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HOUSE BILL No. 1623

Proposed Changes to February 14, 2023 printing by AM162311

DIGEST OF PROPOSED AMENDMENT

Amendment of HB 1623. The amendment does the following: (1) Sets standards for adoption of rules setting fees, fines, or civil penalties, including review by the budget committee. (2) Requires agencies to webcast rulemaking public hearings and provide for remote testimony. (3) Requires an agency to conduct a public hearing during the first comment period for a proposed rule. (4) Permits a proposed rule to be adopted without a second comment period if the agency does not receive any substantive comments during the first comment period or public hearing. (5) Provides that environmental agencies have the same comment periods as other agencies for most rulemaking actions. (6) Replaces the term "emergency rule" with the term "provisional rule". (7) Consolidates two provisions establishing separate procedures for interim rulemaking and expedited rulemaking into one procedure called "interim" rulemaking. (8) Provides that public contracts and certain other information related to government purchase of goods and services are public records and must be published on the transparency portal maintained by the auditor of state. (9) Specifies that environmental agency preapproval of biomass anaerobic digestion facilities and biomass gasification facilities must be reviewed according to the procedures and timelines applicable to confined feeding operations. (10) Requires classification of pesticides as "restricted use pesticides" or "pesticide for use by prescription only" to be made by a bill enacted by the general assembly. (11) Requires pesticide review board and state chemist rules establishing restrictions and limitations for pesticides to be not more stringent than federal requirements. (12) Makes changes in the conditions under which a professional or an occupational license applicant or licensee can recover damages for failure of a professional or an occupational licensing agency to adopt rules related to the application or license. (13) Authorizes the department of insurance to adopt permanent rules in addition to interim rules. (14) Requires that an agency must pay the attorney's fees incurred by a person in a judicial review proceeding arising under the general administrative adjudication law when the court determines that the agency acted under an invalid rule or failed to demonstrate that the agency acted with legal authority. (15) Provides transitional provisions. (16) Makes other related changes.

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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:

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

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

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

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

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

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

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

[2] If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted

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

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

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

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

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

35 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
37 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 and**
38 **IC 34-52-2-1.5 in the 2023 session of the general assembly only**
39 **apply to agency actions commenced under IC 4-21.5-3 after June**
40 **30, 2023.**

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

- 47 (1) the party challenging the agency action proves, by a
- 48 preponderance of the evidence, that:
- 49 [(1)] [(A)] the agency's action was frivolous or groundless;

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<or
[(2)] (B) the agency pursued the action in bad faith;
(2) <the agency has failed to demonstrate that> the
agency action <is> [was] based on <a standard or an
interpretation of a standard that has the force of law; or
(4) [an invalid rule, as provided in IC 4-22-2-44; or
(3) the agency has failed to demonstrate that the agency
acted within its legal authority.

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

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

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

[SECTION 5. IC 4-22-2-3 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) "Agency" means
any officer, board, commission, department, division, bureau,
committee, or other governmental entity exercising any of the
executive (including the administrative) powers of state government.
The term does not include the judicial or legislative departments of
state government or a political subdivision as defined in IC 36-1-2-13.

(b) "Rule" means the whole or any part of an agency statement of
general applicability that:

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

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

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

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

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

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

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

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1] SECTION ~~6~~[6]. IC 4-22-2-13, AS AMENDED BY P.L.2-2007,
2 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 13. (a) Subject to subsections (b), (c), and (d), this
4 chapter applies to the addition, amendment, or repeal of a rule in every
5 rulemaking action.

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

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

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

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

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

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

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

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

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

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

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

30 (d) Except as specifically set forth in IC 13-14-9~~6~~[:

31 **(1) IC 13-14-9 provides ~~alternative~~supplemental**
32 **procedures for notice and public comment concerning**
33 **proposed rules for the ~~environmental rules board and the~~**
34 **~~underground storage tank financial assurance board.~~**
35 **The boards listed in IC 13-14-9-1; and**

36 **(2) the department of environmental management~~, the~~**
37 **~~environmental rules board,~~ and the ~~underground storage~~**
38 **~~tank financial assurance board~~boards listed in**
39 **IC 13-14-9-1 shall comply with the procedures in IC 13-14-9**
40 **in lieu of complying with sections ~~23,~~24, 26, 27, and 29**
41 **(except section 29(c))** of this chapter. ~~do not apply to~~
42 ~~rulemaking actions under IC 13-14-9.~~

43 **In adopting rules, all other provisions of IC 4-22-2 apply to these**
44 **agencies~~, including sections 22.7 and 22.8 of this chapter.~~**

45 SECTION ~~6~~[7]. IC 4-22-2-15 IS AMENDED TO READ AS
46 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking
47 action that this chapter allows or requires an agency to perform, other
48 than final adoption of a rule under section 29, or 37.1, ~~37.2,~~or
49 37.~~2~~[2] of this chapter or IC 13-14-9, may be performed by the

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1 individual or group of individuals with the statutory authority to adopt
 2 rules for the agency, a member of the agency's staff, or another agent
 3 of the agency. Final adoption of a rule under section 29, ~~or 37.1, <37.2,~~
 4 ~~>or 37.~~ ~~<2~~ of this chapter or IC 13-14-9, including readoption of
 5 a rule that is subject to sections 24 through 36 or to section 37.1 of this
 6 chapter and recalled for further consideration under section 40 of this
 7 chapter, may be performed only by the individual or group of
 8 individuals with the statutory authority to adopt rules for the agency.

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

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

17 ~~<SECTION 8>~~ (c) Subject to subsection (e), after June 30,
 18 2023, a public hearing or other public meeting in which an agency
 19 receives comments concerning a rulemaking action from the
 20 general public must be webcast on the state website during the
 21 hearing or meeting for the public to view the proceedings.
 22 Webcasts must be archived as public records on the state website.

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

28 (e) The office of management and budget in consultation with
 29 the office of technology and the publisher shall establish how and
 30 where webcasts will be available, how agencies will provide
 31 opportunities for the general public to attend and comment
 32 remotely, and where notices of upcoming webcasts will be posted.
 33 The governor, by executive order, may delay the implementation
 34 of subsection (c) or (d), or both, for one (1) or more agencies if the
 35 governor finds that implementation of subsection (c) or (d), or
 36 both, is not technically feasible. The governor shall include specific
 37 findings concerning the reasons for a delay in the executive order.
 38 A delay under this subsection may not extend beyond December 31,
 39 2025.

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

44 SECTION 9]. IC 4-22-2-17.5 IS ADDED TO THE INDIANA
 45 CODE AS A NEW SECTION TO READ AS FOLLOWS
 46 [EFFECTIVE JULY 1, 2023]: Sec. 17.5. (a) The legislative services
 47 agency shall provide electronic summaries or electronic copies of
 48 documents submitted to the publisher under this article or
 49 IC 13-14-9 to legislators and legislative committees in the manner

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

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

13 [SECTION 10. IC 4-22-2-19, AS AMENDED BY P.L.53-2014,
14 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]: Sec. 19. (a) ~~Except as provided in section 23.1 of this~~
16 chapter, This section does not apply to the adoption of rules

17 (1) required to receive or maintain:

18 (A) (1) delegation;

19 (B) (2) primacy; or

20 (C) (3) approval;

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

23 (2) that amend an existing rule;

24 (3) required or authorized by statutes enacted before June 30,
25 1995; or

26 (4) required or authorized by statutes enacted before June 30,
27 1995, and recodified in the same or similar form after June 29,
28 1995, in response to a program of statutory recodification
29 conducted by the code revision commission.

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

34 (c) However, an agency shall:

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

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

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

43 (1) the agency publishes a proposed rule under section 23 or
44 37.2 of this chapter; or

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

48 If an interim rulemaking procedure is commenced under section
49 37.2 of this chapter, the agency shall commence a permanent

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rulemaking process under section 23 of this chapter before the adopted interim rule expires.

SECTION ~~9~~[11]. IC 4-22-2-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19.5. (a) To the extent possible, a rule adopted under this article ~~or under IC 13-14-9.5~~[**IC 13-14-9**] shall comply with the following:

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

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

SECTION 12. IC 4-22-2-19.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: Sec. 19.6. (a) A rule adopted under this article or IC 13-14-9 that includes a fee, fine, or civil penalty must comply with this section. Subsections (b), (c), and (d) do not apply to a rule that must be adopted in a certain form to comply with federal law.

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

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

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

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

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

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(1) Whether the violation has a major or minor impact on the health, safety, or welfare of a person, the health or safety of animals or natural resources, or other facts set forth in the agency's rule.

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

(3) The need for deterrence of future violations.

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

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

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

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

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

(B) reviewed by the budget committee:

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

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

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

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

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

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

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

(B) in the case of an agency not described in item (i), July 1, 2024.

Readoption without changes under IC 4-22-2.6 of a nonconforming

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1 fee, fine, or civil penalty that meets the requirements of subdivision
2 (1) or (2) does not invalidate the nonconforming fee, fine, or civil
3 penalty.

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

8] SECTION 13[3]. IC 4-22-2-21, AS AMENDED BY
9 P.L.204-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2023]: Sec. 21. (a) If incorporation of the text
11 in full would be cumbersome, expensive, or otherwise inexpedient, an
12 agency may incorporate by reference into a rule part or all of any of the
13 following matters:

- 14 (1) A federal or state statute, rule, or regulation.
- 15 (2) A code, manual, or other standard adopted by an agent of the
- 16 United States, a state, or a nationally recognized organization or
- 17 association.
- 18 (3) A manual of the department of local government finance
- 19 adopted in a rule described in IC 6-1.1-31-9.
- 20 (4) The following requirements:

21 (A) The schedule, electronic formatting, and standard data,
22 field, and record coding requirements for:

- 23 (i) the electronic data file under IC 6-1.1-4-25
- 24 concerning the parcel characteristics and parcel
- 25 assessments of all parcels and personal property return
- 26 characteristics and assessments; and
- 27 (ii) the electronic data file under IC 36-2-9-20
- 28 concerning the tax duplicate.

29 (B) The schedule, electronic formatting, and standard data,
30 field, and record coding requirements for data required to
31 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.

32 (C) Data export and transmission format requirements for
33 information described in clauses (A) and (B).

34 (b) Each matter incorporated by reference under subsection (a)
35 must be fully and exactly described.

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

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

- 44 (1) An Indiana statute or rule.
- 45 (2) A form or instructions for a form numbered by the Indiana
- 46 archives and record administration under IC 5-15-5.1-6.
- 47 (3) The source of a statement that is quoted or paraphrased in
- 48 full in the rule.
- 49 (4) Any matter that has been previously filed with the:

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- 1 (A) secretary of state before July 1, 2006; or
- 2 (B) publisher after June 30, 2006.
- 3 (5) Any matter referred to in subsection (c) as a matter that is
- 4 directly or indirectly referred to in a primary matter.
- 5 (e) An agency may comply with subsection (d) by submitting a
- 6 paper or an electronic copy of the full text of the matter incorporated
- 7 by reference.
- 8 SECTION 1~~4~~4. IC 4-22-2-22.5, AS AMENDED BY
- 9 P.L.72-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2023]: Sec. 22.5. (a) This section applies to a
- 11 rule that an agency intends to:
- 12 (1) adopt under sections ~~24~~23 through 36 of this chapter or
- 13 **section 37.2 ~~or 37.3~~ of this chapter;**~~and~~
- 14 **(2) adopt under IC 13-14-9; or**
- 15 **(3) readopt under IC 4-22-2.6.**
- 16 (b) As used in this section, "pending rulemaking action" means
- 17 any rulemaking action in which:
- 18 (1) either:
- 19 (A) a notice of ~~intent~~ **a public comment period** has been
- 20 published under section 23 ~~or 37.2~~ **or 37.**~~2~~2 of this
- 21 chapter; **or**
- 22 (B) a rulemaking action has been commenced under
- 23 IC 13-14-9; **and or**
- 24 **(C) a rulemaking action has been commenced under**
- 25 **IC 4-22-2.6; and**
- 26 (2) the rule has not become effective under section 36 of this
- 27 chapter.
- 28 (c) Each agency shall maintain a current rulemaking docket that
- 29 is indexed.
- 30 (d) A current rulemaking docket must list each pending
- 31 rulemaking action. The docket must state or contain:
- 32 (1) the subject matter of the proposed rule;
- 33 (2) notices related to the proposed rule, or links to the Indiana
- 34 Register where these notices may be viewed;
- 35 (3) how comments may be made;
- 36 (4) the time within which comments may be made;
- 37 (5) where comments and the agency's written response to those
- 38 comments may be inspected;
- 39 (6) the date, time, and place where a public hearing required
- 40 under:
- 41 (A) section 26 of this chapter; or
- 42 (B) IC 13-14-9;
- 43 will be held;
- 44 (7) a description of relevant scientific and technical findings
- 45 related to the proposed rule, if applicable; and
- 46 (8) a reasonable estimate of the timetable for action, updated
- 47 periodically as circumstances change, if necessary.
- 48 (e) The agency shall maintain the rulemaking docket on the
- 49 agency's ~~Internet web site.~~ **website.** The information must be in an

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1 open format that can be easily searched and downloaded. Access to the
 2 docket shall, to the extent feasible and permitted by law, provide an
 3 opportunity for public comment on the pertinent parts of the
 4 rulemaking docket, including relevant scientific and technical findings.
 5 Upon request, the agency shall provide a written rulemaking docket.

6 SECTION 1 ~~↔~~ [5]. IC 4-22-2-22.7 IS ADDED TO THE
 7 INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2023]: **Sec. 22.7. (a) Before complying with**
 9 **section 22.8 of this chapter, an agency shall conduct a regulatory**
 10 **analysis for the proposed rule** ~~<~~ **The regulatory analysis must**
 11 **evaluate whether the proposed rule does the following:**

- 12 ~~— (1) Minimizes expenses to:~~
 13 ~~— (A) regulated entities that are required to~~
 14 ~~comply~~ **[complies]** ~~with the rule;~~
 15 ~~— (B) persons who pay taxes or pay fees for government~~
 16 ~~services affected by the rule; and~~
 17 ~~— (C) consumers of products and services of regulated~~
 18 ~~entities affected by the rule.~~
 19 ~~— (2) Achieves the regulatory goal in the least restrictive~~
 20 ~~manner.~~
 21 ~~— (3) Has benefits that exceed the fiscal and economic costs of~~
 22 ~~the proposed rule.~~
 23 ~~— (4) Avoids duplicating and conflicting standards with other~~
 24 ~~federal, state, or local laws, rules, regulations, or ordinances.~~
 25 ~~— (5) Is written for ease of comprehension.~~
 26 ~~— (6) Has practicable enforcement.~~
 27 **> [requirements of this section.**

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

39 **(c)** At a minimum, the regulatory analysis must include
 40 findings and any supporting data, studies, or analyses prepared for
 41 a rule that demonstrate compliance with the following:

- 42 ~~<~~ ~~(1) A requirement in IC 4-3-22-13 explaining how the~~
 43 ~~proposed rule meets the~~ **> [(1) The]** cost benefit requirements
 44 in IC 4-3-22-13.
 45 ~~(2) <A requirement~~ **[Each of the standards]** in section **[s]**
 46 **19.5** ~~and (if applicable) 19.6]~~ of this chapter ~~< to minimize~~
 47 ~~the expenses to regulated entities that are required to comply~~
 48 ~~with the rule.~~
 49 ~~— (3) A~~ **> [**.

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(3) If applicable, the requirements for fees, fines, and civil penalties in section 19.6 of this chapter.

(4) The annual economic impact on small businesses statement required under IC 4-22-2.1-5.

(5) If applicable, the information required under IC 13-14-9-4.

(6) Any requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule, if applicable.

(d) The regulatory analysis must include a] statement justifying any requirement or cost that is:

~~(A)~~ [1] imposed on a regulated entity under the rule; and

~~(B)~~ [2] not expressly required by:

~~(i)~~ [A] the statute authorizing the agency to adopt the rule; or

~~(ii)~~ [B] any other state or federal law.

