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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**  
LSA Document #06-285(APCB)

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAMS IN CLARK AND FLOYD COUNTIES**

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to the vehicle inspection and maintenance (I/M) program in Clark and Floyd counties. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 13-1.1](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-5-9](#).

**STATUTORY REQUIREMENTS**

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#)... would provide no substantial benefit to:

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

**BACKGROUND**

**Basic Purpose and Background**

The Clark and Floyd I/M program was initiated in 1984 in accordance with the Clean Air Act (CAA) to meet the one-hour ozone national ambient air quality standard. The program was authorized by the Indiana General Assembly under Indiana Code 13-17-5. On July 1, 2003, an amendment to this statute became effective that voids Indiana's I/M rule at [326 IAC 13-1.1](#) for Clark and Floyd counties after December 31, 2006, and directs the Air Pollution Control Board to amend [326 IAC 13-1.1](#) to reflect this change unless the State Budget Agency approves a periodic vehicle inspection program for these counties. Because the State Budget Agency has not approved such a program, the I/M program in Clark and Floyd counties will terminate on December 31, 2006.

Though U.S. EPA revoked the one-hour ozone standard, Clark and Floyd counties were designated nonattainment for the eight-hour ozone standard effective June 15, 2004, requiring control measures to remain in place. Monitoring data from 2003-2005 shows that Clark and Floyd counties are now attaining the eight-hour ozone standard, and air quality modeling shows that the area will maintain compliance with the standard in the future. IDEM has submitted a petition to U.S. EPA requesting that Clark and Floyd counties be redesignated to attainment for the eight-hour ozone standard. IDEM believes the area can remain in attainment without the I/M program because of other reductions that have been achieved. For example, cars on the road today are much cleaner and emit less ozone precursor pollutants than cars in the past. In addition, oxides of nitrogen (NO<sub>x</sub>) reductions from power plants in the last few years under the Indiana NO<sub>x</sub> Rule have contributed substantially to cleaner air in Clark and Floyd counties.

IDEM intends to submit revisions from this rulemaking to U.S. EPA for approval into the state implementation plan (SIP). However, before U.S. EPA may approve SIP revisions, Section 110(l) of the Clean Air Act requires a demonstration that the revision will not interfere with any applicable requirement concerning nonattainment, reasonable further progress toward attainment of National Ambient Air Quality Standards (NAAQS), or any other applicable requirement of the CAA. Indiana plans to amend its rules to eliminate the I/M program in Clark and Floyd counties, and submit the amendment to the U.S. EPA as a revision to the SIP. As part of the amendment,

Indiana must make a demonstration under one of two tests:

- (1) that the air pollution reductions associated with the I/M program are not necessary to maintain compliance with the eight-hour ozone standard (through air quality modeling); or
- (2) that there are "equivalent air pollution reductions" at the time of termination that could replace the loss of reductions from the I/M program.

IDEM anticipates a demonstration under the first test because there is evidence through modeling that the I/M program in Clark and Floyd counties is no longer necessary.

IDEM also proposes the deletion [326 IAC 13-1.1-2\(g\)](#) because there is no longer an I/M program in Jefferson County, Kentucky.

In accordance with [IC 13-14-9-7](#), a Section 7 Notice is appropriate for this rulemaking because the rulemaking policy alternatives are so limited that the first public notice and comment period would provide no substantial benefit to the environment or persons affected by the rule.

#### **[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed Under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it provides compliance with Indiana statute.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at [www.in.gov/idem/ctap](http://www.in.gov/idem/ctap).

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 N. Senate Avenue  
W-041  
Indianapolis, IN 46204-2251  
(317) 232-8578  
[selyusuf@idem.in.gov](mailto:selyusuf@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen  
IDEM Small Business Assistance Program Ombudsman  
External Affairs - MC50-01  
100 N. Senate Avenue  
IGCN 1301  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[elevenha@idem.in.gov](mailto:elevenha@idem.in.gov)

#### **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking on elimination of the Clark and Floyd I/M program. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) This rule is an amendment to an existing Indiana rule, the primary and intended purpose of which is to comply with [IC 13-17-5](#).
- (2) The public will benefit from prompt adoption of this rule, because it provides consistency with the Indiana statute that eliminates the program.
- (3) There is no longer an inspection and maintenance program in Jefferson County, Kentucky; therefore, [326 IAC 13-1.1-2\(g\)](#) is obsolete.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

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Thomas W. Easterly  
Commissioner  
Indiana Department of Environmental Management

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#06-285(APCB) Clark and Floyd Counties I/M Program  
Christine Pedersen Mail Code 61-50  
c/o Administrative Assistant  
Rules Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the Tenth Floor East reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

#### COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 22, 2006.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

#### DRAFT RULE

SECTION 1. [326 IAC 13-1.1-2](#) IS AMENDED TO READ AS FOLLOWS:

##### [326 IAC 13-1.1-2](#) Applicability

**Authority:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 2. (a) The following motor vehicles in ~~Clark, Floyd~~, Lake and Porter counties are subject to the requirements of this rule unless such vehicles are exempt or have received a waiver from the requirements as specified in section 10 of this rule:

- (1) Vehicle model years 1976 and newer.
- (2) Light and medium duty motor vehicles.
- (3) Vehicles registered or reregistered for highway use.
- (4) Fleets primarily operated within ~~Clark, Floyd~~, Lake or Porter County.
- (5) Leased vehicles that have the registration or titling in the name of the equity owner other than the lessee or user.
- (6) Vehicles that are operated on federal installations located within ~~Clark, Floyd~~, Lake or Porter County, regardless of whether the vehicles are registered with the federal installation or in ~~Clark, Floyd~~, Lake or Porter County. This requirement applies to all employee-owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on federal installations) as well as agency-owned or operated vehicles operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as ~~such~~ **the** visits do not exceed sixty (60) calendar days per year.

(b) Motor vehicles subject to this rule in ~~Clark, Floyd~~, Lake and Porter counties shall be tested under the parameters specified for I/M 240 or I/M 93 found at section 7 of this rule.

(c) Light and medium duty motor vehicles in ~~Clark, Floyd~~, Lake and Porter counties of model year 1996 or newer are subject to the provisions of the second generation on-board diagnostics systems (OBDII) check found at section 17 of this rule [*Section 17 of this rule was repealed filed Dec 23, 1998, 4:44 p.m.: 22 IR 1471.*] starting January 1, 2001.

(d) The following motor vehicles are exempt from the testing requirements of this rule:

- (1) Heavy duty motor vehicles.
- (2) Motorcycles.
- (3) Motor vehicles with engine displacement less than two hundred (200) cubic centimeters.
- (4) Farm tractors, farm trucks, and farm equipment used in connection with agricultural pursuits usual and

normal to the user's primary operation.

(5) Motor vehicles registered as recreational vehicles (RV).

(6) Motor vehicles using diesel fuel.

(7) All motor vehicles with a chassis year and engine year prior to 1976 as identified by the vehicle identification number and engine identification number.

(8) Electric vehicles or vehicles that have been certified by the department as being electric.

(9) Off highway construction equipment.

(e) Motor vehicles registered in ~~Clark, Floyd, Lake or Porter County~~ but operated in another I/M area shall be:

(1) tested ~~either~~ where they are primarily operated; or ~~shall be~~

(2) given an extension by the department so that testing can occur when the vehicle is brought into the county of registration.

The bureau may accept a certificate of compliance from another U.S. EPA approved I/M program.

(f) Model year vehicles 1996 and newer shall be tested beginning four (4) calendar years after the model year of the vehicle in order to demonstrate initial compliance. After the initial demonstration of compliance, model year vehicles 1996 and newer shall be tested in the calendar year that corresponds to the model year of the vehicle as specified at section 5 of this rule.

~~(g) Owners or operators who commute to Jefferson County, Kentucky from Indiana and are subject to the Jefferson County I/M regulations may have their vehicles tested in Clark, Floyd, Lake, or Porter County.~~

~~(h)~~ (g) Owners or operators of vehicles registered in a state other than Indiana who are subject to their state's I/M regulations may have their vehicles tested in ~~Clark, Floyd, Lake or Porter County~~ under either of the following conditions:

(1) The owner or operator of the vehicle has resided in ~~Clark, Floyd, Lake or Porter County~~ for a minimum of three (3) months of the previous twelve (12) month period as of the date the vehicle is presented for emissions testing.

(2) The owner or operator of the vehicle has operated the vehicle in ~~Clark, Floyd, Lake or Porter County~~ for a minimum of three (3) months of the previous twelve (12) month period as of the date the vehicle is presented for emissions testing.

*(Air Pollution Control Board; [326 IAC 13-1.1-2](#); filed Jun 21, 1995, 4:00 p.m.: 18 IR 2731; filed Dec 23, 1998, 4:44 p.m.: 22 IR 1464; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 2. [326 IAC 13-1.1-3](#) IS AMENDED TO READ AS FOLLOWS:

### **[326 IAC 13-1.1-3](#) General requirements**

**Authority:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 3. (a) All owners and operators of motor vehicles subject to the provisions of this rule shall maintain their motor vehicles and any air pollution control equipment on the motor vehicles in good working order such that they meet the emission standards specified in this rule. Any such motor vehicle that fails to pass the emissions test and tampering inspection required under sections 8 through 9 of this rule or obtain a waiver in accordance with section 10 of this rule in order to obtain a certificate of compliance provided under section 5 of this rule shall not be registered by the commissioner of the bureau.

