

2026 Administrative Rulemaking Seminar

March 31, 2026





Welcome

Since taking office in 2021, Attorney General Rokita has taken strong actions to protect liberty and the rule of law. Employing nearly 400 staff members, the Office of the Indiana Attorney General serves with a servant's heart to ensure Hoosiers' voices are heard and protected.

Our Services to Hoosiers

- As attorney for the State of Indiana, we represent state agencies and officeholders. With nearly **20,000 active cases** at any given time, our office defends laws passed by the legislature and challenges federal overreach harmful to Hoosiers.
- We protect consumers from illicit business practices, cybersecurity and data privacy violations, and ID Theft. We have obtained **nearly \$1.1 billion in settlements** for Hoosiers - including hundreds of thousands from annoying and illegal robocallers.
- **We return over \$ 1 million** in Unclaimed property to Hoosiers every week – achieving a **record \$88 million** returned in 2025.
- Since taking office, **we have recovered \$97 million** from entities allegedly engaged in Medicaid fraud.
- Our Appeals Division handles over **2,000 criminal and civil cases** each year, including those that uphold convictions and sentences for child abusers, murderers, and rapists.





LEGISLATIVE SERVICES AGENCY

Promulgation through the Indiana Register & Indiana Administrative Code

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Legislative Services Agency (“LSA”)



The Publisher

- IC 4-22-2-3: The publisher refers to Legislative Council or the Legislative Services Agency operating under the direction of the Council
- Responsible for publishing the Indiana Administrative Code and the Indiana Register



The Indiana Register

- IC 4-22-8-2: The Indiana Register is a serial publication
- Contains:
 - Every rule
 - Other agency statements such as a rule recall, rule withdrawal, or nonrule policy document
 - Other matters required by statute to be published in the Register



The Indiana Register – Weekly Publications

- Publisher's Receipts for Filed Documents
 - Publisher's Receipts for Filed Documents are posted within three (3) business days of the delivery of a Final Rule, Provisional Rule, Interim Rule, Agency Correction (AC), or Readopted Final Rule for filing with the Publisher on an "as filed" basis daily at 5:00 p.m. (IC 4-22-2-39(c))
- Other Documents
 - All other documents are published on the Indiana Register website on Wednesdays at 3:00 p.m.



Some of Documents Types The Indiana Register Publishes

- Agency Correction
- Attorney General's Opinions
- 60 Day Requirement Notice
- One Requirement Notice
- Request for Additional Time (Governor)
- Change in Notice of Public Hearing
- Disapproval by Attorney General
- Disapproval by Governor
- Executive Orders
- Provisional Rule
- Notice of First Public Comment Period
- Final Rule
- Governor's Approval
- Governor's Proclamations
- Public Comment Period for Interim Rules
- Interim Final Rules
- Initial Notice of Rule Readoption
- Nonrule Policy Document
- Objection to Errata (Attorney General)
- Objection to Errata (Governor)
- Other Notice
- Notice of Public Hearing
- Regulatory Analyses
- Notice of Recall
- Readopted Final Rule
- Notice of Public Comment Period for Rule Readoption
- Readopt Proposed Rule
- Notice of Second Public Comment Period
- Notice of Withdrawal



The Indiana Register – Document Control Number and Document Identification Number

- Assigned by the Publisher
- Document Identification Number: unique number assigned to each rulemaking action and nonrule document:
 - After July 1, 2006, each document that has been posted on the Indiana Register website is assigned a unique document identification number (DIN). A sample DIN is: 20151223-IR-410150039FRA
- Document Control Number: unique identifier that links each related document in a rulemaking:
 - The number is in the format "LSA Document #26-209" with the first 2 digits referencing the year of filing and the digits after the hyphen referencing the rulemaking action in order of filing in that year.
 - The LSA Document number must be included in any subsequent action related to the same rulemaking action.



The Indiana Administrative Code

- IC 4-22-8-5: codification of the general and permanent rules of the agencies
- Updated continuously throughout the calendar year



The Indiana Administrative Code – History Line

- History lines describe the history of each current rule including all transfers and repeals

357 IAC 1-5-2 Posting

Authority: IC 15-16-4-50; IC 15-16-5-44

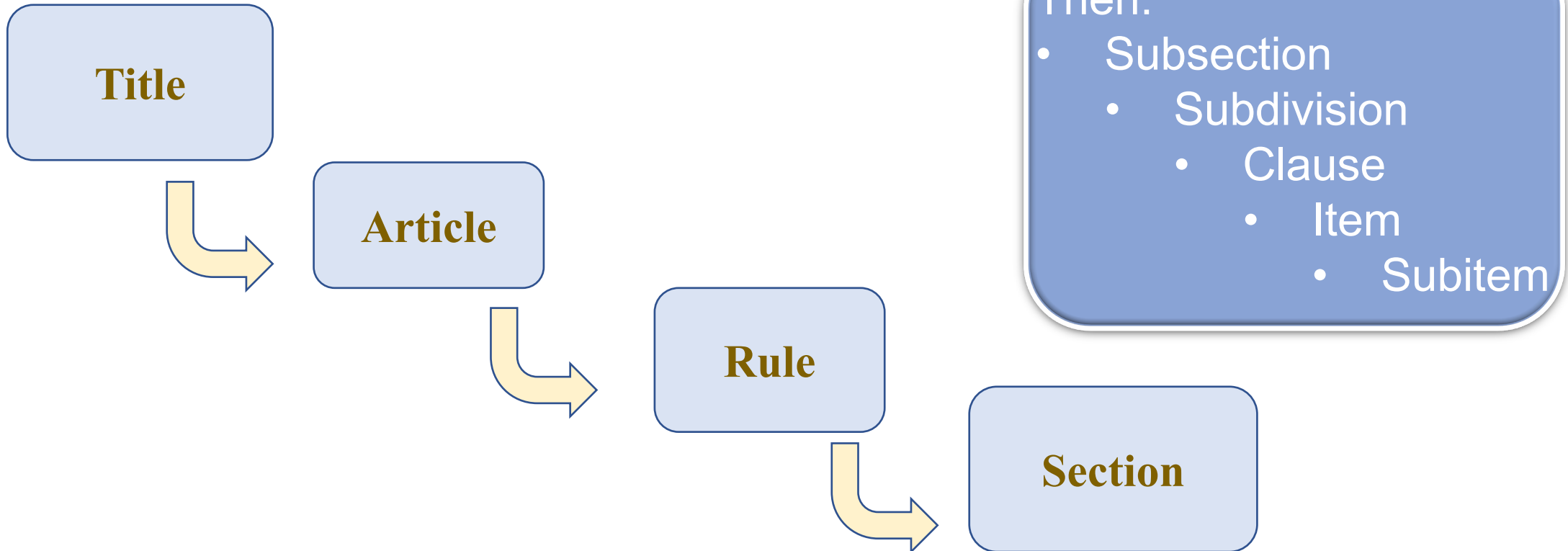
Affected: IC 15-16-4; IC 15-16-5

Sec. 2. (a) At the time of each commercial for hire pesticide application identified...[text deleted for example]

(Indiana Pesticide Review Board; 357 IAC 1-5-2; filed Apr 20, 1990, 4:35 p.m.: 13 IR 1702; errata, 13 IR 1861; filed Jun 9, 2000, 9:58 a.m.: 23 IR 2706; readopted filed Oct 29, 2001, 4:41 p.m.: 25 IR 936; readopted filed Sep 20, 2007, 1:47 p.m.: 20071010-IR-357070485RFA; readopted filed Dec 2, 2013, 4:00 p.m.: 20140101-IR-357130491RFA; readopted filed Dec 1, 2017, 9:25 a.m.: 20171227-IR-357170359RFA)



The Indiana Administrative Code - Organization





The Indiana Administrative Code- Organization

Sec. 8. (a) All surface water quality criteria in this section, except those provided in subsection (b)(1), are not applicable when the stream flows are less than the applicable stream design flow for the particular criterion as determined under 327 IAC 5-2-11.4.

(b) The following are minimum surface water quality conditions:

(1) All surface waters within the Great Lakes system, including waters within a mixing zone, must be free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges that do any of the following:

(A) Settle to form putrescent or otherwise objectionable deposits.

(B) Occur in amounts sufficient to be unsightly or deleterious.

(C) Produce:

(i) color;

(ii) visible oil sheen;

(iii) odor; or

(iv) other conditions;

to an extent that creates a nuisance.