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

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

SECTION 16. IC 4-22-2-22.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 22.8. (a) After conducting a regulatory analysis under section 22.7 of this chapter, if an agency elects to adopt a rule subject to section 23 of this chapter or IC 13-14-9, the agency shall submit a request to the budget agency and the office of management and budget to authorize commencement of the public comment periods under this chapter or IC 13-14-9 (as applicable). The request must include the following:

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

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

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

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

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

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

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

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

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

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

(e) If an agency revises a proposed rule after the budget agency and the office of management and budget authorize commencement of the public comment periods, the agency must obtain a new notice of determination under subsection (d). The agency shall resubmit to the budget agency and the office of management and budget the revised proposed rule and a revised regulatory analysis with sufficient information for the budget agency and the office of management and budget to determine the impact the revisions have on the regulatory analysis previously reviewed by the budget agency and the office of management and budget. After obtaining a new notice of determination, the agency shall submit to the publisher the new notice of determination, the revised proposed rule, and the revised regulatory analysis.

SECTION 17. IC 4-22-2-23, AS AMENDED BY P.L.152-2012, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) (a) At least twenty-eight (28) days before an agency notifies the public of the agency's intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana Register. An agency shall provide notice in the Indiana Register of

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1 the first public comment period required by this section. To
2 publish notice of the first comment period in the Indiana Register,
3 the agency must submit the following to the publisher:

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

8 (2) The full text of the agency's proposed rule in the form
9 required by section 20 of this chapter and the documents
10 required by section 21 of this chapter.

11 (3) The latest version of the regulatory analysis submitted to
12 the budget agency and the office of management and budget
13 under section 22.8 of this chapter.

14 (4) The determination of the budget agency and the office of
15 management and budget authorizing commencement of the
16 public comment periods.

17 (5) If the proposed rule adds or amends language to increase
18 or expand application of a fee, fine, or civil penalty or a
19 schedule of fees, fines, or civil penalties, the agenda of the
20 budget committee meeting at which the rule was scheduled
21 for review.

22 (6) The notice required under subsection (b).

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

25 (1) A general description of the subject matter of the
26 proposed rule.

27 (2) An overview of the intent and scope of the proposed rule and
28 the statutory authority for the rule.

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

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

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

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

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

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

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

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

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

(c) Although the agency may comply with the publication requirements of this section on different days, the agency must comply with all of the publication requirements of this section at least thirty (30) days before the public hearing required by section 26 of this chapter is convened.

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

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

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

SECTION 18. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 23.1. (a) This section and section 19(b) of this chapter do not apply to rules adopted under IC 4-22-2-37.1.

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

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1 not invalidate a rule subsequently adopted.

2 SECTION 19. 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):

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

14 (a) If:

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

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

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

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

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

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

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

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

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

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

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(A) imposed on a regulated entity under the rule; and
(B) not expressly required by:

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

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

(4) an explanation that:

- (A) the proposed rule; and
- (B) any data, studies, or analysis referenced in a statement under subdivision (3);

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

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

(4) Either a statement indicating that no changes in the regulatory analysis have been made from the version of the regulatory analysis published under section 23 of this chapter or the latest version of the regulatory analysis (excluding any appendices containing any data, studies, or 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 to the publisher under section 23 of this chapter.

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

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

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

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

(9) An indication that the notice is for the second of two (2) thirty (30) day periods in which the public may comment on the proposed rule and that following the second comment period the agency may adopt a version of the proposed rule

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that is the same as or does not substantially differ from the text of the proposed rule published under this section.

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

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

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

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

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

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

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

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

- (1) the reasons why the rule was not adopted and the expected date the rule will be completed; and
- (2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this

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chapter.
(b) If a rule is not approved before the later of:
(1) one (1) year after the agency publishes notice of intent to
adopt the rule the first public comment period under section 23
of this chapter; or
(2) the expected date contained in a notice concerning the rule
that is provided to the publisher under subsection (a);
a later approval or deemed approval is ineffective, and the rule may
become effective only through another rulemaking action initiated
under this chapter.

SECTION 21. IC 4-22-2-26 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 26. (a) After the notices
and the text of an agency's proposed rule are published under section
sections 23 and (if applicable) 24 of this chapter, the agency shall
conduct a public hearing on the proposed rule.

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

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

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

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

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

SECTION 22. IC 4-22-2-27 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or
group of individuals who will finally adopt the rule under section 29 of
this chapter shall fully consider comments received by the agency
during each comment period and comments received at the public
hearing hearings required by section sections 23, 24, and 26 of this
chapter and may consider any other information before adopting the
rule. Attendance at the public hearing or review of a written record or
summary of the public hearing is sufficient to constitute full
consideration.

SECTION 23. IC 4-22-2-27.5 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2023]: Sec. 27.5. In addition to the
information submitted to the attorney general under section 31 of
this chapter, to the governor under section 33 of this chapter, and
to the publisher under section 35 of this chapter, an agency shall

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1 submit to the attorney general, the governor, and the publisher a
 2 summary of the comments received by the agency during each
 3 comment period and public hearing under sections 23, 24, and 26
 4 of this chapter or IC 13-14-9 and a summary of the response of the
 5 agency to the comments. The publisher shall publish the
 6 summaries with the final adopted and approved rule.

7 SECTION 24. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,
 8 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout
 10 this section:

11 (1) "Ombudsman" refers to the small business ombudsman
 12 designated under IC 5-28-17-6.

13 (2) "Total estimated economic impact" means the direct annual
 14 economic impact of a rule on all regulated persons after the rule
 15 is fully implemented under subsection (g).

16 (b) The ombudsman:

17 (1) shall review a proposed rule that

18 (A) imposes requirements or costs on small businesses (as
 19 defined in IC 4-22-2.1-4); and

20 (B) is referred to the ombudsman by an agency under
 21 IC 4-22-2.1-5(c); and

22 (2) may review a proposed rule that imposes requirements or
 23 costs on businesses other than small businesses (as defined in
 24 IC 4-22-2.1-4).

25 After conducting a review under subdivision (1) or (2), the ombudsman
 26 may suggest alternatives to reduce any regulatory burden that the
 27 proposed rule imposes on small businesses or other businesses. The
 28 agency that intends to adopt the proposed rule shall respond in writing
 29 to the ombudsman concerning the ombudsman's comments or
 30 suggested alternatives before adopting the proposed rule under section
 31 29 of this chapter.

32 (c) Subject to subsection (e) and not later than fifty (50) days
 33 before the public hearing for a proposed rule required by section 26 of
 34 this chapter, an agency shall submit the proposed rule to the office of
 35 management and budget for a review under subsection (d); if the
 36 agency proposing the rule determines that the rule will have a total
 37 estimated economic impact greater than five hundred thousand dollars
 38 (\$500,000) on all regulated persons: In determining the total estimated
 39 economic impact under this subsection, the agency shall consider any
 40 applicable information submitted by the regulated persons affected by
 41 the rule. To assist the office of management and budget in preparing
 42 the fiscal impact statement required by subsection (d), the agency shall
 43 submit, along with the proposed rule, the data used and assumptions
 44 made by the agency in determining the total estimated economic
 45 impact of the rule.

46 (d) Except as provided in subsection (e), before the adoption of the
 47 rule, and not more than forty-five (45) days after receiving a proposed
 48 rule under subsection (c), the office of management and budget shall
 49 prepare, using the data and assumptions provided by the agency

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1 proposing the rule, along with any other data or information available
2 to the office of management and budget, a fiscal impact statement
3 concerning the effect that compliance with the proposed rule will have
4 on:

5 (1) the state; and

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

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

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

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

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

30 (f) In determining whether a proposed rule has a total estimated
31 economic impact greater than five hundred thousand dollars
32 (\$500,000), the agency proposing the rule shall consider the impact of
33 the rule on any regulated person that already complies with the
34 standards imposed by the rule on a voluntary basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (1) A rule for which the notice required by section 23 of this
 49 chapter or by IC 13-14-9-3 is published by an agency or the

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1 board (as defined in IC 13-13-8-1):

2 (2) A rule for which:

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

4 (B) an appropriate later notice for circumstances described
5 in subsection (g);

6 is published by the department of environmental management
7 after June 30, 2006:

8 (b) (a) As used in this section, **The following definitions apply**
9 **throughout this section:**

10 (1) "Coordinator" refers to the small business regulatory
11 coordinator assigned to a rule by an agency under subsection (e):

12 (b).

13 (c) As used in this section, (2) "Director" refers to the director or
14 other administrative head of an agency.

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

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

27 (1) in the case of a proposed rule, the notice of intent to adopt
28 the rule **The first comment period notice** published under
29 section 23 of this chapter or

30 (2) in the case of a rule proposed by the department of
31 environmental management or the board (as defined in
32 IC 13-13-8-1); the notice published under IC 13-14-9-3 or the
33 findings published under IC 13-14-9-8(b)(1), whichever applies;

34 must include the name, address, telephone number, and electronic mail
35 address of the small business coordinator for the proposed rule, the
36 name, address, telephone number, and electronic mail address of the
37 small business ombudsman designated under IC 5-28-17-6, and a
38 statement of the resources available to regulated entities through the
39 small business ombudsman designated under IC 5-28-17-6. Subject to
40 subsection (f); In the case of a rule finally adopted, the final rule, as
41 published in the Indiana Register, must include the name, address,
42 telephone number, and electronic mail address of the coordinator.

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

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1 in the publication of the final rule in the Indiana Register:

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

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

7 (3) if applicable, a statement of:

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

11 (B) the name, address, telephone number, and electronic
 12 mail address of the ombudsman for small business
 13 designated under IC 13-28-5-2(3). and

14 ~~(4) the information required by subsection (e):~~

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

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

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

37 ~~(1) Any requirements imposed by the rule, including any~~
 38 ~~reporting, record keeping, or accounting requirements.~~

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

41 ~~(3) Any penalties, sanctions, or fines imposed for noncompliance~~
 42 ~~with the rule.~~

43 ~~(4) Any other concerns of small businesses with respect to the~~
 44 ~~rule, including the agency's application or enforcement of the~~
 45 ~~rule in particular situations. However, in the case of a rule~~
 46 ~~adopted under IC 13-14-9, by the department of~~
 47 ~~environmental management or a board listed in~~
 48 ~~IC 13-14-9-1, the coordinator assigned to the rule may refer a~~
 49 ~~small business with concerns about the application or~~

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1 enforcement of the rule in a particular situation to the
2 ombudsman designated under IC 13-28-3-2 or, if applicable,
3 under IC 13-28-5-2(3).

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

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

13 (2) electronically through electronic gateway access.

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

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

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

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

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

27 (1) compile the records received from all of the agency's
28 coordinators under subsection (j); (f);

29 (2) prepare a report that sets forth:

30 (A) the number of comments, complaints, and questions
31 received by the agency from small businesses during the
32 most recent state fiscal year, categorized by the subject
33 matter of the rules involved;

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

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

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

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

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

46 SECTION 26. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012,
47 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
48 JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation
49 described in subsection (c) that occurs after June 30, 2005. However,

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1 in the case of a violation of a rule adopted under IC 13-14-9 by the
2 department of environmental management or the board (as defined in
3 IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7
4 apply instead of this section.

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

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

12 (1) Provides written notice of the violation to the agency not later
13 than forty-five (45) days after the small business knew or should
14 have known that the violation occurred.

15 (2) Corrects the violation within a time agreed to by the agency
16 and the small business. However, the small business shall be
17 given at least ninety (90) days after the date of the notice
18 described in subdivision (1) to correct the violation. The small
19 business may correct the violation at any time before the
20 expiration of the period agreed to under this subdivision.

21 (3) Cooperates with any reasonable request by the agency in any
22 investigation initiated in response to the notice.

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

26 (1) The violation resulted in serious harm or in imminent and
27 substantial endangerment to the public health, safety, or welfare.

28 (2) The violation resulted in a substantial economic benefit that
29 afforded the small business a clear advantage over the small
30 business's competitors.

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

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

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

47 SECTION 27. IC 4-22-2-29, AS AMENDED BY P.L.237-2017,
48 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
49 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 28 of
4 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 23 or (as applicable) 24 of
7 this chapter;

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

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

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

20 (c) Subject to IC 13-14-9-4.5 (if applicable), an agency may not
21 adopt a rule that substantially differs from the version or versions of the
22 proposed rule or rules published in the Indiana Register under section
23 23 or 24 of this chapter, or IC 13-14-9-14 (as applicable), unless it is
24 a logical outgrowth of any proposed rule as supported by any written
25 and public hearing comments submitted:

26 (1) during the public comment period; or

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

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

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

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

38 (3) Written authorization to proceed issued by the publisher
39 ~~under section 24(g) sections 23 and 24~~ of this chapter **or**
40 **IC 13-14-9-4, IC 13-14-9-5, or IC 13-14-9-14, as applicable.**

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

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

47 SECTION 29. IC 4-22-2-32, AS AMENDED BY P.L.1-2006,
48 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
49 JULY 1, 2023]: Sec. 32. (a) The attorney general shall review each rule

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1 submitted under section 31 of this chapter for legality.

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

6 (1) The extent to which all persons affected by the adopted rule
7 should have understood from the published rule or rules that
8 their interests would be affected.

9 (2) The extent to which the subject matter of the adopted rule or
10 the issues determined in the adopted rule are different from the
11 subject matter or issues that were involved in the published rule
12 or rules.

13 (3) The extent to which the effects of the adopted rule differ
14 from the effects that would have occurred if the published rule
15 or rules had been adopted instead.

16 In the review, the attorney general shall consider whether the adopted
17 rule may constitute the taking of property without just compensation to
18 an owner.

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

21 (1) has been adopted without statutory authority;

22 (2) has been adopted without complying with this chapter;

23 (3) does not comply with requirements under section 29 of this
24 chapter; or

25 (4) violates another law.

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

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

31 (1) disapprove the rule; or

32 (2) return the rule to the agency without disapproving the rule.

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

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

40 (1) The governor.

41 (2) The agency head.

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

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

46 (1) submits a rule under section 31 of this chapter; or

47 (2) resubmits a rule under subsection (e);

48 to approve or disapprove the rule. If the attorney general neither
49 approves nor disapproves the rule, the rule is deemed approved, and the

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1 agency may submit it to the governor for approval under section 33 of
2 this chapter without the approval of the attorney general.

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

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

10 (2) may disapprove a rule under this section only if the rule:

11 (A) has been adopted without statutory authority;

12 (B) has been adopted without complying with this chapter
13 or IC 13-14-9;

14 (C) is not a logical outgrowth of the proposed rule as
15 published under IC 13-14-9-5(a)(2) and of the testimony
16 presented at the board meeting held under
17 IC 13-14-9-5(a)(3); **meets the appropriate substantial**
18 **similarity or logical outgrowth standard under section**
19 **29(c) of this chapter; or**

20 (D) violates another law.

21 SECTION 30. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013,
22 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule
24 adopted under this section:

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

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

28 **The amendments to this section made in the 2023 regular session**
29 **of the general assembly apply to provisional rules that are accepted**
30 **for filing by the publisher of the Indiana Register after June 30,**
31 **2023, regardless of whether the adopting agency initiated official**
32 **action to adopt the rule by the name of emergency rule or**
33 **provisional rule before July 1, 2023. An action taken before July 1,**
34 **2023, in conformity with this section (as effective after June 30,**
35 **2023) is validated to the same extent as if the action was taken after**
36 **June 30, 2023.**

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

41 **(1) under this section; or**

42 **(2) in the manner provided by this section.**

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

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

49 **(2) an imminent and material loss of federal funds for an**

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

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

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

- (1) The full text of the proposed provisional rule in the form required by section 20 of this chapter.
- (2) A statement justifying the need for provisional rulemaking.
- (3) The approval of the governor to use provisional rulemaking procedures required by law.
- (4) The documents required by section 21 of this chapter.

