

---

**TITLE 326 AIR POLLUTION CONTROL DIVISION****Proposed Rule**  
LSA Document #11-747**DIGEST**

Amends [326 IAC 2-7-10.5](#) and [326 IAC 2-8-11.1](#) concerning Indiana's air permitting regulations and minor new source review (NSR) requirements for Title V and Federally Enforceable State Operating Permit (FESOP) sources. Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: December 21, 2011, Indiana Register (DIN: [20111221-IR-326110747FNA](#)).  
Second Notice of Comment Period: February 6, 2013, Indiana Register (DIN: [20130206-IR-326110747SNA](#)).  
Notice of First Hearing: February 6, 2013, Indiana Register (DIN: [20130206-IR-326110747PHA](#)).  
Date of First Hearing: May 8, 2013.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on February 6, 2013, at DIN: [20130206-IR-326110747SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from February 6, 2013, through March 8, 2013, on IDEM's draft rule language. IDEM received comments from the following parties:

Indiana Cast Metals Association (INCMA)  
Bingham Greenebaum Doll on behalf of CASE Coalition (BGD)  
Indiana Energy Association on behalf of the Indiana Utility Group (IEA)  
American Electric Power Service Corporation (AEP)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The commenter is uncertain what has precipitated new action on this rule given the long period of time since the United States Environmental Protection Agency's (U.S. EPA's) 1999 feedback on this matter and is not aware of any new threat or mandate to propose new revisions at this time. This opposition is further supported by Governor Pence's moratorium on new rules recently put into effect by Executive Order 13-03 to promote job creation, economic development, and freedom which should encompass this rule. The draft rule language significantly limits the ability of business owners to more simply and efficiently amend their permits as needed by ratcheting down the standards to more strictly define minor changes. We believe the current standards have proven to be adequate and allowed reasonable changes when needed without an overly bureaucratic review and without harm to the environment. The burdensome and ever changing regulatory environment is a major concern for economic development and job growth among most manufacturers. (INCMA)

*Comment:* It is not clear that this rule needs to be amended. U.S. EPA has not issued a letter of deficiency to IDEM regarding this issue. IDEM should consider the full costs to Indiana's economy imposed by these changes, including the costs related to the competitive disadvantage Indiana businesses will face from longer permit review time periods for certain Title V source modifications. (BGD)

*Response:* The rulemaking was initiated prior to the new rule moratorium and as soon as IDEM had a clear understanding of the changes that U.S. EPA required in order for IDEM to get state implementation plan (SIP) approval of the construction modification provisions for existing Title V and FESOP sources. While the changes made in these rules affect minor new source review construction modifications, the changes are necessary to obtain SIP approval for [326 IAC 2-7-10.5](#) and [326 IAC 2-8-11.1](#) as a whole. SIP approval of these construction modification rules will address concerns about IDEM's authority to create applicable requirements through Title I modifications.

*Comment:* The primary concern relates to the proposed changes to [326 IAC 2-7-10.5\(e\)](#) and [2-8-11.1\(d\)](#) that remove the less than 100 ton per year (TPY) greater than 25 tpy carbon monoxide (CO) permitting requirements from the minor modification portions of the rule. The subsequent dropping of the 100 tpy threshold to 25 tpy to qualify as a significant modification appears to create an inconsistency with [326 IAC 2-5.1-3\(a\)\(1\)](#) where it states that a permit is only required for the construction of an emission unit when the emissions of CO exceed 100 tpy. (IEA) (AEP)

*Response:* The thresholds for pollutants that are contained in [326 IAC 2-5.1-3](#) refer to permitting of an entirely new source. Existing sources that are at the registration level use [326 IAC 2-5.5-6](#) for construction

modification pollutant thresholds and existing sources that have a minor source operating permit (MSOP) use the construction modification pollutant thresholds listed in [326 IAC 2-6.1-6](#). IDEM is aware that, in the future, changes may need to be made to these rule provisions in order for them to be approved into the SIP. U.S. EPA considers the current CO threshold in [326 IAC 2-7-10.5\(e\)\(3\)](#) and [326 IAC 2-8-11\(d\)](#) to be a relaxation of the current approved SIP as it was published in the Federal Register (FR) on July 21, 1997 (62 FR 38919). The current SIP requires public notice for construction modifications with allowable emissions of 25 tpy of any regulated pollutant.

