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HOUSE BILL No. 1623

Proposed Changes to introduced printing by AM162305

DIGEST OF PROPOSED AMENDMENT

Regulation of coal combustion residuals. Amends the law requiring the department of environmental management (department) to establish a state permit program for the implementation in Indiana of the federal standards for the disposal of coal combustion residuals (CCR) in landfills and surface impoundments (the federal CCR rule). Provides that the rules adopted by the environmental rules board concerning the disposal of CCR in landfills and surface impoundments: (1) shall be consistent with the federal CCR rule; (2) shall not impose a restriction or requirement that is more stringent than the corresponding restriction or requirement imposed under the federal CCR rule; and (3) shall not impose a restriction or requirement that is not imposed by the federal CCR rule. Defines "legacy generation resource" as an electric generating facility that is directly or indirectly owned by a corporation that was originally formed for the purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests. Provides that the authority of the department to establish requirements under the state permit program is the only authority the department has to establish requirements for a surface impoundment of CCR located on the grounds of a legacy generation resource.

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:

2023

IN 1623—LS 7025/DI 125



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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 (c), 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.~~

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

26 (1) This subsection does not empower the OMB or an agency to
 27 require an interested party or a regulated person to provide any
 28 materials, documents, or other information. ~~in connection with~~
 29 ~~a cost benefit analysis under this section.~~ If an interested party or
 30 a regulated person voluntarily provides materials, documents, or
 31 other information to the OMB or an agency, ~~in connection with~~
 32 ~~a cost benefit analysis under this section,~~ the OMB or the
 33 agency, as applicable, shall ensure the adequate protection of
 34 any:

35 (A) information that is confidential under IC 5-14-3-4; or

36 (B) confidential and proprietary business plans and other
 37 confidential information.

38 If an agency has adopted rules to implement IC 5-14-3-4,
 39 interested parties and regulated persons must submit the
 40 information in accordance with the confidentiality rules adopted
 41 by the agency to ensure proper processing of confidentiality



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1 claims. The OMB and any agency involved in proposing the
2 rule, or in administering the rule upon the rule's adoption, shall
3 exercise all necessary caution to avoid disclosure of any
4 confidential information supplied to the OMB or the agency by
5 an interested party or a regulated person.

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

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

- 16 (e) If the OMB finds that a proposed rule is:
 - 17 (1) an adoption or incorporation by reference of a federal law;
 - 18 regulation; or rule that has no substantive effect on the scope or
 - 19 intended application of the federal law or rule; or
 - 20 (2) a technical amendment with no substantive effect on an
 - 21 existing Indiana rule;

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

34 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
36 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 in the**
37 **2023 session of the general assembly only apply to agency actions**
38 **commenced under IC 4-21.5-3 after June 30, 2023.**

39 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
40 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
42 concerning an agency action, the administrative law judge shall order



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1 the agency to pay the reasonable attorney's fees incurred in the
 2 proceeding by the party challenging the agency action if the party
 3 challenging the agency action proves, by a preponderance of the
 4 evidence, that:

- 5 (1) the agency's action was frivolous or groundless; or
- 6 (2) the agency pursued the action in bad faith;
- 7 **(3) the agency has failed to demonstrate that the agency**
- 8 **action is based on a standard or an interpretation of a**
- 9 **standard that has the force of law; or**
- 10 **(4) the agency has failed to demonstrate that the agency**
- 11 **acted within its legal authority.**

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

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

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

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

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

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

- 27 (A) is ordered by the commissioner of the Indiana
 28 department of transportation;
- 29 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or
 30 IC 9-20-7; and
- 31 (C) applies only to one (1) or more particularly described
 32 intersections, highway portions, bridge causeways, or
 33 viaduct areas.

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

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

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

41 (d) Except as specifically set forth in IC 13-14-9, IC 13-14-9
 42 provides alternative procedures for notice and public comment



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1 concerning proposed rules for the environmental rules board and the
 2 underground storage tank financial assurance board. The department
 3 of environmental management, the environmental rules board, and the
 4 underground storage tank financial assurance board shall comply with
 5 the procedures in IC 13-14-9 in lieu of complying with sections 23, 24,
 6 26, 27, and 29 of this chapter. ~~do not apply to rulemaking actions under~~
 7 ~~IC 13-14-9. In adopting rules, all other provisions of IC 4-22-2~~
 8 **apply to these agencies, including sections 22.7 and 22.8 of this**
 9 **chapter.**

10 SECTION 5. IC 4-22-2-15 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking
 12 action that this chapter allows or requires an agency to perform, other
 13 than final adoption of a rule under section 29, ~~or 37.1, or 37.2~~ of this
 14 chapter **or IC 13-14-9**, may be performed by the individual or group of
 15 individuals with the statutory authority to adopt rules for the agency, a
 16 member of the agency's staff, or another agent of the agency. Final
 17 adoption of a rule under section 29, ~~or 37.1, or 37.2~~ of this chapter **or**
 18 **IC 13-14-9**, including readoption of a rule that is subject to sections 24
 19 through 36 or to section 37.1 of this chapter and recalled for further
 20 consideration under section 40 of this chapter, may be performed only
 21 by the individual or group of individuals with the statutory authority to
 22 adopt rules for the agency.

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

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

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

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



- 1 comply with the following:
- 2 (1) Minimize the expenses to:
- 3 (A) regulated entities that are required to comply with the
- 4 rule;
- 5 (B) persons who pay taxes or pay fees for government
- 6 services affected by the rule; and
- 7 (C) consumers of products and services of regulated entities
- 8 affected by the rule.
- 9 (2) Achieve the regulatory goal in the least restrictive manner.
- 10 (3) Avoid duplicating standards found in state or federal laws.
- 11 (4) Be written for ease of comprehension.
- 12 (5) Have practicable enforcement.
- 13 (b) Subsection (a) does not apply to a rule that must be adopted in
- 14 a certain form to comply with federal law.
- 15 SECTION 9. IC 4-22-2-21, AS AMENDED BY P.L.204-2016,
- 16 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 17 JULY 1, 2023]: Sec. 21. (a) If incorporation of the text in full would be
- 18 cumbersome, expensive, or otherwise inexpedient, an agency may
- 19 incorporate by reference into a rule part or all of any of the following
- 20 matters:
- 21 (1) A federal or state statute, rule, or regulation.
- 22 (2) A code, manual, or other standard adopted by an agent of the
- 23 United States, a state, or a nationally recognized organization or
- 24 association.
- 25 (3) A manual of the department of local government finance
- 26 adopted in a rule described in IC 6-1.1-31-9.
- 27 (4) The following requirements:
- 28 (A) The schedule, electronic formatting, and standard data,
- 29 field, and record coding requirements for:
- 30 (i) the electronic data file under IC 6-1.1-4-25
- 31 concerning the parcel characteristics and parcel
- 32 assessments of all parcels and personal property return
- 33 characteristics and assessments; and
- 34 (ii) the electronic data file under IC 36-2-9-20
- 35 concerning the tax duplicate.
- 36 (B) The schedule, electronic formatting, and standard data,
- 37 field, and record coding requirements for data required to
- 38 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.
- 39 (C) Data export and transmission format requirements for
- 40 information described in clauses (A) and (B).
- 41 (b) Each matter incorporated by reference under subsection (a)
- 42 must be fully and exactly described.



1 (c) An agency may refer to a matter that is directly or indirectly
2 referred to in a primary matter by fully and exactly describing the
3 primary matter.

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

9 (1) An Indiana statute or rule.

10 (2) A form or instructions for a form numbered by the Indiana
11 archives and record administration under IC 5-15-5.1-6.

12 (3) The source of a statement that is quoted or paraphrased in
13 full in the rule.

14 (4) Any matter that has been previously filed with the:

15 (A) secretary of state before July 1, 2006; or

16 (B) publisher after June 30, 2006.

17 (5) Any matter referred to in subsection (c) as a matter that is
18 directly or indirectly referred to in a primary matter.

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

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

26 (1) adopt under sections 24 through 36 of this chapter **or section**
27 **37.3 of this chapter; and**

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

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

31 (1) either:

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

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

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

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

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

42 (d) A current rulemaking docket must list each pending



1 rulemaking action. The docket must state or contain:
 2 (1) the subject matter of the proposed rule;
 3 (2) notices related to the proposed rule, or links to the Indiana
 4 Register where these notices may be viewed;
 5 (3) how comments may be made;
 6 (4) the time within which comments may be made;
 7 (5) where comments and the agency's written response to those
 8 comments may be inspected;
 9 (6) the date, time, and place where a public hearing required
 10 under:

- 11 (A) section 26 of this chapter; ~~or~~
 - 12 (B) IC 13-14-9; **or**
 - 13 (C) **IC 4-22-2.6;**
- 14 will be held;
- 15 (7) a description of relevant scientific and technical findings
 16 related to the proposed rule, if applicable; and
 - 17 (8) a reasonable estimate of the timetable for action, updated
 18 periodically as circumstances change, if necessary.

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

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

- 32 (1) **Minimizes expenses to:**
 - 33 (A) **regulated entities that are required to comply with**
 34 **the rule;**
 - 35 (B) **persons who pay taxes or pay fees for government**
 36 **services affected by the rule; and**
 - 37 (C) **consumers of products and services of regulated**
 38 **entities affected by the rule.**
- 39 (2) **Achieves the regulatory goal in the least restrictive**
 40 **manner.**
- 41 (3) **Has benefits that exceed the fiscal and economic costs of**
 42 **the proposed rule.**

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

3 (5) Is written for ease of comprehension.

4 (6) Has practicable enforcement.

5 (b) The office of management and budget shall set standards
6 for the criteria, analytical method, treatment technology,
7 economic, fiscal, and other background data to be used by an
8 agency in the regulatory analysis. The regulatory analysis,
9 including supporting data, must be submitted in a form that can be
10 easily loaded into commonly used business analysis software and
11 published in the Indiana Register using the format jointly
12 developed by the publisher, the office of management and budget,
13 and the budget agency. The office of management and budget may
14 provide more stringent requirements for rules with fiscal impacts
15 and costs above a threshold amount determined by the office of
16 management and budget. At a minimum, the regulatory analysis
17 must include findings and any supporting data, studies, or analyses
18 prepared for a rule that demonstrate compliance with the
19 following:

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

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

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

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

28 (B) not expressly required by:

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

31 (ii) any other state or federal law.

