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HOUSE BILL No. 1623

Proposed Changes to February 14, 2023 printing by AM162314

DIGEST OF PROPOSED AMENDMENT

Federal regulation and law. Provides that the chapter governing the expiration and readoption of administrative rules does not apply to certain rules that incorporate a federal regulation by reference or adopt a federal regulation under a federal mandate.

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

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

1 SECTION 1. IC 4-3-22-13, AS AMENDED BY P.L.5-2015,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 13. (a) Except as provided in subsection (e), the
4 OMB shall perform a cost benefit analysis upon each proposed rule and
5 provide to:
6 (1) the governor; and
7 (2) the legislative council;
8 an assessment of the rule's effect on Indiana business. The OMB shall
9 submit the cost benefit analysis to the legislative council in an
10 electronic format under IC 5-14-6.
11 (b) After June 30, 2005, the cost benefit analysis performed by the
12 OMB under this section with respect to any proposed rule that has an
13 impact of at least five hundred thousand dollars (\$500,000) shall
14 replace and be used for all purposes under IC 4-22-2 in lieu of the
15 fiscal analysis previously performed by the legislative services agency
16 under IC 4-22-2.
17 (c) The OMB and the budget agency shall review a regulatory
18 analysis and proposed rule submitted by an agency under
19 IC 4-22-2-22.8. In preparing a cost benefit reviewing a regulatory
20]analysis and proposed rule under this section, the OMB shall
21 consider in its analysis any verified data provided voluntarily by

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1 interested parties, regulated persons, and nonprofit corporations whose
 2 members may be affected by the proposed rule. A cost benefit analysis
 3 prepared under this section is a public document, subject to the
 4 following:

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

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

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

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

32 (d) ~~If the OMB or an agency is unable to obtain verified data for~~
 33 ~~the cost benefit analysis described in subsection (c); the OMB shall~~
 34 ~~state in the cost benefit analysis which data were unavailable for~~
 35 ~~purposes of the cost benefit analysis.~~

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

- 37 (1) ~~an adoption or incorporation by reference of a federal law,~~
 38 ~~regulation, or rule that has no substantive effect on the scope or~~
 39 ~~intended application of the federal law or rule; or~~
 40 (2) ~~a technical amendment with no substantive effect on an~~
 41 ~~existing Indiana rule;~~

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

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1 agency shall resubmit the proposed rule to the OMB either for a new
2 determination that the rule meets the requirements of this subsection;
3 or for the OMB to prepare a cost benefit analysis of the rule under this
4 section:

5 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 in the
8 2023 session of the general assembly only apply to agency actions
9 commenced under IC 4-21.5-3 after June 30, 2023.**

10 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
13 concerning an agency action, the administrative law judge shall order
14 the agency to pay the reasonable attorney's fees incurred in the
15 proceeding by the party challenging the agency action if the party
16 challenging the agency action proves, by a preponderance of the
17 evidence, that:

- 18 (1) the agency's action was frivolous or groundless; or
- 19 (2) the agency pursued the action in bad faith;
- 20 **(3) the agency has failed to demonstrate that the agency**
- 21 **action is based on a standard or an interpretation of a**
- 22 **standard that has the force of law; or**
- 23 **(4) the agency has failed to demonstrate that the agency**
- 24 **acted within its legal authority.**

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

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

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

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

- 44 (b) This chapter does not apply to the following agencies:
 - 45 (1) Any military officer or board.
 - 46 (2) Any state educational institution.
- 47 (c) This chapter does not apply to a rulemaking action that results
48 in any of the following rules:
 - 49 (1) A resolution or directive of any agency that relates solely to

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1 internal policy, internal agency organization, or internal
 2 procedure and does not have the effect of law.
 3 (2) A restriction or traffic control determination of a purely local
 4 nature that:
 5 (A) is ordered by the commissioner of the Indiana
 6 department of transportation;
 7 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or
 8 IC 9-20-7; and
 9 (C) applies only to one (1) or more particularly described
 10 intersections, highway portions, bridge causeways, or
 11 viaduct areas.
 12 (3) A rule adopted by the secretary of state under
 13 IC 26-1-9.1-526.
 14 (4) An executive order or proclamation issued by the governor.
 15 **(5) A rule adopted by the board of trustees of the Indiana**
 16 **public retirement system, as provided in IC 5-10.5-4-2.**
 17 **However, the board shall submit rules adopted by the board**
 18 **to the publisher for publication in the Indiana Register.**
 19 (d) Except as specifically set forth in IC 13-14-9, IC 13-14-9
 20 provides alternative procedures for notice and public comment
 21 concerning proposed rules for the environmental rules board and the
 22 underground storage tank financial assurance board. The department
 23 of environmental management, the environmental rules board, and the
 24 underground storage tank financial assurance board shall comply with
 25 the procedures in IC 13-14-9 in lieu of complying with sections 23, 24,
 26 26, 27, and 29 of this chapter. ~~do not apply to rulemaking actions under~~
 27 ~~IC 13-14-9. In adopting rules, all other provisions of IC 4-22-2~~
 28 **apply to these agencies, including sections 22.7 and 22.8 of this**
 29 **chapter.**
 30 SECTION 6. IC 4-22-2-15 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking
 32 action that this chapter allows or requires an agency to perform, other
 33 than final adoption of a rule under section 29, ~~or 37.1, 37.2, or 37.3~~
 34 **of this chapter or IC 13-14-9**, may be performed by the individual or
 35 group of individuals with the statutory authority to adopt rules for the
 36 agency, a member of the agency's staff, or another agent of the agency.
 37 Final adoption of a rule under section 29, ~~or 37.1, 37.2, or 37.3~~
 38 **of this chapter or IC 13-14-9**, including readoption of a rule that is subject to
 39 sections 24 through 36 or to section 37.1 of this chapter and recalled
 40 for further consideration under section 40 of this chapter, may be
 41 performed only by the individual or group of individuals with the
 42 statutory authority to adopt rules for the agency.
 43 SECTION 7. IC 4-22-2-17 IS AMENDED TO READ AS
 44 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) IC 5-14-3
 45 applies to the text of a rule that an agency intends to adopt from the
 46 earlier of the date that the agency takes any action under ~~section 24~~
 47 **section 23** of this chapter, otherwise notifies the public of its intent to
 48 adopt a rule under any statute, or adopts the rule.
 49 (b) IC 5-14-3 applies both to a rule and to the full text of a matter

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1 directly or indirectly incorporated by reference into the rule.