*Comment:* Past experience has shown that CO changes below the PSD significance level have a very minor ambient impact that should allow processing of the changes as minor permit modifications. The commenter is willing to work with IDEM to identify objective criteria that could be used to identify those rare cases where a stationary source would have a significant ambient impact from CO at levels below the PSD significance level. Should IDEM choose to proceed with these changes, IDEM must justify the reasons for these changes. (IEA) (AEP)

*Comment:* States are given the opportunity to provide a demonstration in a SIP revision submittal to justify the change to its rules. IDEM could make a demonstration in lieu of changing the Title V minor and significant source modification thresholds for CO. Since [326 IAC 2-7-10.5](#) does not change any emission limitations and permit approval is still required for modifications involving CO emissions equal to or greater than 25 tpy, the only difference between [326 IAC 2-7-10.5](#) and prior rule [326 IAC 2-1-1](#) (or the proposed rule) is that the public notice of minor source modifications is not required. Thus, it does not appear that this change would interfere with an applicable requirement concerning attainment and reasonable further process toward attainment with the ambient air quality standards, or any other applicable requirement of the Clean Air Act. (BGD)

*Response:* IDEM realizes that the only difference between the rules is the public notice requirement, but the lack of public notice of CO source modifications from 25 to 100 tpy is an approvability issue for this rule with U.S. EPA. IDEM has discussed this issue with U.S. EPA and because the requirement is in the current SIP, it is the benchmark U.S. EPA uses when evaluating backsliding issues.

*Comment:* IDEM should remove [326 IAC 2-7-10.5\(g\)\(7\)](#) from the rule language and incorporate the new threshold for CO into [326 IAC 2-7-10.5\(g\)\(4\)](#) so that CO is listed with the other pollutants that have a 25 tpy threshold instead of being listed separately in [326 IAC 2-7-10.5\(g\)\(7\)](#). (BGD)

*Comment:* IDEM should remove [326 IAC 2-8-11.1\(f\)\(1\)\(H\)](#) from the rule language and incorporate the new threshold for CO into [326 IAC 2-8-11.1\(f\)\(1\)\(E\)](#) so that CO is listed with the other pollutants that have a 25 tpy threshold instead of being listed separately in [326 IAC 2-8-11.1\(f\)\(1\)\(H\)](#). (BGD)

*Response:* IDEM has amended the draft rule language as suggested.

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On May 8, 2013, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to [326 IAC 2-7-10.5](#) and [326 IAC 2-8-11.1](#). Comments were made by the following parties:

Jennifer Thompson, Bingham Greenebaum Doll on behalf of CASE Coalition (BGD)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* U.S. EPA has not issued a letter of deficiency to IDEM regarding its February 3, 1999 amendments to its minor NSR SIP rules, and minimal written communication between U.S. EPA and IDEM exists regarding this issue. This is further complicated by the fact that both U.S. EPA and IDEM staff have changed over this 14-year period, making it almost impossible for industry to follow and understand what is going on with this rulemaking. Many of CASE's members are further confused because the entire state has been in attainment with carbon monoxide since 2000. CASE raised the issue of completing a demonstration in lieu of changing the CO permitting threshold, an alternative that EPA offers up to states in its standard language in its letters of deficiency. IDEM did not address CASE Coalition's comments other than to say, "Lack of public notice is an approvability issue for EPA." The CASE Coalition is seeking clarification on the procedure afforded by the Clean Air Act when seeking to amend a SIP and IDEM's reasons for not pursuing a demonstration, both for CASE's benefit and the Board's. Also, does the demonstration need to include modeling?

*Response:* IDEM is consulting with U.S. EPA regarding the details of a demonstration that Indiana would be able to use for U.S. EPA to approve a change in the CO permitting threshold. The difference between the minor and significant source modification under [326 IAC 2-7-10.5](#) is that public notice and comment is not required for preconstruction approval of a minor source modification.

*Comment:* In the potential Fiscal Impact Section of the notice for this rulemaking, it states that, "Some projects that would previously have been a minor source modification may now be considered a significant source modification." Is IDEM suggesting that sources that relied on this existing minor source CO threshold over the past ten years may be at risk? The commenter is seeking clarification on what happens to those minor source modifications that were completed under the prior threshold once this rulemaking is passed.