The Indiana Register and Indiana Administrative Code - Publication

- Published electronically (IC 4-22-8-2 and IC 4-22-8-5)
- <https://iar.iga.in.gov/>

The screenshot shows the website for the Indiana Administrative Rules and Policies. The header includes the state seal and navigation links for Home, Indiana Register, Administrative Code, and MyIAR. A search bar is prominently displayed with a dropdown menu for 'Pending Rules'. Below the search bar, there are two sections: 'Upcoming Public Hearings' and 'Comment Period Deadline', both indicating a 'Next 60 days' period. Each section lists specific dates and the corresponding agencies or boards.

Section	Date	Agency/Board	Reference
Upcoming Public Hearings	02/18/2026	State Board of Cosmetology and Barber Examiners	LSA 25-328
	02/23/2026	Behavioral Health and Human Services Licensing Board	LSA 25-820
	02/24/2026	Indiana Department of Health	LSA 26-14
Comment Period Deadline	02/20/2026	Indiana Department of Health	LSA 26-14
	02/20/2026	Creamery Examining Board	LSA 25-384
	02/27/2026	Indiana Board of Accountancy	LSA 26-18



Drafting for rules - formatting

IC 4-22-2-20

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

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

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



Drafting for rules

IC 4-22-2-42

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



Drafting for rules

IC 4-22-2-19.5

Sec. 19.5. (a) To the extent possible, a rule adopted under this article or IC 13-14-9 shall comply with the following:

(1) Minimize the expenses to:

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

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

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

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

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

(4) Be written for ease of comprehension.

(5) Have practicable enforcement.

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



Drafting for rules - conformity

- Nonconforming documents may be rejected by the Publisher for failure to use required format, numbering system, standards, and techniques
 - IC 4-22-2-23; IC 4-22-2-24; IC 4-22-2-31; IC 4-22-2-32; IC 4-22-2-33; IC 4-22-2-35; IC 4-22-2-37.1; IC 4-22-2-37.2; IC 4-22-2-38; IC 4-22-2.6-5; IC 4-22-2.6-7;



Drafting Manual

- Drafting Manual:
 - Prepared under the direction of the Indiana Code Revision Commission
 - Approved by the Legislative Council
 - Drafting standards for rule documents and administrative code
 - <https://iar.iga.in.gov/>



Code and Noncode Provisions

- Code:
 - Permanent
 - Organized by 4 level citation number and included in the Indiana Administrative Code
- Noncode:
 - Temporary and not included in the Indiana Administrative Code
 - May contain a specific termination date that is within 2 years after the date of adoption of the rule (e.g. Provisional Rule; Interim Final Rule)
 - May terminate by implication when their purpose is fulfilled or ceases to exist (e.g. repealer, effective date, and expiration date provisions)
 - May supplement, supersede, or suspend current administrative code or temporarily add new provisions



Code and Noncode Provisions

Code:

SECTION 1. 852 IAC 1-1.1-3 IS AMENDED TO READ AS FOLLOWS:

123 IAC 1-1.1-3 **Application**

Authority: IC 1-24-1-1

Affected: IC 1-24-1-3

Sec. 3. The definitions in this chapter apply throughout this ~~article.~~ **title.**

Noncode:

- SECTION 1. (a) This SECTION is supplemental to 856 IAC 2-2.
(b) [text]
- SECTION 1. (a) This SECTION supersedes 856 IAC 2-2-2.
- SECTION 3. 71 IAC 8-2-1 IS SUSPENDED.



Drafting Standards

- Use short, simple sentences
- Use as the subject of each sentence the person or entity to whom a power, right, or privilege is granted or upon whom a duty, obligation, or prohibition is imposed
- Use present tense
- Use the indicative mood
- Use active voice



Drafting Standards

- Organize provisions
 - General provisions before specific provisions
 - Chronological order for provisions that describe a procedure
 - For a rule document that adds a new article or rule:
 - Applicability
 - Definitions
 - Creation of an entity
 - Administrative and procedural provisions
 - Substance
 - Prohibitions and penalties
- Consistency



Drafting Standards - Definitions

- Avoid:
 - writing substantive or applicability provisions into definitions
 - "Applicant" means an individual who:
 - (1) applies for a license from the department;
 - (2) has at least twenty (20) hours training at an accredited school;
 - (3) has at least twenty (20) hours of clinical experience; and
 - (4) pays the prescribed fee.
 - The definition should have stopped with subdivision (1). Subdivisions (2), (3), and (4) are substantive requirements that should be addressed separately as conditions of licensure.
 - use of a word in a sense foreign to a dictionary meaning
 - "Wheat" means wheat, rye, and barley.
 - developing and using an artificial concept



Drafting Standards - Definitions

- Use "includes" not "including, but not limited to"
 - "Includes" is used in a nonexhaustive definition. Use of "including, but not limited to" is redundant.

If, at any time after the location of the line of any railroad chartered by this state, and the filing of the map thereof, it shall appear to the directors of such company that the line thereof is necessarily dangerous, inconvenient, or expensive to operate, by reason of unavoidable causes, grades, or serious errors in location, such directors may make local alteration of the line, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the lands embraced in such new location which may be necessary for the construction and maintenance of such road on such altered line, either by agreement of the owner or by such proceedings as are authorized by the charter of such company, and may use such new line in place of the one for which it is substituted; but nothing in this chapter shall be so construed as to confer upon such railroad company any power to locate its road on any route which would not have been authorized by its charter; and nothing in this chapter contained shall authorize such company to make a location of its track within any city without the consent of the common council of such city, nor to change its road so as to avoid any point named in its charter.

(a) If the directors of the railroad company find that a line is dangerous, inconvenient, or expensive to operate because of unavoidable causes, grades, or serious errors in the location of the line, the directors may:

(1) alter the location of the line; and

(2) file a new map showing the alteration of the line in the office of the clerk where the directors first filed the map showing the location of the line.

(b) The directors of the railroad company may alter the location of a line under subsection (a) at any time after the location of the line is determined and an initial map showing the original proposed location is filed in the office of the clerk.

(c) The directors of the railroad company may take possession of any land that is necessary for the construction or maintenance of the altered location of the line either by:

(1) reaching an agreement with the owner of the applicable land; or

(2) using the proceedings that are authorized by the charter of the railroad company.

(d) A line altered under this section replaces the original proposed line.

(e) Nothing in this chapter shall:

(1) be so construed as to confer upon the railroad company any power to locate a road on any route which would not have been authorized by the railroad company's charter; and

(2) authorize the railroad company to plan a location of a track within any city without the consent of the common council of the city, nor to change a road to avoid any point named in the railroad company's charter.



Drafting Standards – Lead in Lines

- To add a new section:

SECTION 1. 70 IAC 2-1-5 IS ADDED TO READ AS FOLLOWS:

70 IAC 2-1-5 **General Provisions**

Authority: IC 1-1-2-3

Affected: IC 4-2-3-7

[Rule Text]

- To amend a section:

SECTION 1. 345 1-3-26.5 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-26.5 Moving equines into Indiana

Authority: IC 15-17-3-21

Affected: IC 15-17-3-13

[Rule Text]

- To Repeal a section:

SECTION 2. 310 IAC 13 IS REPEALED.



Agency Corrections

IC 4-22-2-38

Sec. 38. (a) This section applies to a rulemaking action resulting in any of the following rules:

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



LEGISLATIVE SERVICES AGENCY

Publication of certain nonrule policy documents in *Indiana Register* (IC 4-22-7-7)

- Attorney General's Opinions
- Executive Orders
- Official explanatory opinions of the State Board of Accounts based on an official opinion of the Attorney General
- Any other statement:
 - (A) that:
 - (i) interprets, supplements, or implements a statute or rule;
 - (ii) has not been adopted in compliance with IC 4-22-2;
 - (iii) is not intended by its issuing agency to have the effect of law; and
 - (iv) may be used in conducting the agency's external affairs; or
 - (B) that specifies a policy that an agency relies upon to:
 - (i) enforce a statute or rule;
 - (ii) conduct an audit or investigation to determine compliance with a statute or rule; or
 - (iii) impose a sanction for violation of a statute or rule.
- IC 4-22-7-7 includes information bulletins, revenue rulings (including, subject to IC 6-8.1-3-3.5, a letter of findings), and other guidelines of an agency.



Rule effectiveness

- Final Rules accepted for filing under IC 4-22-2-35 – the latest of the following:
 - The effective date of the statute delegating authority to the agency to adopt the rule.
 - 30 days after the date and time the rule is accepted for filing by the publisher.
 - The effective date stated by the agency in the rule.
 - The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.
- Provisional Rules under IC 4-22-2-37.1 – the latest of the following:
 - The effective date of the statute delegating authority to the agency to adopt the provisional rule.
 - The date and time the provisional rule is accepted for filing by the publisher.
 - The effective date stated by the agency in the provisional rule.
 - The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the provisional rule.
 - The statutory effective date for a provisional rule set forth in law.



