 **provided in IC 4-22-2.6.**

37 SECTION 44. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY
38 1, 2023]. (Expiration and Readoption of Administrative Rules).

39 SECTION 45. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1
42 of this chapter, "coal combustion residuals" means fly ash, bottom ash,

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1 boiler slag, and flue gas desulfurization materials generated from
 2 burning coal for the purpose of generating electricity by electric
 3 utilities and independent power producers.

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

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

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

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

18 (1) ~~that are~~ **shall be** consistent with the regulations of the United
 19 States Environmental Protection Agency concerning standards
 20 for the disposal of coal combustion residuals in landfills and
 21 surface impoundments, as set forth in the federal CCR rule;

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

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

27 (d) The department shall do the following:

28 (1) Establish a state permit program under Section 2301 of the
 29 federal Water Infrastructure Improvements for the Nation Act
 30 (42 U.S.C. 6945(d)) for the implementation in Indiana of the
 31 federal CCR rule.

32 (2) Submit to the administrator of the United States
 33 Environmental Protection Agency under 42 U.S.C.
 34 6945(d)(1)(A) evidence of the state permit program.

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

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

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

42 (1) the department shall initiate rulemaking for the establishment

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1 of the state permit program not more than sixty (60) days after
 2 the effective date of the SECTION of Senate Enrolled Act
 3 271-2021 amending this section; and
 4 (2) the board shall adopt a final rule for the establishment of the
 5 state permit program not more than sixteen (16) months after
 6 initiation of the rulemaking under subdivision (1).
 7 (g) The state permit program established under this section must
 8 not establish requirements for any surface impoundment of coal
 9 combustion residuals unless and until the state permit program is
 10 approved by the administrator of the United States Environmental
 11 Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**
 12 **department to establish requirements under the state permit**
 13 **program established under this section is the only authority the**
 14 **department has to establish requirements for a surface**
 15 **impoundment of coal combustion residuals located on the grounds**
 16 **of a legacy generation resource.**
 17 (h) The definitions set forth in Section 257.53 of the federal CCR
 18 rule, as in effect January 1, 2021, apply throughout subsection (i).
 19 (i) The department shall charge the following fees under the state
 20 permit program established under this section:
 21 (1) An initial one (1) time permit fee of twenty thousand five
 22 hundred dollars (\$20,500) for each surface impoundment of coal
 23 combustion residuals regulated under the state permit program.
 24 (2) An annual fee of twenty thousand five hundred dollars
 25 (\$20,500) for each surface impoundment of coal combustion
 26 residuals regulated under the state permit program that has not
 27 completed closure in accordance with Section 257.102 of the
 28 federal CCR rule. The duty to pay the fee established by this
 29 subdivision does not apply on an annual basis until three
 30 hundred sixty-five (365) days after the initial one (1) time permit
 31 fee established by subdivision (1) has been assessed.
 32 (3) An annual fee of ten thousand dollars (\$10,000) for each
 33 surface impoundment of coal combustion residuals regulated
 34 under the state permit program that has been closed and for
 35 which post-closure care has been initiated and is still required in
 36 accordance with Section 257.104 of the federal CCR rule. The
 37 duty to pay the fee established by this subdivision does not apply
 38 on an annual basis until three hundred sixty-five (365) days after
 39 the initial one (1) time permit fee established by subdivision (1)
 40 has been assessed.
 41 Fees collected under this subsection shall be deposited in the CCR
 42 program fund established by section 3.2 of this chapter.

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1 (j) Not later than July 1, 2027, and before the end of each
 2 succeeding period of five (5) years, the board shall review the:
 3 (1) costs to the department of operating the state permit program
 4 established under this section; and
 5 (2) revenue from the fees charged under subsection (i);
 6 as provided in IC 13-16-1-4. If the board determines that the revenue
 7 described in subdivision (2) is inadequate or excessive in relation to the
 8 costs described in subdivision (1), the board shall, under IC 13-16-1-2,
 9 change the amount of one (1) or more of the fees established under
 10 subsection (i).

11 (k) Upon the effective date that the board adopts rules to
 12 implement the federal CCR rule and subject to subsection (i), annual
 13 fees for CCR landfills that were previously regulated as restricted waste
 14 sites shall be deposited in the CCR program fund established by section
 15 3.2 of this chapter.

16 SECTION 46. [EFFECTIVE UPON PASSAGE] (a) **After June**
 17 **30, 2023, a rule may be adopted as an emergency rule only for the**
 18 **purposes and through the procedures in IC 4-22-2-37.1 (as effective**
 19 **after June 30, 2023). Any additional authority in a statute outside**
 20 **IC 4-22 to adopt rules through the emergency rulemaking**
 21 **procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or**
 22 **after June 30, 2023) is void. The code revision commission shall**
 23 **provide in calendar year 2023 for the preparation of a bill for**
 24 **introduction in the 2024 regular session of the general assembly**
 25 **that removes language outside IC 4-22 permitting the adoption of**
 26 **emergency rules.**

27 (b) **This SECTION expires January 1, 2024.**

28 SECTION 47. **An emergency is declared for this act.**

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