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

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

39 (5) A requirement in IC 4-22-2.6 to conduct a review to
40 consider whether there are any alternative methods of
41 achieving the purpose of the rule that are less costly or less
42 intrusive, or that would otherwise minimize the economic



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- 1 impact of the proposed rule on small businesses.
- 2 (6) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
- 3 information concerning the fiscal or economic impact of a
- 4 rule or alternatives to a rule subject to these provisions.
- 5 (7) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
- 6 information concerning differences between the rule and
- 7 federal law or the annual fiscal and economic impact of any
- 8 element of the proposed rule that imposes a restriction or
- 9 requirement that is more stringent than a restriction or
- 10 requirement imposed under federal law or that applies in a
- 11 subject area in which federal law does not impose
- 12 restrictions or requirements.
- 13 (8) A requirement under any other law to conduct an
- 14 analysis of the cost, benefits, economic impact, or fiscal
- 15 impact of a rule.
- 16 (c) If an agency has made a good faith effort to comply with
- 17 this section, a rule is not invalid solely because the regulatory
- 18 analysis for the proposed rule is insufficient or inaccurate.
- 19 SECTION 12. IC 4-22-2-22.8 IS ADDED TO THE INDIANA
- 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 21 [EFFECTIVE JULY 1, 2023]: Sec. 22.8. (a) After conducting a
- 22 regulatory analysis under section 22.7 of this chapter, an agency
- 23 may submit a request to the budget agency and the office of
- 24 management and budget to authorize commencement of the first
- 25 and second public comment periods under this chapter or
- 26 IC 13-14-9 (as applicable). The request must include the following:
- 27 (1) A general description of the subject matter of the
- 28 proposed rule.
- 29 (2) The full text of the proposed rule (including a copy of any
- 30 matter incorporated by reference under section 21 of this
- 31 chapter) in the form required by the publisher, including
- 32 citations to any related authorizing and affected Indiana
- 33 statutes.
- 34 (3) The analysis, including supporting data, prepared under
- 35 section 22.7 of this chapter.
- 36 (4) Any other information required by the office of
- 37 management and budget.
- 38 (b) The budget agency and the office of management and
- 39 budget shall expedite the review of the request to adopt a rule. The
- 40 budget agency and the office of management and budget may do
- 41 the following:
- 42 (1) Return the request to the agency with a statement

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1 describing any additional information needed to authorize or
 2 disapprove further rulemaking actions on one (1) or more of
 3 the rules in the request.
 4 (2) Authorize the commencement of the first and second
 5 public comment periods on one (1) or more of the rules in the
 6 request with or without changes.
 7 (3) Disapprove commencement of the first and second public
 8 comment periods on one (1) or more of the rules with a
 9 statement of reasons for the disapproval.
 10 (c) If an agency has requested authorization for more than one
 11 (1) rule in the same request, the budget agency and the office of
 12 management and budget may make separate determinations with
 13 respect to some or all of the rules in the request. Approval of a
 14 request shall be treated as a determination that the review
 15 conducted and findings made by the agency comply with the
 16 requirements of section 22.7 of this chapter and this section.
 17 (d) Notice of the determination shall be provided to the agency
 18 in an electronic format required by the publisher. The budget
 19 agency and the office of management and budget may return to the
 20 agency any copy of a matter incorporated by reference under
 21 section 21 of this chapter that was submitted with the request.
 22 (e) If an agency revises a proposed rule after the budget
 23 agency and the office of management and budget authorize
 24 commencement of the first and second public comment periods, the
 25 agency shall resubmit to the publisher, the budget agency, and the
 26 office of management and budget sufficient information for the
 27 budget agency and the office of management and budget to
 28 determine the impact the revisions have on the regulatory analysis
 29 previously reviewed by the budget agency and the office of
 30 management and budget.
 31 SECTION 13. IC 4-22-2-23, AS AMENDED BY P.L.152-2012,
 32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2023]: Sec. 23. (a) ~~This section does not apply to rules~~
 34 ~~adopted under IC 4-22-2-37.1. An agency may not adopt a proposed~~
 35 ~~rule until the agency has conducted at least two (2) public comment~~
 36 ~~periods, each of which must be at least thirty (30) days in length.~~
 37 (b) At least twenty-eight (28) days before an agency notifies the
 38 public of the agency's intention to adopt a rule under section 24 of this
 39 chapter, the agency shall notify the public of its intention to adopt a
 40 rule by publishing a notice of intent to adopt a rule in the Indiana
 41 Register. An agency shall provide notice in the Indiana Register of
 42 the first public comment period required by subsection (a). To

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1 **publish notice of the first comment period in the Indiana Register,**
 2 **the agency must submit the following to the publisher:**

3 **(1) The full text of the agency's proposed rule (excluding the**
 4 **full text of a matter incorporated by reference under section**
 5 **21 of this chapter). The agency shall submit the rule in the**
 6 **form required by section 20 of this chapter and with the**
 7 **documents required by section 21 of this chapter.**

8 **(2) The latest version of the regulatory analysis, including**
 9 **supporting data and studies, submitted to the budget agency**
 10 **and the office of management and budget under section 22.8**
 11 **of this chapter.**

12 **(3) The determination of the budget agency and the office of**
 13 **management and budget authorizing commencement of the**
 14 **first and second public comment periods on the proposed**
 15 **rule.**

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

17 **(c) The publication notice of the first comment period must**
 18 **include the following:**

19 **(1) A general description of the subject matter of the**
 20 **proposed rule.**

21 **(2) An overview of the intent and scope of the proposed rule and**
 22 **the statutory authority for the rule.**

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

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

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

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

39 **(7) An indication that the notice is for the first of two (2)**
 40 **thirty (30) day periods in which the public may comment on**
 41 **the proposed rule.**

42 **Inadequacy or insufficiency of the published description or**



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1 **regulatory analysis published under this section does not invalidate**
2 **a rulemaking action.**

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

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

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

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

- 26 (1) **The notice of the first comment period.**
- 27 (2) **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).**

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

34 (b) Before or after an agency notifies the public of its intention to
35 adopt a rule under section 24 of this chapter, **submits a request to the**
36 **budget agency and the office of management and budget under**
37 **section 22.8 of this chapter,** the agency may solicit comments from all
38 or any segment of the public on the need for a rule, the drafting of a
39 rule, or any other subject related to a rulemaking action. The
40 procedures that the agency may use include the holding of conferences
41 and the inviting of written suggestions, facts, arguments, or views. An
42 agency's failure to consider comments received under this section does

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1 not invalidate a rule subsequently adopted.
 2 SECTION 15. IC 4-22-2-24, AS AMENDED BY P.L.1-2006,
 3 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its
 5 intention to adopt a rule by complying with the publication
 6 requirements in subsections (b) and (c): **provide notice in:**
 7 **(1) one (1) newspaper of general circulation in Marion**
 8 **County; and**
 9 **(2) the Indiana Register;**
 10 **of the second public comment period required by section 23 of this**
 11 **chapter.**
 12 (b) The agency shall cause a notice of a public hearing to be
 13 published once in one (1) newspaper of general circulation in Marion
 14 County, Indiana. To publish the newspaper notice, the agency shall
 15 directly contract with the newspaper. **The newspaper notice must**
 16 **contain the following information:**
 17 **(1) A general description of the subject matter of the**
 18 **proposed rule.**
 19 **(2) Information indicating that the text of the proposed rule**
 20 **has been published in the Indiana Register and where on the**
 21 **Internet and by what document control number the**
 22 **proposed rule can be found.**
 23 **(3) A statement of the date, time, and place at which the**
 24 **public hearing required by section 26 of this chapter will be**
 25 **convened.**
 26 **(4) Information concerning where, when, and how a person**
 27 **may provide written comments on the proposed rule,**
 28 **including contact information concerning the small business**
 29 **regulatory coordinator required by section 28.1 of this**
 30 **chapter.**
 31 **(5) Information concerning where, when, and how a person**
 32 **may inspect and copy the agency's regulatory analysis, and**
 33 **any supporting data, studies, or analyses for the proposed**
 34 **rule.**
 35 **(6) Information concerning where, when, and how a person**
 36 **may inspect any documents incorporated by reference into**
 37 **the proposed rule under section 21 of this chapter.**
 38 An agency may not contract for the publication of a notice under this
 39 chapter until the agency has received a written or an electronic
 40 authorization to proceed from the publisher under subsection ~~(g)~~: (f).
 41 (c) **To publish a notice of the second comment period in the**
 42 **Indiana Register, the agency must submit the following to the**

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publisher:

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

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

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

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

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

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

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

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

~~(B) not expressly required by:~~

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

~~or~~

~~(ii) any other state or federal law.~~

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



1 cost is necessary.
 2 (4) an explanation that:
 3 (A) the proposed rule; and
 4 (B) any data, studies, or analysis referenced in a statement
 5 under subdivision (3);
 6 may be inspected and copied at the office of the agency.
 7 (3) A summary of the response of the agency to written
 8 comments submitted under section 23 of this chapter during
 9 the first public comment period.
 10 (4) Either a statement indicating that no changes in the
 11 regulatory analysis have been made from the version of the
 12 regulatory analysis published under section 23 of this
 13 chapter or the latest version of the regulatory analysis
 14 (excluding any appendices containing any data, studies, or
 15 analysis referenced in the regulatory analysis) submitted to
 16 the budget agency and the office of management and budget
 17 under section 22.8 of this chapter, if any changes have been
 18 made in the regulatory analysis after submitting the material
 19 to the publisher under section 23 of this chapter.
 20 (5) An explanation of any differences between the text of the
 21 proposed rule published for the first comment period under
 22 section 23 of this chapter and the text of the proposed rule
 23 published for the second comment period under this section.
 24 (6) Information concerning where, when, and how a person
 25 may submit written comments on the proposed rule,
 26 including contact information concerning the small business
 27 regulatory coordinator required by section 28.1 of this
 28 chapter.
 29 (7) Information concerning where, when, and how a person
 30 may inspect and copy the regulatory analysis and any data,
 31 studies, or analyses referenced in a regulatory analysis
 32 referenced in subdivision (4).
 33 (8) Information concerning where, when, and how a person
 34 may inspect any documents incorporated by reference into
 35 the proposed rule under section 21 of this chapter.
 36 (9) An indication that the notice is for the second of two (2)
 37 thirty (30) day periods in which the public may comment on
 38 the proposed rule and that following the second comment
 39 period the agency may adopt a version of the proposed rule
 40 that is the same as or does not substantially differ from the
 41 text of the proposed rule published under this section.
 42 However, inadequacy or insufficiency of the subject matter description[

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1 ~~under subdivision (2) or a statement of justification under subdivision~~
2 ~~(3) or regulatory analysis in a notice published under this section~~
3 ~~]~~ does not invalidate a rulemaking action.