An agency may not adopt a proposed provisional rule until after the publisher notifies the agency that the publisher has complied with subsection (d). At least ten (10) regular business days must elapse after the publisher has complied with subsection (d) before

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1 the department of natural resources, the natural resources
 2 commission, the department of environmental management, or a
 3 board that has rulemaking authority under IC 13 adopts a
 4 provisional rule.

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

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

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

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

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

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

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

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

37 (1) accept the rule for filing; and

38 (2) electronically record the date and time that the rule is
 39 accepted; and

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

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

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

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

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

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

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

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

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

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

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

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

18 (B) IC 13-14-9;

19 as applicable.

20 (h) An agency may amend a provisional rule with another
 21 provisional rule by following the procedures in this section for the
 22 amending provisional rule. However, unless otherwise provided by
 23 IC 4-22-2.3, a provisional rule and all amendments of a provisional
 24 rule by another provisional rule expire not later than one hundred
 25 eighty (180) days after the initial provisional rule is accepted for
 26 filing under subsection (f). The subject of the provisional rule,
 27 including all amendments to the provisional rule, may not be
 28 subsequently extended under this section or section 37.2 of this
 29 chapter. If the governor determines that the circumstance that is
 30 the basis for using the procedures under this section ceases to exist,
 31 the governor may terminate the provisional rule before the lapse
 32 of one hundred eighty (180) days. The termination is effective when
 33 filed with the publisher. The publisher shall publish the
 34 termination notice in the Indiana Register.

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

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

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

49 (j) The attorney general may file a written objection to a

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provisional rule under subsection (i) only if the attorney general determines that the provisional rule has been adopted:

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

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

SECTION 31. IC 4-22-2-37.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not apply to a rule adopted under this section:

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

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

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

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

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

(c) To obtain a determination from the governor, an agency must submit to the governor the text of the proposed interim rule, a statement justifying the need for interim rulemaking procedures, and any additional information required by the governor in the

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

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

(1) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter.

(2) The approval of the governor to use interim rulemaking procedures for the rule.

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

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

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

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

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

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

(3) A statement justifying any requirement or cost that is:
(A) imposed on a regulated entity under the interim rule; and
(B) not expressly required by the statute authorizing the agency to adopt rules or any other state or federal law.

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

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

~~**(5) A requirement in IC 4-22-2.6 to conduct a review to**~~

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~~consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses.~~

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

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

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

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

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

~~— (1) A general description of the subject matter of the proposed rule.~~

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

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

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

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

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

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

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

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

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

~~— (e) If an agency revises a proposed rule after the budget agency and the office of management and budget authorize commencement of the first and second public comment periods, the agency shall resubmit to the publisher, the budget agency, and the office of management and budget a revised regulatory analysis with sufficient information for the budget agency and the office of management and budget to determine the impact the revisions have on the regulatory analysis previously reviewed by the budget agency and the office of management and budget.~~

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

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

~~— (1) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter). 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.~~

~~— (2) The latest version of the regulatory analysis submitted to the budget agency and the office of management and budget under section 22.8 of this chapter.~~

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

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~~parties upon request.~~

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

~~— (1) The notice of the first comment period.~~

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

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

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

~~— SECTION 16. IC 4-22-2-24, AS AMENDED BY P.L.1-2006, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c). provide notice in:~~

~~— (1) one (1) newspaper of general circulation in Marion County; and~~

~~— (2) the Indiana Register;~~

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

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

~~— (1) A general description of the subject matter of the proposed rule;~~

~~— (2) Information indicating that the text of the proposed rule has been published in the Indiana Register and where on the~~

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- 1 ~~Internet and by what document control number the~~
 2 ~~proposed rule can be found.~~
- 3 ~~— (3) A statement of the date, time, and place at which the~~
 4 ~~public hearing required by section 26 of this chapter will be~~
 5 ~~convened.~~
- 6 ~~— (4) Information concerning where, when, and how a person~~
 7 ~~may provide written comments on the proposed rule;~~
 8 ~~including contact information concerning the small business~~
 9 ~~regulatory coordinator required by section 28.1 of this~~
 10 ~~chapter.~~
- 11 ~~— (5) Information concerning where, when, and how a person~~
 12 ~~may inspect and copy the agency's regulatory analysis, and~~
 13 ~~any supporting data, studies, or analyses for the proposed~~
 14 ~~rule.~~
- 15 ~~— (6) Information concerning where, when, and how a person~~
 16 ~~may inspect any documents incorporated by reference into~~
 17 ~~the proposed rule under section 21 of this chapter.~~
- 18 ~~An agency may not contract for the publication of a notice under~~
 19 ~~this chapter until the agency has received a written or an electronic~~
 20 ~~authorization to proceed from the publisher under subsection (g).~~
 21 ~~(f):~~
- 22 ~~— (c) To publish a notice of the second comment period in the~~
 23 ~~Indiana Register, the agency must submit the following to the~~
 24 ~~publisher:~~
- 25 ~~— (1) The agency shall cause a notice of public hearing and The~~
 26 ~~full text of the agency's proposed rule (excluding the full text~~
 27 ~~of a matter incorporated by reference under section 21 of~~
 28 ~~this chapter). to be published once in the Indiana Register.~~
 29 ~~To publish the notice and proposed rule in the Indiana~~
 30 ~~Register, the agency shall submit the text to the publisher in~~
 31 ~~accordance with subsection (g). The agency shall submit the~~
 32 ~~rule in the form required by section 20 of this chapter and~~
 33 ~~with the documents required by section 21 of this chapter (if~~
 34 ~~the agency has not previously provided the publisher with~~
 35 ~~the documents). The publisher shall determine the number~~
 36 ~~of copies of the rule and other documents to be submitted~~
 37 ~~under this subsection. subdivision:~~
- 38 ~~— (2) Either a statement indicating that no changes in the~~
 39 ~~regulatory analysis have been made from the version of the~~
 40 ~~regulatory analysis published under section 23 of this~~
 41 ~~chapter or the latest version of the regulatory analysis~~
 42 ~~submitted to the budget agency and the office of~~
 43 ~~management and budget under section 22.8 of this chapter;~~
 44 ~~if any changes have been made in the regulatory analysis~~
 45 ~~after submitting the material under section 23 of this~~
 46 ~~chapter.~~
- 47 ~~— (3) The notice required under subsection (d):~~
- 48 ~~— (d) The agency shall include the following in the second~~
 49 ~~comment period notice required by subsections (b) and (c):~~
 50 ~~published in the Indiana Register:~~

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- 1 ~~(1) A statement of the date, time, and place at which the~~
2 ~~public hearing required by section 26 of this chapter will be~~
3 ~~convened.~~
4 ~~(2) A general description of the subject matter of the~~
5 ~~proposed rule.~~
6 ~~(3) In a notice published after June 30, 2005, a statement~~
7 ~~justifying any requirement or cost that is:~~
8 ~~(A) imposed on a regulated entity under the rule; and~~
9 ~~(B) not expressly required by:~~
10 ~~(i) the statute authorizing the agency to adopt the~~
11 ~~rule; or~~
12 ~~(ii) any other state or federal law.~~
13 ~~The statement required under this subdivision must include~~
14 ~~a reference to any data, studies, or analyses relied upon by~~
15 ~~the agency in determining that the imposition of the~~
16 ~~requirement or cost is necessary.~~
17 ~~(4) an explanation that:~~
18 ~~(A) the proposed rule; and~~
19 ~~(B) any data, studies, or analysis referenced in a~~
20 ~~statement under subdivision (3);~~
21 ~~may be inspected and copied at the office of the agency.~~
22 ~~(3) A summary of the written comments received by the~~
23 ~~agency during the first comment period and a summary of~~
24 ~~the response of the agency to written comments submitted~~
25 ~~under section 23 of this chapter during the first public~~
26 ~~comment period.~~
27 ~~(4) Either a statement indicating that no changes in the~~
28 ~~regulatory analysis have been made from the version of the~~
29 ~~regulatory analysis published under section 23 of this~~
30 ~~chapter or the latest version of the regulatory analysis~~
31 ~~(excluding any appendices containing any data, studies, or~~
32 ~~analysis referenced in the regulatory analysis) submitted to~~
33 ~~the budget agency and the office of management and budget~~
34 ~~under section 22.8 of this chapter, if any changes have been~~
35 ~~made in the regulatory analysis after submitting the material~~
36 ~~to the publisher under section 23 of this chapter.~~
37 ~~(5) An explanation of any differences between the text of the~~
38 ~~proposed rule published for the first comment period under~~
39 ~~section 23 of this chapter and the text of the proposed rule~~
40 ~~published for the second comment period under this section.~~
41 ~~(6) Information concerning where, when, and how a person~~
42 ~~may submit written comments on the proposed rule;~~
43 ~~including contact information concerning the small business~~
44 ~~regulatory coordinator required by section 28.1 of this~~
45 ~~chapter.~~
46 ~~(7) Information concerning where, when, and how a person~~
47 ~~may inspect and copy the regulatory analysis and any data;~~
48 ~~studies, or analyses referenced in a regulatory analysis~~
49 ~~referenced in subdivision (4).~~
50 ~~(8) Information concerning where, when, and how a person~~

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~~may inspect any documents incorporated by reference into the proposed rule under section 21 of this chapter.~~

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

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

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

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

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

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

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

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

~~— (1) The notice of the second comment period.~~

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

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

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- 1 ~~— (1) the reasons why the rule was not adopted and the~~
 2 ~~expected date the rule will be completed; and~~
 3 ~~— (2) the expected date the rule will be approved or deemed~~
 4 ~~approved by the governor or withdrawn under section 41 of~~
 5 ~~this chapter.~~
 6 ~~— (b) If a rule is not approved before the later of:~~
 7 ~~— (1) one (1) year after the agency publishes notice of intent to~~
 8 ~~adopt the rule the first public comment period under section~~
 9 ~~23 of this chapter; or~~
 10 ~~— (2) the expected date contained in a notice concerning the~~
 11 ~~rule that is provided to the publisher under subsection (a);~~
 12 ~~a later approval or deemed approval is ineffective, and the rule~~
 13 ~~may become effective only through another rulemaking action~~
 14 ~~initiated under this chapter.~~
 15 ~~— SECTION 18. IC 4-22-2-27 IS AMENDED TO READ AS~~
 16 ~~FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual~~
 17 ~~or group of individuals who will finally adopt the rule under~~
 18 ~~section 29 of this chapter shall fully consider written comments~~
 19 ~~received by the agency during each comment period and comments~~
 20 ~~received at the public hearing required by section 26 of this~~
 21 ~~chapter and may consider any other information before adopting~~
 22 ~~the rule. Attendance at the public hearing or review of a written~~
 23 ~~record or summary of the public hearing is sufficient to constitute~~
 24 ~~full consideration.~~
 25 ~~— SECTION 19. IC 4-22-2-27.5 IS ADDED TO THE INDIANA~~
 26 ~~CODE AS A NEW SECTION TO READ AS FOLLOWS~~
 27 ~~[EFFECTIVE JULY 1, 2023]: Sec. 27.5. In addition to the~~
 28 ~~information submitted to the attorney general under section 31 of~~
 29 ~~this chapter, to the governor under section 33 of this chapter, and~~
 30 ~~to the publisher under section 35 of this chapter, an agency shall~~
 31 ~~submit to the attorney general, the governor, and the publisher a~~
 32 ~~summary of the comments received by the agency during each~~
 33 ~~comment period and public hearing under sections 23, 24, and 26~~
 34 ~~of this chapter or IC 13-14-9 and a summary of the response of the~~
 35 ~~agency to the comments. The publisher shall publish the~~
 36 ~~summaries with the final adopted and approved rule.~~
 37 ~~— SECTION 20. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,~~
 38 ~~SECTION 8, IS AMENDED TO READ AS FOLLOWS~~
 39 ~~[EFFECTIVE JULY 1, 2023]: Sec. 28. (a) The following definitions~~
 40 ~~apply throughout this section:~~
 41 ~~— (1) "Ombudsman" refers to the small business ombudsman~~
 42 ~~designated under IC 5-28-17-6.~~
 43 ~~— (2) "Total estimated economic impact" means the direct~~
 44 ~~annual economic impact of a rule on all regulated persons~~
 45 ~~after the rule is fully implemented under subsection (g).~~
 46 ~~— (b) The ombudsman:~~
 47 ~~— (1) shall review a proposed rule that~~
 48 ~~— (A) imposes requirements or costs on small businesses~~
 49 ~~(as defined in IC 4-22-2.1-4); and~~
 50 ~~— (B) is referred to the ombudsman by an agency under~~

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~~IC 4-22-2.1-5(c); and
(2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).~~

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

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

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

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

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

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1 regulated persons affected by the rule in preparation of the fiscal
2 impact statement.

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

4 ~~— (1) the department of environmental management shall give~~
5 ~~written notice to the office of management and budget of the~~
6 ~~proposed date of preliminary adoption of the proposed rule~~
7 ~~not less than sixty-six (66) days before that date; and~~

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

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

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

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

20 ~~— (A) the rule is gradually made to apply to certain~~
21 ~~regulated persons; or~~

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

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

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

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

49 ~~— (i) An agency shall provide the legislative council in an~~
50 ~~electronic format under IC 5-14-6 with any economic impact or~~

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1 fiscal impact statement, including any supporting data, studies, or
 2 analysis, prepared for a rule proposed by the agency or subject to
 3 readoption by the agency to comply with:

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

23 ~~regardless of whether the total estimated economic impact of the~~
 24 ~~proposed rule is more than five hundred thousand dollars~~
 25 ~~(\$500,000), as soon as practicable after the information is~~
 26 ~~prepared. Information submitted under this subsection must~~
 27 ~~identify the rule to which the information is related by document~~
 28 ~~control number assigned by the publisher:~~

29 ~~SECTION 21. IC 4-22-2-28.1, AS AMENDED BY~~
 30 ~~P.L.237-2017, SECTION 9, IS AMENDED TO READ AS~~
 31 ~~FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 28.1. (a) This~~
 32 ~~section applies to the following:~~

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

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

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

~~—— (2) in the case of a rule proposed by the department of environmental management or the board (as defined in IC 13-13-8-1), the notice published under IC 13-14-9-3 or the findings published under IC 13-14-9-8(b)(1), whichever applies;~~

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

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

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

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

~~—— (3) if applicable, a statement of:~~

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

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

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

~~The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (h)~~

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1 ~~and IC 13-28-3. If applicable, the coordinator assigned to the rule~~
 2 ~~under subsection (e) shall work with the ombudsman referred to in~~
 3 ~~subdivision (3)(B) to coordinate the provision of services required~~
 4 ~~under subsection (h) and IC 13-28-5.~~

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

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

20 ~~— (1) Any requirements imposed by the rule, including any~~
 21 ~~reporting, record keeping, or accounting requirements.~~

22 ~~— (2) How the agency determines or measures compliance with~~
 23 ~~the rule, including any deadlines for action by regulated~~
 24 ~~entities.~~

25 ~~— (3) Any penalties, sanctions, or fines imposed for~~
 26 ~~noncompliance with the rule.~~

27 ~~— (4) Any other concerns of small businesses with respect to the~~
 28 ~~rule, including the agency's application or enforcement of the~~
 29 ~~rule in particular situations. However, in the case of a rule~~
 30 ~~adopted under IC 13-14-9, the coordinator assigned to the~~
 31 ~~rule may refer a small business with concerns about the~~
 32 ~~application or enforcement of the rule in a particular~~
 33 ~~situation to the ombudsman designated under IC 13-28-3-2~~
 34 ~~or, if applicable, under IC 13-28-5-2(3).~~

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

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

44 ~~— (2) electronically through electronic gateway access.~~

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

50 ~~— (1) not later than ten (10) days after the date on which the~~

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

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

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

~~— SECTION 23. IC 4-22-2-31, AS AMENDED BY P.L.123-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 31. After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the following to the attorney general:~~