Rule effectiveness

- Interim Rules accepted under IC 4-22-2-37.2 – the latest of the following:
 - The effective date of the statute delegating authority to the agency to adopt the interim rule.
 - The date and time the interim rule is accepted for filing by the publisher.
 - The effective date stated by the agency in the interim rule.
 - The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the interim rule.
 - The statutory effective date for an interim rule set forth in law.
- Exceptions for certain interim rules in IC 4-22-2.3
- Agency Corrections under IC 4-22-2-37.1 – the latest of the following:
 - The date that the rule being corrected by an agency correction becomes effective
 - 45 days after the rule is accepted for filing by the publisher.



Rule effectiveness

- Readopted Final Rules accepted under IC 4-22-2.6-8 – the latest of the following:
 - 30 days after the date and time the rule is accepted for filing by the publisher.
 - The effective date stated by the agency in the rule.
 - The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.



Rulemaking Tips and Tricks

Websites in a publication

The Register does ~~not~~ currently link to other websites. Please avoid long websites ~~or placing hyperlinks in documents.~~

~~Contact the Register if you choose to provide webcast information for Microsoft Teams.~~



LEGISLATIVE SERVICES AGENCY

Word document and Markup from the Register

- The Register will email the agency a compare, markup PDF, and Word document after a document with rule text is published.
- The markup will have questions or suggestions.
- The compare document is a compare of the published document to the original document sent by the agency.
- The Word document is identical to what is posted on the Register.
- The Word document, with any changes made after publishing, must be used when presenting the rule for adoption.
- The adopted version must be burned to a CD to be placed in the Final Rule binder.
- The adopted version must not be substantially different from the last published version and must be in the administrative drafting style.



LEGISLATIVE SERVICES AGENCY

Beware of Deadlines

Deadlines for rules expiring in 2028 under IC 4-22-2.6:

1. Initial Notices of Rule Readoption are due before January 1, 2027.
2. The Readoption Review is due before July 1, 2027, to OMB and the Register.
3. Notices of Public Comment Period for Rule Readoption are due before September 3, 2027.
4. Readopted Final Rules are due before December 2, 2027.

Rulemaking under IC 4-22-2:

1. Requires at least one 30-day comment period and a public hearing to be held 30 days after the proposed rule is published.
2. The governor must approve rules within one year of the Notice of First Public Comment Period being published.

Note: the home page for the Register links to the checklist used by the Attorney General's Office when approving Final Rules.



Rule Drafting Manual

The Administrative Drafting Manual has been updated on the Register website.

Common Issues:

1. Word documents with redline edits, comments, or track changes on.
2. Not using the latest version of the administrative code.
3. All the text in an IAC cite that is being amended not shown in the document.
4. Including the following in a rule document:
 - IAC Article and Rule headings if the headings are not being amended.
 - Text of current cites that are not being amended.
 - Text of a cite to be repealed.
5. Stricken text following bold text – stricken text must appear before bold text.
6. Striking or adding in bold when IAC cite headings are changed: these can be amended without showing the stricken and bold text.
7. Not including in the Final Rule binder, a statement of whether or not changes were made to the rule after publication or not.



Templates

- <https://www.in.gov/omb/management-circulars/rule-approval-process/lisa-templates/>
- Purpose Of Notice
 - Contains a narrative paragraph explaining the purpose of the notice
 - A brief description of the major provisions adding, amending, or repealing language within the rule.
 - Each description of the change in a rule begins with "adds", "amends", "repeals", or "makes" and the subject matter affected



Templates

- Authority:
 - Citation of each Indiana statute that expressly delegates rulemaking power to the agency to issue a rule on the subject matter of the accompanying rule.
 - If the General Assembly has not expressly delegated authority to issue a rule, give the citation of each statute that grants rulemaking power to the agency by implication.
- Citations Affected:
 - Citation of each Indiana statute that:
 - Is cited in the rule text
 - Directly relates to the subject matter
 - Is a savings clause or other provision that affects the validity



Where and how do you submit

Submissions to the Register:

- Final Rule documents must be burned to a CD and submitted in the Final Rule Binder to the OAG. Once the Governor's office approves the Final Rule, the office will submit the binder to the publisher.
- All other documents submitted to the Register must be submitted through the Agency Portal on the Register website. If you need access, contact me at heather.Jarrett@iga.in.gov.



LEGISLATIVE SERVICES AGENCY

Resources

Register website

<https://iar.iga.in.gov>

OMB website

<https://www.in.gov/omb/management-circulars/rule-approval-process/>

Templates on OMB website

<https://www.in.gov/omb/management-circulars/rule-approval-process/lisa-templates/>

Administrative Rule Drafting Manual

<https://iar.iga.in.gov/IACDrftMan.pdf>

Email the Register Staff at Register@iga.in.gov



An Overview of the Rulemaking Process

Donald "Ned" Hannah
Deputy Attorney General, Advisory

Z. Claire Dyer
Advisory Chief, Indiana Department of Health



Rulemaking: In General

“The power of an administrative agency to administer a congressionally created ... program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.” *Morton v. Ruiz*, 415 U.S. 199, 231, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974). “The same principle is true here at the state level . . .”

Natural Resources Defense Council v. Poet Biorefining-North Manchester, LLC, 15 N.E.3d 555, 563 (Ind. 2014)



Office of the Attorney General Advisory Division

- The Attorney General is the legal advisor to all agencies in the drafting and preparation of rules (IC 4-22-2-22)
- Agencies are encouraged to seek advice and assistance from the Advisory Division when promulgating rules



General Requirements

- Indiana Code 4-22-2, 4-22-2.1, 4-22-2.3, 4-22-2.6
- Some agencies may have additional statutory requirements for rulemaking; consult your authorizing statutes
- See, e.g., IDEM boards have a separate rulemaking process governed by IC 13-14



What is a rule?

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

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

IC 4-22-2-3(b)



Rule or Policy?

A formal rulemaking is not required for “a resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law.”

IC 4-22-2-13(c)(1)



Rule or Agency Action?

The rulemaking statute does not apply to an “agency action” – an adjudication resulting in an order that applies only to particular parties.

Hamilton Se. Utilities, Inc. v. Indiana Util. Regulatory Comm’n, 135 N.E. 3d 902, 913 (Ind. Ct. App. 2019).



Indiana Administrative Code and Indiana Register

- Final and/or regular rules become part of the Indiana Administrative Code (IAC)
- Online at <http://iar.iga.in.gov/code/current>
- Documents related to pending rulemaking actions, provisional rules, and interim rules are in the Indiana Register: <http://iac.iga.in.gov/iac/irtoc.htm>



Important Resource

- An important resource to remember is the Administrative Rules Drafting Manual available at: <http://iar.iga.in.gov/IACDrftMan.pdf>



60-day deadline to begin rulemaking

- Rulemaking must begin within 60 days of effective date of statute authorizing rule (IC 4-22-2-19)
- If rulemaking will not begin within 60 days, notify Legislative Services Agency (LSA)
 - Notice should state reason why rulemaking failed to begin within the 60 days
- LSA notice can be submitted after the 60-day deadline, at any point in the process
- See page 28 of the Administrative Rules Drafting Manual for additional information.



Exceptions to 60-day deadline

- Rule required to receive or maintain delegation, primacy, or approval for state implementation or operation of a program established under federal law



Regulatory Analysis IC 4-22-2-22.7

- Regulatory Analysis to be completed and submitted to the Office of Management and Budget (OMB) and State Budget Agency (SBA)
 - Template available under step 2 at: <https://www.in.gov/omb/rule-approval-process/administrative-rulemaking-rulemaking-process-overview/>
 - To be published on the Indiana Register
- Agency must receive authorization from OMB and SBA to commence the public comment periods.



Regulatory Analysis IC 4-22-2-22.7 (Con't.)

- The regulatory analysis must include findings and any supporting data, studies, or analyses prepared for a rule that demonstrate compliance with the following:
 - Comply with standards of IC 4-22-2-19.5 including, minimizing expenses to regulated entities, persons, or consumers, in the least restrictive manner with practicable enforcement.
 - If applicable, complies with the requirements for fees, fines, and civil penalties in IC 4-22-2-19.6.
 - The annual economic impact on small businesses statement required under IC 4-22-2.1-5.
 - Any requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule, if applicable.



Regulatory Analysis IC 4-22-2-22.7 (Con't.)

- The regulatory analysis must include a statement justifying any requirement or cost that is:
 - imposed on a regulated entity under the rule; and
 - not expressly required by:
 - the statute authorizing the agency to adopt the rule; or
 - any other state or federal law.