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

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

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

- 14 ~~(1) establishing the intended publication date; and~~
- 15 ~~(2) receiving the public hearing information specified in~~
16 ~~subsection (d) from the agency;~~

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

- 23 **(1) The notice of the second comment period.**
- 24 **(2) The full text of the agency's proposed rule (excluding the**
25 **full text of a matter incorporated by reference under section**
26 **21 of this chapter).**

27 SECTION 16. IC 4-22-2-25, AS AMENDED BY P.L.5-2015,
28 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2023]: Sec. 25. (a) An agency has one (1) year from the date
30 that it publishes a notice of intent to adopt a rule in the Indiana Register
31 ~~under section 23 of this chapter to comply with sections 26 through 33~~
32 ~~of this chapter the first public comment period under section 23 of~~
33 **this chapter to comply with sections 23 through 33 of this chapter**
34 and obtain the approval or deemed approval of the governor. If an
35 agency determines that a rule cannot be adopted within one (1) year
36 after the publication of the notice of ~~intent to adopt a rule~~ **the first**
37 **public comment period** under section 23 of this chapter, the agency
38 shall, before the two hundred fiftieth day following the publication of
39 the notice of ~~intent to adopt a rule~~ **the first public comment period**
40 under section 23 of this chapter, notify the publisher by electronic
41 means:

- 42 (1) the reasons why the rule was not adopted and the expected

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- 1 date the rule will be completed; and
 2 (2) the expected date the rule will be approved or deemed
 3 approved by the governor or withdrawn under section 41 of this
 4 chapter.
 5 (b) If a rule is not approved before the later of:
 6 (1) one (1) year after the agency publishes notice of ~~intent to~~
 7 ~~adopt the rule~~ **the first public comment period** under section 23
 8 of this chapter; or
 9 (2) the expected date contained in a notice concerning the rule
 10 that is provided to the publisher under subsection (a);
 11 a later approval or deemed approval is ineffective, and the rule may
 12 become effective only through another rulemaking action initiated
 13 under this chapter.

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

- 18 (1) "Ombudsman" refers to the small business ombudsman
 19 designated under IC 5-28-17-6.
 20 (2) "Total estimated economic impact" means the direct annual
 21 economic impact of a rule on all regulated persons after the rule
 22 is fully implemented under subsection (g).
 23 (b) The ombudsman:
 24 (1) shall review a proposed rule that
 25 ~~(A)~~ imposes requirements or costs on small businesses (as
 26 defined in IC 4-22-2.1-4); ~~and~~
 27 ~~(B)~~ is referred to the ombudsman by an agency under
 28 IC 4-22-2.1-5(c); and
 29 (2) may review a proposed rule that imposes requirements or
 30 costs on businesses other than small businesses (as defined in
 31 IC 4-22-2.1-4).

32 After conducting a review under subdivision (1) or (2), the ombudsman
 33 may suggest alternatives to reduce any regulatory burden that the
 34 proposed rule imposes on small businesses or other businesses. The
 35 agency that intends to adopt the proposed rule shall respond in writing
 36 to the ombudsman concerning the ombudsman's comments or
 37 suggested alternatives before adopting the proposed rule under section
 38 29 of this chapter.

39 ~~(c) Subject to subsection (e) and not later than fifty (50) days~~
 40 ~~before the public hearing for a proposed rule required by section 26 of~~
 41 ~~this chapter, an agency shall submit the proposed rule to the office of~~
 42 ~~management and budget for a review under subsection (d); if the~~



1 agency proposing the rule determines that the rule will have a total
 2 estimated economic impact greater than five hundred thousand dollars
 3 (\$500,000) on all regulated persons. In determining the total estimated
 4 economic impact under this subsection, the agency shall consider any
 5 applicable information submitted by the regulated persons affected by
 6 the rule. To assist the office of management and budget in preparing
 7 the fiscal impact statement required by subsection (d), the agency shall
 8 submit, along with the proposed rule, the data used and assumptions
 9 made by the agency in determining the total estimated economic
 10 impact of the rule.

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

19 (1) the state; and

20 (2) all persons regulated by the proposed rule.

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

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

36 (1) the department of environmental management shall give
 37 written notice to the office of management and budget of the
 38 proposed date of preliminary adoption of the proposed rule not
 39 less than sixty-six (66) days before that date; and

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



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1 adoption of the proposed rule:

2 (f) In determining whether a proposed rule has a total estimated
3 economic impact greater than five hundred thousand dollars
4 (\$500,000), the agency proposing the rule shall consider the impact of
5 the rule on any regulated person that already complies with the
6 standards imposed by the rule on a voluntary basis:

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

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

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

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

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

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

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

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

41 (1) a requirement in section 19.5 of this chapter to minimize the
42 expenses to regulated entities that are required to comply with



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- 1 the rule;
- 2 (2) a requirement in section 24 of this chapter to publish a
- 3 justification of any requirement or cost that is imposed on a
- 4 regulated entity under the rule;
- 5 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
- 6 describes the annual economic impact of a rule on all small
- 7 businesses after the rule is fully implemented;
- 8 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
- 9 consider whether there are any alternative methods of achieving
- 10 the purpose of the rule that are less costly or less intrusive; or
- 11 that would otherwise minimize the economic impact of the
- 12 proposed rule on small businesses;
- 13 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
- 14 information concerning the fiscal impact of a rule or alternatives
- 15 to a rule subject to these provisions; or
- 16 (6) a requirement under any other law to conduct an analysis of
- 17 the cost, economic impact, or fiscal impact of a rule;
- 18 regardless of whether the total estimated economic impact of the
- 19 proposed rule is more than five hundred thousand dollars (\$500,000);
- 20 as soon as practicable after the information is prepared. Information
- 21 submitted under this subsection must identify the rule to which the
- 22 information is related by document control number assigned by the
- 23 publisher.

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

- 27 (1) A rule for which the notice required by section 23 of this
- 28 chapter or by IC 13-14-9-3 is published by an agency or the
- 29 board (as defined in IC 13-13-8-1).
- 30 (2) A rule for which:
- 31 (A) the notice required by IC 13-14-9-3; or
- 32 (B) an appropriate later notice for circumstances described
- 33 in subsection (g);
- 34 is published by the department of environmental management
- 35 after June 30, 2006.
- 36 (b) As used in this section, "coordinator" refers to the small
- 37 business regulatory coordinator assigned to a rule by an agency under
- 38 subsection (e).
- 39 (c) As used in this section, "director" refers to the director or other
- 40 administrative head of an agency.
- 41 (d) As used in this section, "small business" has the meaning set
- 42 forth in IC 5-28-2-6.

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

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

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

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

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

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

38 (3) if applicable, a statement of:

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

42 (B) the name, address, telephone number, and electronic



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1 mail address of the ombudsman for small business
2 designated under IC 13-28-5-2(3); and

3 (4) the information required by subsection (e).
4 The coordinator assigned to the rule under subsection (e) shall work
5 with the ombudsman described in subdivision (2) and the office of
6 voluntary compliance established by IC 13-28-1-1 to coordinate the
7 provision of services required under subsection (h) and IC 13-28-3. If
8 applicable, the coordinator assigned to the rule under subsection (e)
9 shall work with the ombudsman referred to in subdivision (3)(B) to
10 coordinate the provision of services required under subsection (h) and
11 IC 13-28-5.

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

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

- 26 (1) Any requirements imposed by the rule, including any
27 reporting, record keeping, or accounting requirements.
- 28 (2) How the agency determines or measures compliance with the
29 rule, including any deadlines for action by regulated entities.
- 30 (3) Any penalties, sanctions, or fines imposed for noncompliance
31 with the rule.
- 32 (4) Any other concerns of small businesses with respect to the
33 rule, including the agency's application or enforcement of the
34 rule in particular situations. However, in the case of a rule
35 adopted under IC 13-14-9, the coordinator assigned to the rule
36 may refer a small business with concerns about the application
37 or enforcement of the rule in a particular situation to the
38 ombudsman designated under IC 13-28-3-2 or, if applicable,
39 under IC 13-28-5-2(3).

40 (i) The coordinator assigned to a rule under subsection (e) shall
41 provide guidance under this section in response to questions and
42 concerns expressed by small businesses affected by the rule. The

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1 coordinator may also issue general guidelines or informational
2 pamphlets to assist small businesses in complying with the rule. Any
3 guidelines or informational pamphlets issued under this subsection
4 shall be made available:

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

7 (2) electronically through electronic gateway access.

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

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

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

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

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

21 (1) compile the records received from all of the agency's
22 coordinators under subsection (j);

23 (2) prepare a report that sets forth:

24 (A) the number of comments, complaints, and questions
25 received by the agency from small businesses during the
26 most recent state fiscal year, categorized by the subject
27 matter of the rules involved;

28 (B) the number of complaints or questions reported under
29 clause (A) that were resolved to the satisfaction of the
30 agency and the small businesses involved;

31 (C) the total number of staff serving as coordinators under
32 this section during the most recent state fiscal year;

33 (D) the agency's costs in complying with this section during
34 the most recent state fiscal year; and

35 (E) the projected budget required by the agency to comply
36 with this section during the current state fiscal year; and

37 (3) deliver the report to the legislative council in an electronic
38 format under IC 5-14-6 and to the small business ombudsman
39 designated under IC 5-28-17-6.