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

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

~~— SECTION 24. 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~~

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1 ~~to avoid:~~

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

9 ~~To obtain a determination from the governor, an agency must~~
 10 ~~submit to the governor the text of the proposed emergency rule, a~~
 11 ~~statement justifying the need for emergency rulemaking~~
 12 ~~procedures, and any additional information required by the~~
 13 ~~governor in the form and in the manner required by the governor.~~
 14 ~~A notice of determination by the governor shall include findings~~
 15 ~~that explain the basis for the determination. The notice of~~
 16 ~~determination shall be provided to the agency in an electronic~~
 17 ~~format. Approval of a request shall be treated as a determination~~
 18 ~~that the rule meets the criteria in this subsection.~~

19 ~~— (c) After an agency adopts a rule under this section, the~~
 20 ~~governor approves emergency rulemaking procedures for a rule,~~
 21 ~~the agency shall submit the rule to the publisher for the assignment~~
 22 ~~of obtain a document control number. The agency shall submit the~~
 23 ~~rule in the form required by section 20 of this chapter and with the~~
 24 ~~documents required by section 21 of this chapter. from the~~
 25 ~~publisher. The publisher shall determine the documents and the~~
 26 ~~format of the rule and other documents to that must be submitted~~
 27 ~~under this subsection. to the publisher to obtain a document~~
 28 ~~control number.~~

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

32 ~~— (1) The text of the adopted emergency rule. The agency shall~~
 33 ~~submit the emergency rule in the form required by section 20~~
 34 ~~of this chapter. and with~~

35 ~~— (2) A signature page that indicates that the agency has~~
 36 ~~adopted the emergency rule in conformity with all~~
 37 ~~procedures required by law.~~

38 ~~— (3) The approval of the governor to use emergency~~
 39 ~~rulemaking procedures for the rule.~~

40 ~~— (4) The documents required by section 21 of this chapter.~~
 41 ~~The publisher shall determine the format of the emergency rule~~
 42 ~~and other documents to be submitted under this subsection. The~~
 43 ~~substantive text of the adopted emergency rule must be~~
 44 ~~substantially similar to the text of the proposed emergency rule~~
 45 ~~submitted to the governor. An emergency rule may suspend but not~~
 46 ~~repeal a rule approved by the governor under section 34 of this~~
 47 ~~chapter.~~

48 ~~— (e) Subject to subsection (d) and section 39 of this chapter, the~~
 49 ~~publisher shall:~~

50 ~~— (1) accept the rule for filing; and~~

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

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~~this section:~~

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

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

- ~~— (1) without statutory authority; or~~
- ~~— (2) without complying with this section:~~

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

~~— SECTION 25. IC 4-22-2-37.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not apply to a rule adopted under this section:~~

- ~~— (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as applicable);~~
- ~~— (2) Sections 28 through 36 of this chapter:~~

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

~~— (b) An agency may adopt a rule on a subject for which the agency has rulemaking authority with a single comment period of at least thirty (30) days in length using the procedures in this section if the governor finds that the agency proposing to adopt the rule has demonstrated to the satisfaction of the governor that use of interim rulemaking procedures under this section is necessary to implement:~~

- ~~— (1) a new state or federal law or program, rule of another state agency, federal regulation, or federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization; or~~
- ~~— (2) a change in a new state or federal law or program, rule of another state agency, federal regulation, federal grant or~~

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~~loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization;~~

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

~~— (c) An agency shall notify the public of its intention to adopt an interim rule by complying with the publication requirements in this section. The agency shall cause a notice of a public comment period and the full text of the agency's proposed interim 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. The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After establishing the intended publication date and receiving the public comment period information from the agency, the publisher shall provide a written or an electronic mail authorization to proceed to the agency.~~

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

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

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

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

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

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

~~(3) [6] A date that is thirty (30) days after the notice is published in the Indiana Register by which written comments are due and a statement explaining that any person may submit written comments concerning the proposed ~~expedited~~ [interim] rule during the public comment period and instructions on when, where, and how~~

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the person may submit written comments.
However, inadequacy or insufficiency of the subject matter description under subdivision (1) or a statement of justification under subdivision (~~2~~3) in a notice does not invalidate a rulemaking action. An agency may continue the comment period by publishing a subsequent notice in the Indiana Register extending the comment period.

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

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

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

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

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

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

[] (~~4~~) ~~The approval of the governor to use interim rulemaking procedures for the rule.~~

~~(5)~~ The documents required by section 21 of this chapter. The publisher shall determine the format of the interim rule and other documents to be submitted under this subsection. An interim rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter.

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

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

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

- (1) The effective date of the statute delegating authority to the agency to adopt the interim rule.
- (2) The date and time that the interim rule is accepted for filing under subsection (~~h~~i).
- (3) The effective date stated by the adopting agency in the interim rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the interim rule.
- (5) The statutory effective date for an interim rule set forth in law.

~~h~~k An agency may amend an interim rule with another interim rule by following the procedures in this section for adoption of an interim rule. ~~A~~Except as provided in IC 4-22-2.3, an interim rule and all subsequent rules on the same subject adopted under section 37.1 ~~or 37.3~~ of this chapter or this section expire not later than four hundred twenty-five (425) days after the initial interim rule is accepted for filing under subsection (~~h~~i). ~~The interim rule, including all subsequent interim rules adopted under section 37.1 or 37.3 of this chapter or this section on the same subject, may not be subsequently extended under section 37.1 or 37.3 of this chapter or this section after four hundred twenty-five (425) days.~~

~~k~~i.

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

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

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

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

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

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- 1 ~~— (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as~~
2 ~~applicable):~~
3 ~~— (2) Sections 28 through 36 of this chapter.~~
4 ~~— (b) An agency may adopt a rule described in IC 4-22-2.3 with~~
5 ~~a single comment period of at least thirty (30) days in length using~~
6 ~~the procedures in this section if the governor finds that the agency~~
7 ~~proposing to adopt the rule has demonstrated to the satisfaction of~~
8 ~~the governor that use of expedited rulemaking procedures under~~
9 ~~this section is appropriate for a rule described in IC 4-22-2.3. To~~
10 ~~obtain a determination from the governor, an agency must submit~~
11 ~~to the governor the text of the proposed expedited rule, a statement~~
12 ~~justifying the need for expedited rulemaking procedures, and any~~
13 ~~additional information required by the governor in the form and~~
14 ~~in the manner required by the governor. A notice of determination~~
15 ~~by the governor shall include findings that explain the basis for the~~
16 ~~determination. The notice of determination shall be provided to the~~
17 ~~agency in an electronic format. Approval of a request shall be~~
18 ~~treated as a determination that the rule meets the criteria in this~~
19 ~~subsection.~~
20 ~~— (c) An agency shall notify the public of its intention to adopt a~~
21 ~~rule by complying with the publication requirements in this~~
22 ~~section. The agency shall cause a notice of a public comment period~~
23 ~~and the full text of the agency's proposed expedited rule (excluding~~
24 ~~the full text of a matter incorporated by reference under section 21~~
25 ~~of this chapter) to be published once in the Indiana Register. The~~
26 ~~publisher shall review materials submitted under this section and~~
27 ~~determine the date that the publisher intends to include the~~
28 ~~material in the Indiana Register. After establishing the intended~~
29 ~~publication date and receiving the public comment period~~
30 ~~information from the agency, the publisher shall provide a written~~
31 ~~or an electronic mail authorization to proceed to the agency.~~
32 ~~— (d) The agency shall include the following in the notice of the~~
33 ~~public comment period:~~
34 ~~— (1) A general description of the subject matter of the~~
35 ~~proposed expedited rule, including the document control~~
36 ~~number;~~
37 ~~— (2) A statement justifying any requirement or cost that is:~~
38 ~~— (A) imposed on a regulated entity under the expedited~~
39 ~~rule; and~~
40 ~~— (B) not expressly required by the statute authorizing the~~
41 ~~agency to adopt rules or any other state or federal law.~~
42 ~~— The statement required under this subdivision must include~~
43 ~~a reference to any data, studies, or analyses relied upon by~~
44 ~~the agency in determining that the imposition of the~~
45 ~~requirement or cost is necessary and where and how a~~
46 ~~person may inspect and copy or electronically download the~~
47 ~~data, studies, or analysis.~~
48 ~~— (3) A date that is thirty (30) days after the notice is published~~
49 ~~in the Indiana Register by which written comments are due~~

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~~and a statement explaining that any person may submit written comments concerning the proposed expedited rule during the public comment period and instructions on when, where, and how the person may submit written comments.~~

~~However, inadequacy or insufficiency of the subject matter description under subdivision (1) or a statement of justification under subdivision (2) in a notice does not invalidate a rulemaking action. An agency may continue the comment period by publishing a subsequent notice in the Indiana Register extending the comment period.~~

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

~~— (f) After an agency has completed the comment period under this section and complied with subsection (e), the agency may:~~

~~— (1) adopt a rule that is identical to a proposed expedited rule published in the Indiana Register under this section; or~~

~~— (2) adopt a revised version of a proposed expedited rule published under this section and include provisions that did not appear in the published version.~~

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

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

~~— (1) The text of the adopted expedited rule. The agency shall submit the expedited rule in the form required by section 20 of this chapter.~~

~~— (2) A summary of the comments received by the agency during the comment period and the agency's response to the comments.~~

~~— (3) A signature page that indicates that the agency has adopted the expedited rule in conformity with all procedures required by law.~~

~~— (4) The approval of the governor to use expedited rulemaking procedures for the rule.~~

~~— (5) The documents required by section 21 of this chapter.~~

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

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

~~— (1) accept the expedited rule for filing;~~

~~— (2) electronically record the date and time that the expedited~~

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- 1 ~~rule is accepted; and~~
- 2 ~~— (3) publish the text of the adopted expedited rule and the~~
- 3 ~~governor's approval in the Indiana Register.~~
- 4 ~~— (i) An expedited rule adopted by an agency under this section~~
- 5 ~~takes effect on the latest of the following dates:~~
- 6 ~~— (1) The effective date of the statute delegating authority to~~
- 7 ~~the agency to adopt the expedited rule.~~
- 8 ~~— (2) The date and time that the expedited rule is accepted for~~
- 9 ~~filing under subsection (h).~~
- 10 ~~— (3) The effective date stated by the adopting agency in the~~
- 11 ~~expedited rule.~~
- 12 ~~— (4) The date of compliance with every requirement~~
- 13 ~~established by law as a prerequisite to the adoption or~~
- 14 ~~effectiveness of the expedited rule.~~
- 15 ~~— (5) The statutory effective date for an expedited rule set forth~~
- 16 ~~in law.~~
- 17 ~~— (j) An expedited rule that has been accepted for filing under~~
- 18 ~~subsection (h) expires as provided in IC 4-22-2.3. An agency may~~
- 19 ~~continue an expedited rule for an additional period after it would~~
- 20 ~~otherwise expire only as permitted in IC 4-22-2.3.~~
- 21 ~~— (k) Subject to subsection (l), the attorney general or the~~
- 22 ~~governor may file an objection to a rule that is adopted under this~~
- 23 ~~section not later than forty-five (45) days after the date and time~~
- 24 ~~that an expedited rule or amendment to an expedited rule is~~
- 25 ~~accepted for filing under subsection (h). The objection must cite the~~
- 26 ~~document control number for the affected expedited rule and state~~
- 27 ~~the basis for the objection. When filed with the publisher, the~~
- 28 ~~objection has the effect of invalidating the expedited rule or~~
- 29 ~~amendment to an expedited rule. The publisher shall publish the~~
- 30 ~~objection in the Indiana Register.~~
- 31 ~~— (l) The attorney general may file a written objection to an~~
- 32 ~~expedited rule under subsection (k) only if the attorney general~~
- 33 ~~determines that the expedited rule has been adopted:~~
- 34 ~~— (1) without statutory authority; or~~
- 35 ~~— (2) without complying with this section.~~
- 36 ~~A notice of objection to an expedited rule by the attorney general~~
- 37 ~~must include findings that explain the basis for the determination.~~
- 38 ~~The notice of objection shall be provided to the agency in an~~
- 39 ~~electronic format.~~
- 40 ~~— SECTION 27~~ [32]. IC 4-22-2-38, AS AMENDED BY
- 41 P.L.123-2006, SECTION 13, IS AMENDED TO READ AS
- 42 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 38. (a) This section
- 43 applies to a rulemaking action resulting in any of the following rules:
- 44 (1) A rule that brings another rule into conformity with section
- 45 20 of this chapter.
- 46 (2) A rule that amends another rule to replace an inaccurate
- 47 reference to a statute, rule, regulation, other text, governmental
- 48 entity, or location with an accurate reference, when the
- 49 inaccuracy is the result of the rearrangement of a federal or state

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1 statute, rule, or regulation under a different citation number, a
 2 federal or state transfer of functions from one (1) governmental
 3 entity to another, a change in the name of a federal or state
 4 governmental entity, or a change in the address of an entity.
 5 (3) A rule correcting any other typographical, clerical, or
 6 spelling error in another rule.
 7 (b) Sections 24 through 37.1 ~~↔~~ **[37.↔]** ~~↔~~ **[2]** of this chapter do not
 8 apply to rules described in subsection (a).
 9 (c) Notwithstanding any other statute, an agency may adopt a rule
 10 described by subsection (a) without complying with any statutory
 11 notice, hearing, adoption, or approval requirement. In addition, the
 12 governor may adopt a rule described in subsection (a) for an agency
 13 without the agency's consent or action.
 14 (d) A rule described in subsection (a) shall be submitted to the
 15 publisher for the assignment of a document control number. The
 16 agency (or the governor, for the agency) shall submit the rule in the
 17 form required by section 20 of this chapter and with the documents
 18 required by section 21 of this chapter. The publisher shall determine
 19 the number of copies of the rule and other documents to be submitted
 20 under this subsection.
 21 (e) After a document control number is assigned, the agency (or
 22 the governor, for the agency) shall submit the rule to the publisher for
 23 filing. The agency (or the governor, for the agency) shall submit the
 24 rule in the form required by section 20 of this chapter and with the
 25 documents required by section 21 of this chapter. The publisher shall
 26 determine the format of the rule and other documents to be submitted
 27 under this subsection.
 28 (f) Subject to section 39 of this chapter, the publisher shall:
 29 (1) accept the rule for filing; and
 30 (2) electronically record the date and time that it is accepted.
 31 (g) Subject to subsection (h), a rule described in subsection (a)
 32 takes effect on the latest of the following dates:
 33 (1) The date that the rule being corrected by a rule adopted under
 34 this section becomes effective.
 35 (2) The date that is forty-five (45) days from the date and time
 36 that the rule adopted under this section is accepted for filing
 37 under subsection (f).
 38 (h) The governor or the attorney general may file an objection to
 39 a rule that is adopted under this section before the date that is forty-five
 40 (45) days from the date and time that the rule is accepted for filing
 41 under subsection (f). When filed with the publisher, the objection has
 42 the effect of invalidating the rule.
 43 SECTION ~~↔~~ **[33]**. IC 4-22-2-39, AS AMENDED BY
 44 P.L.123-2006, SECTION 14, IS AMENDED TO READ AS
 45 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 39. (a) When an agency
 46 submits a rule for filing under section 35, 37.1, **37.2** ~~↔~~ ~~↔~~ ~~↔~~, or 38 of
 47 this chapter, the publisher may accept the rule for filing only if the
 48 following conditions are met:
 49 (1) The following documents are submitted to allow the

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- publisher to comply with IC 4-22-7-5:
- (A) One (1) electronic copy of the rule.
- (B) One (1) copy of any matters incorporated by reference under section 21 of this chapter in the format specified by the publisher.
- (C) One (1) copy of any supporting documentation submitted under section 31 of this chapter in the format specified by the publisher.