2 SECTION 8. IC 4-22-2-17.5 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2023]: **Sec. 17.5. (a) The legislative services
5 agency shall provide electronic summaries or electronic copies of
6 documents submitted to the publisher under this article or
7 IC 13-14-9 to legislators and legislative committees in the manner
8 and on the schedule specified by the legislative council or the
9 personnel subcommittee of the legislative council acting for the
10 legislative council.**

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

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

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

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

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

- 43 (1) A federal or state statute, rule, or regulation.
- 44 (2) A code, manual, or other standard adopted by an agent of the
- 45 United States, a state, or a nationally recognized organization or
- 46 association.
- 47 (3) A manual of the department of local government finance
- 48 adopted in a rule described in IC 6-1.1-31-9.
- 49 (4) The following requirements:

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- 1 (A) The schedule, electronic formatting, and standard data,
 2 field, and record coding requirements for:
 3 (i) the electronic data file under IC 6-1.1-4-25
 4 concerning the parcel characteristics and parcel
 5 assessments of all parcels and personal property return
 6 characteristics and assessments; and
 7 (ii) the electronic data file under IC 36-2-9-20
 8 concerning the tax duplicate.
- 9 (B) The schedule, electronic formatting, and standard data,
 10 field, and record coding requirements for data required to
 11 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.
- 12 (C) Data export and transmission format requirements for
 13 information described in clauses (A) and (B).
- 14 (b) Each matter incorporated by reference under subsection (a)
 15 must be fully and exactly described.
- 16 (c) An agency may refer to a matter that is directly or indirectly
 17 referred to in a primary matter by fully and exactly describing the
 18 primary matter.
- 19 (d) **Except as otherwise provided in this article**, whenever an
 20 agency submits a rule to the attorney general, the governor, or the
 21 publisher under this chapter, the agency shall also submit a copy of the
 22 full text of each matter incorporated by reference under subsection (a)
 23 into the rule, other than the following:
 24 (1) An Indiana statute or rule.
 25 (2) A form or instructions for a form numbered by the Indiana
 26 archives and record administration under IC 5-15-5.1-6.
 27 (3) The source of a statement that is quoted or paraphrased in
 28 full in the rule.
 29 (4) Any matter that has been previously filed with the:
 30 (A) secretary of state before July 1, 2006; or
 31 (B) publisher after June 30, 2006.
 32 (5) Any matter referred to in subsection (c) as a matter that is
 33 directly or indirectly referred to in a primary matter.
- 34 (e) An agency may comply with subsection (d) by submitting a
 35 paper or an electronic copy of the full text of the matter incorporated
 36 by reference.
- 37 SECTION 11. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014,
 38 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2023]: Sec. 22.5. (a) This section applies to a rule that an
 40 agency intends to:
 41 (1) adopt under sections 24 through 36 of this chapter **or section**
 42 **37.2 or 37.3 of this chapter; and**
 43 (2) **readopt under IC 4-22-2.6.**
- 44 (b) As used in this section, "pending rulemaking action" means
 45 any rulemaking action in which:
 46 (1) either:
 47 (A) a notice of ~~intent~~ **a public comment period** has been
 48 published under section 23, **37.2, or 37.3** of this chapter; **or**
 49 (B) a rulemaking action has been commenced under

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- 1 IC 13-14-9; ~~and or~~
 2 **(C) a rulemaking action has been commenced under**
 3 **IC 4-22-2.6; and**
 4 (2) the rule has not become effective under section 36 of this
 5 chapter.
 6 (c) Each agency shall maintain a current rulemaking docket that
 7 is indexed.
 8 (d) A current rulemaking docket must list each pending
 9 rulemaking action. The docket must state or contain:
 10 (1) the subject matter of the proposed rule;
 11 (2) notices related to the proposed rule, or links to the Indiana
 12 Register where these notices may be viewed;
 13 (3) how comments may be made;
 14 (4) the time within which comments may be made;
 15 (5) where comments and the agency's written response to those
 16 comments may be inspected;
 17 (6) the date, time, and place where a public hearing required
 18 under:
 19 (A) section 26 of this chapter; or
 20 (B) IC 13-14-9;
 21 will be held;
 22 (7) a description of relevant scientific and technical findings
 23 related to the proposed rule, if applicable; and
 24 (8) a reasonable estimate of the timetable for action, updated
 25 periodically as circumstances change, if necessary.
 26 (e) The agency shall maintain the rulemaking docket on the
 27 agency's ~~Internet web site:~~ **website**. The information must be in an
 28 open format that can be easily searched and downloaded. Access to the
 29 docket shall, to the extent feasible and permitted by law, provide an
 30 opportunity for public comment on the pertinent parts of the
 31 rulemaking docket, including relevant scientific and technical findings.
 32 Upon request, the agency shall provide a written rulemaking docket.
 33 SECTION 12. IC 4-22-2-22.7 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2023]: **Sec. 22.7. (a) Before complying with**
 36 **section 22.8 of this chapter, an agency shall conduct a regulatory**
 37 **analysis for the proposed rule. The regulatory analysis must**
 38 **evaluate whether the proposed rule does the following:**
 39 **(1) Minimizes expenses to:**
 40 **(A) regulated entities that are required to comply with**
 41 **the rule;**
 42 **(B) persons who pay taxes or pay fees for government**
 43 **services affected by the rule; and**
 44 **(C) consumers of products and services of regulated**
 45 **entities affected by the rule.**
 46 **(2) Achieves the regulatory goal in the least restrictive**
 47 **manner.**
 48 **(3) Has benefits that exceed the fiscal and economic costs of**
 49 **the proposed rule.**

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- 1 **(4) Avoids duplicating and conflicting standards with other**
2 **federal, state, or local laws, rules, regulations, or ordinances.**
3 **(5) Is written for ease of comprehension.**
4 **(6) Has practicable enforcement.**
5 **(b) The office of management and budget shall set standards**
6 **for the criteria, analytical method, treatment technology,**
7 **economic, fiscal, and other background data to be used by an**
8 **agency in the regulatory analysis. The regulatory analysis must be**
9 **submitted in a form that can be easily loaded into commonly used**
10 **business analysis software and published in the Indiana Register**
11 **using the format jointly developed by the publisher, the office of**
12 **management and budget, and the budget agency. The office of**
13 **management and budget may provide more stringent requirements**
14 **for rules with fiscal impacts and costs above a threshold amount**
15 **determined by the office of management and budget. At a**
16 **minimum, the regulatory analysis must include findings and any**
17 **supporting data, studies, or analyses prepared for a rule that**
18 **demonstrate compliance with the following:**
19 **(1) A requirement in IC 4-3-22-13 explaining how the**
20 **proposed rule meets the cost benefit requirements in**
21 **IC 4-3-22-13.**
22 **(2) A requirement in section 19.5 of this chapter to minimize**
23 **the expenses to regulated entities that are required to comply**
24 **with the rule.**
25 **(3) A statement justifying any requirement or cost that is:**
26 **(A) imposed on a regulated entity under the rule; and**
27 **(B) not expressly required by:**
28 **(i) the statute authorizing the agency to adopt the**
29 **rule; or**
30 **(ii) any other state or federal law.**
31 **The statement required under this subdivision must include**
32 **a reference to any data, studies, or analyses relied upon by**
33 **the agency in determining that the imposition of the**
34 **requirement or cost is necessary.**
35 **(4) A requirement in IC 4-22-2.1-5 to prepare a statement**
36 **that describes the annual economic impact of a rule on all**
37 **small businesses after the rule is fully implemented.**
38 **(5) A requirement in IC 4-22-2.6 to conduct a review to**
39 **consider whether there are any alternative methods of**
40 **achieving the purpose of the rule that are less costly or less**
41 **intrusive, or that would otherwise minimize the economic**
42 **impact of the proposed rule on small businesses.**
43 **(6) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish**
44 **information concerning the fiscal or economic impact of a**
45 **rule or alternatives to a rule subject to these provisions.**
46 **(7) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish**
47 **information concerning differences between the rule and**
48 **federal law or the annual fiscal and economic impact of any**
49 **element of the proposed rule that imposes a restriction or**
50 **requirement that is more stringent than a restriction or**

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1 requirement imposed under federal law or that applies in a
2 subject area in which federal law does not impose
3 restrictions or requirements.

