
TITLE 326 AIR POLLUTION CONTROL BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #10-112****DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR)****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 CFR to mean the 2009 edition. This rulemaking also includes amendments to [326 IAC 1-2-48](#), [326 IAC 19-2-1](#), and [326 IAC 20-28](#) to update citations to federal standards that are incorporated by reference. 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](#); [326 IAC 1-2-48](#); [326 IAC 19-2-1](#); [326 IAC 20-28](#).

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

"References to the Code of Federal Regulations", at [326 IAC 1-1-3](#), 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), the rules of the board, 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 2009 edition of the CFR is a codification of the general and permanent regulations published in the FR as of June 30, 2009. IDEM incorporates citations by reference from Titles 29 and 40 of the CFR in Title 326.

Title 29 of the CFR contains federal regulations 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 includes all federal environmental regulations promulgated by the United States Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

The latest version of the CFR contained in [326 IAC 1-1-3](#) is July 1, 2008. 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, 2009, Title 326 of the IAC will be consistent with those regulations that the federal government promulgated between July 1, 2008, and June 30, 2009.

""Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" defined", at [326 IAC 1-2-48](#), was recently amended through rulemaking LSA Document #09-477, which became effective on February 5, 2010. The amendment incorporated by reference the federally revised definition at 74 FR 3437 (January 21, 2009). The revised definition adds the compounds dimethyl carbonate and propylene carbonate to the list of compounds that are excluded from the definition of VOCs on the basis that these compounds make a negligible contribution to tropospheric ozone formation and will not result in adverse human health or environmental effects under reasonable conditions. These compounds were excluded from the regulatory definition of VOCs to focus VOC control efforts on compounds that do significantly increase ozone concentrations and as an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that remain regulated as VOCs.

By amending [326 IAC 1-1-3](#) in this rulemaking to contain a reference date of July 1, 2009, Title 326 of the IAC will be consistent with those regulations that the federal government promulgated between July 1, 2008, and June 30, 2009.

The current rule at [326 IAC 19-2-1](#), Transportation Conformity to Federal and State Implementation Plans, incorporates by reference 40 CFR 93, Subpart A, as amended by 69 FR 40072 on July 1, 2004. This CFR has since been revised and the reference to 69 FR 40072 is now outdated. Therefore, IDEM has included draft revisions for [326 IAC 19-2-1](#) that eliminate the outdated reference to the FR to ensure that the rule is consistent with current federal regulations.

The current rule at [326 IAC 20-28](#), Hazardous Waste Combustors, incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Hazardous Waste Combustors found at 40 CFR 63, Subpart EEE with several sections excepted. This NESHAP from Hazardous Waste Combustors was revised in the October 28, 2008, Federal Register at 73 FR 64068. Therefore, IDEM has included draft revisions for [326 IAC 20-28](#) that eliminate outdated references to the FR to ensure that the rule is consistent with current federal regulations.

Upon completion of the rulemaking, this rule will be submitted to the U.S. EPA for approval as a revision to the state implementation plan.

[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, 2009, edition in [326 IAC 1-1-3](#) 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. The proposed amendments to [326 IAC 1-2-48](#), [326 IAC 19-2-1](#), and [326 IAC 20-28](#) will have no fiscal impact because the amendments are an incorporation of existing federal law and no impact beyond that already imposed by the federal law is imposed by 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, Rule and State Implementation Plan 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

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

The Small Business Assistance Program Ombudsman is:
Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
bbaughn@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding this rulemaking updating references to the July 1, 2009, edition of the CFR and the revisions to citations of federal standards that are incorporated by reference 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 is required by the Clean Air Act (CAA) to adopt these requirements as state rule.
- (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.

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:

#10-112 (APCB) Annual Update to References to the Code of Federal
Regulations (CFR)
Manda Clevenger Mail Code 61-50
Rule and State Implementation Plan 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 reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by April 2, 2010.

Additional information regarding this action may be obtained from Manda Clevenger, Rule and State Implementation Plan 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, ~~2008~~, **2009**, 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](#); filed Jul 1, 2009, 3:12 p.m.: [20090729-IR-326080901FRA](#))

SECTION 2. [326 IAC 1-2-48](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-2-48](#) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" defined

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

Affected: [IC 13-17-3-14](#)

Sec. 48. (a) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) as follows:

(1) 40 CFR 51.100(s)(1)*. as amended at 74 FR 3437, January 21, 2009*.