- (2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.
- (3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the publisher shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.
- (b) If a rule includes a statement that the rule is not effective until:
 - (1) an agency has complied with requirements established by the federal or state government;
 - (2) a specific period of time has elapsed; or
 - (3) a date has occurred;

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

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

SECTION ~~29~~[34]. IC 4-22-2-40, AS AMENDED BY P.L.53-2014, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for filing by the publisher under section 35, 37.1, ~~37.2~~, ~~37.3~~, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether:

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

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

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

(d) The recall of a rule under this section voids any approval given

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1 after the rule was adopted and before the rule was recalled.
2 (e) If a rule is:
3 (1) subject to sections 31 and 33 of this chapter;
4 (2) recalled under subsection (a); and
5 (3) readopted under subsection (c);
6 the agency shall resubmit the readopted version of the recalled rule to
7 the attorney general and the governor for approval. The attorney
8 general and the governor have the full statutory period to approve or
9 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~
10 ~~office of management and budget under section 28 of this chapter,~~ The
11 agency shall resubmit the readopted version of a recalled rule to the
12 office of management and budget with sufficient information for the
13 office of management and budget to evaluate whether ~~its the~~ initial~~<~~
14 ~~>~~~~[~~~~]~~~~fiscal impact statement regulatory analysis submitted to the~~
15 ~~office of management and budget~~ under section 28 **22.8** of this
16 chapter needs to be revised. ~~The office of management and budget shall~~
17 ~~revise a fiscal impact statement under section 28 of this chapter~~ If the
18 fiscal impact of the readopted rule is substantially different from the
19 recalled rule, **the agency shall submit the revised regulatory**
20 **analysis to the publisher for publication in the Indiana Register**
21 **with the document control number assigned by the publisher to the**
22 **rule.** The agency also shall comply with any other applicable approval
23 requirement provided by statute.
24 (f) The readopted version of a recalled rule is effective only after
25 the agency has complied with section 35, 37.1, **37.2,** ~~<37.3,>~~ or 38 of
26 this chapter.
27 SECTION 3 ~~<~~~~>~~~~[~~~~]~~~~5~~. IC 4-22-2-41, AS AMENDED BY
28 P.L.123-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 41. (a) At any time
29 before a rule is accepted by the publisher for filing under section 35,
30 37.1, **37.2,** ~~<37.3,>~~ or 38 of this chapter, the agency that adopted the
31 rule may withdraw it.
32 (b) ~~<~~~~S~~~~>~~~~[~~~~IC 13-14-9 and s~~~~]~~~~ections~~ ~~[~~~~24~~~~f~~~~]~~ ~~23~~ through 40 of this
33 chapter do not apply to a withdrawal action. However, the withdrawing
34 agency shall distribute a notice of the withdrawal to the publisher for
35 publication in the Indiana Register.
36 (c) The withdrawal of a rule under this section terminates the
37 rulemaking action, and the withdrawn rule may become effective only
38 through another rulemaking action initiated under this chapter.
39 SECTION 3 ~~<~~~~>~~~~[~~~~]~~~~6~~. IC 4-22-2.1-1, AS AMENDED BY
40 P.L.139-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2023]: Sec. 1. Except for a rule that is the
42 subject of a rulemaking action under IC 13-14-9, IC 22-12, IC 22-13,
43 IC 22-14, or IC 22-15, this chapter applies to a rule for which the notice
44 **of the first public comment period** required by IC 4-22-2-23 is
45 published by an agency after June 30, 2005.
46 SECTION 3 ~~<~~~~>~~~~[~~~~]~~~~7~~. IC 4-22-2.1-5, AS AMENDED BY
47 P.L.109-2015, SECTION 16, IS AMENDED TO READ AS
48 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency
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1 intends to adopt a rule under IC 4-22-2 that will impose requirements
2 or costs on small businesses, the agency shall prepare a statement that
3 describes the annual economic impact of a rule on all small businesses
4 after the rule is fully implemented. ~~as described in subsection (b)~~. The
5 statement required by this section must include the following:

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

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

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

19 (4) A statement justifying any requirement or cost that is:
20 (A) imposed on small businesses by the rule; and
21 (B) not expressly required by:

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

24 (ii) any other state or federal law.

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

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

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

36 (B) The establishment of less stringent schedules or
37 deadlines for compliance or reporting requirements for
38 small businesses.

39 (C) The consolidation or simplification of compliance or
40 reporting requirements for small businesses.

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

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

46 If the agency has made a preliminary determination not to
47 implement one (1) or more of the alternative methods
48 considered, the agency shall include a statement explaining the
49 agency's reasons for the determination, including a reference to

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- 1 any data, studies, or analyses relied upon by the agency in
- 2 making the determination.
- 3 (b) For purposes of subsection (a), a proposed rule will be fully
- 4 implemented with respect to small businesses after:
 - 5 (1) the conclusion of any phase-in period during which:
 - 6 (A) the rule is gradually made to apply to small businesses
 - 7 or certain types of small businesses; or
 - 8 (B) the costs of the rule are gradually implemented; and
 - 9 (2) the rule applies to all small businesses that will be affected
 - 10 by the rule.

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

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

25 SECTION 3 ~~3~~ [8]. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005,
 26 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2023]: Sec. 7. Before an agency may act under IC 4-22-2.5 ~~5~~
 28 ~~>~~ [IC 4-22-2.6 to readopt a rule to which the chapter applies, the
 29 agency must conduct the review required under IC 4-22-2.5-3.1.
 30 IC 4-22-2.6-4.

31 SECTION 3 ~~3~~ [9]. IC 4-22-2.3 IS ADDED TO THE INDIANA
 32 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2023]:

34 **Chapter 2.3. Transitional Provisions; Exceptions to**
 35 **Rulemaking Procedures**

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

- 45 ~~3~~ (1) October 1, 2023; or
- 46 (2) if the rule is included on a list described in subsection (d),
- 47 October 1, 2024;

48 as applicable. An emergency rule that expires under this subsection
 49 may not be renewed under IC 4-22-2-37.1 (as effective after June

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1 30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for
 2 adoption as an interim rule, the rule may be ~~readopted~~ adopted
 3 under IC 4-22-2-37.2.

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

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

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

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

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

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

26 Sec. 2. Before ~~an emergency~~ a provisional rule adopted
 27 under IC 4-22-2-37.1 (as effective after June 30, 2023) expires, the
 28 governor by executive order may authorize the extension of the
 29 ~~emergency~~ provisional rule under the ~~expedited~~ interim
 30 procedures in IC 4-22-2-37. ~~3~~ 2 if the governor determines and
 31 finds in the executive order that the ~~emergency~~ provisional
 32 circumstances justifying the ~~emergency~~ provisional rule
 33 continue to exist. A rule adopted under the authority of an
 34 extension under this section, expires not later than ~~June 30 of~~
 35 ~~the~~ one (1) year ~~following~~ after the ~~year in~~ date on which
 36 the ~~rule is accepted for filing by the~~ rules are publishe~~d~~ in
 37 the Indiana Register.

38 Sec. 3. ~~The office of the secretary of family and social services~~
 39 ~~may adopt rules under IC 4-22-2-37.3 to implement IC 12-13-16-13~~
 40 ~~(211 dialing code services). The rule expires not later than one (1)~~
 41 ~~year after the adopted rule is accepted for filing under~~
 42 ~~IC 4-22-2-37.3. An expedited rule described in this section may not~~
 43 ~~be continued in another expedited rule after the expiration of the~~
 44 ~~initial expedited rule.~~

45 ~~Sec. 4. The department of natural resources (or to the extent~~
 46 ~~permitted by IC 14-10-2, the natural resources commission) may~~
 47 ~~adopt rules under IC 4-22-2-37.3 to carry out the duties of the~~
 48 ~~department of natural resources under a law listed in IC 14-10-2-5.~~
 49 ~~The rule expires not later than one (1) year after the adopted rule~~
 50 ~~is accepted for filing by the publisher of the Indiana Register. An~~

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~~expedited rule described in this section may be continued in another expedited rule only if the governor determines under IC 4-22-2-37.3(b) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule. A person who violates the rule commits a Class C infraction, unless otherwise specified under state law:~~

~~— Sec. 5. > The director of the department of natural resources may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 to temporarily modify or suspend a rule described in IC 14-22-2-6 (fish and wildlife rules) [. An interim rule authorized] under ~~<the procedures in IC 4-22-2-37.3. The adopted rule>~~ [this section] expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register ~~<An expedited rule described in this section>~~ [and] may not be continued in another ~~<expedited rule after the expiration of the initial expedited rule.~~~~

~~— Sec. 6. The Indiana education employment relations board may adopt rules under IC 4-22-2-37.3 to implement IC 20-29-6-6.1 (review of collective bargaining agreement). The rule expires not later than one (1) year after the adopted rule is accepted for filing by the publisher of the Indiana Register. An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule.~~

~~— Sec. 7. > [interim rule.~~

Sec. 4]. The Indiana state board of education may adopt [interim]rules under [the interim rule procedures in IC 4-22-2-37. <3> [2] for the provision of special education or related services to an eligible choice scholarship student who receives an amount under IC 20-51-4-4(a)(2). <The> [An interim rule] authorized under this section] expires not later than one (1) year after the <adopted> rule is accepted for filing by the publisher of the Indiana Register <

~~— Sec. 8. (a) > [and may not be continued in another interim rule.~~

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

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

(1) The department of financial institutions shall adopt rules

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under [\[the interim rule procedures in IC 4-22-2-37.↔\] \[2\]](#) announcing:

[~~(↔)~~ [\[A\]](#) sixty (60) days before January 1 of each odd-numbered year in which dollar amounts under IC 24-4.5 (Uniform Consumer Credit Code) are to change, the changes in dollar amounts required by IC 24-4.5-1-106(2); ~~and~~

[~~(↔)~~ [\[B\]](#) promptly after the changes occur, changes in the Index required by IC 24-4.5-1-106(3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index];

[\(C\) the adjustments required under IC 24-9-2-8 concerning high cost home loans; and](#)

[\(D\) the adjustments required under IC 34-55-10-2 \(bankruptcy exemptions; limitations\) or IC 34-55-10-2.5\].](#)

~~The~~ [[A](#)] rule [\[described in this subdivision\]](#) expires not later than January ~~↔~~ of the next odd-numbered year after the department of financial institutions is required to issue the rule.

~~↔~~ [~~(↔)~~ [\[2\]](#)] The department of financial institutions may adopt [\[a rule under the interim rule procedures in IC 4-22-2-37.2 for\]](#) a rule permitted under IC 24-4.4-1-101 (licensing system for creditors and mortgage loan originators) or IC 24-4.5 (Uniform Consumer Credit Code) ~~under IC 4-22-2-37.3~~ if the department of financial institutions declares an emergency. The rule [\[described in this subdivision\]](#) expires not later than two (2) years after the ~~adopted~~ rule is ~~accepted for filing by the publisher of the Indiana Register.~~

~~—(c) The department of financial institutions shall adopt rules under IC 4-22-2-37.3 in the same manner provided in subsection (a) for the adjustments required under IC 24-9-2-8 concerning high cost home loans. The rule expires not later than January 1 of the next odd-numbered year after the department of financial institutions is required to issue the rule.~~

~~—(d)~~ [\[effective.](#)

[\(3\)](#) The department of financial institutions may adopt [\[a rule↔ described in ~~34-55-10-2~~ IC 34-55-10-2\]](#) (bankruptcy exemptions; limitations) ~~and~~ [\[or\]](#) IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23 through IC 4-22-2-36 or the ~~expedited~~ [\[interim rule\]](#) procedures in IC 4-22-2-37.↔ [\[2\]](#).

A rule [\[described in this subdivision\]](#) adopted under IC 4-22-2-37.↔ [\[2\]](#) expires not later than two (2) years after the ~~adopted~~ rule is accepted for filing by the publisher of the Indiana Register.

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~~←(e) An expedited→~~ [A] rule described in this section may be continued in another ~~←expedited→~~ [interim] rule only if the governor determines under [section] IC 4-22-2-37. ~~↔~~ [2] (~~←b→~~ [c]) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule. ~~←~~

~~— Sec. 9→~~ [

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

Sec. 8]. The Indiana board of pharmacy may adopt [interim] rules under IC 4-22-2-37. ~~↔~~ [2] to declare~~←that→~~ a substance is a synthetic drug if the board finds that the substance:

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

In making a determination, the Indiana board of pharmacy shall consider the factors described in IC 25-26-13-4.1. Notwithstanding IC 4-22-2-37. ~~↔~~ [2(i)], ~~←the→~~ [a] rule [described in this section] becomes effective when the ~~←adopted→~~ rule is published in the Indiana Register. ~~←The→~~ [A] rule [described in this section] expires not later than ~~←June 30 of the→~~ [one (1)] year ~~←following the year in which→~~ [after] the rule is accepted for filing by the publisher of the Indiana Register ~~←An expedited rule described in this section→~~ [and] may not be continued in another ~~←expedited rule after the expiration of the initial expedited rule.~~

~~— SECTION 35→~~ [interim rule.

Sec. 9. The Indiana pesticide review board may adopt interim rules under IC 4-22-2-37.2 to classify a pesticide as a restricted use pesticide or a pesticide for use by prescription only pending review by the general assembly, if the Indiana pesticide review board finds that:

- (1) the pesticide has been classified as a restricted use pesticide or a pesticide for use by prescription only by the United States Environmental Protection Agency; and
- (2) adoption of the interim rule is necessary to prevent an undue and immediate hazard to persons, animals, wildlife, lands, or water, other than the pests that the pesticide is intended to prevent, destroy, control, or mitigate.

A rule described in this section expires not later than sixty (60)

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days after adjournment sine die of the regular session of the general assembly that occurs after the interim rule proceeding is commenced.

SECTION 40. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1, 2023]. (Expiration and Readoption of Administrative Rules).

SECTION ~~36~~ [41]. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 2.6. Expiration and Readoption of Administrative Rules

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

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

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

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

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

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

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

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

- (1)** without changes in conformity with the procedures in

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

Sec. 3. (a) Except as provided in subsection (b), if an agency intends to readopt a rule, the agency shall, not later than January 1 of the fourth year after the year in which the rule takes effect, provide an initial notice of the intended readoption in an electronic format designated by the publisher to legislators and legislative committees in the manner and on the schedule specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council.

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

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

- ~~(1) Minimize expenses to:

 - ~~(A) regulated entities that are required to comply with the rule;~~
 - ~~(B) persons who pay taxes or pay fees for government services affected by the rule; and~~
 - ~~(C) consumers of products and services of regulated entities affected by the rule.~~~~
- ~~(2) Achieve the regulatory goal in the least restrictive manner.~~
- ~~(3) Have benefits that exceed the fiscal and economic costs of the rule.~~
- ~~(4) Avoid duplicating and conflicting standards with other federal, state, or local laws, rules, regulations, or ordinances.~~
- ~~(5) Be written for ease of comprehension.~~
- ~~(6) Have practicable enforcement.~~

>[meet each of the standards in IC 4-22-2-19.5 and (if applicable) the requirements for fees, fines, and civil penalties in IC 4-22-2-19.6.]

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

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

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

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1 (1) Conduct one (1) or more additional comment periods in
2 the manner provided in section 5 of this chapter on one (1) or
3 more rules within the scope of the notice of proposed
4 readoption. If a person submits to the agency during the
5 initial comment period under section 5 of this chapter a
6 written request stating a basis for considering a particular
7 rule separately from other rules in the notice of proposed
8 readoption, the agency may not readopt that rule under this
9 chapter. The agency may readopt that rule with or without
10 changes only through a rulemaking action initiated under
11 IC 4-22-2-23 through IC 4-22-2-36 (as modified by
12 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
43 readopt a rule with or without amendments shall submit a notice
44 of withdrawal of the readoption rulemaking action in the manner
45 provided in IC 4-22-2-41.

46 Sec. 10. If a rule is not readopted and the governor finds that
47 the failure to readopt the rule causes an emergency to exist, the
48 governor may, by executive order issued before the rule's
49 expiration date, postpone the expiration date of the rule until a

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1 date that is not later than one (1) year after the date specified in
2 section 1 of this chapter.