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

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

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

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

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

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

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

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

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

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

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

45 (c) If an agency has requested authorization for more than one
46 (1) rule in the same request, the budget agency and the office of
47 management and budget may make separate determinations with
48 respect to some or all of the rules in the request. Approval of a
49 request shall be treated as a determination that the review

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1 conducted and findings made by the agency comply with the
2 requirements of section 22.7 of this chapter and this section.

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

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

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

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

31 (1) The full text of the agency's proposed rule (excluding the
32 full text of a matter incorporated by reference under section
33 21 of this chapter). The agency shall submit the rule in the
34 form required by section 20 of this chapter and with the
35 documents required by section 21 of this chapter.

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

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

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

44 (c) The publication notice of the first comment period must
45 include the following:

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

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

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

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

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

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

17 (7) An indication that the notice is for the first of two (2)
 18 thirty (30) day periods in which the public may comment on
 19 the proposed rule.

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

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

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

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

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

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

47 (2) **The full text of the agency's proposed rule (excluding the**
 48 **full text of a matter incorporated by reference under section**
 49 **21 of this chapter).**

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

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

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

- 20 (1) **one (1) newspaper of general circulation in Marion**
- 21 **County; and**
- 22 (2) **the Indiana Register;**
- 23 **of the second public comment period required by section 23 of this**
- 24 **chapter.**

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

- 30 (1) **A general description of the subject matter of the**
- 31 **proposed rule.**
- 32 (2) **Information indicating that the text of the proposed rule**
- 33 **has been published in the Indiana Register and where on the**
- 34 **Internet and by what document control number the**
- 35 **proposed rule can be found.**
- 36 (3) **A statement of the date, time, and place at which the**
- 37 **public hearing required by section 26 of this chapter will be**
- 38 **convened.**
- 39 (4) **Information concerning where, when, and how a person**
- 40 **may provide written comments on the proposed rule,**
- 41 **including contact information concerning the small business**
- 42 **regulatory coordinator required by section 28.1 of this**
- 43 **chapter.**
- 44 (5) **Information concerning where, when, and how a person**
- 45 **may inspect and copy the agency's regulatory analysis, and**
- 46 **any supporting data, studies, or analyses for the proposed**
- 47 **rule.**
- 48 (6) **Information concerning where, when, and how a person**
- 49 **may inspect any documents incorporated by reference into**

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the proposed rule under section 21 of this chapter.

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

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

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

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

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

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

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

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

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

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

(B) not expressly required by:

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

or

(ii) any other state or federal law.

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

(4) an explanation that:

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- (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 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

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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:

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

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

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

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

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

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

SECTION 18. IC 4-22-2-27 IS AMENDED TO READ AS

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

SECTION 19. IC 4-22-2-27.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. In addition to the information submitted to the attorney general under section 31 of this chapter, to the governor under section 33 of this chapter, and to the publisher under section 35 of this chapter, an agency shall submit to the attorney general, the governor, and the publisher a summary of the comments received by the agency during each comment period and public hearing under sections 23, 24, and 26 of this chapter or IC 13-14-9 and a summary of the response of the agency to the comments. The publisher shall publish the summaries with the final adopted and approved rule.**

SECTION 20. IC 4-22-2-28, AS AMENDED BY P.L.237-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout this section:

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

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

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

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

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

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

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

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

- 36 (1) the department of environmental management shall give
 37 written notice to the office of management and budget of the
 38 proposed date of preliminary adoption of the proposed rule not
 39 less than sixty-six (66) days before that date; and
- 40 (2) the office of management and budget shall prepare the fiscal
 41 impact statement referred to in subsection (d) not later than
 42 twenty-one (21) days before the proposed date of preliminary
 43 adoption of the proposed rule.

44 (f) In determining whether a proposed rule has a total estimated
 45 economic impact greater than five hundred thousand dollars
 46 (\$500,000), the agency proposing the rule shall consider the impact of
 47 the rule on any regulated person that already complies with the
 48 standards imposed by the rule on a voluntary basis.

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

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

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

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

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

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

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1 to a rule subject to these provisions; or
 2 (6) a requirement under any other law to conduct an analysis of
 3 the cost, economic impact, or fiscal impact of a rule;
 4 regardless of whether the total estimated economic impact of the
 5 proposed rule is more than five hundred thousand dollars (\$500,000);
 6 as soon as practicable after the information is prepared. Information
 7 submitted under this subsection must identify the rule to which the
 8 information is related by document control number assigned by the
 9 publisher.

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

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

16 (2) A rule for which:

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

18 (B) an appropriate later notice for circumstances described
 19 in subsection (g);

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

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

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

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

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

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

42 (2) in the case of a rule proposed by the department of
 43 environmental management or the board (as defined in
 44 IC 13-13-8-1), the notice published under IC 13-14-9-3 or the
 45 findings published under IC 13-14-9-8(b)(1), whichever applies;
 46 must include the name, address, telephone number, and electronic mail
 47 address of the small business coordinator for the proposed rule, the
 48 name, address, telephone number, and electronic mail address of the
 49 small business ombudsman designated under IC 5-28-17-6, and a

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

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

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

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

17 (3) if applicable, a statement of:

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

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

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

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

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

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

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

49 (2) How the agency determines or measures compliance with the

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1 rule, including any deadlines for action by regulated entities.
2 (3) Any penalties, sanctions, or fines imposed for noncompliance
3 with the rule.
4 (4) Any other concerns of small businesses with respect to the
5 rule, including the agency's application or enforcement of the
6 rule in particular situations. However, in the case of a rule
7 adopted under IC 13-14-9, the coordinator assigned to the rule
8 may refer a small business with concerns about the application
9 or enforcement of the rule in a particular situation to the
10 ombudsman designated under IC 13-28-3-2 or, if applicable,
11 under IC 13-28-5-2(3).
12 (i) The coordinator assigned to a rule under subsection (e) shall
13 provide guidance under this section in response to questions and
14 concerns expressed by small businesses affected by the rule. The
15 coordinator may also issue general guidelines or informational
16 pamphlets to assist small businesses in complying with the rule. Any
17 guidelines or informational pamphlets issued under this subsection
18 shall be made available:
19 (1) for public inspection and copying at the offices of the agency
20 under IC 5-14-3; and
21 (2) electronically through electronic gateway access.
22 (j) The coordinator assigned to a rule under subsection (e) shall
23 keep a record of all comments, questions, and complaints received
24 from small businesses with respect to the rule. The coordinator shall
25 deliver the record, along with any accompanying documents submitted
26 by small businesses, to the director:
27 (1) not later than ten (10) days after the date on which the rule is
28 submitted to the publisher under section 35 of this chapter; and
29 (2) before July 15 of each year during which the rule remains in
30 effect.
31 The coordinator and the director shall keep confidential any
32 information concerning a small business to the extent that the
33 information is exempt from public disclosure under IC 5-14-3-4.
34 (k) Not later than November 1 of each year, the director shall:
35 (1) compile the records received from all of the agency's
36 coordinators under subsection (j);
37 (2) prepare a report that sets forth:
38 (A) the number of comments, complaints, and questions
39 received by the agency from small businesses during the
40 most recent state fiscal year, categorized by the subject
41 matter of the rules involved;
42 (B) the number of complaints or questions reported under
43 clause (A) that were resolved to the satisfaction of the
44 agency and the small businesses involved;
45 (C) the total number of staff serving as coordinators under
46 this section during the most recent state fiscal year;
47 (D) the agency's costs in complying with this section during
48 the most recent state fiscal year; and
49 (E) the projected budget required by the agency to comply

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1 with this section during the current state fiscal year; and
2 (3) deliver the report to the legislative council in an electronic
3 format under IC 5-14-6 and to the small business ombudsman
4 designated under IC 5-28-17-6.

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

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

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

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

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

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

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

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

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

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

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

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1 considers necessary.

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

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

9 **The amendments to this section made in the 2023 regular session**
10 **of the general assembly apply to emergency rules that are accepted**
11 **for filing by the publisher of the Indiana Register after June 30,**
12 **2023, regardless of whether the adopting agency initiated official**
13 **action to adopt the emergency rule before July 1, 2023. An action**
14 **taken before July 1, 2023, in conformity with this section (as**
15 **effective after June 30, 2023) is validated to the same extent as if**
16 **the action was taken after June 30, 2023.**

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

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

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

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

34 **To obtain a determination from the governor, an agency must**
35 **submit to the governor the text of the proposed emergency rule, a**
36 **statement justifying the need for emergency rulemaking**
37 **procedures, and any additional information required by the**
38 **governor in the form and in the manner required by the governor.**
39 **A notice of determination by the governor shall include findings**
40 **that explain the basis for the determination. The notice of**
41 **determination shall be provided to the agency in an electronic**
42 **format. Approval of a request shall be treated as a determination**
43 **that the rule meets the criteria in this subsection.**

44 ~~(c) After an agency adopts a rule under this section, the governor~~
45 **approves emergency rulemaking procedures for a rule, the agency**
46 **shall submit the rule to the publisher for the assignment of obtain a**
47 **document control number The agency shall submit the rule in the form**
48 **required by section 20 of this chapter and with the documents required**
49 **by section 21 of this chapter. from the publisher. The publisher shall**

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1 determine the **documents and the** format of the ~~rule and other~~
2 ~~documents to that must~~ be submitted ~~under this subsection: to the~~
3 **publisher to obtain a document control number.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 ~~(2) a rule adopted under this section may be extended by~~

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1 ~~adopting another rule under this section, but only for one (1)~~
 2 ~~extension period; and~~
 3 ~~(3) for a rule adopted under this section to be effective after one~~
 4 ~~(1) extension period; the rule must be adopted under:~~
 5 (A) sections 24 through 36 of this chapter; or
 6 (B) IC 13-14-9;
 7 as applicable.

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

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

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

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

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

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

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

46 SECTION 25. IC 4-22-2-37.2 IS ADDED TO THE INDIANA
 47 CODE AS A NEW SECTION TO READ AS FOLLOWS
 48 [EFFECTIVE JULY 1, 2023]: **Sec. 37.2. (a) The following do not**
 49 **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 The amendments to this section made in the 2023 regular session
5 of the general assembly apply to interim rules that are accepted for
6 filing by the publisher of the Indiana Register after June 30, 2023,
7 regardless of whether the adopting agency initiated official action
8 to adopt the interim rule before July 1, 2023. An action taken
9 before July 1, 2023, in conformity with this section (as effective
10 after June 30, 2023) is validated to the same extent as if the action
11 was taken after June 30, 2023.

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

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

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

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

43 (c) An agency shall notify the public of its intention to adopt an
44 interim rule by complying with the publication requirements in
45 this section. The agency shall cause a notice of a public comment
46 period and the full text of the agency's proposed interim rule
47 (excluding the full text of a matter incorporated by reference under
48 section 21 of this chapter) to be published once in the Indiana
49 Register. The publisher shall review materials submitted under this

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1 section and determine the date that the publisher intends to include
 2 the material in the Indiana Register. After establishing the
 3 intended publication date and receiving the public comment period
 4 information from the agency, the publisher shall provide a written
 5 or an electronic mail authorization to proceed to the agency.

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

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

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

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

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

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

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

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

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

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

41 (1) adopt a rule that is identical to a proposed interim rule
 42 published in the Indiana Register under this section; or

43 (2) adopt a revised version of a proposed interim rule
 44 published under this section and include provisions that did
 45 not appear in the initially published proposed version.

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

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

3 (1) The text of the adopted interim rule. The agency shall
4 submit the interim rule in the form required by section 20 of
5 this chapter.

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

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

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

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

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

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

21 (1) accept the rule for filing;

22 (2) electronically record the date and time that the rule is
23 accepted; and

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

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

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

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

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

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

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

39 (j) An agency may amend an interim rule with another interim
40 rule by following the procedures in this section for adoption of an
41 interim rule. An interim rule and all subsequent rules on the same
42 subject adopted under section 37.1 or 37.3 of this chapter or this
43 section expire not later than four hundred twenty-five (425) days
44 after the initial interim rule is accepted for filing under subsection
45 (h). The interim rule, including all subsequent interim rules
46 adopted under section 37.1 or 37.3 of this chapter or this section on
47 the same subject, may not be subsequently extended under section
48 37.1 or 37.3 of this chapter or this section after four hundred
49 twenty-five (425) days.

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

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

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

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

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

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

27 (b) An agency may adopt a rule described in IC 4-22-2.3 with
28 a single comment period of at least thirty (30) days in length using
29 the procedures in this section if the governor finds that the agency
30 proposing to adopt the rule has demonstrated to the satisfaction of
31 the governor that use of expedited rulemaking procedures under
32 this section is appropriate for a rule described in IC 4-22-2.3. To
33 obtain a determination from the governor, an agency must submit
34 to the governor the text of the proposed expedited rule, a statement
35 justifying the need for expedited rulemaking procedures, and any
36 additional information required by the governor in the form and
37 in the manner required by the governor. A notice of determination
38 by the governor shall include findings that explain the basis for the
39 determination. The notice of determination shall be provided to the
40 agency in an electronic format. Approval of a request shall be
41 treated as a determination that the rule meets the criteria in this
42 subsection.