40 SECTION 19. IC 4-22-2-29, AS AMENDED BY P.L.237-2017,
41 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2023]: Sec. 29. (a) As used in this section, "small business

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1 ombudsman" refers to the small business ombudsman designated under
2 IC 5-28-17-6.

3 (b) After an agency has complied with sections 26, 27, and 22.8
4 **through** 28 of this chapter, the agency may:

5 (1) adopt a rule that is identical to a proposed rule published in
6 the Indiana Register under section 24 of this chapter;

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

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

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

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

24 (1) during the public comment ~~period~~; **periods**; or

25 (2) by the small business ombudsman under IC 4-22-2.1-6(a), if
26 applicable.

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

34 (1) The rule in the form required by section 20 of this chapter.

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

36 (3) Written authorization to proceed issued by the publisher
37 under ~~section 24(g)~~ **sections 23(d) and 24(f)** of this chapter.

38 (4) Any other documents specified by the attorney general.

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

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

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

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

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

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

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

- (1) an imminent and substantial peril to public health, safety, or welfare;**
- (2) an imminent and material loss of federal funds for an agency program;**
- (3) an imminent and material deficit; or**
- (4) an imminent and substantial violation of a state or federal law or the terms of a federal agreement or program.**

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

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1 **subsection.**

2 (c) After an agency adopts a rule under this section, ~~the governor~~
 3 **approves emergency rulemaking procedures for a rule**, the agency
 4 shall ~~submit the rule to the publisher for the assignment of~~ **obtain** a
 5 document control number. ~~The agency shall submit the rule in the form~~
 6 ~~required by section 20 of this chapter and with the documents required~~
 7 ~~by section 21 of this chapter.~~ **from the publisher.** The publisher shall
 8 determine the **documents and the** format of the ~~rule and other~~
 9 ~~documents to that must be submitted under this subsection.~~ **to the**
 10 **publisher to obtain a document control number.**

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

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

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

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

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

23 The publisher shall determine the format of the **emergency rule** and
 24 other documents to be submitted under this subsection. **The**
 25 **substantive text of the adopted emergency rule must be**
 26 **substantially similar to the text of the proposed emergency rule**
 27 **submitted to the governor. An emergency rule may suspend but not**
 28 **repeal a rule approved by the governor under section 34 of this**
 29 **chapter.**

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

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

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

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

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

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

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



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- 1 (3) The effective date stated by the adopting agency in the
2 **emergency rule.**
- 3 (4) The date of compliance with every requirement established
4 by law as a prerequisite to the adoption or effectiveness of the
5 **emergency rule.**
- 6 (5) The statutory effective date for an emergency rule set forth
7 in the statute authorizing the agency to adopt emergency rules.
8 **law.**
- 9 (g) Unless otherwise provided by the statute authorizing adoption
10 of the rule:
- 11 (1) a rule adopted under this section expires not later than ninety
12 (90) days after the rule is accepted for filing under subsection
13 (e);
- 14 (2) a rule adopted under this section may be extended by
15 adopting another rule under this section, but only for one (1)
16 extension period; and
- 17 (3) for a rule adopted under this section to be effective after one
18 (1) extension period, the rule must be adopted under:
- 19 (A) sections 24 through 36 of this chapter; or
20 (B) IC 13-14-9;
21 as applicable.
- 22 (g) An agency may amend an emergency rule with another
23 emergency rule by following the procedures in this section for the
24 amending emergency rule. However, unless otherwise provided by
25 IC 4-22-2.3, an emergency rule and all amendments of an
26 emergency rule by another emergency rule expire not later than
27 one hundred eighty (180) days after the initial emergency rule is
28 accepted for filing under subsection (e). The subject of the
29 emergency rule, including all amendments to the emergency rule,
30 may not be subsequently extended under this section or section
31 37.2 of this chapter. If the governor determines that the emergency
32 that is the basis for using the procedures under this section ceases
33 to exist, the governor may terminate the emergency rule before the
34 lapse of one hundred eighty (180) days. The termination is effective
35 when filed with the publisher. The publisher shall publish the
36 termination notice in the Indiana Register.
- 37 (h) This section may not be used to readopt a rule under
38 IC 4-22-2.5.
- 39 (i) The publisher of the Indiana administrative code shall annually
40 publish a list of agencies authorized to adopt rules under this section.
- 41 (h) Subject to subsection (i), the attorney general or the
42 governor may file an objection to an emergency rule that is

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1 adopted under this section not later than forty-five (45) days after
 2 the date that an emergency rule or amendment to an emergency
 3 rule is accepted for filing under subsection (e). The objection must
 4 cite the document control number for the affected emergency rule
 5 and state the basis for the objection. When filed with the publisher,
 6 the objection has the effect of invalidating the emergency rule or
 7 amendment to an emergency rule. The publisher shall publish the
 8 objection in the Indiana Register.

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

12 (1) without statutory authority; or

13 (2) without complying with this section.

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

18 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
 19 applicable).

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

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

29 (b) An agency may adopt a rule on a subject for which the
 30 agency has rulemaking authority using the procedures in this
 31 section if the governor finds that the agency proposing to adopt the
 32 rule has demonstrated to the satisfaction of the governor that use
 33 of interim rulemaking procedures under this section is necessary
 34 to implement:

35 (1) a new state or federal law or program, rule of another
 36 state agency, federal regulation, or federal grant or loan
 37 agreement, or (if used by the agency to carry out the
 38 agency's responsibilities) a building, an equipment, a
 39 firefighting, a safety, or a professional code adopted by a
 40 nationally recognized organization; or

41 (2) a change in a new state or federal law or program, rule of
 42 another state agency, federal regulation, federal grant or



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1 loan agreement, or (if used by the agency to carry out the
2 agency's responsibilities) a building, an equipment, a
3 firefighting, a safety, or a professional code adopted by a
4 nationally recognized organization;
5 before the time that a final rule approved by the governor under
6 section 34 of this chapter could reasonably take effect. To obtain
7 the approval of the governor, an agency must submit to the
8 governor the text of the proposed interim rule, a statement
9 justifying the need for interim rulemaking procedures, and any
10 additional information required by the governor in the form and
11 in the manner required by the governor. A notice of determination
12 by the governor shall include findings that explain the basis for the
13 determination. The notice of determination shall be provided to the
14 agency in an electronic format. Approval of a request shall be
15 treated as a determination that the rule meets the criteria in this
16 subsection.

17 (c) After the governor approves interim rulemaking
18 procedures for a rule, the agency shall obtain a document control
19 number from the publisher. The publisher shall determine the
20 documents and the format of documents that must be submitted to
21 the publisher to obtain a document control number.

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

25 (1) The text of the adopted interim rule. The agency shall
26 submit the interim rule in the form required by section 20 of
27 this chapter.

28 (2) A signature page that indicates that the agency has
29 adopted the interim rule in conformity with all procedures
30 required by law.

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

33 (4) The documents required by section 21 of this chapter.
34 The publisher shall determine the format of the interim rule and
35 other documents to be submitted under this subsection. The
36 substantive text of the adopted interim rule must be substantially
37 similar to the text of the proposed interim rule submitted to the
38 governor. An interim rule may suspend but not repeal a rule
39 approved by the governor under section 34 of this chapter.

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

42 (1) accept the rule for filing;



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- 1 (2) electronically record the date and time that the rule is
- 2 accepted; and
- 3 (3) publish the text of the adopted interim rule and the
- 4 governor's approval in the Indiana Register.
- 5 (f) An interim rule adopted by an agency under this section
- 6 takes effect on the latest of the following dates:
- 7 (1) The effective date of the statute delegating authority to
- 8 the agency to adopt the interim rule.
- 9 (2) The date and time that the interim rule is accepted for
- 10 filing under subsection (e).
- 11 (3) The effective date stated by the adopting agency in the
- 12 interim rule.
- 13 (4) The date of compliance with every requirement
- 14 established by law as a prerequisite to the adoption or
- 15 effectiveness of the interim rule.
- 16 (5) The statutory effective date for an interim rule set forth
- 17 in law.
- 18 (g) An agency may amend an interim rule with another
- 19 interim rule by following the procedures in this section for the
- 20 amending interim rule. An interim rule and all amendments of an
- 21 interim rule by another interim rule expire not later than four
- 22 hundred twenty-five (425) days after the initial interim rule is
- 23 accepted for filing under subsection (e). The subject of the interim
- 24 rule, including all amendments to the interim rule, may not be
- 25 subsequently extended under section 37.1 of this chapter or this
- 26 section.
- 27 (h) Subject to subsection (i), the attorney general or the
- 28 governor may file an objection to an interim rule that is adopted
- 29 under this section not later than forty-five (45) days after the date
- 30 that an interim rule or amendment to an interim rule is accepted
- 31 for filing under subsection (e). The objection must cite the
- 32 document control number for the affected interim rule and state
- 33 the basis for the objection. When filed with the publisher, the
- 34 objection has the effect of invalidating the interim rule or
- 35 amendment to an interim rule. The publisher shall publish the
- 36 objection in the Indiana Register.
- 37 (i) The attorney general may file a written objection to an
- 38 emergency rule under subsection (h) only if the attorney general
- 39 determines that the emergency rule has been adopted:
- 40 (1) without statutory authority; or
- 41 (2) without complying with this section.
- 42 SECTION 23. IC 4-22-2-37.3 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2023]: Sec. 37.3. (a) The following do not
 3 apply to a rule adopted under this section:

4 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
 5 applicable).