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

9 SECTION ~~37~~ [42. IC 5-14-3.5-2, AS AMENDED BY
10 P.L.87-2022, SECTION 3, IS AMENDED TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) The auditor of state, working
12 with the office of technology established by IC 4-13.1-2-1, or another
13 organization that is part of a state educational institution, and the office
14 of management and budget established by IC 4-3-22-3, shall post on
15 the Indiana transparency ~~Internet web site~~ **website** the following data:

16 (1) A listing of state expenditures and fund balances, including
17 expenditures for contracts, grants, and leases.

18 (2) A listing of state owned real and personal property that has
19 a value of more than twenty thousand dollars (\$20,000).

20 The ~~web site~~ **website** must be electronically searchable by the public
21 and must be intuitive to users of the ~~web site.~~ **website.**

22 (b) The data base must include **the following** for each state
23 agency:

24 (1) The amount, date, payer, and payee of expenditures.

25 (2) A listing of state expenditures by:

26 (A) personal services;

27 (B) other operating expenses; or

28 (C) total operating expenses;

29 to reflect how the funds were appropriated in the state budget
30 act.

31 (3) A listing of state fund balances.

32 (4) A listing of property owned by the state. **and**

33 (5) The information report required under IC 4-12-1-21(c).

34 (6) **Not more than thirty (30) days after the last state**
35 **signatory to the contract is obtained, a copy of each contract**
36 **for a purchase (as defined in IC 5-22-2-24) by a**
37 **governmental body (as defined in IC 5-22-2-13(1)) under**
38 **IC 5-22 that are entered into after June 30, 2023. The posted**
39 **copies must redact trade secrets and other confidential**
40 **information in the posted contracts. When multiple**
41 **purchases under a quality purchase agreement or other**
42 **contract are permitted, posting of the quality purchase**
43 **agreement or contract meets the requirements of this**
44 **subdivision.**

45 (c) The data base must include for each state educational
46 institution a listing of the annual salaries for employees of the state
47 educational institution.

48 SECTION 43. IC 5-22-10-3, AS AMENDED BY P.L.181-2015,
49 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2023]: Sec. 3. (a) A purchasing agent shall maintain the
2 contract records for a special purchase in a separate file.
3 (b) A purchasing agent shall include in the contract file a written
4 determination of the basis for:
5 (1) the special purchase; and
6 (2) the selection of a particular contractor.
7 (c) Notwithstanding any other law, a governmental body shall
8 maintain a record listing all contracts made under this chapter for a
9 minimum of five (5) years. The record must contain the following
10 information:
11 (1) Each contractor's name.
12 (2) The amount, **price per unit**, and type of each contract.
13 (3) A description, **purchase price per unit, and total cost each**
14 **purchase** of the supplies purchased under each contract.
15 (d) The contract records for a special purchase are subject to audit
16 by the state board of accounts.
17 SECTION 44. IC 5-22-18-4 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) Except as
19 provided in this section or by another law, contract and purchasing
20 records are public records subject to public inspection under IC 5-14-3.
21 **The information described in IC 5-22-10-3(c) are public records**
22 **subject to public inspection under IC 5-14-3.**
23 (b) A governmental body may establish policies or adopt rules for
24 the protection of documents submitted to the governmental body in
25 response to a solicitation.
26 (c) Policies or rules may provide procedures for the following:
27 (1) Protection of offers before opening to prevent disclosure of
28 contents.
29 (2) Afford unobstructed evaluation of offers and award of
30 contracts by the purchasing agent after opening.
31 (3) Protection of offers from tampering before and after opening.
32 SECTION 45. IC 5-28-17-6, AS AMENDED BY P.L.197-2021,
33 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2023]: Sec. 6. The corporation shall act as the small business
35 ombudsman. The small business ombudsman shall carry out the
36 following duties:
37 (1) Work with state agencies to permit increased enforcement
38 flexibility and the ability to grant common sense exemptions for
39 first time offenders of state rules and policies, including,
40 notwithstanding any other law, policies for the compromise of
41 interest and penalties related to a listed tax (as defined in
42 IC 6-8.1-1-1) and other taxes and fees collected or administered
43 by a state agency.
44 (2) Work with state agencies to seek ways to consolidate forms
45 and eliminate the duplication of paperwork, harmonize data, and
46 coordinate due dates.
47 (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform
48 cost benefit analyses.
49 (4) Work with state agencies to monitor any outdated,

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- 1 ineffective, or overly burdensome information requests from
 2 state agencies to small businesses.
 3 (5) Carry out the duties specified under IC 4-22-2-28 and
 4 IC 4-22-2.1 to review proposed rules and participate in
 5 rulemaking actions that affect small businesses.
 6 (6) Coordinate with the ombudsman designated under
 7 IC 13-28-3-2 and the office of voluntary compliance established
 8 by IC 13-28-1-1 to coordinate the provision of services required
 9 under IC 4-22-2-28.1 and IC 13-28-3.
 10 (7) Prepare written and electronic information for periodic
 11 distribution to small businesses describing the small business
 12 services provided by coordinators (as defined in
 13 ~~IC 4-22-2-28.1(b)) IC 4-22-2-28.1(a)~~ and work with the office
 14 of technology established by IC 4-13.1-2-1 to place information
 15 concerning the availability of these services on state Internet web
 16 sites that the small business ombudsman or a state agency
 17 determines are most likely to be visited by small business owners
 18 and managers.
 19 (8) Assist in training agency coordinators who will be assigned
 20 to rules under IC 4-22-2-28.1(e). **IC 4-22-28.1(b).**
 21 (9) Investigate and attempt to resolve any matter regarding
 22 compliance by a small business with a law, rule, or policy
 23 administered by a state agency, either as a party to a proceeding
 24 or as a mediator.

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

31 SECTION 46]. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,
 32 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under
 34 IC 4-22-2 to implement this chapter, the division shall consult with and
 35 fully consider any comments submitted by:

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

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

47 (b) Rules adopted under this chapter must:

- 48 (1) include protections for the rights, safety, and welfare of
 49 individuals with special needs receiving care from a caretaker

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1 under this chapter, including reasonable monitoring and
 2 reporting requirements;
 3 (2) serve distinct populations, including:
 4 (A) the aged;
 5 (B) persons with developmental disabilities; and
 6 (C) persons with physical disabilities;
 7 in a manner that recognizes, and appropriately responds to, the
 8 particular needs of the population;
 9 (3) not create barriers to the availability of home and community
 10 based services under IC 12-10-10 and IC 12-10-11.5 by
 11 imposing costly or unduly burdensome requirements on
 12 caretakers or other service providers, including:
 13 (A) requirements for proof of financial responsibility; and
 14 (B) monitoring, enforcement, reporting, or other
 15 administrative requirements; and
 16 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 17 chapter.
 18 (c) Before submitting a rule adopted under this chapter to the
 19 attorney general for final approval under IC 4-22-2-31, the division
 20 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for
 21 publication in the Indiana Register the division's written response ~~under~~
 22 ~~IC 4-22-2-23~~ to any comments received from the parties described in
 23 subsection (a). Submissions to the publisher shall be made in the
 24 electronic format specified by the publisher.
 25 SECTION ~~38~~[47]. IC 12-10.5-2-3, AS AMENDED BY
 26 P.L.123-2006, SECTION 27, IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) Before finally
 28 adopting a rule under IC 4-22-2 to implement this chapter, the division
 29 shall consult with and fully consider any comments submitted by:
 30 (1) continuum of care providers providing care under this
 31 chapter;
 32 (2) individuals receiving care under this chapter;
 33 (3) area agencies on aging;
 34 (4) consumers and providers of home and community based
 35 services under IC 12-10-10 and IC 12-10-11.5; and
 36 (5) any other agency, volunteer group, faith based group, or
 37 individual that the division considers appropriate;
 38 to ensure that the rule complies with the requirements set forth in
 39 subsection (b).
 40 (b) Rules adopted under this chapter must:
 41 (1) include protections for the rights, safety, and welfare of
 42 individuals receiving care under this chapter;
 43 (2) serve distinct populations, including:
 44 (A) the aged;
 45 (B) persons with developmental disabilities; and
 46 (C) persons with physical disabilities;
 47 in a manner that recognizes, and appropriately responds to, the
 48 particular needs of the population;
 49 (3) not create barriers to the availability of home and community

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1 based services under IC 12-10-10 and IC 12-10-11.5 by
 2 imposing costly or unduly burdensome requirements on
 3 continuum of care providers or other service providers,
 4 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 48. IC 13-14-9-0.2 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2023]: Sec. 0.2. This chapter (as effective
 20 January 1, 2023) continues to apply after June 30, 2023, to a
 21 rulemaking action that is commenced under this chapter before
 22 July 1, 2023.

23] SECTION ~~39~~[49]. IC 13-14-9-1, AS AMENDED BY
 24 P.L.133-2012, SECTION 89, IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as
 26 provided in [sections] [8] [and] section 14 of this chapter, this
 27 chapter applies to the following:

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

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

33 ~~(c) This chapter (as effective January 1, 2023) continues to~~
 34 ~~apply after June 30, 2023, to a rulemaking action that is~~
 35 ~~commenced under this chapter before July 1, 2023.~~

36 ~~SECTION 40~~[SECTION 50. IC 13-14-9-2 IS REPEALED
 37 [EFFECTIVE JULY 1, 2023]. Sec. 2: Except as provided in sections
 38 4.5; 7; 8; and 14 of this chapter, a board may not adopt a rule under this
 39 chapter until the board has conducted at least two (2) public comment
 40 periods, each of which must be at least thirty (30) days in length.

41 SECTION 51]. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,
 42 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 43 JULY 1, 2023]: Sec. 3. [(a)] Except as provided in subsection (b);
 44 ~~<The department shall>~~[Before publication of the notice described
 45 in IC 4-22-2-23, the department shall may]provide notice in the
 46 Indiana Register of [the] [first] [a]public comment period
 47 [required] [by] [section] [2] [of] [this] <chapter.

48 ~~(b) To publish notice of the first public comment period in the~~
 49 ~~Indiana Register, the agency must submit the following to the~~

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~~publisher:~~

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

~~(2) 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 IC 4-22-2-22.8;~~

~~(3) The determination of the budget agency and the office of management and budget authorizing commencement of the first and second public comment periods on the proposed rule under IC 4-22-2-22.8.~~

~~(4) The notice required under subsection (e).~~

~~(e)~~ f chapter regarding potential rulemaking. A notice provided under this section must do the following:

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

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

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

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

(i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or

(ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements;

(C) state the extent to which each alternative listed under clause (A) differs from federal law;

(D) include any information known to the department about the potential fiscal impact of each alternative under clause (A) that creates:

(i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or

(ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements; and

(E) set forth the basis for each alternative listed under clause (A).

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the

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- purpose of the proposed rule.
- (5) Request the submission of comments, including suggestions of specific language for the proposed rule.
- (6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.
- ~~(7) Include the latest version of the regulatory analysis (excluding 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 IC 4-22-2-22.8.~~
- ~~(8) Include information concerning where, when, and how a person may submit written comments on the proposed rule, including contact information concerning the small business regulatory coordinator required by IC 4-22-2-28.1.~~
- ~~(9) Include information concerning where, when, and how a person may inspect and copy any data, studies, or analyses referenced in a regulatory analysis under subdivision (7).~~
- ~~(10) Include information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed rule under IC 4-22-2-21.~~
- ~~(11) Include an indication that the notice is for the first of two (2) thirty (30) day periods in which the public may comment on the proposed rule.~~

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

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

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

- ~~(1) The notice of the first comment period.~~
- ~~(2) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under IC 4-22-2-21).>~~

SECTION ~~<41>~~ [52]. IC 13-14-9-4, AS AMENDED BY P.L.218-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) ~~[The] [department] [shall~~ ~~<provide notice in the Indiana Register of the second>~~ [provide

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1 notice in the Indiana Register of the second public comment period
 2 required by section 2 of this chapter. A notice provided under this
 3 section In addition to the requirements of IC 4-22-2-23 and (if
 4 applicable) IC 4-22-2-24, the notice of] public comment <period
 5 required by section 2 of this chapter:

6 ~~— (b) To publish a notice of the second public comment period in~~
 7 ~~the Indiana Register, the agency must submit the~~
 8 ~~following> [submitted by the department] to the publisher<:~~

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

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

25 ~~— (3) The notice required under subsection (c):~~

26 ~~— (c) A notice provided under this section → [] must do the~~
 27 ~~following:~~

28 (1) Contain the full text of the proposed rule; to the extent
 29 required under IC 4-22-2-24(c):

30 (2) (1) Contain a summary of the response of the department to
 31 written comments submitted under section 3 of this chapter []
 32 [during] [] the [] first [] public [] comment [] period. If
 33 applicable.]

34 (3) (2) Request the submission of comments, including
 35 suggestions of specific amendments to the language contained
 36 in the proposed rule ~~< and indicate where, when, and how a~~
 37 ~~person may submit written comments on the proposed rule;~~
 38 ~~including contact information concerning the small business~~
 39 ~~regulatory coordinator required by IC 4-22-2-28>. <1>~~

40 (4) ~~<3>~~ Contain the full text of the commissioner's written
 41 findings under section 7 of this chapter, if applicable. ~~<Include~~
 42 ~~a statement indicating the date, time, and place at which the~~
 43 ~~public hearing on the proposed rule will be convened>~~

44 (5) ~~<4>~~ [3] Identify each element of the proposed rule that
 45 imposes a restriction or requirement on persons to whom the
 46 proposed rule applies that:

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

49 (B) applies in a subject area in which federal law does not

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impose a restriction or requirement.
(6) (~~5~~ [4]) With respect to each element identified under subdivision ~~(5)~~; (~~3~~), identify:
(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;
(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and
(C) the:
(i) estimated fiscal impact; and
(ii) expected benefits;
based on the extent to which the proposed rule is more stringent than the restrictions or requirements of federal law, or on the creation of restrictions or requirements in a subject area in which federal law does not impose restrictions or requirements.

(7) (~~6~~ [5]) For any element of the proposed rule that imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law or that applies in a subject area in which federal law does not impose restrictions or requirements, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:
(A) health criteria;
(B) analytical methods;
(C) treatment technology;
(D) economic impact data;
(E) environmental assessment data;
(F) analyses of methods to effectively implement the proposed rule; and
(G) other background data.

~~(7) Either a statement indicating that no changes in the regulatory analysis have been made from the version of the regulatory analysis published under section 3 of this chapter or the latest version of the regulatory analysis (excluding 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 IC 4-22-2-22.8, if any changes have been made in the regulatory analysis after submitting the material under section 3 of this chapter:~~

~~(8) Include an explanation of any differences between the text of the proposed rule published for the first comment period under section 3 of this chapter and the text of the proposed rule published for the second comment period under this section:~~

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

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

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

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

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

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

~~— (1) The notice of the second comment period.~~

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

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

(d) ~~<(f)>~~**[c]** Subsections (b)(2) and ~~<(e) do >~~**[e]** ~~Subsection <(e)>~~
>~~<(e)>~~**[b]**~~<do>~~ does not prohibit or restrict the commissioner, the department, or the board from:

- (1) adopting ~~[emergency]~~ **[provisional]** rules under IC 4-22-2-37.1;
- (2) taking emergency action under IC 13-14-10; or

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(3) temporarily:

- (A) altering ordinary operating policies or procedures; or
- (B) implementing new policies or procedures;

in response to an emergency situation.

SECTION ~~42~~ [53]. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the date of preliminary adoption of a proposed rule by a board, the department shall make available to the board the ~~fiscal impact statement~~ **latest version of the regulatory analysis** prepared by the office of management and budget with respect to for the proposed rule. ~~<>~~ under IC 4-22-2-28(e).

SECTION ~~43~~ [54]. IC 13-14-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a rule

- (1) that has been preliminarily adopted by a board in a form that is:
 - (A) (1) identical to; or
 - (B) (2) not substantively different from;
 the proposed rule published in a second notice under section 4 of this chapter; or (2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter; IC 4-22-2-23 or (if applicable) IC 4-22-2-24;

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

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

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

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

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

SECTION ~~44~~ [55]. IC 13-14-9-5, AS AMENDED BY P.L.123-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the following occur:

- (1) The board holds a board meeting on the proposed rule.
- (2) The department, after approval of the proposed rule by the board under subsection (c), publishes the **following**

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information<=>[] in the Indiana Register as provided in IC 4-22-2-24(c):

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

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

(C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000); a copy of the office of management and budget fiscal analysis required under IC 4-22-2-28: required by section 4 of this chapter. However, a notice of a third [n additional] public comment period under section 4.5 of this chapter must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second [the immediately preceding] notice under section 4 [or (if applicable) 4.5] of this chapter.