Regulatory Analysis IC 4-22-2-22.7 (Con't.)

- Budget Committee Review
 - If the proposed rule adds or amends language to increase or expand application of a fee, fine, or civil penalty the agency must obtain budget committee review of the proposed rule before it can be approved by OMB and SBA. SBA will assist an agency covered by this requirement to seek budget committee review.
 - Template available under step 3 at: <https://www.in.gov/omb/rule-approval-process/administrative-rulemaking-rulemaking-process-overview/>



First Notice of Public Comment Period IC 4-22-2-23

Must be submitted by the agency to the Indiana Register **at least thirty (30) days before the public hearing.**

- Date, time, and place at which the hearing will be convened, including information for how to attend the public hearing remotely (Public Hearing Notice).
- Full text of Proposed Rule.
- Documents incorporated by reference, if applicable.
- Continued on next slide...



First Notice of Public Comment Period IC 4-22-2-23 Cont'd

- Latest version of the regulatory analysis submitted to SBA and OMB.
- Authorization of SBA and OMB for the commencement of the public comment periods.
- If the proposed rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.



First Notice of Public Comment Period IC 4-22-2-23 Cont'd

- The actual notice of the first public comment period includes:
 - A general description of the subject matter of the proposed rule.
 - Appropriate overview of intent and scope of the rule.
 - Statutory authority for the rule.
 - Latest version of the regulatory analysis submitted to SBA and OMB excluding any appendices containing any data, studies, or analyses references. Must include where, when, and how a person may inspect any data, studies, or analyses used referenced in the regulatory analysis.
 - Continued on next slide...



First Notice of Public Comment Period IC 4-22-2-23 Cont'd

- The actual notice of the first public comment period includes:
 - Where, when, and how a person may inspect any documents incorporated in by reference in the proposed rule (IC 4-22-2-21).
 - Where, when, and how a person may submit written comments on the proposed rule, including the name, address, phone number, and email address of the small business regulatory coordinator (IC 4-22-2-28.1).
 - An indication that, if the agency does not receive any substantive comments during the public comment period or public hearing, the agency may adopt a rule that is the same as or does not substantially differ from the text of the proposed rule published under this section.



Authorization to Proceed from LSA

- After submitting the Notice of First Public Comment Period and Hearing Notice, the agency should receive an Authorization to Proceed from LSA



Economic Impact Statement and Small Business Ombudsman Review IC 4-22-2-28, IC 4-22-2.1-5 and IC 4-22-2.1-6

- If an agency intends to adopt a rule that will **impose requirements or costs** on small businesses, the agency **shall** prepare a statement describing the annual economic impact of the rule on small businesses once the rule is implemented.
- The agency shall submit a copy of the notice of the first public comment period and regulatory analysis to the small business ombudsman prior to the publication of the notice of the first public comment period.
- Receive approval or comments from the Small Business Ombudsman



Economic Impact Statement and Small Business Ombudsman Review IC 4-22-2-28, IC 4-22-2.1-5 and IC 4-22-2.1-6

- Small Business Ombudsman's comments must be made available for public inspection and copying at the agency's office, electronically by IOT, and distributed at public hearing.
- Agency must respond in writing to Ombudsman's comments or suggestions.



Executive Order 13-05: Family Impact Statement

- Some agencies may be required to publish a Family Impact Statement, including:
 - Family and Social Services Administration
 - Department of Workforce Development
 - Department of Child Services
 - State Department of Health
 - Department of Correction
 - Criminal Justice Institute



Executive Order 13-05: Family Impact Statement

- For every new rule that has a real or potential impact on family well-being or family formation, the head of the agency shall certify in writing that such measure has been assessed.
- The Family Impact Statement shall be sent to the OMB for review and comment.
- OMB shall review the proposed rule and submit comments to the agency no later than seven (7) days before the public hearing.



Rulemaking docket IC 4-22-2-22.5

- Must be in place from publication of Notice of First Public Comment Period until effective date of rule
- Must be kept current and should be updated as needed
- Agency can use IOT application or its own
- To ensure compliance with statute, call it “Rulemaking docket” or “Pending rules”



Rulemaking docket IC 4-22-2-22.5 Con't.

- Must include:
 - Subject matter of the proposed rule
 - Notices or links to IR notices
 - How comments may be made and inspected
 - Time within which comments may be made, including deadline
 - the date, time, and place where a public hearing will be held
 - a description of relevant scientific and technical findings related to the proposed rule, if applicable
 - a reasonable estimate of the timetable for action, updated periodically as circumstances change.



Public Hearing IC 4-22-2-26

- May be conducted “in any informal manner that allows for an orderly presentation of comments and avoids undue repetition.”
- “The agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency’s proposed rule through the presentation of oral and written facts or arguments.”



Public Hearing IC 4-22-2-26

- Occurs on date and at time and place stated in the notice and include an option for remote attendance.
- May recess and reconvene on a different date or at a different time or place by announcing change at original hearing before the recess.
- Record the announcement in the agency's record of the public hearing.
- Subject to Open Door requirements in IC 5-14-1.5



Public Hearing and Remote Webcast Hearing IC 4-22-2-26 and IC 4-22-2-17

- Documentation confirms the public hearing occur on the date and time and place stated in the notice of public hearing and record of any comments received.
 - Record of hearing may consist of minutes, transcript, or summary
- Public hearing(s) occur at least thirty (30) days after the Notice of Public Comment Period and Notice of Second Public Comment Period, if applicable.
- Include an option for remote attendance that allows the public to comment remotely.
- Webcast(s) are archived as public records on the state website.
- Executive Order 24-02



Second Public Comment Period IC 4-22-2-24

- If an agency receives substantive comments during the first public comment period or the public hearing, or the rule establishes a requirement or limitation that is more stringent than an applicable federal requirement or limitation, the agency must conduct a second public comment period.
- The agency must comply with all of the publication requirements **at least thirty (30) days before the second public hearing was convened.**



Second Public Comment Period IC 4-22-2-24 Cont'd

- To publish a notice of the second public comment period, the agency must submit the following to the Indiana Register:
 - Full text of the proposed rule.
 - The Notice of the Second Public Comment Period



Second Public Comment Period IC 4-22-2-24 Con't.

- The notice of the second public comment period includes:
 - Date, time, and place at which the hearing will be convened, including information for how to attend the public hearing remotely (Public Hearing Notice).
 - A general description of the subject matter of the rule.
 - Summary of the written comments received by the agency during the first public comment period and a summary of the response of the agency to the written comments.
 - Either a statement indicating that no changes in the regulatory analysis have been made from the first public comment period or the latest version of the regulatory analysis excluding any appendices containing data, studies, or analyses.
 - Where, when, and how a person may inspect the regulatory analysis and the data, studies, or analyses referenced in the analysis.



Second Public Comment Period IC 4-22-2-24

Cont'd

- Explanation of any differences between the text of the proposed rule published in the notice of first public comment period and the text of the proposed rule.
- Where, when, and how a person may inspect any documents incorporated in by reference in the proposed rule (IC 4-22-2-21).
- Where, when, and how a person may submit written comments on the proposed rule.
 - Name, address, phone number, and email address of the small business regulatory coordinator (IC 4-22-2-28.1)
- An indication that the notice is for the second of two (2) thirty (30) day comment periods and that the agency may adopt the rule following the second comment period if the proposed rule is the same or does not substantially differ from the text of the published proposed rule.



Second Public Comment Period IC 4-22-2-24 Cont'd

- When the public comment period will conclude (at least 30 days after the notice is published).
- Indication that, if the agency does not receive any substantive comments during the 30-day public comment period or public hearing, the agency may adopt a rule that is the same as or does not substantially differ from the text of the published proposed rule.
- Authorization to proceed from the publisher.



Summary of Public Comments and Agency Responses IC 4-22-2-27 and IC 4-22-2-27.5

- The authorized authority adopting the rule will consider the comments submitted during the public comment period(s) and public hearing(s).
- Summary of comments received by the agency during each public comment period and public hearing and a summary of the response of the agency to the comments must be submitted to the attorney general, the governor, and the publisher.



Incorporation by reference IC 4-22-2-21

- Incorporation by reference makes an outside document part of the rule.
- Document must be fully and exactly described in the rule.
- The incorporated document is “frozen;” updates do not become part of the rule.
- Incorporated document must be filed with LSA (hard copy or electronic) unless previously filed with another rule.