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

7 (b) An agency may adopt a rule on a subject for which the
 8 agency has rulemaking authority with a single comment period of
 9 at least thirty (30) days in length using the procedures in this
 10 section if the governor finds that the agency proposing to adopt the
 11 rule has demonstrated to the satisfaction of the governor that use
 12 of expedited rulemaking procedures under this section is:

13 (1) appropriate for a rule described in IC 4-22-2.3; or

14 (2) necessary to permit time for a final rule on the same
 15 subject to become effective and the circumstances in section
 16 37.1(b)(1) through 37.1(b)(4) of this chapter and section
 17 37.2(b)(1) through 37.2(b)(2) of this chapter do not apply.

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

29 (c) An agency shall notify the public of its intention to adopt a
 30 rule by complying with the publication requirements in this
 31 section. The agency shall cause a notice of a public comment period
 32 and the full text of the agency's proposed expedited rule (excluding
 33 the full text of a matter incorporated by reference under section 21
 34 of this chapter) to be published once in the Indiana Register. The
 35 publisher shall review materials submitted under this section and
 36 determine the date that the publisher intends to include the
 37 material in the Indiana Register. After establishing the intended
 38 publication date and receiving the public comment period
 39 information from the agency, the publisher shall provide a written
 40 or an electronic mail authorization to proceed to the agency.

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

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- 1 (1) A general description of the subject matter of the
 2 proposed expedited rule, including the document control
 3 number.
 4 (2) A statement justifying any requirement or cost that is:
 5 (A) imposed on a regulated entity under the expedited
 6 rule; and
 7 (B) not expressly required by the statute authorizing the
 8 agency to adopt rules or any other state or federal law.
 9 The statement required under this subdivision must include
 10 a reference to any data, studies, or analyses relied upon by
 11 the agency in determining that the imposition of the
 12 requirement or cost is necessary and where and how a
 13 person may inspect and copy or electronically download the
 14 data, studies, or analysis.
 15 (3) A statement explaining that any person may submit
 16 written comments concerning the proposed expedited rule
 17 during the public comment period and instructions on when,
 18 where, and how the person may submit written comments.
 19 However, inadequacy or insufficiency of the subject matter
 20 description under subdivision (1) or a statement of justification
 21 under subdivision (2) in a notice does not invalidate a rulemaking
 22 action.
 23 (e) Before adopting the expedited rule, the agency shall
 24 prepare a written response to comments received by the agency,
 25 including the reasons for rejecting any recommendations made in
 26 the comments.
 27 (f) After an agency has completed a public comment period of
 28 at least thirty (30) days in length and complied with subsection (e),
 29 the agency may:
 30 (1) adopt a rule that is identical to a proposed expedited rule
 31 published in the Indiana Register under this section; or
 32 (2) adopt a revised version of a proposed expedited rule
 33 published under this section and include provisions that did
 34 not appear in the published version.
 35 An agency may not adopt an expedited rule that substantially
 36 differs from the version of the proposed expedited rule published
 37 in the Indiana Register under this section, unless it is a logical
 38 outgrowth of any proposed expedited rule as supported by any
 39 written comments submitted during the public comment period.
 40 (g) After the agency adopts the expedited rule, the agency shall
 41 submit the following to the publisher for filing:
 42 (1) The text of the adopted expedited rule. The agency shall

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- 1 submit the expedited rule in the form required by section 20
 2 of this chapter.
- 3 (2) A summary of the comments received by the agency
 4 during the comment period and the agency's response to the
 5 comments.
- 6 (3) A signature page that indicates that the agency has
 7 adopted the expedited rule in conformity with all procedures
 8 required by law.
- 9 (4) The approval of the governor to use expedited
 10 rulemaking procedures for the rule.
- 11 (5) The documents required by section 21 of this chapter.
- 12 The publisher shall determine the format of the expedited rule and
 13 other documents to be submitted under this subsection.
- 14 (h) Subject to subsection (g) and section 39 of this chapter, the
 15 publisher shall:
- 16 (1) accept the expedited rule for filing;
 17 (2) electronically record the date and time that the expedited
 18 rule is accepted; and
 19 (3) publish the text of the adopted expedited rule and the
 20 governor's approval in the Indiana Register.
- 21 (i) An expedited rule adopted by an agency under this section
 22 takes effect on the latest of the following dates:
- 23 (1) The effective date of the statute delegating authority to
 24 the agency to adopt the expedited rule.
 25 (2) The date and time that the expedited rule is accepted for
 26 filing under subsection (h).
 27 (3) The effective date stated by the adopting agency in the
 28 expedited rule.
 29 (4) The date of compliance with every requirement
 30 established by law as a prerequisite to the adoption or
 31 effectiveness of the expedited rule.
 32 (5) The statutory effective date for an expedited rule set forth
 33 in law.
- 34 (j) An expedited rule that has been accepted for filing under
 35 subsection (h) expires:
- 36 (1) not later than one hundred eighty (180) days after the
 37 date the rule is accepted for filing under subsection (h); or
 38 (2) as provided in the applicable provision of IC 4-22-2.3;
 39 whichever is later.
- 40 (k) Subject to subsection (l), the attorney general or the
 41 governor may file an objection to a rule that is adopted under this
 42 section not later than forty-five (45) days after the date and time



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1 that an expedited rule or amendment to an expedited rule is
2 accepted for filing under subsection (h). The objection must cite the
3 document control number for the affected expedited rule and state
4 the basis for the objection. When filed with the publisher, the
5 objection has the effect of invalidating the expedited rule or
6 amendment to an expedited rule. The publisher shall publish the
7 objection in the Indiana Register.

8 (l) The attorney general may file a written objection to an
9 emergency rule under subsection (k) only if the attorney general
10 determines that the emergency rule has been adopted:

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

13 SECTION 24. IC 4-22-2-38, AS AMENDED BY P.L.123-2006,
14 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action
16 resulting in any of the following rules:

- 17 (1) A rule that brings another rule into conformity with section
18 20 of this chapter.
- 19 (2) A rule that amends another rule to replace an inaccurate
20 reference to a statute, rule, regulation, other text, governmental
21 entity, or location with an accurate reference, when the
22 inaccuracy is the result of the rearrangement of a federal or state
23 statute, rule, or regulation under a different citation number, a
24 federal or state transfer of functions from one (1) governmental
25 entity to another, a change in the name of a federal or state
26 governmental entity, or a change in the address of an entity.
- 27 (3) A rule correcting any other typographical, clerical, or
28 spelling error in another rule.

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

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

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

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

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

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

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

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

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

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

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

- 30 (A) One (1) electronic copy of the rule.
- 31 (B) One (1) copy of any matters incorporated by reference
32 under section 21 of this chapter in the format specified by
33 the publisher.
- 34 (C) One (1) copy of any supporting documentation
35 submitted under section 31 of this chapter in the format
36 specified by the publisher.

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

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

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- 1 the basis for determining that the agency has complied with all
 2 procedures required before the date of the approval.
- 3 (b) If a rule includes a statement that the rule is not effective until:
 4 (1) an agency has complied with requirements established by the
 5 federal or state government;
 6 (2) a specific period of time has elapsed; or
 7 (3) a date has occurred;
 8 the agency has complied with subsection (a)(3) even if the described
 9 event or time has not occurred before the publisher reviews the rule
 10 under this section.
- 11 (c) The publisher shall take no more than three (3) business days
 12 to complete the review of a rule under this section.
- 13 SECTION 26. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,
 14 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for
 16 filing by the publisher under section 35, 37.1, **37.2, 37.3**, or 38 of this
 17 chapter, the agency that adopted the rule may recall it. A rule may be
 18 recalled regardless of whether:
- 19 (1) the rule has been disapproved by the attorney general under
 20 section 32 of this chapter; or
 21 (2) the rule has been disapproved by the governor under section
 22 34 of this chapter.
- 23 (b) Sections 24 through 38 of this chapter do not apply to a recall
 24 action under this section. However, the agency shall distribute a notice
 25 of its recall action to the publisher for publication in the Indiana
 26 Register. Sections 24 and 26 of this chapter do not apply to a
 27 readoption action under subsection (c).
- 28 (c) After an agency recalls a rule, the agency may reconsider its
 29 adoption action and adopt an identical rule or a revised rule. However,
 30 if sections 24 through 36 of this chapter apply to the recalled rule, the
 31 readopted rule must comply with the requirements under section 29 of
 32 this chapter.
- 33 (d) The recall of a rule under this section voids any approval given
 34 after the rule was adopted and before the rule was recalled.
- 35 (e) If a rule is:
 36 (1) subject to sections 31 and 33 of this chapter;
 37 (2) recalled under subsection (a); and
 38 (3) readopted under subsection (c);
 39 the agency shall resubmit the readopted version of the recalled rule to
 40 the attorney general and the governor for approval. The attorney
 41 general and the governor have the full statutory period to approve or
 42 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~



1 office of management and budget under section 28 of this chapter; The
 2 agency shall resubmit the readopted version of a recalled rule to the
 3 office of management and budget with sufficient information for the
 4 office of management and budget to evaluate whether ~~its~~ **the initial**
 5 **fiscal impact statement regulatory analysis submitted to the office**
 6 **of management and budget** under section ~~28~~ **22.8** of this chapter
 7 needs to be revised. ~~The office of management and budget shall revise~~
 8 ~~a fiscal impact statement under section 28 of this chapter~~ If the fiscal
 9 impact of the readopted rule is substantially different from the recalled
 10 rule, **the agency shall submit the revised regulatory analysis to the**
 11 **publisher for publication in the Indiana Register with the**
 12 **document control number assigned by the publisher to the rule.**
 13 The agency also shall comply with any other applicable approval
 14 requirement provided by statute.

15 (f) The readopted version of a recalled rule is effective only after
 16 the agency has complied with section 35, 37.1, **37.2, 37.3**, or 38 of this
 17 chapter.

18 SECTION 27. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,
 19 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the
 21 publisher for filing under section 35, 37.1, **37.2, 37.3**, or 38 of this
 22 chapter, the agency that adopted the rule may withdraw it.