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

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

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

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

- (1) proceed to publication under subsection (a)(2);
- (2) be subject to additional comments under section ~~[3]~~ [3] ~~[or 4 of this chapter, considering any written finding made by the commissioner under section 7 or 8]~~ [4 4.5] of this chapter; ~~[considering any written finding made by the commissioner under section 7 or 8 of this chapter;]~~ or
- (3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION ~~<45>~~ [56]. IC 13-14-9-6, AS AMENDED BY P.L.123-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. ~~[In]~~ [addition] ~~[to]~~ [the] ~~[requirements]~~ [of] ~~[section]~~ [8] ~~[of]~~ [this] ~~[chapter,~~ [T]he department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

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

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by the department.

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

- (A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;
- (B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if ~~[a]~~ ~~[third]~~ **an additional** public comment period is not required under section 4.5 of this chapter; or
- (C) during:
 - (i) ~~[a]~~ ~~[third]~~ **an additional** public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a ~~[second]~~ notice under section 4 of this chapter; and
 - (ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;
 for a board meeting held under section 5(a)(3) of this chapter if ~~[a]~~ ~~[third]~~ **[an additional]**public comment period is required under section 4.5 of this chapter.

(3) The full text of the ~~office of management and budget~~ **fiscal latest version of regulatory** analysis if a ~~fiscal~~ analysis is required under IC ~~4-22-2-28.~~ ~~<prepared>~~ **[provided to the budget agency and the office of management and budget] under IC 4-22-2-22.** ~~<7.~~

~~SECTION 46~~ **[8.**

SECTION 57. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY 1, 2023]. Sec. 7. (a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, section 3 of this chapter does not apply to a rulemaking action if the commissioner determines that the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under section 3 of this chapter would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule.

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

SECTION 58. IC 13-14-9-8, AS AMENDED BY P.L.6-2012, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in subsection (g), unless a board determines that a proposed rule should be subject to additional comments or makes a determination described in subsection (f), sections 2 through 7 and sections 9 through 14 of this chapter do not apply to a rulemaking action if the commissioner

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1 determines that:

2 (1) the proposed rule constitutes:

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

5 (i) is or will be applicable to Indiana; and

6 (ii) contains no amendments that have a substantive
7 effect on the scope or intended application of the
8 federal law or rule;

9 (B) a technical amendment with no substantive effect on an
10 existing Indiana rule; or

11 (C) an amendment to an existing Indiana rule, the primary
12 and intended purpose of which is to clarify the existing rule;
13 and

14 (2) the proposed rule is of such nature and scope that there is no
15 reasonably anticipated benefit to the environment or the persons
16 referred to in section 7(a)(2) of this chapter from the following:

17 (A) Exposing the proposed rule to diverse public comment
18 under section 3 or 4 of this chapter;

19 (B) Affording interested or affected parties the opportunity
20 to be heard under section 3 or 4 of this chapter;

21 (C) Affording interested or affected parties the opportunity
22 to develop evidence in the record collected under sections
23 3 and 4 of this chapter;

24 (b) If the commissioner makes a determination under subsection
25 (a); the commissioner shall prepare written findings under this section.
26 The full text of the commissioner's written findings shall be included
27 in:

28 (1) the notice of adoption of the proposed rule; and

29 (2) the written materials to be considered by the board at the
30 public hearing held under this section.

31 (c) The notice of adoption of a proposed rule under this section
32 must:

33 (1) be published in the Indiana Register; and

34 (2) include the following:

35 (A) Draft rule language that includes the language
36 described in subsection (a)(1);

37 (B) A written comment period of at least thirty (30) days;

38 (C) A notice of public hearing before the appropriate board;

39 (d) The department shall include the following in the written
40 materials to be considered by the board at the public hearing referred
41 to in subsection (c):

42 (1) The full text of the proposed rule as most recently prepared
43 by the department;

44 (2) Written responses of the department to written comments
45 received during the comment period referred to in subsection (c);

46 (3) The commissioner's findings under subsection (b);

47 (e) At the public hearing referred to in subsection (c); the board
48 may:

49 (1) adopt the proposed rule;

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1 (2) adopt the proposed rule with amendments;

2 (3) reject the proposed rule;

3 (4) determine that additional public comment is necessary; or

4 (5) determine to reconsider the proposed rule at a subsequent
5 board meeting;

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

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

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

24 (1) a proposed rule is adopted by a board under subsection (e)(1)
25 based on a determination by the commissioner under subsection
26 (a)(1)(A) and the federal law, rule, or regulation on which the
27 adopted rule is based is later repealed or otherwise nullified by
28 legislative or administrative action, then that part of the adopted
29 rule that corresponds to the repealed or nullified federal law,
30 rule, or regulation is void as of the effective date of the
31 legislative or administrative action repealing or otherwise
32 nullifying the federal law, rule, or regulation;

33 (2) a board adopts a proposed rule under subsection (e)(1) that
34 is based on a determination by the commissioner under
35 subsection (a)(1)(A) and the federal law, rule, or regulation on
36 which the adopted rule is based is later invalidated, vacated, or
37 otherwise nullified by a judicial decree, order, or judgment of a
38 state or federal court whose decisions concerning such matters
39 have force and effect in Indiana:

40 (A) then that part of the rule that corresponds to the
41 invalidated, vacated, or otherwise nullified federal law, rule,
42 or regulation shall not be enforced by the commissioner or
43 any other person during the time in which an appeal of the
44 judicial decree, order, or judgment can be commenced or is
45 pending; and

46 (B) either:

47 (i) that part of the adopted rule that corresponds to the
48 invalidated, vacated, or otherwise nullified federal law,
49 rule, or regulation is void as of the date that the judicial

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decree, order, or judgment becomes final and unappealable; or

(ii) enforcement of the adopted rule is restored if the judicial decree, order, or judgment is reversed, vacated, or otherwise nullified on appeal; and

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

(1) that is the basis of a rule that is adopted under subsection ~~(e)(1)~~ by the board; and based on a determination by the commissioner under subsection (a)(1)(A)

(2) is stayed by an administrative or a judicial order pending an administrative or a judicial action regarding the validity of the federal law, rule, or regulation;

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

SECTION 59. IC 13-14-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying with sections ~~2 4~~ through ~~8 6~~ of this chapter, the board may, at the board meeting held under section 5(a)(3) of this chapter:

(1) adopt a rule that is identical to the proposed rule published under section 5(a)(2) of this chapter;

(2) adopt the proposed rule with amendments that meet the criteria set forth in section 10 of this chapter;

~~(3)~~ (2) recommend amendments to the proposed rule; that do not meet the criteria set forth in section 10 of this chapter;

~~(4)~~ (3) reject the proposed rule; or

~~(5)~~ (4) reconsider the proposed rule at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 60. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY 1, 2023]. Sec. 10: (a) A board may amend a proposed rule at a board meeting held under section 5(a)(3) of this chapter and adopt the amended rule under section 9(2) of this chapter if the amendments are a logical outgrowth of:

(1) the proposed rule as published under section 5(a)(2) of this chapter; and

(2) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter:

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

(1) whether the language of:

(A) the proposed rule as published under section 5(a)(2) of this chapter; and

(B) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter;

fairly apprised interested persons of the specific subjects and issues contained in the amendment; and

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(2) whether the interested parties were allowed an adequate opportunity to be heard by the board:

SECTION 61. IC 13-14-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board recommends amendments to a proposed rule under section ~~9(3)~~ **9(2)** of this chapter, the full text of the proposed rule and accompanying amendments shall be published in accordance with section 5(a)(2) of this chapter. After that publication, the board shall hold another board meeting on the proposed rule under section 5(a)(3) of this chapter.

SECTION 62. IC 13-14-9-12, AS AMENDED BY P.L.204-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under section ~~9(4)~~ **9** of this chapter if one (1) of the following conditions exists:

(1) The following occurs or has occurred:

(A) under section 8 of this chapter, sections 3 and 4 of this chapter did not apply to the proposed rule; and

(B) either:

(i) (1) The board determines that necessary amendments to the proposed rule will affect persons that reasonably require an opportunity to comment under section 4 of this chapter. ~~considering the criteria set forth in section 8(a)(2) of this chapter; or~~

(ii) (2) The board determines that due to the fundamental or inherent structure or content of the proposed rule, the only reasonably anticipated method of developing a rule acceptable to the board is to require the department to redraft the rule and to obtain the public comments under section 4 of this chapter.

(2) The following occurs or has occurred:

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

(B) either:

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

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

SECTION 63. IC 13-14-9-14, AS AMENDED BY P.L.133-2012, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g), sections 1 through 13 of this chapter do not apply to a rule adopted

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1 under this section.

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

5 (1) an approved long term control plan; and

6 (2) an approved use attainability analysis that supports the use of
7 a CSO wet weather limited use subcategory established under
8 IC 13-18-3-2.5.

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

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

15 (1) Suggested rule language that amends the designated use to
16 allow for a CSO wet weather limited use subcategory in
17 accordance with IC 13-18-3-2.5.

18 (2) A written comment period of at least thirty (30) days.

19 (3) A notice of public hearing before the board.

20 (e) The department shall include the following in the written
21 materials to be considered by the board at the public hearing referred
22 to in subsection (d)(3):

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

25 (2) Written responses of the department to written comments
26 received during the comment period referred to in subsection
27 (d)(2).

28 (3) The letter prepared by the department approving the long
29 term control plan and use attainability analysis.

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

32 (1) adopt the proposed rule to establish a new water quality
33 standard amending the designated use to allow for a CSO wet
34 weather limited use subcategory;

35 (2) adopt the proposed rule with amendments;

36 (3) reject the proposed rule; or

37 (4) determine to reconsider the proposed rule at a subsequent
38 board meeting.

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

49 (h) The department shall submit a new water quality standard

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1 [established in a rule adopted under subsection \(f\) to the United States](#)
 2 [Environmental Protection Agency for approval.](#)

3 [SECTION 64](#). IC 13-14-9-15 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance**
 6 **with this chapter by the department of environmental management**
 7 **or a board that has rulemaking authority under ~~IC 13~~ [\[this title\]](#)**
 8 **expire as provided in IC 4-22-2.6.**

9 SECTION ~~47~~ [\[65\]](#). IC 13-14-9-16 IS ADDED TO THE
 10 INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2023]: [\[Sec. 16. \(a\) \]](#) For a rule document
 12 subject to this chapter, the one (1) year period established under
 13 IC 4-22-2-25 in which to adopt a rule and obtain the approval or
 14 deemed approval of the governor commences on the date that the
 15 initial comment period notice for the rule document is published in
 16 the Indiana Register under section ~~3 of this chapter, (if the section~~
 17 ~~3 comment period is waived under section 7 of this chapter) section~~
 18 ~~>4 of this chapter, section 8 of this chapter, or section 14 of this~~
 19 ~~chapter (as applicable)~~. ~~<>~~ [\[](#)

20 [\(b\) \]](#) If an agency determines that a rule cannot be adopted
 21 within one (1) year after the publication of the notice, the
 22 ~~agency~~ [\[department\]](#) shall, before two hundred fifty (250) days
 23 following the publication of the notice, notify the publisher by
 24 electronic means:

- 25 (1) the reasons why the rule was not adopted and the
- 26 expected date the rule will be completed; and
- 27 (2) the expected date the rule will be approved or deemed
- 28 approved by the governor or withdrawn under IC 4-22-2-41.

29 ~~(b)~~ [\[c\]](#) If a rule is not approved before the later of:

- 30 (1) one (1) year after the ~~agency~~ [\[department\]](#) publishes
- 31 the initial notice of intent under this chapter; or
- 32 (2) the expected date contained in a notice concerning the
- 33 rule that is provided to the publisher under subsection
- 34 ~~(a)~~ [\[b\]](#);

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

38 SECTION ~~48~~ [\[66\]](#). IC 13-14-9.5 IS REPEALED [EFFECTIVE
 39 JULY 1, 2023]. (Expiration and Readoption of Administrative Rules).

40 SECTION ~~49~~ [\[67\]](#). IC 13-19-3-3, AS AMENDED BY
 41 P.L.120-2022, SECTION 5, IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) As used in this section
 43 and section 3.1 of this chapter, "coal combustion residuals" means fly
 44 ash, bottom ash, boiler slag, and flue gas desulfurization materials
 45 generated from burning coal for the purpose of generating electricity
 46 by electric utilities and independent power producers.

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

- 49 (1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the

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federal standards for the disposal of coal combustion residuals in landfills and surface impoundments.

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

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

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

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

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

(d) The department shall do the following:

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

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

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

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

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

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

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

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

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1 **department has to establish requirements for a surface**
2 **impoundment of coal combustion residuals located on the grounds**
3 **of a legacy generation resource.**

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

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

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

11 (2) An annual fee of twenty thousand five hundred dollars
12 (\$20,500) for each surface impoundment of coal combustion
13 residuals regulated under the state permit program that has not
14 completed closure in accordance with Section 257.102 of the
15 federal CCR rule. The duty to pay the fee established by this
16 subdivision does not apply on an annual basis until three
17 hundred sixty-five (365) days after the initial one (1) time permit
18 fee established by subdivision (1) has been assessed.

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

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

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

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

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

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

40 (k) Upon the effective date that the board adopts rules to
41 implement the federal CCR rule and subject to subsection (i), annual
42 fees for CCR landfills that were previously regulated as restricted waste
43 sites shall be deposited in the CCR program fund established by section
44 3.2 of this chapter.

45 SECTION ~~50~~ 168. IC 13-20-10.5-1, AS ADDED BY
46 P.L.189-2011, SECTION 13, IS AMENDED TO READ AS
47 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) A person may not
48 after June 30, 2011, start:

49 (1) construction of:

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(A) a biomass anaerobic digestion facility; or
(B) a biomass gasification facility; or
(2) expansion of:
(A) a biomass anaerobic digestion facility; or
(B) a biomass gasification facility;
without obtaining prior approval of the department.

(b) A person who proposes to construct or expand a biomass anaerobic digestion facility or a biomass gasification facility on the premises of a confined feeding operation must obtain A request for the prior approval required under subsection (a) through shall be reviewed according to the procedures and subject to the timelines for the approval process for confined feeding operations under IC 13-18-10 and rules implementing that chapter.

SECTION 69. IC 14-10-2-5, AS AMENDED BY P.L.164-2020, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) The department may adopt emergency rules under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to carry out the duties of the department under the following:

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

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

(c) A person who violates:
(1) an emergency rule adopted by the department under IC 4-22-2-37.1 before July 1, 2023; or
(2) an interim rule adopted by the department under IC 4-22-2-37.2 after June 30, 2023;
to carry out a provision described in subsection (a) commits a Class C infraction, unless otherwise specified under state law.

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1 SECTION 70. IC 15-16-4-31, AS ADDED BY P.L.2-2008,
 2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]: Sec. 31. As used in this chapter, "pesticide for use by
 4 prescription only" means any pesticide that:

5 (1) the board has found to be more hazardous than a restricted
 6 use pesticide so that any specific use and application must be
 7 determined and prescribed by a qualified pest management
 8 specialist approved by the state chemist; and

9 (2) is designated as a pesticide for use by prescription only in
 10 a rule of the board or a law enacted by the general assembly.

11 SECTION 71. IC 15-16-4-37, AS ADDED BY P.L.2-2008,
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use
 14 pesticide" means the following:

15 (1) Any pesticide classified as a restricted use pesticide by the
 16 administrator of the United States Environmental Protection
 17 Agency or (as of March 31, 2023).

