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**TITLE 326 AIR POLLUTION CONTROL BOARD****FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE  
LSA Document #07-373****DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REFERENCES TO THE CODE OF FEDERAL REGULATIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 1-1-3](#) concerning an update to references to the Code of Federal Regulations (CFR) to mean the 2007 edition. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Air Pollution Control Board (board) for consideration of adoption of these rules.

**CITATIONS AFFECTED:** [326 IAC 1-1-3](#).

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

**STATUTORY REQUIREMENTS**

[IC 13-14-9-8](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods and public hearings routinely provided. In cases where the commissioner determines that there is no anticipated benefit from a second public comment period and first public hearing, IDEM may forgo these opportunities for public comment and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

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

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

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

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

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

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

**BACKGROUND**

[326 IAC 1-1-3](#), References to the Code of Federal Regulations, indicates the yearly edition of the CFR that is applicable to rules that have been incorporated by reference throughout Title 326 of the Indiana Administrative Code (IAC), unless a different edition is specified in a given rule. By annually updating the reference to the CFR, IDEM is able to incorporate by reference the latest version of the parts of the CFR already incorporated in to the air rules, with the exception of those most recent published in the Federal Register (FR)

The 2007 edition of the CFR is a codification of the general and permanent rules published in the FR as of June 30, 2007. IDEM incorporates citations by reference from Titles 29 and 40 of the CFR.

Title 29 of the CFR, entitled "Intergovernmental Review of Environmental Protection Agency Programs and Activities", contains federal rules for the asbestos and lead programs. Title 29 of the CFR is referenced in [326 IAC 14](#) (Emission Standards for Hazardous Air Pollutants), [326 IAC 20](#) (Asbestos Management), and [326 IAC 23](#) (Lead-Based Paint Program). Many of these regulations are either directly incorporated by reference into Title 326 of the [IAC](#) as state-enforceable rule provisions or they are incorporated into Title 326 of the IAC as federal authority for the implementation and enforcement of state rule provisions.

Title 40 of the CFR, entitled "Protection of Environment", includes all federal environmental regulations promulgated by the U.S. Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

The latest version of the CFR adopted by the board is dated July 1, 2006. Since that date, a number of new federal rules have been promulgated that are not reflected in the current version of Title 326 of the IAC. By updating the reference date to July 1, 2007, Title 326 of the IAC will be consistent with those rules that the federal government updated between June 30, 2006, and July 1, 2007.

Examples of rules and changes that have occurred since the last update to [326 IAC 1-1-3](#), References to the Code of Federal Regulations, include:

- **71 FR 38482, 7/6/2006—Final Rule—Standards of Performance for Stationary Combustion Turbines:** On July 6, 2006, the U.S. EPA promulgated standards of performance for new stationary combustion turbines in 40 CFR Part 60, Subpart KKKK. The new source performance standards (NSPS) recognize changes in nitrogen oxides (NO<sub>x</sub>) emission control technologies and turbine design since the original promulgation of standards in 1979. Turbine owners and operators may now meet either concentration-based or output-based standards. Citation Affected: 12-1-1.
- **71 FR 39579, 7/13/2006—Final Rule—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities:** The NESHAP for integrated iron and steel manufacturing facilities (40 CFR Part 63, Subpart FFFFF) was challenged by industry petitioners after promulgation. The U.S. EPA and petitioners entered into a settlement agreement from which these final amendments to the NESHAP resolve the petitioner's concerns. This action includes amendments that add a new compliance option; revise emission limitations; reduce the frequency of repeat performance tests for certain emission units; add corrective action requirements; and clarify monitoring, recordkeeping, and reporting requirements. Citation Affected: [326 IAC 20-93-1](#).
- **71 FR 40316, 7/14/2006—Final Rule—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing:** This action amends the NESHAP for miscellaneous organic chemical (MON) manufacturing (40 CFR Part 63, Subpart FFFF) and corrects inconsistencies that were discovered during the U.S. EPA's review process. Specifically, the rule clarifies the applicability of 40 CFR 63, Subpart FFFF, provides additional compliance options, modifies initial and continuous compliance requirements, and simplifies recordkeeping and reporting requirements. These provisions will reduce the burden associated with demonstrating compliance without affecting emissions control or the ability of enforcement agencies to ensure compliance. Citation Affected: [326 IAC 20-84-1](#).
- **71 FR 55119, 9/21/2006—Final Rule—Methods of Measurement for Visible Emissions:** This action finalizes Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method that was previously being used. The states requested this action, and the intended effect is to provide states with an expanded array of data reduction procedures for determining compliance with SIP opacity regulations. The action also amends various testing provision in the New Source Performance Standards (NSPS) to correct errors and amend a testing provision. Citation Affected: [326 IAC 12-1-1](#).
- **71 FR 58499, 10/4/2006—Final Rule—NESHAP: Miscellaneous Coating Manufacturing:** U.S. EPA amended the NESHAP for miscellaneous coating manufacturing (40 CFR Part 63, Subpart HHHHH) to clarify the definition of coating manufacturing. The amendments also clarify the applicability of the rule and minimize the compliance burden. Citation Affected: [326 IAC 20-88-1](#).
- **71 FR 69011, 11/29/2006—Final Rule—NESHAP: Site Remediation:** U.S. EPA amends the NESHAP for site remediation activities (40 CFR Part 63, Subpart GGGGG). The rule revises the specific provisions in the rule to resolve issues and questions subsequent to promulgation; correct technical omissions; and correct typographical, cross-reference, and grammatical errors. Citation Affected: [326 IAC 20-87-1](#).
- **72 FR 20227, 4/24/2007—Direct Final Rule—NESHAP: Surface Coating of Automobiles and Light-Duty Trucks; NESHAP for Surface Coating of Plastic Parts and Products:** This rulemaking clarifies the interaction between the Automobiles and Light-Duty Trucks NESHAP (40 CFR Part 63, Subpart IIII) and the NESHAP for Surface Coating of Plastic Parts and Products (40 CFR Part 63, Subpart PPPP). This action also corrects certain errors in the regulatory text. The U.S. EPA is also taking direct final action on amendments to the Plastic Parts NESHAP to clarify that screen printing is not subject to that rule. Citations Affected: [326 IAC 20-81-1](#) and [326 IAC 20-85-1](#).

#### **[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 is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

#### **Potential Fiscal Impact**

Updating the reference to the Code of Federal Regulations to mean the July 1, 2007, edition allows federal and state rules to be consistent with each other and does not establish any requirements to which the regulated

sources are not already subject. There are no increased costs to the regulated entities due to the state rulemaking.

### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Fardy, Regulatory Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6027 (in Indiana).

### **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/compliance/ctap/index.html](http://www.in.gov/idem/compliance/ctap/index.html)

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

Christine Lowry  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 N. Senate Avenue  
W-041  
Indianapolis, IN 46204-2251  
(317) 234-1191  
[clowry@idem.in.gov](mailto:clowry@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 - IGCN 1307  
100 N. Senate Ave.  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[mtretter@idem.in.gov](mailto:mtretter@idem.in.gov)

### **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation by reference of the 2007 version of the CFR as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana, in many cases, is required by the Clean Air Act (CAA) to adopt these requirements as state rules.
- (3) The public will benefit from prompt adoption of this rule, because it alleviates unnecessary duplication of rulemaking efforts by the state by directly updating the references to the CFR that have been amended by the U.S. EPA.
- (4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first public comment period and first public hearing.
- (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:

#07-373(APCB) Annual Update to References to the Code of Federal Regulations (CFR)  
Amy Fardy, 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 August 24, 2007.

Additional information regarding this action may be obtained from Amy Fardy, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

#### DRAFT RULE

SECTION 1. [326 IAC 1-1-3](#) IS AMENDED TO READ AS FOLLOWS:

#### [326 IAC 1-1-3](#) References to the Code of Federal Regulations

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

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

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the ~~July 1, 2006~~, **July 1, 2007**, edition\*.

\*This body of documents is 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 1-1-3](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; filed Oct 30, 2000, 2:13 p.m.: 24 IR 667; filed May 21, 2002, 10:20 a.m.: 25 IR 3054; filed Aug 26, 2004, 11:30 a.m.: 28 IR 17; filed Oct 14, 2005, 10:00 a.m.: 29 IR 795; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2517; filed Apr 26, 2007, 9:38 a.m.: [20070523-IR-326060412FRA](#))*

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

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