*Response:* IDEM is not suggesting that sources that relied on the existing minor source CO threshold are at risk. IDEM was referring to modifications after the new rule is in place and the potential fiscal impact due to differences in fees between minor and significant source modifications.

[326 IAC 2-7-10.5](#); [326 IAC 2-8-11.1](#)

SECTION 1. [326 IAC 2-7-10.5](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-7-10.5](#) Part 70 permits; source modifications

Authority: [IC 13-14-8](#); [IC 13-15-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15-5](#); [IC 13-17](#)

Sec. 10.5. (a) An owner or operator of a Part 70 source proposing to:

- (1) construct new emission units;
- (2) modify existing emission units; or
- (3) otherwise modify the source as described in this section;

shall submit a request for a modification approval in accordance with this section.

(b) In addition to the request for modification approval in subsection (a), the commissioner may issue a source modification for the purpose of incorporating the control requirements and emission limitations that are set forth in a:

- (1) final federal district court order that adjudicates violations of:
  - (A) the prevention of significant deterioration provisions under Sections 160 through 169B of the CAA (42 U.S.C. 7470 through 42 U.S.C. 7492);
  - (B) the nonattainment new source review requirements under Sections 171 through 193 of the CAA (42 U.S.C. 7501 through 42 U.S.C. 7515);
  - (C) Section 112(g) and 112(j) of the CAA (42 U.S.C. 7412(g) and 42 U.S.C. 7412(j));
  - (D) [326 IAC 2-2](#);
  - (E) [326 IAC 2-3](#); or
  - (F) [326 IAC 20](#); or
- (2) federal consent decree that is entered into for the purpose of resolving alleged violations of:
  - (A) the prevention of significant deterioration provisions under Sections 160 through 169B of the CAA (42 U.S.C. 7470 through 42 U.S.C. 7492);
  - (B) the nonattainment new source review requirements under Sections 171 through 193 of the CAA (42 U.S.C. 7501 through 42 U.S.C. 7515);
  - (C) Section 112(g) and 112(j) of the CAA (42 U.S.C. 7412(g) and 42 U.S.C. 7412(j));
  - (D) [326 IAC 2-2](#);
  - (E) [326 IAC 2-3](#); or
  - (F) [326 IAC 20](#).

(c) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof without prior approval if the repair or replacement:

- (1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;
- (2) is not a major modification under [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#); and
- (3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a modification approval or operating permit ~~revision~~ **modification** under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit ~~revision~~ **modification** to the commissioner not later than thirty (30) calendar days after initiating the repair or replacement.

(d) Any person proposing to make a modification described in subsection (e) or (g) shall submit an application to the commissioner concerning the modification as follows:

- (1) If only preconstruction approval is requested, the application shall contain the following information:
  - (A) The company name and address.
  - (B) The following descriptive information:
    - (i) A description of the nature and location of the proposed construction or modification.
    - (ii) The design capacity and typical operating schedule of the proposed construction or modification.

- (iii) A description of the following:
  - (AA) The source and the emissions unit or units comprising the source.
  - (BB) Any proposed emission control equipment, including design specifications.
- (C) A schedule for proposed construction or modification of the source.
- (D) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards set forth in [326 IAC 1-3](#), or the prevention of significant deterioration maximum allowable increase under [326 IAC 2-2](#):
  - (i) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutants.
  - (ii) Estimates of offset credits, as required under [326 IAC 2-3](#), for sources to be constructed in nonattainment areas.
  - (iii) Any other information, including, but not limited to, the air quality impact, determined by the commissioner to be necessary to reasonably demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.
- (E) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes the following:
  - (i) An acknowledgment that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA.
  - (ii) Affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.
- (2) If the source requests that the preconstruction approval and operating permit revision be combined, the application shall contain the information in subdivision (1) and the following information consistent with section 4(c) of this rule:
  - (A) An identification of the applicable requirements to which the source will be subject as a result of the modification, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.
  - (B) A description of the Part 70 permit terms and conditions that will apply to the modification and that are consistent with sections 5 and 6 of this rule.
  - (C) A schedule of compliance, if applicable.
  - (D) A statement describing what the compliance status of the modification will be after construction has been completed consistent with section 4(c)(10) of this rule.
  - (E) A certification consistent with section 4(f) of this rule.
- (e) The following minor modifications shall be processed in accordance with subsection (f):
  - ~~(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.~~
  - ~~(2) The addition of a portable source or relocation of a portable source to an existing source if the addition or relocation would require a change to any permit terms or conditions.~~
  - ~~(3)~~ **(1)** Modifications that would have a potential to emit within any of the following ranges:
    - (A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either PM, PM<sub>10</sub>, or direct PM<sub>2.5</sub>.
    - (B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:
      - (i) Sulfur dioxide (SO<sub>2</sub>).
      - (ii) Nitrogen oxides (NO<sub>x</sub>).
      - (iii) VOC for modifications that are not described in clause (C).
    - (C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of VOC for modifications that require the use of air pollution control equipment to comply with the applicable provisions of [326 IAC 8](#).
    - ~~(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).~~
    - ~~(E)~~ **(D)** Less than five (5) tons **one (1) ton** per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).
    - ~~(F)~~ **(E)** Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:
      - (i) Hydrogen sulfide (H<sub>2</sub>S).
      - (ii) Total reduced sulfur (TRS).