Incorporation by reference IC 4-22-2-21

- Texts and documents outside the rule that may be incorporated by reference:
 - Federal or state statute, rule or regulation
 - Code, manual or standard adopted by U.S., state, or nationally recognized organization or association
 - Certain Indiana DLGF manuals and information



The 249th Day IC 4-22-2-25

- Agency has one year from the date of publication of Notice of First Public Comment Period to obtain Governor's approval (or deemed approval)
- If one-year deadline will not be met, the agency must submit a notice to LSA before the 250th day after the Notice of First Public Comment Period is published.



The 249th Day IC 4-22-2-25 Cont'd

- LSA notice includes reasons for delay and expected date of completion and the expected date the rule will be approved or deemed approved by the Governor
- If rule is not approved (or deemed approved) by the Governor within one year, or by expected date in LSA notice, rule is dead and new rulemaking must be started.



Final Rule Adoption IC 4-22-2-29

- Final rule adoption, unlike other steps in the process, can't be delegated. The rule must be adopted by the individual or group of individuals (board, commission, etc.) with the statutory authority to adopt rules (IC 4-22-2-15)
- If adopted by a board, commission or other group, adoption must take place in a public meeting



Final Rule Adoption IC 4-22-2-29

- Final rule need not be identical to proposed rule, but if it substantially differs, it must be a *logical outgrowth* of the proposed rule based on public comments or comments received from the Small Business Ombudsman
- Agency may consolidate two or more proposed rules as one final rule, or adopt parts of proposed rule in two or more separate final adoption actions



Final Rule Disc

- Rule binder must include a disc of the Final Rule in Word format to be published by LSA
 - Must be titled “Final Rule”
 - Disc must be labeled “Final Rule”
 - Must contain final version of the rule
 - No further revisions



Attorney General Review IC 4-22-2-31 and IC 4-22-2-32

- All rules must comply with statutory steps for submission and are reviewed for form and legality within 45 days



Attorney General Review

Submission packet to OAG

- Final rule on CD (in Word, not PDF)
- Signature page
- Supporting documentation
- All materials incorporated by reference



Attorney General Review

Supporting Documentation

- Copies of all Indiana Register Documents
- Rulemaking docket
- Regulatory analysis and related documents
- Hearing notices
- Public hearing comments
- Agency's response to comments
- Documents related to adoption (meeting minutes, transcript, etc.)
- Summary of changes from proposed to final rule



Attorney General Review

- Agency may include additional documents and explanations to facilitate review
- An index and tabbed dividers labeling the appropriate rulemaking step is preferred.
- An explanation clarifying any unusual circumstances should be included when appropriate.
- List of required documents and a checklist can be found on the IR website: <https://iar.iga.in.gov/Submissions-to-Attorney-Generals-Office.pdf>



Attorney General Review

- Possible actions for OAG review
 - Approve
 - Take no action for 45 days (“deemed approved”)
 - Disapprove
 - Return to agency without disapproval
 - Agency may recall or withdraw rule
 - Recall: changes can be made to bring rule into compliance (IC 4-22-2-40)
 - Withdraw: rule is dead (IC 4-22-2-41)



Attorney General Review

Grounds for disapproval

- Adopted without statutory authority
- Adopted without complying with rulemaking statutes
- Changes from proposed rule to final rule do not comply with IC 4-22-2-29(c)
 - Changes must be logical outgrowth of comments received during the public comment periods, public hearings, or from Small Business Ombudsman.
- Violates another law



Attorney General Review

OAG does not evaluate the policy or technicalities of a rule, except to determine that the rule is within the agency's statutory authority and does not violate another law.



Attorney General Review IC 4-22-2-20

- Form of rule
 - is clear, concise, and easy to interpret and to apply
 - uses the format, numbering system, standards, and techniques established by LSA under IC 4-22-2-42



Attorney General Review

- If rule does not comply with form requirements, OAG may disapprove the rule, or return it to agency without disapproval
- If returned to agency, rule can be corrected without readoption (IC 4-22-2-32(e))



Attorney General Review

- A rulemaking action that does not comply with IC 4-22-2 does not have the effect of law (IC 4-22-2-44)
- OAG requires supporting documentation to determine compliance with IC 4-22-2 and IC 4-22-2.1 (IC 4-22-2-31)



Approval by Governor IC 4-22-2-33 and IC 4-22-2-34

- As a courtesy, the OAG submits the rule to the Governor's Office, on agency's behalf, after OAG approval
- Governor may approve or disapprove a rule with or without cause
- 15 days to take action
- Governor can request an additional 15 days



Submission to Publisher IC 4-22-2-35 and IC 4-22-2-36

- After Governor's approval, rule is submitted to publisher for filing
- LSA accepts it for filing and publishes a receipt in the Indiana Register
- Rule takes effect the *later* of:
 - 30 days after it is accepted for filing; or
 - the effective date stated in the rule



Recall of Rule IC 4-22-2-40

- A rule may be recalled by the agency at any time before it is accepted for filing
- A recall “unadopts” a rule and voids any approval given after the rule was adopted
- Agency may readopt an identical or revised rule
- A notice of recall is published in the Indiana Register
 - See page 24 of the Administrative Rules Drafting Manual for more information.



Withdrawal of Rule IC 4-22-2-41

- The agency may withdraw the rule at any time before it is accepted for publication
- Withdrawal terminates the rulemaking action
- A notice of withdrawal is published in the Indiana Register
 - See page 24 of the Administrative Rules Drafting Manual for more information.



Expiration and Re-Adoption IC 4-22-2.6

- Rules expire January 1 of 5th year after effective date unless readopted.
- Re-Adoption of Rules
 - Submit initial notice of readoption to Indiana Register (*see also* IC 4-22-2.6-3)
 - Review rule, reexamine previous cost benefit, economic impact, fiscal impact, and regulatory burden statements → prepare written findings
 - Publish Notice of Proposed Re-Adoption
 - Public Comment Period(s)
 - Re-Adoption of Rule



Readoption Deadlines

- January 1st: Legislative Notice must be filed
- July 1st: Readoption Analysis and Regulatory Analysis submitted to OMB for review
 - FMC 5.1 OMB Review of Agency Rulemaking
 - FMC 5.2 Requirements for Regulatory Analysis
 - FMC 5.6 Readoption Analysis
- September 1st: Public Comment Period must begin on or before
- December 1st: Final Rule for Readoption submitted to LSA



Other Rulemaking actions IC 4-22-2-38

- Agency correction
 - Non-substantive rule change to correct typographical or other errors or to update certain outdated citations or references
 - Submit to Indiana Register for filing



Provisional Rulemaking IC 4-22-2-37.1

- Agency must have provisional rulemaking authority in statute
 - Must have Governor's Approval
 - Submit text of proposed provisional rule, statement justifying need, and any additional information required by the Governor
 - Publish Proposed Provisional Rule with LSA
 - Rule distributed to Legislative Council
 - Adopt Provisional Rule and submit Provisional Rule and Signature Page to LSA
- Expires after 180 days
- Governor and Attorney General may object to a Provisional Rule



Interim Rulemaking IC 4-22-2-37.2

- Agency must have interim rulemaking authority in statute
 - Must have Governor's Approval
 - Submit text of proposed interim rule, statement justifying need, and any additional information required by the Governor
 - Publish Notice of Interim Rule with LSA
 - LSA Authorization to Proceed
 - Notice of Public Comment Period (30 days)
 - Agency response to comments
 - Adopt identical rule or revised version based on logical outgrowth from written comments received
 - Expires after 425 days
 - Governor and Attorney General may object to an Interim Rule



Office of the Attorney General Advisory Division

- The Attorney General is the legal advisor to all agencies in the drafting and preparation of rules (IC 4-22-2-22).
- The Advisory Division of the OAG is primarily tasked with assisting agencies with rule drafting questions.
 - The Advisory Division is comprised of 10 attorneys and 2 assistants.
 - Each attorney reviews rules as they are submitted on a rotating basis.