18 (2) A pesticide designated as a pesticide in a law enacted by
 19 the general assembly.

20 (2)(3) Subject to section 50 of this chapter, a pesticide that the
 21 board has determined to be unduly hazardous to persons,
 22 animals, plants, wildlife, waters, or lands other than the pests it
 23 is intended to prevent, destroy, control, or mitigate.

24 (4) All formulations containing methomyl (Chemical
 25 Abstracts Service Reg. No. 16752-77-5).

26 (5) Any dicamba containing pesticide product that:

27 (A) contains a dicamba active ingredient concentration
 28 greater than or equal to six and one-half percent (6.5%);
 29 and

30 (B) is intended for agricultural production uses but is
 31 not labeled solely for use on turf or other
 32 nonagricultural use sites.

33 SECTION 72. IC 15-16-4-50, AS AMENDED BY P.L.99-2012,
 34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2023]: Sec. 50. (a) The board may adopt rules under IC 4-22-2
 36 to do the following:

37 (+) Establish a list of recommend to the general assembly the
 38 addition, deletion, or reclassification of pesticides by
 39 submitting in an electronic format under IC 5-14-6 a report
 40 of the recommendations to the legislative council. In making
 41 a determination to add or reclassify a pesticide as a restricted
 42 use pesticides and pesticide or pesticides pesticide for use by
 43 prescription only for all of Indiana or designated areas within
 44 Indiana, if the board finds must find that the characteristics of
 45 a pesticide require that rules restricting the:

46 (A) (1) sale;

47 (B) (2) distribution; or

48 (C) (3) use;

49 of the pesticide by any person are necessary to prevent undue hazards

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1 to persons, animals, wildlife, lands, or waters, other than the pests that
 2 they are intended to prevent, destroy, control, or mitigate. After
 3 considering the factors enumerated in this subsection, the board
 4 shall make findings and recommendations concerning the control
 5 of the substance if it finds the substance. If any substance is
 6 designated or reclassified to a more restrictive schedule as a
 7 pesticide under federal law and notice is given to the board, the
 8 board shall recommend similar control of the substance under this
 9 article in the board's report to the general assembly, unless the
 10 board objects to inclusion or rescheduling. In that case, the board
 11 shall publish the reasons for objection and afford all interested
 12 parties an opportunity to be heard. At the conclusion of the
 13 hearing, the board shall publish its findings in the Indiana
 14 Register.

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

17 (1) Reclassify a pesticide:

18 (A) from a more restrictive classification to a less
 19 restrictive classification; or

20 (B) as a substance that is not a pesticide;

21 if the board finds that the substance qualifies for
 22 reclassification under this chapter and that the same
 23 reclassification has been made in a classification under
 24 federal law. If the board reclassifies a substance under this
 25 subdivision, the board shall recommend the same
 26 reclassification to the general assembly under subsection (a).
 27 If the board objects to rescheduling or deletion of the
 28 substance, the board shall notify the chair of the legislative
 29 council not more than thirty (30) days after the federal law
 30 is changed and the substance may not be reclassified or
 31 deleted until the conclusion of the next complete session of
 32 the general assembly. The notice from the board to the chair
 33 of the legislative council must be published in the Indiana
 34 Register. Notwithstanding a provision in this chapter that
 35 classifies a pesticide in a more restrictive classification than
 36 a rule adopted under this subdivision, a person who
 37 manufactures, distributes, dispenses, possesses, or uses a
 38 pesticide in compliance with the requirements applicable to
 39 the less restrictive classification to which the pesticide is
 40 reclassified under this subdivision does not commit a
 41 violation of law. Notwithstanding a provision in this chapter
 42 that classifies a substance as a pesticide, a person does not
 43 commit a violation of law if the board has reclassified the
 44 pesticide as a substance that is not a pesticide.

45 (2) Provide for the safe:

46 (A) handling;

47 (B) transportation;

48 (C) storage;

49 (D) display;

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1 (E) distribution;
2 (F) disposal; and
3 (G) production;
4 of pesticide products and pesticide containers.
5 (3) Restrict or prohibit the use of certain types of containers or
6 packages for specific pesticides. The restrictions may apply to
7 the:
8 (A) type of construction;
9 (B) strength; or
10 (C) size;
11 to alleviate danger of spillage, breakage, or misuse.
12 (b) The board may adopt by reference the restricted use
13 classification of a pesticide that is maintained by the United States
14 Environmental Protection Agency.
15 (c) The board may adopt rules under IC 4-22-2 to do the
16 following:
17 (1) Determine the time and conditions of the:
18 (A) sale;
19 (B) distribution; or
20 (C) use;
21 of pesticide products.
22 (2) Require that any or all pesticide products be purchased,
23 possessed, or used only under:
24 (A) permit;
25 (B) certificate;
26 (C) license; or
27 (D) registration;
28 of the state chemist or under certain conditions or in certain
29 quantities or concentrations.
30 (3) Require all persons issued:
31 (A) permits;
32 (B) certificates;
33 (C) licenses; or
34 (D) registrations;
35 under this subsection to maintain records as to the use of the
36 pesticide products.
37 (d) A rule adopted under this chapter that becomes effective
38 after June 30, 2023, may not impose a restriction or requirement
39 more stringent than a restriction or requirement imposed under
40 federal law unless the restriction or requirement is specifically
41 authorized by Indiana law.
42 (e) The state chemist shall maintain a list of each class of
43 pesticides adopted by Indiana law or board rule on the website for
44 the state chemist. Failure to include a pesticide on the list does not
45 exempt a person from compliance with a law or rule for a pesticide
46 designated by law or rule.
47 SECTION 73. IC 15-16-4-52, AS ADDED BY P.L.2-2008,
48 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
49 JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under

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1 IC 4-22-2 to administer this chapter, including rules providing for the
 2 following:

3 (1) The collection and examination of samples of pesticide
 4 products.

5 (2) Determining whether a pesticide product is highly toxic to
 6 humans or wildlife.

7 (3) The issuance of permits to purchase, possess, or use
 8 "restricted use pesticides" and "pesticides for use by prescription
 9 only".

10 (4) Determining standards of coloring or discoloring for
 11 pesticide products and to subject pesticide products to the
 12 requirements of section 57 of this chapter.

13 **A rule described in this section that becomes effective after June**
 14 **30, 2023, may not impose a restriction or requirement concerning**
 15 **pesticides more stringent than a restriction or requirement**
 16 **imposed under federal law unless the restriction or requirement is**
 17 **specifically authorized by Indiana law.**

18 SECTION 56. IC 15-16-4-57, AS AMENDED BY P.L.99-2012,
 19 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2023]: Sec. 57. Except as provided in section 58 of this
 21 chapter, a person may not produce, distribute, display, sell, or offer for
 22 sale within Indiana or deliver for transportation or transport in
 23 intrastate commerce or between points within Indiana through any
 24 point outside Indiana any of the following:

25 (1) Any pesticide product that has not been registered under
 26 section 61 of this chapter.

27 (2) Any pesticide product if any of the claims made for it or any
 28 of the directions for its use differ in substance from the
 29 representations made in connection with its registration.

30 (3) A pesticide product if the composition of the product differs
 31 from the composition as represented in connection with its
 32 registration. However, at the discretion of the state chemist, a
 33 change in the labeling or formula of a pesticide may be made
 34 within a registration period without requiring reregistration of
 35 the product.

36 (4) Any pesticide product (except a bulk pesticide or a pesticide
 37 in a container designed and constructed to accommodate the
 38 return and refill of the container) unless it is in the registrant's or
 39 the manufacturer's unbroken immediate container, and there is
 40 affixed to that container, and to any outside container or wrapper
 41 of the retail package through which the required information on
 42 the immediate container cannot be clearly read, a label bearing:

43 (A) the name and address of the manufacturer, registrant, or
 44 person for whom manufactured;

45 (B) the name, brand, or trademark under which the pesticide
 46 product is sold; and

47 (C) the net weight or measure of the content, subject,
 48 however, to reasonable variations as the state chemist may
 49 permit.

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- 1 (5) Any pesticide product that is adulterated or misbranded.
- 2 (6) Any pesticide product in containers violating rules adopted
- 3 under section ~~50(a)(3)~~ 50(b)(3) of this chapter. Pesticides found
- 4 in containers that are unsafe due to damage may be seized and
- 5 impounded.
- 6 (7) A highly volatile herbicide except on written permission by
- 7 the state chemist.
- 8 (8) Any bulk pesticide unless it is accompanied in all transfers
- 9 of custody or ownership by or held in storage vessels to which is
- 10 affixed a label bearing the information specified in subdivision
- 11 (4).
- 12 (9) Any pesticide that violates the Federal Insecticide, Fungicide,
- 13 and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations
- 14 adopted under the Act.

15 SECTION 57. IC 15-16-5-72 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2023]: Sec. 72. A rule adopted under this
 18 chapter that becomes effective after June 30, 2023, may not impose
 19 a restriction or requirement concerning pesticides more stringent
 20 than a restriction or requirement imposed under federal law unless
 21 the restriction or requirement is specifically authorized by Indiana
 22 law.

23 SECTION 74]. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE
 24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2023]:

26 **Chapter 5.3. Failure to Enact Licensure Rules**

27 **Sec. 1. The following definitions apply throughout this**
 28 **chapter:**

- 29 (1) "Agency" has the meaning set forth in IC 25-1-5-2.
- 30 (2) "~~Board~~ [Applicant]" has the meaning set forth in
- 31 IC 25-1-5-~~4~~ [11].
- 32 [(3) "Board" has the meaning set forth in IC 25-1-5-2.
- 33] [(4) "Compliant", with respect to a licensure rule,
- 34 means a licensure rule that the agency or a board has
- 35 adopted.
- 36 [(5) "Enactment date" means the date on which a
- 37 statute requires rulemaking for a licensure rule to [become
- 38 effective or otherwise requires rulemaking to]commence.]
- 39 [(6) "Executive director" refers to the individual
- 40 described in IC 25-1-5-5.
- 41 (7) "Licensee" has the meaning set forth in
- 42 IC 25-1-5-11.
- 43 (8) "Licensure rule" means a rule that:
- 44 (A) relates to the issuance of a license, certificate,
- 45 registration, or permit, or a requirement or prerequisite
- 46 for obtaining a license, or keeping a license in good
- 47 standing; and
- 48 (B) is required by statute to be adopted by the agency or
- 49 a board.

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- [(9) "Material detriment" means:
 - (A) an inability to obtain a license, certification, permit, or other credential from the agency or a board;
 - (B) an inability to:
 - (i) practice;
 - (ii) perform a procedure; or
 - (iii) engage in a particular professional activity in Indiana or another jurisdiction; or
 - (C) any other substantial burden to professional or business interests.

[~~(8)~~ [10] "Noncompliant", with respect to a licensure rule, means a licensure rule that the agency or a board has not adopted [as an interim rule under IC 4-22-2-37.2] within ~~<eighteen>~~ [six] ~~(~~18~~)~~ [6] months of the enactment date.

Sec. 2. (a) If a licensee [or applicant] believes that the agency or a board has failed to adopt a licensure rule within ~~<eighteen>~~ [six] ~~(~~18~~)~~ [6] months of the enactment date, ~~<the licensee may request in writing that the executive director determine that the licensure rule is noncompliant. The executive director shall issue the determination of noncompliance or compliance in writing.~~

~~— (b) If the executive director determines that the licensure rule is noncompliant, the licensee is entitled to the relief described in section 3 of this chapter.~~

- ~~— (c) If:~~
 - ~~— (1) the executive director determines that the licensure rule is compliant; or~~
 - ~~— (2) at least thirty (30) days have passed since the licensee requested the executive director to confirm that the licensure rule is noncompliant and the executive director has not issued a determination;~~

~~the licensee may request that the governor or the attorney general determine that the licensure rule is a noncompliant. A licensee may not request that both the governor and the attorney general make a determination under this subsection.~~

~~— (d) If the governor or the attorney general determines that the licensure rule is noncompliant, the licensee is entitled to the relief described in section 3 of this chapter.~~

~~Sec. 3. (a) If the executive director, governor, or attorney general determines that a licensure rule is noncompliant, the licensee:~~

- ~~— (1) is not required to pay the license fee to which the licensure rule relates from the enactment date to the date the licensure rule becomes compliant (if applicable); and~~
- ~~— (2) is entitled to a refund of any license fee to which the licensure rule relates from the enactment date to the date the licensure rule becomes compliant (if applicable);~~

~~— (b) The failure to pay a license fee as authorized under this section does not affect the validity of the license.~~

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~~— Sec. 4. (a) If the executive director has determined under section 2 of this chapter that a licensure rule is noncompliant, and the agency later adopts a licensure rule, the executive director may, upon the request of any person, including the executive director, make a new determination concerning the licensure rule. The executive director shall issue the determination in writing.~~

~~— (b) If the executive director determines that the licensure rule is compliant, a licensee who disagrees with the determination may request, not later than thirty (30) days after issuance of the new determination, that the governor or attorney general review the determination. The licensee may not request that both the governor and the attorney general review the determination. If the governor or attorney general determines that the licensure rule is noncompliant, the determination of the governor or attorney general controls.~~

~~— Sec. 5. If the governor or attorney general determined that a licensure rule was noncompliant under section 2 of this chapter, and the agency later adopts a licensure rule, upon the request of any person, the governor or attorney general may make a new determination concerning the licensure rule. The governor or attorney general shall issue the determination in writing.~~

~~— Sec. 6. If the executive director, under section 4 of this chapter, or the governor or attorney general, under section 5 of this chapter, determines that a formerly >[an applicant or licensee who has suffered a material detriment as a result of a] noncompliant licensure rule <is now compliant, a licensee> [may seek damages from the agency or board by bringing an action in a court of competent jurisdiction.~~

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

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

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

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

(3) Court costs and attorney's fees.

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

SECTION 75. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. (a) The department shall adopt emergency rules under ~~IC 4-22-2-37.~~ IC 4-22-2 to implement this chapter. The rules must include a requirement that health payer data sources submit necessary information to the administrator. Rules enacted under this subsection must cover all health payer data sources as follows:

(1) The department shall adopt rules that apply to health payers

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regulated under IC 27.

(2) The office of the secretary of family and social services shall adopt rules that apply to health payers regulated under IC 12.

(b) The department shall adopt **emergency provisional** rules under IC 4-22-2-37.1 establishing a fee formula for data licensing and the collection and release of claims data.

(c) The department may impose a civil penalty on a health payer that is required to ~~pay the license fee to which the licensure rule relates, beginning:~~

- ~~— (1) from the date the new determination was issued; or~~
- ~~— (2) if the new determination was issued by the executive director under section 4(a) of~~ [submit information under] ~~this chapter and the licensee sought review by the governor or attorney general under section 4(b) of this chapter, from the date the governor attorney general issued a determination;~~

~~whichever is later.~~
~~— SECTION 51~~ [fails to comply. A civil penalty collected under this section must be deposited in the department of insurance fund created by IC 27-1-3-28.

SECTION 76. IC 34-52-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1.5. (a) In a proceeding under IC 4-21.5-5 to judicially review a final order made by a state agency, the court shall apply the same standard as an administrative law judge under IC 4-21.5-3-27.5 regarding an order for the payment of attorney's fees.

(b) An order for the payment of attorney's fees under this section is not subject to sections 2 and 4 of this chapter.

SECTION 77. [EFFECTIVE UPON PASSAGE] (a) After June 30, 2023, a rule may be adopted as ~~an emergency~~ [a provisional] rule only for the purposes and through the procedures in IC 4-22-2-37.1 (as effective after June 30, 2023). Any additional authority in a statute outside IC 4-22 to adopt rules through the emergency rulemaking procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or after June 30, 2023) is void. The code revision commission shall provide in calendar year 2023 for the preparation of a bill for introduction in the 2024 regular session of the general assembly that removes language outside IC 4-22 permitting the adoption of emergency rules.

(b) This SECTION expires January 1, 2024.

SECTION ~~52~~ [78]. An emergency is declared for this act.[]

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