- (iii) Reduced sulfur compounds.
- (iv) Fluorides.

(4) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than HAPs, ten (10) tons per year of any single HAP as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of HAPs by complying with one (1) of the following constraints:

- (A) Limiting total annual solvent usage or maximum VOC content, or both.
- (B) Limiting annual hours of operation of the process or business.
- (C) Using a particulate air pollution control device as follows:
  - (i) Achieving and maintaining ninety-nine percent (99%) efficiency.
  - (ii) Complying with a no-visible emission standard.
  - (iii) The potential to emit before controls does not exceed major source thresholds for federal permitting programs.
  - (iv) Certifying to the commissioner that the control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of PM, or fifteen (15) tons per year of PM<sub>10</sub> or direct PM<sub>2.5</sub>.
- (D) Limiting individual fuel usage and fuel type for a combustion source.
- (E) Limiting raw material throughput or sulfur content of raw materials, or both.

(5) A modification that is subject to a RACT, a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR Part 63, Subpart B, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources\*. As part of the application required under subsection (d), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

(6) A change for which a source requests an emission limit to avoid [326 IAC 8-1-6](#).

(7) A modification of an existing source that has a potential to emit greater than the thresholds under subdivision (3) if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:

- (A) results in the replacement or repair of an entire process;
- (B) qualifies as a reconstruction of an entire process;
- (C) may result in an increase of actual emissions; or
- (D) would result in a net emissions increase greater than the significant levels in [326 IAC 2-2](#) or [326 IAC 2-3](#).

(8) A modification that has a potential to emit greater than the thresholds under subdivision (3) that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in [326 IAC 2-2](#) or [326 IAC 2-3](#).

(9) **(2)** For a source in Lake County or Porter County with the potential to emit twenty-five (25) tons per year of either VOC or NO<sub>x</sub>, any modification that would result in an increase of either in emissions of either pollutant of greater than or equal to the following:

- (A) Fifteen (15) pounds per day of VOCs.
- (B) Twenty-five (25) pounds per day of NO<sub>x</sub>.

(f) Minor modification approval procedures for modifications described under subsection (d) **(e)** are as follows:

(1) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has approved the modification request.

(2) Within forty-five (45) calendar days from receipt of an application for a modification described under subsection (e), the commissioner shall do one (1) of the following:

- (A) Approve the modification request.
- (B) Deny the modification request.
- (C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards would allow for an increase in emissions greater than the thresholds in subsection (g) or would not provide for compliance monitoring consistent with this rule and should be processed under subsection (h).

(3) The source may begin construction as follows:

- (A) If the source has a final Part 70 permit and only requests preconstruction approval or if the source does not have a final Part 70 permit, the source may begin construction upon approval by the commissioner. Notwithstanding [IC 13-15-5](#), the commissioner's approval shall become effective immediately. Operation of the modification shall be as follows:

- (i) For a source that has a final Part 70 permit, operation of the modification may commence in accordance

with section 12 of this rule.

(ii) For a source without a final Part 70 permit, operation may begin after construction is completed.

(B) If the source requests that the preconstruction approval and operating permit revision be combined, the source may begin construction upon approval and operation may begin in accordance with section 12 of this rule.

(g) The following significant modifications shall be processed in accordance with subsection (h):

(1) Any modification that is subject to [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#).

(2) A modification that is subject to [326 IAC 8-1-6](#).

(3) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(4) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of any of the following pollutants:

(A) PM, PM<sub>10</sub>, or direct PM<sub>2.5</sub>.

