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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE  
LSA Document #08-901****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 2008 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 federal regulations 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 into the air rules, with the exception of those most recently published in the Federal Register (FR).

The 2008 edition of the CFR is a codification of the general and permanent rules published in the FR as of June 30, 2008. 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](#) (Hazardous Air Pollutants), 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, 2007. Since that date, a number of new federal regulations 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, 2008, Title 326 of the IAC will be consistent with those regulations that the federal government updated between July 1, 2007, and June 30, 2008.

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

- **72 FR 72607, 12/21/2007 – Final Rule – Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping:** This rule finalized proposed revisions to the regulations governing the major new source review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (40 CFR Part 51, Subpart I and 40 CFR Part 52, Subpart A). Specifically, the rule clarified the "reasonable possibility" recordkeeping and reporting standard of the 2002 NSR reform rules and identified the criteria under which an owner or operator of a major stationary source undergoing a physical change or change in the method of operation that does not trigger major NSR permitting requirements must keep records. The standard also specified the recordkeeping and reporting requirements on such sources. Citations Affected: [326 IAC 1-2-28.5\(4\)](#); [326 IAC 2-2-1\(w\)\(3\)](#); [326 IAC 2-3-1\(u\)\(3\)](#); [326 IAC 2-3-1\(dd\)\(3\)\(B\)\(v\)\(CC\)](#); and [326 IAC 2-3-3\(b\)\(14\)\(A\)](#).
- **72 FR 73264, 12/27/2007 – Final Rule – Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone-Depleting Substances:** In this rule, EPA is taking final action to extend the global laboratory and analytical use exemption for the production and import of class I ozone-depleting substances through 12/31/2011, consistent with the recent actions by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (40 CFR Part 82, Subpart A). This exemption allows persons in the United States to produce and import controlled substances for laboratory and analytical uses that have not been already identified by EPA as nonessential. The final rule also extended the applicability of the global laboratory and analytical use exemption to the production and import of methyl bromide for specific laboratory uses. This action also eliminated the testing of organic matter in coal from the global laboratory and analytical use exemption. Citations Affected: [326 IAC 2-2-1\(ll\)\(6\)\(B\)\(i\)](#) and [326 IAC 2-3-1\(gg\)\(6\)\(B\)\(i\)](#).
- **73 FR 3568, 01/18/2008 – Final Rule – Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines:** In this rule, EPA promulgated new source standards of performance for stationary spark ignition internal combustion engines (40 CFR Part 60, Subparts A and JJJJ; 40 CFR Part 85; 40 CFR Part 90; 40 CFR Part 1048; 40 CFR Part 1065; and 40 CFR Part 1068). EPA also promulgated national emission standards for hazardous air pollutants for new and reconstructed stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions (40 CFR Part 63, Subparts A and ZZZZ). Citations Affected: [326 IAC 10-3-4\(b\)](#); [326 IAC 11-6-2\(b\)](#); [326 IAC 12-1-2\(a\)\(1\)](#); [326 IAC 12-1-2\(a\)\(2\)](#); [326 IAC 20-1-1](#); and [326 IAC 20-82-1\(b\)](#).
- **73 FR 7210, 02/07/2008 – Final Rule – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries:** EPA issued amendments to the national emission standards for hazardous air pollutants for iron and steel foundries (40 CFR Part 63, Subparts A and EEEEE). These final amendments add alternative compliance options for cupolas at existing foundries and clarify several provisions to increase operational flexibility and improve understanding of the final rule requirements. Citations Affected: [326 IAC 20-1-1](#) and [326 IAC 20-92-1\(b\)](#).
- **73 FR 17252, 04/01/2008 – Direct Final Rule – National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities:** In this action, EPA took direct final action on amendments to the national perchloroethylene air emission standards for dry cleaning facilities promulgated on 07/27/2006, under the authority of Section 112 of the Clean Air Act (40 CFR Part 63, Subpart M). This action amended rule language to correct applicability cross references that were not correctly amended between the most recent proposed and final rule revisions, and to clarify that condenser performance monitoring may be done by either of two prescribed methods (pressure or temperature). Without these amendments, new area sources could erroneously be required to perform monitoring that was proposed for only major sources, and installed condenser performance gauge readings could be required of sources when a prescribed temperature method is just as valid for compliance purposes. Citation Affected: [326 IAC 20-7-1\(b\)](#).
- **73 FR 21825, 04/23/2008 – Direct Final Rule – National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline):** EPA took direct final action on the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline), which EPA promulgated on 02/03/2004, and amended on 07/28/2006 (40 CFR Part 63, Subpart EEEE). In this action,

EPA clarified combustion control device compliance requirements, certain storage tank control compliance dates, and vapor balance system monitoring requirements. In addition, EPA corrected typographical errors found in the 07/28/2006, final rule amendments. Citation Affected: [326 IAC 20-83-1\(b\)](#).

• **73 FR 28321, 05/16/2008 – Final Rule – Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)**: In this rule, EPA finalized regulations to implement the NSR program for fine particulate matter (40 CFR Part 51, Subpart I and 40 CFR Part 52, Subpart A). The Clean Air Fine Particle Implementation Rule, which was proposed in the Federal Register on November 1, 2005, included requirements and guidance for State and local air pollution agencies to follow in developing State Implementation Plans (SIPs) and also the NSR provisions. The final implementation rule that was promulgated on April 25, 2007, included all the SIPs related provisions. In this rulemaking, EPA finalized the NSR provisions of the November 1, 2005, proposed rule including the major source threshold, significant emissions rate, and offset ratios for PM<sub>2.5</sub>, interpollutant trading for offsets and applicability of NSR to PM<sub>2.5</sub> precursors. Citations Affected: [326 IAC 1-2-28.5\(4\)](#); [326 IAC 2-2-1\(w\)\(3\)](#); [326 IAC 2-3-1\(u\)\(3\)](#); [326 IAC 2-3-1\(dd\)\(3\)\(B\)\(v\)\(CC\)](#); and [326 IAC 2-3-3\(b\)\(14\)\(A\)](#).

#### **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 CFR to mean the July 1, 2008, 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 this 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 Manda Clevenger, Rules Development Section, Office of Air Quality at (317) 232-8229 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:

<http://www.in.gov/idem/4108.htm>

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

Alison Surface, Senior Environmental Manager  
IDEM Compliance and Technical Assistance Program - OPPTA  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Megan Tretter  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 - IGCN 1307  
100 North Senate Avenue  
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 2008 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:

#08-901(APCB) Annual Update to References to the Code of Federal Regulations (CFR)  
Manda Clevenger, 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 January 16, 2009.

Additional information regarding this action may be obtained from Manda Clevenger, Rules Development Section, Office of Air Quality, (317) 232-8229 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, ~~2007~~, **2008**, 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](#); filed Apr 1, 2008, 9:59 a.m.: [20080430-IR-326070373FRA](#))

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