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

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

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

37 SECTION 29. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,
 38 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency intends to adopt a rule under
 40 IC 4-22-2 that will impose requirements or costs on small businesses,
 41 the agency shall prepare a statement that describes the annual
 42 economic impact of a rule on all small businesses after the rule is fully

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1 implemented. ~~as described in subsection (b)~~. The statement required by
2 this section must include the following:

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

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

8 (3) An estimate of the total annual economic impact that
9 compliance with the proposed rule will have on all small
10 businesses subject to the rule. ~~The agency is not required to~~
11 ~~submit the proposed rule to the office of management and budget~~
12 ~~for a fiscal analysis under IC 4-22-2-28 unless the estimated~~
13 ~~economic impact of the rule is greater than five hundred~~
14 ~~thousand dollars (\$500,000) on all regulated entities, as set forth~~
15 ~~in IC 4-22-2-28.~~

16 (4) A statement justifying any requirement or cost that is:
17 (A) imposed on small businesses by 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 by 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 (5) A regulatory flexibility analysis that considers any less
27 intrusive or less costly alternative methods of achieving the
28 purpose of the proposed rule. The analysis under this subdivision
29 must consider the following methods of minimizing the
30 economic impact of the proposed rule on small businesses:

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

33 (B) The establishment of less stringent schedules or
34 deadlines for compliance or reporting requirements for
35 small businesses.

36 (C) The consolidation or simplification of compliance or
37 reporting requirements for small businesses.

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

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

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

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

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

10 (A) the rule is gradually made to apply to small businesses
 11 or certain types of small businesses; or

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

13 (2) the rule applies to all small businesses that will be affected
 14 by the rule.

15 In determining the total annual economic impact of the rule under
 16 subsection (a)(3), the agency shall consider the annual economic
 17 impact on all small businesses beginning with the first twelve (12)
 18 month period after the rule is fully implemented. The agency may use
 19 actual or forecasted data and may consider the actual and anticipated
 20 effects of inflation and deflation. The agency shall describe any
 21 assumptions made and any data used in determining the total annual
 22 economic impact of a rule under subsection (a)(3):

23 (c) The agency shall:

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

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

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

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

38 **Chapter 2.3. Transitional Provisions; Exceptions to**
 39 **Rulemaking Procedures**

40 **Sec. 1. (a) This section sets an expiration date for rules adopted**
 41 **under IC 4-22-2-37.1 (as effective before July 1, 2023) or**
 42 **IC 4-22-2-37 (before its repeal) that at the time of adoption were**



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1 permitted by law to continue in effect for an indefinite period of
 2 time. The rules to which this subsection applies include rules that
 3 were permitted to continue until another emergency rule or a final
 4 rule was adopted to replace the emergency rule or the agency
 5 repealed the emergency rule. Subject to subsections (b) and (c), the
 6 rule expires not later than:

7 (1) October 1, 2023; or

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

10 as applicable. An emergency rule that expires under this subsection
 11 may not be renewed under IC 4-22-2-37.1 (as effective after June
 12 30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for
 13 adoption as an interim rule, the rule may be readopted under
 14 IC 4-22-2-37.2.

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

18 (1) incorporated into a provision of the Indiana
 19 Administrative Code that before July 1, 2023, was amended
 20 under the procedures in IC 4-22-2-23 through IC 4-22-2-36
 21 or IC 13-14-9 (as applicable); or

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

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

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

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

37 **Sec. 2.** Before an emergency rule adopted under IC 4-22-2-37.1
 38 (as effective after June 30, 2023) expires, the governor by executive
 39 order may authorize the extension of the emergency rule under the
 40 expedited procedures in IC 4-22-2-37.3 if the governor determines
 41 and finds in the executive order that the emergency circumstances
 42 justifying the emergency rule continue to exist. A rule adopted



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1 under the authority of an extension under this section, expires not
 2 later than June 30 of the year following the year in which the rule
 3 is accepted for filing by the publisher of the Indiana Register.

4 **Sec. 3.** The office of the secretary of family and social services
 5 may adopt rules under IC 4-22-2-37.3 to implement IC 12-13-16-13
 6 (211 dialing code services). The rule expires not later than one (1)
 7 year after the adopted rule is accepted for filing under
 8 IC 4-22-2-37.3.

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

17 **Sec. 5.** The director of the department of natural resources
 18 may temporarily modify or suspend a rule described in
 19 IC 14-22-2-6 (fish and wildlife rules) under the procedures in
 20 IC 4-22-2-37.3. The adopted rule expires not later than one (1) year
 21 after the rule is accepted for filing by the publisher of the Indiana
 22 Register.

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

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

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

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

40 (2) promptly after the changes occur, changes in the Index
 41 required by IC 24-4.5-1-106(3), including, when applicable,
 42 the numerical equivalent of the Reference Base Index under



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1 a revised Reference Base Index and the designation or title
 2 of any index superseding the Index.
 3 The rule expires not later than January 1 of the next
 4 odd-numbered year that the department of financial institutions is
 5 required to issue the rule.

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

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

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

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

30 SECTION 32. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,
 31 2023]. (Expiration and Readoption of Administrative Rules).

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

35 **Chapter 2.6. Expiration and Readoption of Administrative**
 36 **Rules**

37 **Sec. 1. (a) Except as provided in this section and section 10 of**
 38 **this chapter, a rule expires January 1 of the fifth year after the**
 39 **year in which the rule takes effect, unless the rule expires or is**
 40 **repealed on an earlier date. Except for an amendment made under**
 41 **IC 4-22-2-38, the expiration date of a rule under this section is**
 42 **extended each time that a rule amending or readopting an**



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1 unexpired rule takes effect. The rule, as amended or readopted,
 2 expires on January 1 of the fifth year after the year in which the
 3 amendment or readoption takes effect.

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

5 (1) in calendar year 2017, the rule expires not later than
 6 January 1, 2024;

7 (2) in calendar year 2018, the rule expires not later than
 8 January 1, 2025;

9 (3) in calendar year 2019, the rule expires not later than
 10 January 1, 2026; or

11 (4) in calendar year 2020, the rule expires not later than
 12 January 1, 2027.

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

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

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

19 (3) the rule was adopted by an agency not described in
 20 subdivision (1) or (2), the rule expires not later than January
 21 1, 2027.

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

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

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

33 (1) without changes in conformity with the procedures in
 34 sections 3 through 9 of this chapter; or

35 (2) with or without changes in conformity with the
 36 procedures in IC 4-22-2-23 through IC 4-22-2-36 (as
 37 modified by IC 13-14-9, when applicable).

38 **Sec. 3.** (a) Except as provided in subsection (b), if an agency
 39 intends to readopt a rule, the agency shall, not later than January
 40 1 of the fourth year after the year in which the rule takes effect,
 41 provide an initial notice of the intended readoption in an electronic
 42 format designated by the publisher to legislators and legislative



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1 committees in the manner and on the schedule specified by the
 2 legislative council or the personnel subcommittee of the legislative
 3 council acting for the legislative council.

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

7 Sec. 4. (a) To readopt a rule, an agency must conduct a review
 8 of the rule to consider the continued need for the rule and whether
 9 the rule, if readopted, will do the following:

10 (1) Minimize expenses to:

11 (A) regulated entities that are required to comply with
 12 the rule;

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

15 (C) consumers of products and services of regulated
 16 entities affected by the rule.

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

19 (3) Have benefits that exceed the fiscal and economic costs of
 20 the rule.

21 (4) Avoid duplicating and conflicting standards with other
 22 federal, state, or local laws, rules, regulations, or ordinances.

23 (5) Be written for ease of comprehension.

24 (6) Have practicable enforcement.

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

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

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

42 (A) the agency in administering the rule; or



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1 **(B) small businesses (as defined in IC 4-22-2.1-4) or**
 2 **other regulated persons in complying with the rule.**
 3 **(3) The degree to which technology, economic conditions, or**
 4 **other factors have changed in the area affected by the rule**
 5 **since the last time the rule was reviewed.**
 6 **(c) The agency shall prepare written findings concerning the**
 7 **agency's determinations under this section.**
 8 **Sec. 5. (a) If an agency elects to readopt a rule under this**
 9 **chapter, the agency shall submit a notice of proposed readoption**
 10 **to the publisher for publication in the Indiana Register. A separate**
 11 **notice must be published for each board or other person or entity**
 12 **with rulemaking authority.**
 13 **(b) The notice must include the following:**
 14 **(1) A general description of the subject matter of all rules**
 15 **proposed to be readopted.**
 16 **(2) A listing of rules that are proposed to be readopted, listed**
 17 **by their titles and subtitles only.**
 18 **(3) A written comment period of at least thirty (30) days and**
 19 **instructions on how to submit written comments to the**
 20 **agency.**
 21 **(4) A request for comments on whether specific rules should**
 22 **be reviewed through the regular rulemaking process under**
 23 **IC 4-22-2-23 through IC 4-22-2-36 (as modified by**
 24 **IC 13-14-9, when applicable).**
 25 **(5) A summary of the agency's findings under section 4 of**
 26 **this chapter.**
 27 **(6) Any other information required by the publisher.**
 28 **(c) The agency shall submit the material in the form required**
 29 **by IC 4-22-2-20. The agency need not resubmit the documents**
 30 **required by IC 4-22-2-21 if the publisher received a copy of the**
 31 **documents when the rule was previously adopted or amended. The**
 32 **publisher shall review the material submitted under this section**
 33 **and determine the date that the publisher intends to include the**
 34 **material in the Indiana Register. After:**
 35 **(1) establishing the intended publication date; and**
 36 **(2) receiving the material as required by this section;**
 37 **the publisher shall assign a document control number, provide an**
 38 **electronic mail authorization to proceed to the agency, and publish**
 39 **the material on the intended publication date.**
 40 **Sec. 6. (a) The agency shall prepare responses to all comments**
 41 **received during the comment period.**
 42 **(b) The agency, after considering the written comments and**

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1 responses, may do the following:

2 (1) Conduct one (1) or more additional comment periods in
3 the manner provided in section 5 of this chapter on one (1) or
4 more rules within the scope of the notice of proposed
5 readoption. If a person submits to the agency during the
6 initial comment period a written request stating a basis for
7 considering a particular rule separately from other rules in
8 the notice of proposed readoption, the agency may not
9 readopt that rule under this chapter. The agency may
10 readopt that rule with or without changes only through a
11 rulemaking action initiated under IC 4-22-2-23 through
12 IC 4-22-2-36 (as modified by IC 13-14-9, when applicable).