Office of the Attorney General Advisory Division

- Agencies may request pre-review of proposed rules and related documents
 - Highly encouraged where there are form or legality questions.
- Pre-review can facilitate final rule review **but does not guarantee approval**, because procedural problems may occur during the promulgation process.
- **Agencies are encouraged to seek advice and assistance from the Advisory Division when promulgating rules**



OAG Presentation Contacts

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Administrative Rulemaking Seminar: OMB and SBA Review



Patrick Price
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Lynn Tyler
General Counsel,
Office of Management
and Budget



Emily Crisler
General Counsel,
State Budget Agency

Roadmap of Presentation

I. OMB & SBA Review

- Overview
- Review In Practice
- Provisional and Interim Rule Review
- Readoptions
- Tips for Smooth OMB Review

II. General Rulemaking Requirements

- What is a Rule
- Role of Rules
- Examples
- Why it Matters

III. Regulatory Analysis

- Overview
- Statutory Requirements
- How to Prepare Analyses

IV. Helpful Resources

V. Questions



Overview of OMB and SBA Review

Background

- OMB and SBA review provided in statute (IC 4-3-22-13 and IC 4-22-2-22.8)
- Agencies must use standard template for regulatory analysis and adhere to the requirements in [Financial Management Circular \(FMC\) 5.2](#)
- [FMC 5.1](#) describes the OMB and SBA review process

Purposes

- Coordination between agency, SBA, and OMB
- Evaluate whether burdens imposed by regulations are justified (IC 4-3-22-1)
- Cost-benefit, fiscal, and regulatory analyses



Scope of OMB and SBA Review

FMC 5.1 OMB and SBA Review Process

- Applies to ALL *regular* rulemakings under IC 4-22-2-23
- Does NOT APPLY to provisional rules
 - OMB and SBA still review as described in [FMC 5.3](#)
- Does NOT APPLY to interim rules
 - OMB and SBA still review as described in [FMC 5.4](#)
- Does NOT APPLY to re-adoptions of expiring rules
 - OMB and SBA still review as described in [FMC 5.6](#)



OMB and SBA Review Process

STEP 1: Agency Submits Review Request

- Proposed rule, regulatory analysis, and all supporting materials required by [FMC 5.1](#)
- Send to SBArules@gov.in.gov

STEP 2: OMB and SBA Review Request for Completeness & Assigns Tracking Number

- SBArules@gov.in.gov will send response acknowledging review request
- Agency should reference tracking number in correspondence (e.g., OMB #2024-001)
- Incomplete requests will be held until all supporting documentation provided

STEP 3: OMB & SBA Review Rule

- Work with agency on rule language, regulatory analysis
- Allows agency to address any questions/concerns about proposed rule prior to the public comment period and review by the Office of the Attorney General and Governor's Office



OMB and SBA Review Process

STEP 4: Budget Committee Review (if necessary)

- If rule includes new or increased fees, fines, or civil penalties, it must be reviewed by Budget Committee
- If rule will have a combined implementation and compliance costs of at least one million dollars (\$1,000,000)* for businesses, local units, and individuals over any two (2) year period, it must be reviewed by Budget Committee
- OMB and SBA will complete a review prior to Budget Committee

STEP 5: OMB and SBA Transmit Approval Letter

- Single approval letter signed by OMB and SBA
- Approval letter only issued AFTER approval by OMB, SBA, and Budget Committee review, if necessary.
- Approval letter will be emailed to submitter for agency



* Beginning July 1, 2026, the cost threshold over a two (2) year period is \$500,000.



Contents of Review Request

1. Requirements for submission described in [FMC 5.1](#)
2. Copy of the proposed rule in Word format
3. Redline of changes made from existing regulation
4. Regulatory Analysis, as described in [FMC 5.2](#)
5. Family impact statement (if necessary), as described in [EO #13-05](#)



OMB and SBA Review In Practice

OMB Review

- Collaborative process between OMB and Agency
- Focus on rule language and regulatory analysis
- Process is deliberative and exempt from APRA (PAC opinion [17-FC-270](#))

SBA Review

- Focus on fiscal impact analysis



OMB and SBA Review of Resubmissions

OMB and SBA Review of Resubmissions

- If a rule changes after OMB and SBA approval, agency must resubmit for review under IC 4-22-2-22.8(f) and [FMC 5.5](#)
- Agency must submit:
 - Revised rule language
 - Revised regulatory analysis
 - Discussion of any changes in the rule or regulatory analysis
 - Explanation of rationale for any changes
 - If it is after the first public comment period, any comments received from regulated and interested parties as well as their answers to those comments
- OMB and SBA will transmit a new approval letter after review of the revised documents
- Reapproval is required before the agency may continue with the rulemaking process



Provisional Rule Overview

Provisional Rulemaking (IC 4-22-2-37.1)

- For temporary situations posing imminent and substantial harm
- Effective for one hundred eighty (180) days after accepted for filing
- Must get written authorization from Governor to proceed
- Circulated to the legislature then effective (DNR and IDEM 10-day delay)
- Fees, fines, or civil penalties must be submitted to Budget Committee
- [FMC 5.3](#) describes the review process and information required



Provisional Rule Process

Provisional Rulemaking – Review in Practice

- Agency emails SBArules@sba.in.gov with the following:
 - Copy of the proposed rule
 - Copy of the regulatory analysis
 - Statement justifying the need for a provisional rule
- OMB and SBA do the initial review of rule language and qualification for provisional rulemaking
- OMB and SBA work with agency on rule language and justification
- OMB and SBA send recommendation to Governor's Office
- Governor's Office signs approval letter
- OMB and SBA send PDF and Word version of approval letter to agency submitter
- Agency provides PDF and Word versions of approval letter to Indiana Register



Interim Rule Overview

Interim Rulemaking (IC 4-22-2-37.2)

- For changes required by new or updated statutes, federal regulations, or professional codes
- Placeholder that gives agency time to do formal rulemaking
- Effective for four hundred twenty-five (425) days after accepted for filing
- Must get written authorization from Governor to proceed
- Publish Notice of Interim Rulemaking and 30-day comment period (no public hearing)
- Fees, fines, or civil penalties must be submitted to Budget Committee
- [FMC 5.4](#) describes the review process and information required



Interim Rule Process

Interim Rulemaking – Review in Practice

- Agency emails SBArules@sba.in.gov the following:
 - Copy of the proposed rule
 - Copy of the regulatory analysis
 - Statement justifying the need for an interim rule
- OMB and SBA do initial review of rule language and qualification for interim rulemaking
- OMB and SBA work with agency on rule language and justification
- OMB and SBA send recommendation to Governor's Office
- Governor's Office signs approval letter
- OMB and SBA send PDF and Word version of approval letter to agency submitter
- Agency provides PDF and Word versions of approval letter to Indiana Register



Rule Readoption Process

Readoption Overview

- A rule now expires on January 1 of the fifth year after the year in which the rule takes effect.
- Agencies are required to submit an initial notice of readoption to the register not later than January 1 of the year preceding the year in which the rule expires.
- Pursuant to [FMC 5.6*](#), agencies must submit the required documentation to OMB and SBA not later than the first regular business day in July of the year preceding the year in which the rule expires.
- Agencies must have the finalized documents and approval letter submitted to the Indiana Register by the first working day of September of the year preceding the year in which the rule expires.



* SEC. 10 of HEA 1003 (P.L.152-2026) (Effective July 1, 2027) adds this deadline to Ind. Code § 4-22-2.6-5.



Rule Readoption Process

Readoption Review Process

- Pursuant to [FMC 5.6*](#), agencies must submit the readoption request to SBArules@gov.in.gov with the following:
 - A completed readoption review containing the written findings required by [EO 25-17](#), Paragraph 3 (<https://www.in.gov/omb/files/Readoption-Review-LSA-Template.docx>)
 - A copy of the rule to be readopted in Word
 - Either:
 - A previously prepared cost benefit, economic impact, fiscal impact, or regulatory burden statements prepared by the agency for the rule under Indiana Code § 4-3-22-13, 4-3-27-12, 4-22-2-22.7, 4-22-2-22.8, 4-22-2-28, and 4-22-2.1-5, if those previously prepared statements were published by the Indiana Register; or
 - If the rule did not have a prior document listed above, a completed regulatory analysis that meets the requirements of [FMC 5.2](#)



* SEC. 10 of HEA 1003 (P.L.152-2026) (Effective July 1, 2027) adds this deadline to Ind. Code § 4-22-2.6-5.



Rule Readoption Process

Readoption Review Process

- OMB and SBA will review the submission
 - Work with the agency to revise any of the documents as needed
- OMB and SBA will issue a single approval letter for the agency to provide to the Indiana Register along with the other documents
- Pursuant to [FMC 5.6](#)^{*}, an agency may not file the notice under IC 4-22-2.6-5 with the Indiana Register until it has obtained OMB and SBA approval



^{*} SEC. 10 of HEA 1003 (P.L.152-2026) (Effective July 1, 2027) adds this deadline to Ind. Code § 4-22-2.6-5.