(2) 40 CFR 51.100(s)(5)*.

(3) 40 CFR 51.100(s)(2)*, as measured by [326 IAC 8-1-4](#) and approved by the commissioner, subject to conditions under 40 CFR 51.100(s)(3) through 40 CFR 51.100(s)(4)*.

(b) Compliance calculations for coatings expressed as pounds VOC/gallon coating (less water) should treat nonphotochemically reactive compounds or negligibly photochemically reactive compounds as water for purposes of calculating the less water portion of the coating composition.

*These documents are incorporated by reference. Copies referenced in this section 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 ~~Legal Counsel~~, **Air Quality**, Indiana Government Center North, ~~Thirteenth~~ **Tenth** Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 1-2-48](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2373; filed Sep 23, 1988, 11:59 a.m.: 12 IR 255; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2827; filed Sep 5, 1995, 12:00 p.m.: 19 IR 29; filed May 13, 1996, 5:00 p.m.: 19 IR 2855; errata filed Mar 21, 1997, 9:50 a.m.: 20 IR 2116; filed Jun 9, 2000, 10:01 a.m.: 23 IR 2704; filed May 21, 2002, 10:20 a.m.: 25 IR 3055; filed Oct 20, 2005, 1:30 p.m.: 29 IR 796; filed Apr 26, 2007, 9:38 a.m.: [20070523-IR-326060412FRA](#); filed Jan 6, 2010, 4:07 p.m.: [20100203-IR-326090477FRA](#))

SECTION 3. [326 IAC 19-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 19-2-1](#) Applicability; incorporation by reference of federal standards

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

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

Sec. 1. (a) This rule, unless specifically exempted in the applicability section of 40 CFR 93, Subpart A*, applies to transportation plans, programs, and projects in nonattainment or maintenance areas for transportation-related criteria pollutants that are developed, funded, or approved by the United States Department of Transportation (DOT) and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 United States Code (U.S.C.) or the Federal Transit Laws.

(b) This rule applies to regionally significant projects, regardless of funding source, located in nonattainment or maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(c) The air pollution control board incorporates by reference the following:

(1) 40 CFR 51, Subpart T*.

(2) 40 CFR 93, Subpart A*. as amended by 69 FR 40072, July 1, 2004*.

*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 also 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 19-2-1](#); filed Apr 28, 1997, 4:00 p.m.: 20 IR 2298; filed Oct 20, 1998, 4:45 p.m.: 22 IR 751; filed May 21, 2002, 10:20 a.m.: 25 IR 3085; filed Oct 20, 2005, 1:30 p.m.: 29 IR 797)

SECTION 4. [326 IAC 20-28-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 20-28-1](#) Hazardous waste combustors; applicability; incorporation by reference of federal standards

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

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

Sec. 1. (a) This rule applies to all hazardous waste combustors as provided in 40 CFR 63.1200*. ~~64 FR 52828 (September 30, 1999)*, including the following:~~

~~(1) Hazardous waste incinerators.~~

~~(2) Hazardous waste burning cement kilns.~~

~~(3) Hazardous waste burning lightweight aggregate kilns.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart EEE*, ~~64 FR 52828 (September 30, 1999)*, 64 FR 63209 (November 19, 1999)*, 65 FR 42292 (July 10, 2000)*, and 65 FR 67268 (November 9, 2000)*, National Emission Standards for Hazardous Air Pollutants for from Hazardous Waste Combustors. with the exception of the following sections:~~

~~(1) 63.1206(a)(2), concerning sources that do not intend to comply.~~

~~(2) 63.1210(b), concerning notification of intent to comply.~~

~~(3) 63.1210(c), concerning public meeting and notice of intent to comply.~~

~~(4) 63.1211(b), concerning compliance progress reports associated with the notification of intent to comply.~~

~~(5) 63.1212(a), concerning certification of intent to comply.~~

~~(6) 63.1212(b), concerning sources that begin burning hazardous waste after September 30, 1999.~~

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, Washington, D.C. 20402, or are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana.

(Air Pollution Control Board; [326 IAC 20-28-1](#); filed Jun 21, 2001, 2:23 p.m.: 24 IR 3617; errata filed Oct 10, 2001, 3:34 p.m.: 25 IR 813)

[Notice of Public Hearing](#)

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