43 (c) An agency shall notify the public of its intention to adopt a
44 rule by complying with the publication requirements in this
45 section. The agency shall cause a notice of a public comment period
46 and the full text of the agency's proposed expedited rule (excluding
47 the full text of a matter incorporated by reference under section 21
48 of this chapter) to be published once in the Indiana Register. The
49 publisher shall review materials submitted under this section and

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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 expedited rule, including the document control number.

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

(A) imposed on a regulated entity under the expedited 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 analysis.

(3) 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 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

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

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1 the basis for the objection. When filed with the publisher, the
2 objection has the effect of invalidating the expedited rule or
3 amendment to an expedited rule. The publisher shall publish the
4 objection in the Indiana Register.

5 (l) The attorney general may file a written objection to an
6 expedited rule under subsection (k) only if the attorney general
7 determines that the expedited rule has been adopted:

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

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

14 SECTION 27. IC 4-22-2-38, AS AMENDED BY P.L.123-2006,
15 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action
17 resulting in any of the following rules:

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

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

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

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

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

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under this subsection.

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

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

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

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

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

SECTION 28. IC 4-22-2-39, AS AMENDED BY P.L.123-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, **37.2, 37.3**, or 38 of this chapter, the publisher may accept the rule for filing only if the following conditions are met:

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

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

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

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

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

- (1) an agency has complied with requirements established by the federal or state government;
- (2) a specific period of time has elapsed; or
- (3) a date has occurred;

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

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

SECTION 29. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,

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

6 (1) the rule has been disapproved by the attorney general under
7 section 32 of this chapter; or

8 (2) the rule has been disapproved by the governor under section
9 34 of this chapter.

10 (b) Sections 24 through 38 of this chapter do not apply to a recall
11 action under this section. However, the agency shall distribute a notice
12 of its recall action to the publisher for publication in the Indiana
13 Register. Sections 24 and 26 of this chapter do not apply to a
14 readoption action under subsection (c).

15 (c) After an agency recalls a rule, the agency may reconsider its
16 adoption action and adopt an identical rule or a revised rule. However,
17 if sections 24 through 36 of this chapter apply to the recalled rule, the
18 readopted rule must comply with the requirements under section 29 of
19 this chapter.

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

22 (e) If a rule is:

23 (1) subject to sections 31 and 33 of this chapter;

24 (2) recalled under subsection (a); and

25 (3) readopted under subsection (c);

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

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

47 SECTION 30. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,
48 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
49 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the

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1 publisher for filing under section 35, 37.1, **37.2, 37.3**, or 38 of this
2 chapter, the agency that adopted the rule may withdraw it.

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

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

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

17 SECTION 32. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,
18 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency intends to adopt a rule under
20 IC 4-22-2 that will impose requirements or costs on small businesses,
21 the agency shall prepare a statement that describes the annual
22 economic impact of a rule on all small businesses after the rule is fully
23 implemented. ~~as described in subsection (b).~~ The statement required by
24 this section must include the following:

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

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

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

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

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

40 (B) not expressly required by:

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

42 or

43 (ii) any other state or federal law.

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

48 (5) A regulatory flexibility analysis that considers any less
49 intrusive or less costly alternative methods of achieving the

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purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:

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

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

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

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

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

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

SECTION 33. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. Before an agency may act under IC 4-22-2.5 IC 4-22-2.6 to readopt a rule to which the chapter applies, the agency must conduct the review required under IC 4-22-2.5-3.1. IC 4-22-2.6-~~4~~[6].

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1 SECTION 34. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]:

4 **Chapter 2.3. Transitional Provisions; Exceptions to**
 5 **Rulemaking Procedures**

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

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

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

18 **as applicable. An emergency rule that expires under this subsection**
 19 **may not be renewed under IC 4-22-2-37.1 (as effective after June**
 20 **30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for**
 21 **adoption as an interim rule, the rule may be readopted under**
 22 **IC 4-22-2-37.2.**

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

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

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

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

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

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

45 **Sec. 2. Before an emergency rule adopted under IC 4-22-2-37.1**
 46 **(as effective after June 30, 2023) expires, the governor by executive**
 47 **order may authorize the extension of the emergency rule under the**
 48 **expedited procedures in IC 4-22-2-37.3 if the governor determines**
 49 **and finds in the executive order that the emergency circumstances**

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

5 **Sec. 3.** The office of the secretary of family and social services
6 may adopt rules under IC 4-22-2-37.3 to implement IC 12-13-16-13
7 (211 dialing code services). The rule expires not later than one (1)
8 year after the adopted rule is accepted for filing under
9 IC 4-22-2-37.3. An expedited rule described in this section may not
10 be continued in another expedited rule after the expiration of the
11 initial expedited rule.

12 **Sec. 4.** The department of natural resources (or to the extent
13 permitted by IC 14-10-2, the natural resources commission) may
14 adopt rules under IC 4-22-2-37.3 to carry out the duties of the
15 department of natural resources under a law listed in IC 14-10-2-5.
16 The rule expires not later than one (1) year after the adopted rule
17 is accepted for filing by the publisher of the Indiana Register. An
18 expedited rule described in this section may be continued in
19 another expedited rule only if the governor determines under
20 IC 4-22-2-37.3(b) that the policy options available to the agency are
21 so limited that use of the additional notice, comment, and review
22 procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no
23 benefit to persons regulated or otherwise affected by the rule. A
24 person who violates the rule commits a Class C infraction, unless
25 otherwise specified under state law.

26 **Sec. 5.** The director of the department of natural resources
27 may temporarily modify or suspend a rule described in
28 IC 14-22-2-6 (fish and wildlife rules) under the procedures in
29 IC 4-22-2-37.3. The adopted rule expires not later than one (1) year
30 after the rule is accepted for filing by the publisher of the Indiana
31 Register. An expedited rule described in this section may not be
32 continued in another expedited rule after the expiration of the
33 initial expedited rule.

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

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

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

49 (1) sixty (60) days before January 1 of each odd-numbered
50 year in which dollar amounts under IC 24-4.5 (Uniform

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1 Consumer Credit Code) are to change, the changes in dollar
 2 amounts required by IC 24-4.5-1-106(2); and
 3 (2) promptly after the changes occur, changes in the Index
 4 required by IC 24-4.5-1-106(3), including, when applicable,
 5 the numerical equivalent of the Reference Base Index under
 6 a revised Reference Base Index and the designation or title
 7 of any index superseding the Index.

8 The rule expires not later than January 1 of the next
 9 odd-numbered year after the department of financial institutions
 10 is required to issue the rule.