Budget Committee Review

Budget Committee Review

- Required for any proposed rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty
- Required if a proposed rule will have combined implementation and compliance costs of at least one million dollars (\$1,000,000)* for businesses, local units, and individuals over any two (2) year period
- Templates for Budget Committee report available on OMB website:
 - <https://www.in.gov/omb/rule-approval-process/rulemaking-resources/>
- **After** initial approval by OMB, the agency should upload rule, regulatory analysis, and Budget Committee report to the Budget Committee submission portal
 - <https://in.accessgov.com/sba/Forms/Page/sba/budget-committee/1>
- Contact agency's SBA budget analyst once documents have been uploaded to the submission portal



**Beginning July 1, 2026, the cost threshold over a two (2) year period is \$500,000.*



Tips for Smooth Review

- Be prepared to talk to OMB and SBA about the rule
 - Have everyone in the discussion at the same time – lawyers *and* subject matter experts
- Do not bite off too much
 - Rule only moves as fast as the slowest portion
 - Can break off higher priority portions to move through first
- Do not reinvent the wheel
 - Modifying existing administrative code tends to be easier than a repeal and replace
- Ensure Completeness
 - Make sure all FMC requirements are met for each document, and each section has the required information



Tips for Smooth Review

- Identify what is new
 - **Redlines** (changes from existing requirements)
- Follow [Administrative Rules Drafting Manual](#) and additional guidelines issued
- Check legal authority for each provision
- Obtain feedback from interested parties prior to submitting materials to OMB/SBA
- Avoid duplication of statutory or CFR language (consider manuals)
- Include requirements from forms or policy
- For larger rules, consider talking to OMB before drafting



What is a Rule – Statute

Indiana Code establishes what must be included in regulation:

IC 4–22–2–3(b)

“Rule” means the whole or any part of an agency statement of general applicability that:

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

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



What is a Rule – Case Law

Courts have adhered closely to the statutory definition

Rules have Four Elements

- *Villegas v. Silverman*, 832 N.E.2d 598 (Ind. Ct. App. 2005)
- An administrative rule is:
 - (1) “an agency statement of general applicability to a class;”
 - (2) that is “applied prospectively to the class;”
 - (3) that is “applied as though it has the effect of law;” and
 - (4) that “affect[s] the substantive rights of the class.”



What is a Rule – Case Law

“Effect of Law” means Mandatory

- *Ward v. Carter*, 90 N.E.3d 660 (Ind. 2018)
- “an agency regulation carries the effect of law when it prescribes binding standards of conduct for persons subject to agency authority.”
- “[I]f an agency rule acts as a coercive mechanism or wields coercive power over people, it carries the effect of law.”



What is a Rule – Examples

In General

- Requirements that must be met need to be in statute or regulation
- Basis for denying application or permit must be in statute or rule
- Basis for violation or enforcement action must be in statute or rule

Examples

- Information *required* to be submitted in an application
- Documents *required* to prove identification
- Required equipment
- Required training standards
- Fees, Fines, and Civil Penalties
 - Specific dollar amount
 - Formula - must explain how the fee is calculated



Why isn't Policy Enough?

Because statute requires certain process for adoption

- Agency power to make rules flows from General Assembly
 - Agencies can only make rules where authorized by statute
- General Assembly requires rules to be adopted using certain process
 - Administrative Rules and Procedures Act (IC 4-22-2)
 - Requires due process (sort of)
 - *Villegas v. Silverman*, 832 N.E.2d 598 (Ind. Ct. App. 2005)
 - “These requirements dictate, among other things, public input into any proposed rule changes. The duty of the BMV to issue licenses in a manner that it deems prudent does not supersede the mandate to allow the public to participate in the rule-making process.”



Why isn't Policy Enough?

Courts will not enforce rules without procedural steps

- Agency policies without rulemaking steps do not carry the effect of law
 - “We hold that the new identification requirements are a rule, and because they were not promulgated in accordance with the ARPA, they are void and without effect.” *Villegas*, 832 N.E.2d at 610
 - “IDEM may only regulate by a new rule if the proper rulemaking procedures have been followed.” *Indiana-Kentucky Elec. Corp. v. Comm’r, Indiana Dep’t of Env’t Mgmt.*, 820 N.E.2d 771, 780 (Ind. Ct. App. 2005)
- Examples of rule “alternatives” rejected by courts:
 - **Written policy:** *Villegas*, (required documents for driver’s license)
 - **Oral policy:** *Indiana-Kentucky Elec. Corp.*, (location of environmental monitoring equipment)
 - **Contract:** *Am. Trucking Associations, Inc. v. City of Los Angeles, Cal.*, 569 U.S. 641 (2013) (imposing “distinctive governmental” authority through contract)



The Role of Rules – Statutes vs. Rules

- Statutes set general program requirements
- Regulations fill in details
- Regulations can expand on or explain statutory requirements and definitions
- Rules should not duplicate statute, IC 4-22-2-19.5(a)(3)
 - If your rule repeats statute, must update rule each time statute is updated
 - Means more rules and more confusion



The Role of Rules – Rules vs. Policies/Manuals

- Rules *impose* requirements
- Rules are legally enforceable
- Policies and Manuals *explain* requirements
- Manuals can combine requirements from statute and regulation and explain in regular language for regulated parties
 - Examples, [BMV Driver's Manual](#), [DNR Hunting Manual](#)
- Policies and Manuals are not legally enforceable



Statute, Rule, or Policy/Manual

	Statute	Rule	Policy	Manual
Purpose	Set legal authority and basic requirements	Expand on basic requirements	Explain / clarify specific requirements	Synthesize and explain all requirements
Legally Enforceable	Yes	Yes	No	No
Requirements for Adoption	Set by Indiana Constitution	Set by Indiana statute	Set by internal agency policy	Set by internal agency policy
Language Style	LSA bill drafting manual	LSA rule drafting manual	Typically, legal memo style	Common language
Comprehensive	Maybe, agency rules can supplement	No, does not include statutes	Usually focused on one issue	Yes, one-stop summary for public



Example 1 – BMV

Statute

- IC 9-24-16.5-1 The bureau shall issue a photo exempt identification card to an individual who meets the following conditions ... (2) Is an **Indiana resident**.

Regulation

- 140 IAC 7-1.1-3(b) An applicant must show proof of the following ... (4) Being an Indiana resident and of the applicant's **residence address, which may not be a post office box**, by submitting **two (2) documents showing proof of being an Indiana resident and two (2) documents showing the applicant's residence address**. Qualifying documents include the following ...

BMV Driver's Manual

- You must be a legal resident of Indiana to obtain an Indiana credential. Evidence of Indiana residency includes:
 - Maintaining a residential address in Indiana and not claiming residency in another state
 - Being a registered voter in Indiana
 - Having a dependent who is enrolled in an elementary or secondary school located in Indiana



Example 2 – DNR

Statute

- IC 14-22-11: Establishes basic requirements for hunting licenses.

DNR Regulation

- 312 IAC 9-12-2(a): **In addition to the requirements for obtaining a hunting license under IC 14-22-11**, an individual born after December 31, 1986, must have successfully completed a course in hunter education by the department or the department's agent under IC 14-22-35-1 and this rule.

DNR Hunting Manual

- Hunter education: Anyone born after Dec. 31, 1986 must successfully complete a DNR-offered hunter education class to purchase an Indiana hunting license.



Attorney Fees

- Modified in HEA 1623 effective July 1, 2023
- Basis for agency action must be found in statute or valid rule
- Agency may be liable for enforcing requirements only found in non-rule policies, manuals, handbooks, interpretative guidance, etc.
- Applies to proceedings under AOPA (IC 4-21.5-3-27.5)
- Applies to judicial review of agency actions (IC 34-52-2-1.5)



Regulatory Analysis – Overview

WHAT

- Document to inform agency and public of the effects of regulatory actions

GOAL

- Ensure the agency and public understand the impacts of proposed rules

FOCUS

- Delivering clear, evidence-based insights into the impacts of proposed rules



Regulatory Analysis – Statutory Requirements

- Under IC 4-22-2-22.7, a regulatory analysis must include findings and any supporting data, studies, or analyses for a rule that demonstrate compliance with the following:
 - The cost benefit requirements in IC 4-3-22-13.
 - Each of the standards in IC14-22-2-9.5.
 - If applicable, the requirements for fees, fines, and civil penalties in section IC 4-22-2-19.6 of this chapter.



Regulatory Analysis – Statutory Requirements

- Under IC 4-22-2-22.7, a regulatory analysis must include findings and any supporting data, studies, or analyses for a rule that demonstrate compliance with the following (cont.):
 - The annual economic impact on small businesses statement required under IC 4-22-2.1-5.
 - If applicable, the information required under IC 13-14-9-4.
 - A determination whether the combined implementation and compliance costs of a proposed rule are at least one million dollars (\$1,000,000)* for businesses, units, and individuals over any two (2) year period.
 - Any requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule, if applicable.