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

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

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

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

29 (1) accept the rule for filing; and

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

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

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

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

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

42 Sec. 9. An agency that terminates a rulemaking action to



1 readopt a rule with or without amendments shall submit a notice
2 of withdrawal of the readoption rulemaking action in the manner
3 provided in IC 4-22-2-41.

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

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

16 SECTION 34. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,
17 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under
19 IC 4-22-2 to implement this chapter, the division shall consult with and
20 fully consider any comments submitted by:

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

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

- 32 (b) Rules adopted under this chapter must:
 - 33 (1) include protections for the rights, safety, and welfare of
 - 34 individuals with special needs receiving care from a caretaker
 - 35 under this chapter, including reasonable monitoring and
 - 36 reporting requirements;
 - 37 (2) serve distinct populations, including:
 - 38 (A) the aged;
 - 39 (B) persons with developmental disabilities; and
 - 40 (C) persons with physical disabilities;
 - 41 in a manner that recognizes, and appropriately responds to, the
 - 42 particular needs of the population;

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1 (3) not create barriers to the availability of home and community
 2 based services under IC 12-10-10 and IC 12-10-11.5 by
 3 imposing costly or unduly burdensome requirements on
 4 caretakers or other service providers, including:
 5 (A) requirements for proof of financial responsibility; and
 6 (B) monitoring, enforcement, reporting, or other
 7 administrative requirements; and
 8 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 9 chapter.
 10 (c) Before submitting a rule adopted under this chapter to the
 11 attorney general for final approval under IC 4-22-2-31, the division
 12 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for
 13 publication in the Indiana Register the division's written response ~~under~~
 14 ~~IC 4-22-2-23~~ to any comments received from the parties described in
 15 subsection (a). Submissions to the publisher shall be made in the
 16 electronic format specified by the publisher.
 17 SECTION 35. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,
 18 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under
 20 IC 4-22-2 to implement this chapter, the division shall consult with and
 21 fully consider any comments submitted by:
 22 (1) continuum of care providers providing care under this
 23 chapter;
 24 (2) individuals receiving care under this chapter;
 25 (3) area agencies on aging;
 26 (4) consumers and providers of home and community based
 27 services under IC 12-10-10 and IC 12-10-11.5; and
 28 (5) any other agency, volunteer group, faith based group, or
 29 individual that the division considers appropriate;
 30 to ensure that the rule complies with the requirements set forth in
 31 subsection (b).
 32 (b) Rules adopted under this chapter must:
 33 (1) include protections for the rights, safety, and welfare of
 34 individuals receiving care under this chapter;
 35 (2) serve distinct populations, including:
 36 (A) the aged;
 37 (B) persons with developmental disabilities; and
 38 (C) persons with physical disabilities;
 39 in a manner that recognizes, and appropriately responds to, the
 40 particular needs of the population;
 41 (3) not create barriers to the availability of home and community
 42 based services under IC 12-10-10 and IC 12-10-11.5 by

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1 imposing costly or unduly burdensome requirements on
 2 continuum of care providers or other service providers,
 3 including:

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

5 (B) monitoring, enforcement, reporting, or other
 6 administrative requirements; and

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

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

16 SECTION 36. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,
 17 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2023]: Sec. 1. (a) Except as provided in sections 8 and 14 of
 19 this chapter, this chapter applies to the following:

20 (1) The board.

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

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

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

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

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

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

41 **(2) The latest version of the regulatory analysis (including**
 42 **any appendices containing any data, studies, or analysis**



- 1 **referenced in the regulatory analysis) submitted to the**
- 2 **budget agency and the office of management and budget**
- 3 **under IC 4-22-2-22.8, <**
- 4 **> (3) The determination of the budget agency and the office of**
- 5 **management and budget authorizing commencement of the**
- 6 **first and second public comment periods on the proposed**
- 7 **rule under IC 4-22-2-22.8.**
- 8 **(4) The notice required under subsection (c).**
- 9 **(c) A notice provided under this section must do the following:**
- 10 (1) Identify the authority under which the proposed rule is to be
- 11 adopted.
- 12 (2) Describe the subject matter and the basic purpose of the
- 13 proposed rule. The description required by this subdivision must:
- 14 (A) list all alternatives being considered by the department
- 15 at the time of the notice;
- 16 (B) state whether each alternative listed under clause (A)
- 17 creates:
- 18 (i) a restriction or requirement more stringent than a
- 19 restriction or requirement imposed under federal law;
- 20 or
- 21 (ii) a restriction or requirement in a subject area in
- 22 which federal law does not impose restrictions or
- 23 requirements;
- 24 (C) state the extent to which each alternative listed under
- 25 clause (A) differs from federal law;
- 26 (D) include any information known to the department about
- 27 the potential fiscal impact of each alternative under clause
- 28 (A) that creates:
- 29 (i) a restriction or requirement more stringent than a
- 30 restriction or requirement imposed under federal law;
- 31 or
- 32 (ii) a restriction or requirement in a subject area in
- 33 which federal law does not impose restrictions or
- 34 requirements; and
- 35 (E) set forth the basis for each alternative listed under
- 36 clause (A).
- 37 (3) Describe the relevant statutory or regulatory requirements or
- 38 restrictions relating to the subject matter of the proposed rule
- 39 that exist before the adoption of the proposed rule.
- 40 (4) Request the submission of alternative ways to achieve the
- 41 purpose of the proposed rule.
- 42 (5) Request the submission of comments, including suggestions

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1 of specific language for the proposed rule.

2 (6) Include a detailed statement of the issue to be addressed by
3 adoption of the proposed rule.

4 **(7) Include the latest version of the regulatory analysis**
5 **(excluding any appendices containing any data, studies, or**
6 **analysis referenced in the regulatory analysis) submitted to**
7 **the budget agency and the office of management and budget**
8 **under IC 4-22-2-22.8.**

9 **(8) Include information concerning where, when, and how a**
10 **person may submit written comments on the proposed rule,**
11 **including contact information concerning the small business**
12 **regulatory coordinator required by IC 4-22-2-28.1.**

13 **(9) Include information concerning where, when, and how a**
14 **person may inspect and copy any data, studies, or analyses**
15 **referenced in a regulatory analysis under subdivision (7).**

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

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

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

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

26 (c) (e) The notice required under subsection (a) shall be published
27 electronically in the Indiana Register under procedures established by
28 the publisher. The publisher shall review materials submitted under
29 this section and determine the date that the publisher intends to
30 publish the text of the proposed rule and the notice in the Indiana
31 Register. If the submitted material complies with this section, the
32 publisher shall establish the intended publication date, assign a
33 document control number to the proposed rule, and provide a
34 written or an electronic mail authorization to proceed to the
35 agency. The publisher shall publish the following in the Indiana
36 Register on the intended publication date:

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

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

41 SECTION 38. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the
2 Indiana Register of the second public comment period required by
3 section 2 of this chapter.

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

7 **(1) The full text of the agency's proposed rule (excluding the**
8 **full text of a matter incorporated by reference under**
9 **IC 4-22-2-21). The agency shall submit the rule in the form**
10 **required by IC 4-22-2-20 and with the documents required**
11 **by IC 4-22-2-21, if these documents have not already been**
12 **submitted to the publisher.**

13 **(2) Either a statement indicating that no changes in the**
14 **regulatory analysis have been made from the version of the**
15 **regulatory analysis published under section 3 of this chapter**
16 **or the latest version of the regulatory analysis (including any**
17 **appendices containing any data, studies, or analysis**
18 **referenced in the regulatory analysis) submitted to the**
19 **budget agency and the office of management and budget**
20 **under IC 4-22-2-22.8, if any changes have been made in the**
21 **regulatory analysis after submitting the material under**
22 **section 3 of this chapter.**

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

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

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

27 ~~(2)~~ **(1) Contain a summary of the response of the department to**
28 **written comments submitted under section 3 of this chapter**
29 **during the first public comment period.**

30 ~~(3)~~ **(2) Request the submission of comments, including**
31 **suggestions of specific amendments to the language contained**
32 **in the proposed rule and indicate where, when, and how a**
33 **person may submit written comments on the proposed rule,**
34 **including contact information concerning the small business**
35 **regulatory coordinator required by IC 4-22-2-28.1.**

36 ~~(4)~~ **(3) Contain the full text of the commissioner's written**
37 **findings under section 7 of this chapter, if applicable. Include a**
38 **statement indicating the date, time, and place at which the**
39 **public hearing on the proposed rule will be convened.**

40 ~~(5)~~ **(4) Identify each element of the proposed rule that imposes**
41 **a restriction or requirement on persons to whom the proposed**
42 **rule applies that:**

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- 1 (A) is more stringent than a restriction or requirement
 2 imposed under federal law; or
 3 (B) applies in a subject area in which federal law does not
 4 impose a restriction or requirement.
- 5 ~~(6)~~ (5) With respect to each element identified under
 6 subdivision ~~(5)~~; (4), identify:
- 7 (A) the environmental circumstance or hazard that dictates
 8 the imposition of the proposed restriction or requirement to
 9 protect human health and the environment;
 10 (B) examples in which federal law is inadequate to provide
 11 the protection referred to in clause (A); and
 12 (C) the:
- 13 (i) estimated fiscal impact; and
 14 (ii) expected benefits;
- 15 based on the extent to which the proposed rule is more
 16 stringent than the restrictions or requirements of federal
 17 law, or on the creation of restrictions or requirements in a
 18 subject area in which federal law does not impose
 19 restrictions or requirements.
- 20 ~~(7)~~ (6) For any element of the proposed rule that imposes a
 21 restriction or requirement that is more stringent than a restriction
 22 or requirement imposed under federal law or that applies in a
 23 subject area in which federal law does not impose restrictions or
 24 requirements, describe the availability for public inspection of
 25 all materials relied upon by the department in the development
 26 of the proposed rule, including, if applicable:
- 27 (A) health criteria;
 28 (B) analytical methods;
 29 (C) treatment technology;
 30 (D) economic impact data;
 31 (E) environmental assessment data;
 32 (F) analyses of methods to effectively implement the
 33 proposed rule; and
 34 (G) other background data.
- 35 **(7) Either a statement indicating that no changes in the**
 36 **regulatory analysis have been made from the version of the**
 37 **regulatory analysis published under section 3 of this chapter**
 38 **or the latest version of the regulatory analysis (excluding any**
 39 **appendices containing any data, studies, or analysis**
 40 **referenced in the regulatory analysis) submitted to the**
 41 **budget agency and the office of management and budget**
 42 **under IC 4-22-2-22.8, if any changes have been made in the**



1 regulatory analysis after submitting the material under
2 section 3 of this chapter.