11 (b) The department of financial institutions may adopt a rule
 12 permitted under IC 24-4.4-1-101 (licensing system for creditors
 13 and mortgage loan originators) or IC 24-4.5 (Uniform Consumer
 14 Credit Code) under IC 4-22-2-37.3 if the department of financial
 15 institutions declares an emergency. The rule expires not later than
 16 two (2) years after the adopted rule is accepted for filing by the
 17 publisher of the Indiana Register.

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

24 (d) The department of financial institutions may adopt rules
 25 described in 34-55-10-2 (bankruptcy exemptions; limitations) and
 26 IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23
 27 through IC 4-22-2-36 or the expedited procedures in
 28 IC 4-22-2-37.3. A rule adopted under IC 4-22-2-37.3 expires not
 29 later than two (2) years after the adopted rule is accepted for filing
 30 by the publisher of the Indiana Register.

31 (e) An expedited rule described in this section may be
 32 continued in another expedited rule only if the governor
 33 determines under IC 4-22-2-37.3(b) that the policy options
 34 available to the agency are so limited that use of the additional
 35 notice, comment, and review procedures in IC 4-22-2-23 through
 36 IC 4-22-2-36 would provide no benefit to persons regulated or
 37 otherwise affected by the rule.

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

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

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

SECTION 35. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1, 2023]. (Expiration and Readoption of Administrative Rules).

SECTION 36. 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. This chapter does not apply to a rule that incorporates a federal regulation by reference or adopts a federal regulation, under a federal mandate, in its entirety without substantive additions.

Sec. 2. (a) This section applies to a rule that is required:

(1) to receive or maintain:

(A) delegation;

(B) primacy; or

(C) approval;

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

(2) to begin or continue receiving federal funding for the implementation or operation of a program.

(b) A rule described under subsection (a) does not expire under this chapter. However, an agency shall readopt a rule described in this section before January 1 of the seventh year after the year in which the rule takes effect as set forth in this chapter.

Sec. ~~4~~[3]. (a) Except as provided in this section and section 1~~4~~[2] 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

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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. ~~↔~~[4]. An agency that has rulemaking authority may readopt a rule in anticipation of a rule's expiration under section ~~↔~~[3] of this chapter. To readopt a rule, an agency may readopt the rule either:

- (1) without changes in conformity with the procedures in sections ~~↔~~[5] through ~~↔~~[11] 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. ~~↔~~[5]. (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 ~~↔~~[3](b)(1) of this chapter.

Sec. ~~↔~~[6]. (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.

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- 1 (3) Have benefits that exceed the fiscal and economic costs of
 2 the rule.
- 3 (4) Avoid duplicating and conflicting standards with other
 4 federal, state, or local laws, rules, regulations, or ordinances.
- 5 (5) Be written for ease of comprehension.
- 6 (6) Have practicable enforcement.
- 7 (b) In the review, the agency shall reexamine previous cost
 8 benefit, economic impact, fiscal impact, and regulatory burden
 9 statements prepared by the agency for the rule under IC 4-3-22-13,
 10 IC 4-3-27-12, IC 4-22-2-28, IC 4-22-2.1-5, or an executive order
 11 and revise the statements to reflect any change in circumstances
 12 that affect the analysis. The agency shall identify any alternative
 13 methods of achieving the purpose of the rule that are less costly or
 14 less intrusive, or that would otherwise minimize the economic
 15 impact of the proposed rule on small businesses (as defined in
 16 IC 4-22-2.1-4) and other regulated entities. The agency also shall
 17 consider the following:
- 18 (1) The nature of any complaints or comments received from
 19 the public, including small businesses (as defined in
 20 IC 4-22-2.1-4), concerning the rule or the rule's
 21 implementation by the agency.
- 22 (2) The complexity of the rule, including any difficulties
 23 encountered by:
- 24 (A) the agency in administering the rule; or
 25 (B) small businesses (as defined in IC 4-22-2.1-4) or
 26 other regulated persons in complying with the rule.
- 27 (3) The degree to which technology, economic conditions, or
 28 other factors have changed in the area affected by the rule
 29 since the last time the rule was reviewed.
- 30 (c) The agency shall prepare written findings concerning the
 31 agency's determinations under this section.
- 32 Sec. ~~5~~ 7. (a) If an agency elects to readopt a rule under this
 33 chapter, the agency shall submit a notice of proposed readoption
 34 to the publisher not later than the first regular business day in
 35 September of the year preceding the year in which the rule expires
 36 under this chapter for publication in the Indiana Register. A
 37 separate notice must be published for each board or other person
 38 or entity with rulemaking authority.
- 39 (b) The notice must include the following:
- 40 (1) A general description of the subject matter of all rules
 41 proposed to be readopted.
- 42 (2) A listing of rules that are proposed to be readopted, listed
 43 by their titles and subtitles only.
- 44 (3) A written comment period of thirty (30) days and
 45 instructions on how to submit written comments to the
 46 agency.
- 47 (4) A request for comments on whether specific rules should
 48 be reviewed through the regular rulemaking process under
 49 IC 4-22-2-23 through IC 4-22-2-36 (as modified by

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

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1 accepted.

2 Sec. ~~8~~[10]. A readopted rule that has been accepted for
3 filing under section ~~7~~[9] of this chapter takes effect on the latest
4 of the following dates:

5 (1) The date that is thirty (30) days from the date and time
6 that the rule was accepted for filing under section ~~7~~[9] of
7 this chapter.

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

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

12 Sec. ~~9~~[11]. An agency that terminates a rulemaking action
13 to readopt a rule with or without amendments shall submit a notice
14 of withdrawal of the readoption rulemaking action in the manner
15 provided in IC 4-22-2-41.

16 Sec. 1~~0~~[2]. If a rule is not readopted and the governor finds
17 that the failure to readopt the rule causes an emergency to exist,
18 the governor may, by executive order issued before the rule's
19 expiration date, postpone the expiration date of the rule until a
20 date that is not later than one (1) year after the date specified in
21 section ~~1~~[3] of this chapter.

22 Sec. 1~~1~~[3]. The publisher shall remove all rules that have
23 expired under this chapter from the Indiana Administrative Code.
24 However, a rule that has expired but is readopted under this
25 chapter (or IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before
26 its repeal)) may not be removed from the Indiana Administrative
27 Code.

28 SECTION 37. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,
29 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under
31 IC 4-22-2 to implement this chapter, the division shall consult with and
32 fully consider any comments submitted by:

33 (1) caretakers providing care for a special needs individual under
34 this chapter;

35 (2) individuals with special needs receiving care from a
36 caretaker under this chapter;

37 (3) area agencies on aging;

38 (4) consumers and providers of home and community based
39 services under IC 12-10-10 and IC 12-10-11.5; and

40 (5) any other agency, volunteer group, faith based group, or
41 individual that the division considers appropriate;

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

44 (b) Rules adopted under this chapter must:

45 (1) include protections for the rights, safety, and welfare of
46 individuals with special needs receiving care from a caretaker
47 under this chapter, including reasonable monitoring and
48 reporting requirements;

49 (2) serve distinct populations, including:

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- 1 (A) the aged;
- 2 (B) persons with developmental disabilities; and
- 3 (C) persons with physical disabilities;
- 4 in a manner that recognizes, and appropriately responds to, the
- 5 particular needs of the population;
- 6 (3) not create barriers to the availability of home and community
- 7 based services under IC 12-10-10 and IC 12-10-11.5 by
- 8 imposing costly or unduly burdensome requirements on
- 9 caretakers or other service providers, including:
- 10 (A) requirements for proof of financial responsibility; and
- 11 (B) monitoring, enforcement, reporting, or other
- 12 administrative requirements; and
- 13 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
- 14 chapter.