**Beginning July 1, 2026, the cost threshold over a two (2) year period is \$500,000.*



Regulatory Analysis – Steps

STEP 1: Description of the rule

STEP 2: Fiscal Impact Analysis

STEP 3: Identify the impacted parties

STEP 4: Identify the changes in the proposed rule

STEP 5: Provide a tally of the benefits

STEP 6: Provide a tally of the costs

STEP 7: Indicate any outside sources of information

STEP 8: Aggregate the tally of the costs and benefits



STEP 1 – Description of the Rule

STEP 1: Provide a description of the rule

- Identify the history and background of the rule
 - What prompted the rulemaking?
 - When was the last major update to the rule?
- Identify the scope of the rule
 - Is the rule simplifying a process?
 - Is the rule aligning the rules with current state or federal laws?
 - Is this a repeal and replace?



STEP 1 – Description of the Rule

STEP 1: Provide a description of the rule

- Statement of Need
 - Is the rule addressing a federal or state statutory requirement, court order, audit finding, operational issue, or another factor?
- Statutory Authority
 - Include both the authority for the agency to regulate in the subject area and the specific statutory authority for the agency to issue the proposed rule
- Fees, Fines, and Civil Penalties
 - Indicate whether the rule adds or increases any fees, fines, or civil penalties



STEP 2 – Fiscal Impact

STEP 2: Fiscal Impact Analysis

- Include a discussion of the impact of the proposed rulemaking on State and local government expenditures and revenue (not regulated parties)
 - Include the anticipated effective date of the rule
 - Estimate the fiscal impact on state and local government
 - Identify any sources of expenditures or revenue impacted by the rule



STEP 3 – Impacted Parties

STEP 3: Identify the number of impacted parties

- Include a specific number or estimated number of the total number of parties impacted by the proposed rule
 - This will serve as multiplier for costs and benefits
- Consider impact of rule on all persons affected by the rule, not just regulated persons



STEP 3 – Impacted Parties – Example

How to Identify Number of Impacted Parties

Sometimes you know

- **PLA:** There are 60,993 beauty culture professionals, 8217 beauty culture salons, 99 beauty culture schools, and 498 tanning facilities holding active licenses in the State of Indiana.

Sometimes you can calculate

- **Egg Board:** Total number of small businesses in Indiana who would be potentially impacted by the requirement for using new packaging materials is estimated to be 170 producer packers. This number was determined by the total of 540 small egg businesses minus 355 registered farm market retailers who would be exempt under the proposed rule. We then removed the 15 small wholesalers who are not packing their own eggs and would not have a direct cost associated with purchasing new packaging materials.



STEP 3 – Impacted Parties – Example

How to Identify Number of Impacted Parties

Sometimes you can estimate

- **IDHS:** It is estimated that this proposed rule will affect somewhere around 14,068 homes per year. This is the number of homes believed to be constructed each year in Indiana, based off building permit data obtained from the United States Census Bureau.
- **Health:** Of the 54 Indiana counties responding to a survey, 50 local health departments reported that in 2020 there were a total of 4954 septic permits issued, or an average of 99.1 per local health department, and in 2021, 49 local health departments reported that there were a total of 4885 septic permits issued, representing an average of 99.5 permits per county. These were the years that the impact of COVID was most significant, and the number of permits issued may not be representative of past or future years. If this average of 99.5 permits were extended to all 92 counties in Indiana, that would give an approximate number of 9154 residential septic permits issued each year.



STEP 4 – Changes in Proposed Rule

STEP 4: Identify all Changes

- Provide all changes from existing regulation
 - This can be done by creating a list or table enumerating each change, such as definitions added/removed, revised compliance criteria, or procedural updates
- This is done to ensure transparency and clarity for OMB and SBA review as well as to regulated parties
- Failure to identify all changes is the biggest reason for delays in the OMB and SBA review of a proposed rule



STEP 5 – Benefit Analysis

STEP 5: Identify Benefits

- Include a discussion of the benefits of the proposed rule
- Analyze benefits to the general public, regulated community, and government agencies
- To the extent possible, quantify the benefits with monetary estimates
- If not possible to quantify, provide a detailed description of non-quantifiable benefits and an assessment of whether the benefits are significant



STEP 5 – Benefits: Source of Motivation

How did this problem come to your attention?

- Inspection records
- Enforcement proceedings
- Implementation experience
- Consumer complaints
- Lawsuits
- Consent decrees
- Federal requirements
- Research studies
- Experience of other states or jurisdictions



STEP 5 – Benefits: Motivation Examples

- **Health:** Individuals with a confirmed elevated blood lead level of 5 µg/dL and above can expect increased healthcare costs and a loss in lifetime earnings.
- **Egg Board:** According to a CDC report, there were 8 cases of Salmonella in Indiana that were attributed to back yard poultry flocks.
- **IURC:** NiSource, the parent company of Columbia Gas of Massachusetts, said restoration and payment of claims related to the Merrimack Valley gas disaster could cost greater than \$1 billion for that one incident. Even one smaller incident with fatalities can easily exceed tens of millions of dollars.
- **IDEM:** Persons impacted by military deployment unable to provide the necessary documentation or retake the examination within a specified amount of time.
- **Insurance:** The proposed rule is based upon Model #787 and must be adopted in each state in order for that state to maintain its accreditation with the NAIC. States failing to maintain NAIC accreditation will subject domestic insurers to financial examinations from each of the other NAIC-accredited jurisdictions.



STEP 6 – Cost Analysis

STEP 6: Identify costs associated with each change

- Costs are the burden of complying with the rule on the regulated parties
 - Anyone who must change their behavior to interact with the regulated party
- Unless the it is considered a regulated party, this section should not include costs identified for state and local government units



STEP 6 – Cost Analysis

STEP 6: Identify costs associated with each change

- To the extent possible, quantify the costs with monetary estimates
- If it is not possible to quantify, provide a detailed description of non-quantifiable costs and an assessment of whether the costs are significant
- Include the fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 (if applicable)
- Determine if the combined implementation and compliance costs are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6)



STEP 6 – Existing Compliance – Example

Existing Compliance Reduces Cost Imposed by Regulation

Using Enforcement Records

- **State Chemist:** There are currently approximately 300 regulated and potentially impacted government entities in Indiana. These government entities are broken down roughly as 75% (225) local, 23% (69) state, and 2% (6) federal. Based on routine government facility inspections by OISC, it is estimated that at least 80% of these government entities already have application recordkeeping systems in place.
- **IDHS:** IDHS employs EMS District Managers who are responsible for 2-3 IDHS districts and would handle EMS organizations in roughly 20 Indiana counties. The District Manager interacts frequently with the EMS providers in their districts and also will do organization visits or official audits. All new ambulances are inspected, so every time a new ambulance is put into service the District Manager will be on site. This is how they interact and discover the equipment and resources that are being used.



STEP 6 – Existing Compliance – Example

Using Surveys

- **DOC:** A fiscal impact toolkit was developed to measure a detention facility's current level of compliance with the new standards, and if noncompliant, the extent of any fiscal impact to achieve compliance. All nineteen (19) juvenile detention facilities were provided the fiscal impact toolkit; of those, twelve (12) of the detention facilities completed the toolkit. A potential fiscal impact was reported for a total of nine (9) standards.

Using Surveys plus internet research

- **BMV:** BMV has conducted a survey of all licensed driver education schools to determine how many vehicles this amendment would impact. Of the 80 schools that responded, five vehicles total were reported to not already have this safety feature in place. Assuming a replacement cost of \$13.99 for the mirror (determined via internet research), the anticipated cost to all licensed entities is approximately \$70.



STEP 7 – Sources of Information

STEP 7: Identify the sources of outside information utilized to calculate costs and benefits

- Official government reports, academic articles, commercial literature, survey data
 - If any of the above were relied upon, provide citations to where they can be located, or indicate how a person can obtain copies from the agency to review
- CPI database, IRS data, industry specific databases
 - If any of the above were relied upon to determine the costs and benefits, please provide a description of the information obtained



STEP 8 – Aggregated Tally

STEP 8: Tally costs and benefits for each new requirement and aggregate for the entire rule

- For each new requirement, sum the benefits and costs
 - Multiply average costs / benefits by number of impacted parties
 - Exclude parties already in compliance from cost-benefit analysis
- Evaluate the net benefit for each requirement separately
 - Benefits from one requirement cannot offset costs of another
- Aggregate the calculation for each requirement to determine the total net benefit of rule
- Conclude with a determination of whether the benefits are likely to exceed the costs



Helpful Resources

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[OMB Website](#)

- Overview of OMB/SBA processes
- Links to key documents
- Links to rulemaking resources

[Freakonomics - All You Need is Nudge](#)



QUESTIONS?