3 **(8) Include an explanation of any differences between the**
4 **text of the proposed rule published for the first comment**
5 **period under section 3 of this chapter and the text of the**
6 **proposed rule published for the second comment period**
7 **under this section.**

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

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

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

21 **Inadequacy or insufficiency of the subject matter description or**
22 **summary of the regulatory analysis in the published notice does**
23 **not invalidate a rulemaking action.**

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

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

27 (2) if any element of the proposed rule to which the notice
28 relates imposes a restriction or requirement that is more stringent
29 than a restriction or requirement imposed under federal law,
30 shall be submitted in an electronic format under IC 5-14-6 to the
31 executive director of the legislative services agency, who shall
32 present the notice to the legislative council established by
33 IC 2-5-1.1-1.

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



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

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

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

12 ~~(d)~~ **(f)** ~~Subsections (b)(2) and Subsection (e) (e) do~~ does not
 13 prohibit or restrict the commissioner, the department, or the board
 14 from:

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

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

17 (3) temporarily:

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

19 (B) implementing new policies or procedures;

20 in response to an emergency situation.

21 SECTION 39. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,
 22 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the
 24 date of preliminary adoption of a proposed rule by a board, the
 25 department shall make available to the board the ~~fiscal impact~~
 26 **statement latest version of the regulatory analysis** prepared by the
 27 **office of management and budget with respect to** for the proposed
 28 rule. ~~Under IC 4-22-2-28(e).~~

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

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

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

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

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

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

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



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

- 3 (1) text;
4 (2) summary; and
5 (3) fiscal analysis;

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

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

15 SECTION 41. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,
16 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the
18 following occur:

- 19 (1) The board holds a board meeting on the proposed rule.
20 (2) The department, after approval of the proposed rule by the
21 board under subsection (c), publishes the following
22 **information** in the Indiana Register as provided in
23 ~~IC 4-22-2-24(c)~~:

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

27 (B) A summary of the response of the department to all
28 comments received at the meeting held under subdivision
29 (1):

30 (C) For a proposed rule with an estimated economic impact
31 on regulated entities that is greater than five hundred
32 thousand dollars (\$500,000); a copy of the office of
33 management and budget fiscal analysis required under
34 ~~IC 4-22-2-28~~ required by section 4 of this chapter.
35 **However, a notice of a third public comment period**
36 **under section 4.5 of this chapter must request the**
37 **submission of comments, including suggestions of**
38 **specific amendments, that concern only the portion of**
39 **the preliminarily adopted rule that is substantively**
40 **different from the language contained in the proposed**
41 **rule published in a second notice under section 4 of this**
42 **chapter.**



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- 1 (3) The board, after publication of the notice under subdivision
- 2 (2), holds another board meeting on the proposed rule.
- 3 (4) If a third public comment period is required under section 4.5
- 4 of this chapter, the department publishes notice of the third
- 5 public comment period in the Indiana Register.
- 6 (b) Board meetings held under subsection (a)(1) and (a)(3) shall
- 7 be conducted in accordance with IC 4-22-2-26(b) through
- 8 IC 4-22-2-26(d).
- 9 (c) At a board meeting held under subsection (a)(1), the board
- 10 shall determine whether the proposed rule will:
- 11 (1) proceed to publication under subsection (a)(2);
- 12 (2) be subject to additional comments under section 3 or 4 of this
- 13 chapter, considering any written finding made by the
- 14 commissioner under section 7 or 8 of this chapter; or
- 15 (3) be reconsidered at a subsequent board meeting in accordance
- 16 with IC 4-22-2-26(d).
- 17 SECTION 42. IC 13-14-9-6, AS AMENDED BY P.L.123-2006,
- 18 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 19 JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of~~
- 20 ~~this chapter,~~ The department shall include the following in the written
- 21 materials to be considered at the board meetings held under section
- 22 5(a)(1) and 5(a)(3) of this chapter:
- 23 (1) The full text of the proposed rule, as most recently prepared
- 24 by the department.
- 25 (2) The written responses of the department to all comments
- 26 received:
- 27 (A) during the immediately preceding comment period for
- 28 a board meeting held under section 5(a)(1) of this chapter;
- 29 (B) during the immediately preceding board meeting under
- 30 section 5(a)(1) of this chapter for a board meeting held
- 31 under section 5(a)(3) of this chapter if a third public
- 32 comment period is not required under section 4.5 of this
- 33 chapter; or
- 34 (C) during:
- 35 (i) a third public comment period that address the
- 36 portion of the preliminarily adopted rule that is
- 37 substantively different from the language contained in
- 38 the proposed rule published in a second notice under
- 39 section 4 of this chapter; and
- 40 (ii) the immediately preceding board meeting held
- 41 under section 5(a)(1) of this chapter;
- 42 for a board meeting held under section 5(a)(3) of this

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1 chapter if a third public comment period is required under
2 section 4.5 of this chapter.

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

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

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

14 SECTION 45. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1
17 of this chapter, "coal combustion residuals" means fly ash, bottom ash,
18 boiler slag, and flue gas desulfurization materials generated from
19 burning coal for the purpose of generating electricity by electric
20 utilities and independent power producers.

21 (b) As used in The following definitions apply throughout this
22 section:

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

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

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

35 (1) that are shall be consistent with the regulations of the United
36 States Environmental Protection Agency concerning standards
37 for the disposal of coal combustion residuals in landfills and
38 surface impoundments, as set forth in the federal CCR rule;

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

42 (3) shall not impose a restriction or requirement that is not



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- 1 imposed by the federal CCR rule.
- 2 (d) The department shall do the following:
- 3 (1) Establish a state permit program under Section 2301 of the
- 4 federal Water Infrastructure Improvements for the Nation Act
- 5 (42 U.S.C. 6945(d)) for the implementation in Indiana of the
- 6 federal CCR rule.
- 7 (2) Submit to the administrator of the United States
- 8 Environmental Protection Agency under 42 U.S.C.
- 9 6945(d)(1)(A) evidence of the state permit program.
- 10 (3) Take other necessary or appropriate actions to obtain
- 11 approval of the state permit program.
- 12 (e) Not later than May 15, 2021, the department shall notify the
- 13 United States Environmental Protection Agency of its intention to
- 14 establish a state permit program described in subsection (d)(1) and to
- 15 seek approval of the state permit program under 42 U.S.C. 6945(d)(1).
- 16 (f) Under IC 4-22-2 and IC 13-14-9:
- 17 (1) the department shall initiate rulemaking for the establishment
- 18 of the state permit program not more than sixty (60) days after
- 19 the effective date of the SECTION of Senate Enrolled Act
- 20 271-2021 amending this section; and
- 21 (2) the board shall adopt a final rule for the establishment of the
- 22 state permit program not more than sixteen (16) months after
- 23 initiation of the rulemaking under subdivision (1).
- 24 (g) The state permit program established under this section must
- 25 not establish requirements for any surface impoundment of coal
- 26 combustion residuals unless and until the state permit program is
- 27 approved by the administrator of the United States Environmental
- 28 Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**
- 29 **department to establish requirements under the state permit**
- 30 **program established under this section is the only authority the**
- 31 **department has to establish requirements for a surface**
- 32 **impoundment of coal combustion residuals located on the grounds**
- 33 **of a legacy generation resource.**
- 34 (h) The definitions set forth in Section 257.53 of the federal CCR
- 35 rule, as in effect January 1, 2021, apply throughout subsection (i).
- 36 (i) The department shall charge the following fees under the state
- 37 permit program established under this section:
- 38 (1) An initial one (1) time permit fee of twenty thousand five
- 39 hundred dollars (\$20,500) for each surface impoundment of coal
- 40 combustion residuals regulated under the state permit program.
- 41 (2) An annual fee of twenty thousand five hundred dollars
- 42 (\$20,500) for each surface impoundment of coal combustion

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1 residuals regulated under the state permit program that has not
2 completed closure in accordance with Section 257.102 of the
3 federal CCR rule. The duty to pay the fee established by this
4 subdivision does not apply on an annual basis until three
5 hundred sixty-five (365) days after the initial one (1) time permit
6 fee established by subdivision (1) has been assessed.

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

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

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

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

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

28 (k) Upon the effective date that the board adopts rules to
29 implement the federal CCR rule and subject to subsection (i), annual
30 fees for CCR landfills that were previously regulated as restricted waste
31 sites shall be deposited in the CCR program fund established by section
32 3.2 of this chapter.

33 **SECTION 46.] [EFFECTIVE UPON PASSAGE] (a) After June**
34 **30, 2023, a rule may be adopted as an emergency rule only for the**
35 **purposes and through the procedures in IC 4-22-2-37.1 (as effective**
36 **after June 30, 2023). Any additional authority in a statute outside**
37 **IC 4-22 to adopt rules through the emergency rulemaking**
38 **procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or**
39 **after June 30, 2023) is void. The code revision commission shall**
40 **provide in calendar year 2023 for the preparation of a bill for**
41 **introduction in the 2024 regular session of the general assembly**
42 **that removes language outside IC 4-22 permitting the adoption of**

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1 **emergency rules.**
2 **(b) This SECTION expires January 1, 2024.**
3 SECTION 4~~6~~^[7]. **An emergency is declared for this act.**
4 **]**

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