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

22 SECTION 38. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,
 23 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under
 25 IC 4-22-2 to implement this chapter, the division shall consult with and
 26 fully consider any comments submitted by:

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

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

- 37 (b) Rules adopted under this chapter must:
- 38 (1) include protections for the rights, safety, and welfare of
- 39 individuals receiving care under this chapter;
- 40 (2) serve distinct populations, including:
- 41 (A) the aged;
- 42 (B) persons with developmental disabilities; and
- 43 (C) persons with physical disabilities;
- 44 in a manner that recognizes, and appropriately responds to, the
- 45 particular needs of the population;
- 46 (3) not create barriers to the availability of home and community
- 47 based services under IC 12-10-10 and IC 12-10-11.5 by
- 48 imposing costly or unduly burdensome requirements on
- 49 continuum of care providers or other service providers,

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including:

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

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

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

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

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

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

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

SECTION 40. IC 13-14-9-3, AS AMENDED BY P.L.100-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) ~~Except as provided in subsection (b)~~; The department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter.

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

(1) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under 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 (c).

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

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

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

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

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

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

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

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

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

25 SECTION 41. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the
28 Indiana Register of the second public comment period required by
29 section 2 of this chapter.

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

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

39 (2) **Either a statement indicating that no changes in the
40 regulatory analysis have been made from the version of the
41 regulatory analysis published under section 3 of this chapter
42 or the latest version of the regulatory analysis (including any
43 appendices containing any data, studies, or analysis
44 referenced in the regulatory analysis) submitted to the
45 budget agency and the office of management and budget
46 under IC 4-22-2-22.8, if any changes have been made in the
47 regulatory analysis after submitting the material under
48 section 3 of this chapter.**

49 (3) The notice required under subsection (c).

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- 1 (c) A notice provided under this section must do the following:
- 2 (1) Contain the full text of the proposed rule; to the extent
- 3 required under IC 4-22-2-24(c).
- 4 (2) (1) Contain a summary of the response of the department to
- 5 written comments submitted under section 3 of this chapter
- 6 during the first public comment period.
- 7 (3) (2) Request the submission of comments, including
- 8 suggestions of specific amendments to the language contained
- 9 in the proposed rule **and indicate where, when, and how a**
- 10 **person may submit written comments on the proposed rule,**
- 11 **including contact information concerning the small business**
- 12 **regulatory coordinator required by IC 4-22-2-28.1.**
- 13 (4) (3) Contain the full text of the commissioner's written
- 14 findings under section 7 of this chapter, if applicable. **Include a**
- 15 **statement indicating the date, time, and place at which the**
- 16 **public hearing on the proposed rule will be convened.**
- 17 (5) (4) Identify each element of the proposed rule that imposes
- 18 a restriction or requirement on persons to whom the proposed
- 19 rule applies that:
- 20 (A) is more stringent than a restriction or requirement
- 21 imposed under federal law; or
- 22 (B) applies in a subject area in which federal law does not
- 23 impose a restriction or requirement.
- 24 (6) (5) With respect to each element identified under
- 25 subdivision ~~(5)~~ (4), identify:
- 26 (A) the environmental circumstance or hazard that dictates
- 27 the imposition of the proposed restriction or requirement to
- 28 protect human health and the environment;
- 29 (B) examples in which federal law is inadequate to provide
- 30 the protection referred to in clause (A); and
- 31 (C) the:
- 32 (i) estimated fiscal impact; and
- 33 (ii) expected benefits;
- 34 based on the extent to which the proposed rule is more
- 35 stringent than the restrictions or requirements of federal
- 36 law, or on the creation of restrictions or requirements in a
- 37 subject area in which federal law does not impose
- 38 restrictions or requirements.
- 39 (7) (6) For any element of the proposed rule that imposes a
- 40 restriction or requirement that is more stringent than a restriction
- 41 or requirement imposed under federal law or that applies in a
- 42 subject area in which federal law does not impose restrictions or
- 43 requirements, describe the availability for public inspection of
- 44 all materials relied upon by the department in the development
- 45 of the proposed rule, including, if applicable:
- 46 (A) health criteria;
- 47 (B) analytical methods;
- 48 (C) treatment technology;
- 49 (D) economic impact data;

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- (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).

(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

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

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

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

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

17 (f) Subsections (b)(2) and Subsection (e) do does not
 18 prohibit or restrict the commissioner, the department, or the board
 19 from:

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

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

22 (3) temporarily:

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

24 (B) implementing new policies or procedures;

25 in response to an emergency situation.

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

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

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

39 (A) identical to; or

40 (B) not substantively different from;

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

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

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

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

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

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

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

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

(C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), a copy of the office of management and budget fiscal analysis required under IC 4-22-2-28. **required by section 4 of this chapter. However, a notice of a third 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 notice under section 4 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 public comment period is required under section 4.5 of this chapter, the department publishes notice of the third 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

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1 shall determine whether the proposed rule will:

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

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

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

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

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

20 (B) during the immediately preceding board meeting under
21 section 5(a)(1) of this chapter for a board meeting held
22 under section 5(a)(3) of this chapter if a third public
23 comment period is not required under section 4.5 of this
24 chapter; or

25 (C) during:
26 (i) a third public comment period that address the
27 portion of the preliminarily adopted rule that is
28 substantively different from the language contained in
29 the proposed rule published in a second notice under
30 section 4 of this chapter; and

31 (ii) the immediately preceding board meeting held
32 under section 5(a)(1) of this chapter;
33 for a board meeting held under section 5(a)(3) of this
34 chapter if a third public comment period is required under
35 section 4.5 of this chapter.

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

39 SECTION 46. IC 13-14-9-15 IS ADDED TO THE INDIANA
40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance**
42 **with this chapter by the department of environmental management**
43 **or a board that has rulemaking authority under IC 13 expire as**
44 **provided in IC 4-22-2.6.**

45 SECTION 47. IC 13-14-9-16 IS ADDED TO THE INDIANA
46 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
47 [EFFECTIVE JULY 1, 2023]: **For a rule document subject to this**
48 **chapter, the one (1) year period established under IC 4-22-2-25 in**
49 **which to adopt a rule and obtain the approval or deemed approval**

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1 of the governor commences on the date that the initial comment
2 period notice for the rule document is published in the Indiana
3 Register under section 3 of this chapter, (if the section 3 comment
4 period is waived under section 7 of this chapter) section 4 of this
5 chapter, section 8 of this chapter, or section 14 of this chapter (as
6 applicable). If an agency determines that a rule cannot be adopted
7 within one (1) year after the publication of the notice, the agency
8 shall, before two hundred fifty (250) days following the publication
9 of the notice, notify the publisher by electronic means:

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

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

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

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

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

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

22 SECTION 48. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY
23 1, 2023]. (Expiration and Readoption of Administrative Rules).