(b) Vehicles of model year 1981 and newer registered in Lake or Porter County shall be subject to the enhanced I/M test procedures and requirements. ~~Vehicles of model year 1981 and newer registered in Clark or Floyd County shall be subject to the test parameters and the test procedures and standards of the enhanced I/M program, except to the extent specified otherwise in this rule. Unless stated otherwise, the requirements of this rule shall apply to both enhanced I/M and basic I/M.~~

*(Air Pollution Control Board; [326 IAC 13-1.1-3](#); filed Jun 21, 1995, 4:00 p.m.: 18 IR 2731; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

SECTION 3. [326 IAC 13-1.1-10](#) IS AMENDED TO READ AS FOLLOWS:

**[326 IAC 13-1.1-10](#) Waivers and compliance through diagnostic inspection**

**Authority:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

**Affected:** [IC 13-15](#); [IC 13-17](#)

Sec. 10. (a) A waiver of the requirement that a motor vehicle obtain a certificate of compliance may be issued only under the following conditions:

- (1) A waiver shall be issued only after a vehicle has failed a retest performed after all emission-related repairs as described in subdivisions (3) through (5) have been completed. Vehicles that are subject to an emissions recall but have not had recall repairs shall not be eligible for a waiver until ~~such~~ **the** repairs have been made.
- (2) Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in subdivision (5). The department may issue exemptions for tampering-related repairs if the motorist can verify that the part in question or one similar to it is no longer available for sale.
- (3) Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made at the time of retest to determine if repairs were actually made. Receipts shall be submitted for review at the test site to further verify that qualifying repairs were performed.
- (4) Repairs shall be performed at a certified I/M emission repair facility. A certified I/M emission repair facility shall meet the following criteria:
  - (A) Employ at least one (1) certified I/M emission repair technician as defined in this rule.
  - (B) For all I/M emission testing, possess the following:
    - (i) Reference material.
    - (ii) Digital multimeter.
    - (iii) Vacuum and fuel pressure testing equipment.
    - (iv) Carbon/fuel injection cleaning equipment.
    - (v) Ignition scope with distributorless ignition (DIS) capability.
    - (vi) 2, 3, 4, or 5 gas analyzer.
    - (vii) Scan tool.
  - (C) For all I/M emission testing beginning January 1, 2000, possess the following:
    - (i) All equipment listed in clause (B).
    - (ii) Digital storage oscilloscope (DSO).
    - (iii) OBDII scan tool.
  - (D) For I/M 240 emission testing, possess the following:
    - (i) All equipment listed in clauses (A) and (B).
    - (ii) Purge-flow tester.

The department may suspend, revoke, or deny renewal of a certification of a certified I/M emission repair facility if the facility fails to adhere to program requirements.

- (5) In order to qualify for a waiver, repairs shall be performed by a certified I/M emission repair technician who:
  - (A) is certified and maintains current certification as an Automotive Service Excellence (ASE) A6 (Electrical/Electronic Systems) technician and an A8 (Engine Performance) technician;
  - (B) on and after January 1, 2000, is certified and maintains current certification as an ASE L1 (Advanced Engine Performance) technician;
  - (C) has successfully completed the department approved emission and driveability training program;
  - (D) is professionally engaged in emission/driveability repair; and
  - (E) is employed at a certified I/M emission repair facility.

The department may suspend, revoke, or deny renewal of a certification of a certified I/M emission repair technician if the technician fails to adhere to program requirements.

- (6) Repairs appropriate to the reason for the failure may be performed by nontechnicians (such as owners) to apply toward the waiver limit for model year vehicles 1976 through 1980.

- (7) In order to qualify for a minimum expenditure waiver, motorists in Lake or Porter County with 1981 model year or newer vehicles shall expend the following:

- (A) At least four hundred fifty dollars (\$450) in repairs on or after January 1, 1999.
- (B) Motorists in ~~Clark, Floyd,~~ Lake or Porter County with 1976 through 1980 model year vehicles shall expend at least seventy-five dollars (\$75) in repairs in order to qualify for a minimum expenditure waiver.
- ~~(C) Motorists in Clark or Floyd County shall expend a minimum of two hundred dollars (\$200) for 1981 and newer vehicles in order to qualify for a minimum expenditure waiver.~~

The costs of owner performed repairs shall not include labor costs. Any available warranty coverage shall be

used to obtain needed repairs before expenditures can be counted towards the cost limits. The operator of a vehicle within the statutory age and mileage coverage under Section 207(b) of the Clean Air Act\* shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(8) Vehicles subject to an enhanced I/M emission test at the cutpoints established in 40 CFR 51.351\* may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest, a complete, documented physical and functional diagnosis and inspection performed by the contractor shows no additional emission-related repairs are needed. Any such exemption policy and procedures shall be subject to EPA approval.

(9) After an initial I/M emission test failure, a vehicle may be retested up to four (4) additional times. A vehicle shall not be retested a fifth time until the type of repairs or modifications necessary has been fully evaluated by department and contractor personnel.

(10) Waivers shall be issued only by the test site manager or other employee specifically designated for this purpose.

(11) A waiver shall be valid for ~~no~~ **not** more than one (1) test cycle.

(b) No vehicle in its lifetime shall receive more than one (1) waiver.

\*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

*(Air Pollution Control Board; [326 IAC 13-1.1-10](#); filed Jun 21, 1995, 4:00 p.m.: 18 IR 2734; filed Dec 23, 1998, 4:44 p.m.: 22 IR 1468; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1570; filed Aug 26, 2004, 11:30 a.m.: 28 IR 78)*

#### [Notice of Public Hearing](#)

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