24 SECTION 49. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
25 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1
27 of this chapter, "coal combustion residuals" means fly ash, bottom ash,
28 boiler slag, and flue gas desulfurization materials generated from
29 burning coal for the purpose of generating electricity by electric
30 utilities and independent power producers.

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

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

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

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

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

49 (2) shall not impose a restriction or requirement that is more

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1 **stringent than the corresponding restriction or requirement**
2 **imposed under the federal CCR rule; and**
3 **(3) shall not impose a restriction or requirement that is not**
4 **imposed by the federal CCR rule.**
5 (d) The department shall do the following:
6 (1) Establish a state permit program under Section 2301 of the
7 federal Water Infrastructure Improvements for the Nation Act
8 (42 U.S.C. 6945(d)) for the implementation in Indiana of the
9 federal CCR rule.
10 (2) Submit to the administrator of the United States
11 Environmental Protection Agency under 42 U.S.C.
12 6945(d)(1)(A) evidence of the state permit program.
13 (3) Take other necessary or appropriate actions to obtain
14 approval of the state permit program.
15 (e) Not later than May 15, 2021, the department shall notify the
16 United States Environmental Protection Agency of its intention to
17 establish a state permit program described in subsection (d)(1) and to
18 seek approval of the state permit program under 42 U.S.C. 6945(d)(1).
19 (f) Under IC 4-22-2 and IC 13-14-9:
20 (1) the department shall initiate rulemaking for the establishment
21 of the state permit program not more than sixty (60) days after
22 the effective date of the SECTION of Senate Enrolled Act
23 271-2021 amending this section; and
24 (2) the board shall adopt a final rule for the establishment of the
25 state permit program not more than sixteen (16) months after
26 initiation of the rulemaking under subdivision (1).
27 (g) The state permit program established under this section must
28 not establish requirements for any surface impoundment of coal
29 combustion residuals unless and until the state permit program is
30 approved by the administrator of the United States Environmental
31 Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**
32 **department to establish requirements under the state permit**
33 **program established under this section is the only authority the**
34 **department has to establish requirements for a surface**
35 **impoundment of coal combustion residuals located on the grounds**
36 **of a legacy generation resource.**
37 (h) The definitions set forth in Section 257.53 of the federal CCR
38 rule, as in effect January 1, 2021, apply throughout subsection (i).
39 (i) The department shall charge the following fees under the state
40 permit program established under this section:
41 (1) An initial one (1) time permit fee of twenty thousand five
42 hundred dollars (\$20,500) for each surface impoundment of coal
43 combustion residuals regulated under the state permit program.
44 (2) An annual fee of twenty thousand five hundred dollars
45 (\$20,500) for each surface impoundment of coal combustion
46 residuals regulated under the state permit program that has not
47 completed closure in accordance with Section 257.102 of the
48 federal CCR rule. The duty to pay the fee established by this
49 subdivision does not apply on an annual basis until three

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

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

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

- 16 (1) costs to the department of operating the state permit program
 17 established under this section; and
 - 18 (2) revenue from the fees charged under subsection (i);
- 19 as provided in IC 13-16-1-4. If the board determines that the revenue
 20 described in subdivision (2) is inadequate or excessive in relation to the
 21 costs described in subdivision (1), the board shall, under IC 13-16-1-2,
 22 change the amount of one (1) or more of the fees established under
 23 subsection (i).

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

29 SECTION 50. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2023]:

32 **Chapter 5.3. Failure to Enact Licensure Rules**

33 **Sec. 1. The following definitions apply throughout this**
 34 **chapter:**

- 35 (1) "Agency" has the meaning set forth in IC 25-1-5-2.
- 36 (2) "Board" has the meaning set forth in IC 25-1-5-2.
- 37 (3) "Compliant", with respect to a licensure rule, means a
 38 licensure rule that the agency or a board has adopted.
- 39 (4) "Enactment date" means the date on which a statute
 40 requires rulemaking for a licensure rule to commence.
- 41 (5) "Executive director" refers to the individual described in
 42 IC 25-1-5-5.
- 43 (6) "Licensee" has the meaning set forth in IC 25-1-5-11.
- 44 (7) "Licensure rule" means a rule that:
 - 45 (A) relates to the issuance of a license, certificate,
 46 registration, or permit, or a requirement or prerequisite
 47 for obtaining a license, or keeping a license in good
 48 standing; and
 - 49 (B) is required by statute to be adopted by the agency or

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a board.

(8) "Noncompliant", with respect to a licensure rule, means a licensure rule that the agency or a board has not adopted within eighteen (18) months of the enactment date.

Sec. 2. (a) If a licensee believes that the agency or a board has failed to adopt a licensure rule within eighteen (18) 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.

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

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1 governor and the attorney general review the determination. If the
2 governor or attorney general determines that the licensure rule is
3 noncompliant, the determination of the governor or attorney
4 general controls.

5 Sec. 5. If the governor or attorney general determined that a
6 licensure rule was noncompliant under section 2 of this chapter,
7 and the agency later adopts a licensure rule, upon the request of
8 any person, the governor or attorney general may make a new
9 determination concerning the licensure rule. The governor or
10 attorney general shall issue the determination in writing.

11 Sec. 6. If the executive director, under section 4 of this chapter,
12 or the governor or attorney general, under section 5 of this
13 chapter, determines that a formerly noncompliant licensure rule
14 is now compliant, a licensee is required to pay the license fee to
15 which the licensure rule relates, beginning:

- 16 (1) from the date the new determination was issued; or
- 17 (2) if the new determination was issued by the executive
- 18 director under section 4(a) of this chapter and the licensee
- 19 sought review by the governor or attorney general under
- 20 section 4(b) of this chapter, from the date the governor
- 21 attorney general issued a determination;
- 22 whichever is later.

23 SECTION 51. [EFFECTIVE UPON PASSAGE] (a) After June
24 30, 2023, a rule may be adopted as an emergency rule only for the
25 purposes and through the procedures in IC 4-22-2-37.1 (as effective
26 after June 30, 2023). Any additional authority in a statute outside
27 IC 4-22 to adopt rules through the emergency rulemaking
28 procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or
29 after June 30, 2023) is void. The code revision commission shall
30 provide in calendar year 2023 for the preparation of a bill for
31 introduction in the 2024 regular session of the general assembly
32 that removes language outside IC 4-22 permitting the adoption of
33 emergency rules.

34 (b) This SECTION expires January 1, 2024.

35 SECTION 52. An emergency is declared for this act.

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