(B) Sulfur dioxide (SO<sub>2</sub>).

(C) Nitrogen oxides (NO<sub>x</sub>).

(D) VOC.

(E) Hydrogen sulfide (H<sub>2</sub>S).

(F) Total reduced sulfur (TRS).

(G) Reduced sulfur compounds.

(H) Fluorides.

**(I) Carbon monoxide (CO).**

(5) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(6) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single HAP as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of HAPs.

~~(7) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).~~

(h) The following shall apply to the significant modifications described in subsection (g):

(1) Any person proposing to make a modification described in subsection (g) shall:

(A) submit an application concerning the modification; and

(B) include the information under subsection (d).

(2) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has issued a modification approval.

(3) The commissioner shall approve or deny the modification as follows:

(A) Within one hundred twenty (120) calendar days from receipt of an application for a modification in subsection (g) except subsection (g)(1).

(B) Within two hundred seventy (270) calendar days from receipt of an application for a modification under subsection (g)(1).

(4) A modification approval under this subsection may be issued only if all of the following conditions have been met:

(A) The commissioner has received a complete application for a modification.

(B) The commissioner has complied with the requirements for public notice as follows:

(i) For modifications for which a source is only requesting preconstruction approval, the commissioner has complied with the requirements under [326 IAC 2-1.1-6](#).

(ii) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the commissioner has complied with the requirements under section 17 of this rule.

(C) The conditions of the modification approval provide for compliance with all applicable requirements and this rule.

(D) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the U.S. EPA has received a copy of the proposed modification approval and any notices required and has not objected to the issuance of the modification approval within the time period specified in section 18 of this rule.

(5) The commissioner shall do the following:

(A) Provide a technical support document that sets forth the legal and factual basis for draft modification approval conditions, including references to the applicable statutory and regulatory provisions.

(B) Send this technical support document to:

(i) the U.S. EPA;

(ii) the applicant; and

(iii) any other person who requests it.

(i) The following shall apply to a modification approval described in subsection (g) for a source that has not received a final Part 70 permit:

(1) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(A) The affidavit shall include the following:

(i) The name and title of the authorized individual.

(ii) The company name.

(iii) Subject to item (iv), an affirmation that the emissions units described in the modification approval:

(AA) were constructed in conformance with the request for modification approval; and

(BB) will comply with the modification approval.

(iv) Identification of any changes to emissions units not included in the request for modification approval, but which should have been included under subsection (a).

(v) The signature of the authorized individual.

(B) The affidavit shall be notarized.

(C) A source shall submit the affidavit to the commissioner either after construction of all the emission units described in the modification approval or after each phase of construction of the emission units described in the modification approval, as applicable, has been completed.

(2) A source may not operate any emissions units described in the modification approval prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(A) A source may operate the emissions units covered by the affirmation in the affidavit of construction upon submission of the affidavit of construction.

(B) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(C) The validation letter shall authorize the operation of all or part of each emissions unit covered by the affirmation in the affidavit of construction.

(D) Subject to clause (E), the validation letter shall include any amendments to the modification approval if the amendment is requested by the source and if the amendment does not constitute a modification and require public notice and comment under [326 IAC 2-1.1-6](#).

(E) A validation letter shall not approve the operation of any emissions unit if an amendment to the modification approval requested by the source would constitute a modification and require public notice and comment under [326 IAC 2-1.1-6](#).

(j) Each modification approval issued under this rule shall provide that construction must commence within eighteen (18) months of the issuance of the modification approval.

(k) All modification approval proceedings under this section shall provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft modification approval **for significant modifications** as established in [326 IAC 2-1.1-6](#) or section 17 of this rule. **Modifications for the purpose of incorporating the control requirements and emission limitations of a final federal district court order or federal consent decree under subsection (b) shall follow procedures for public notice as established in [326 IAC 2-1.1-6](#).**

(l) The commissioner shall provide for review by the U.S. EPA and affected states of each:

(1) modification application;

(2) draft modification approval;

(3) proposed modification approval; and

(4) final modification approval;

in accordance with the procedures established in section 18 of this rule for modifications that a source is requesting a combined preconstruction approval and operating permit revision.

(m) A modification approval issued in accordance with this section shall be incorporated into the source's Part 70 permit or permit application as follows:

(1) For a source that has a final Part 70 permit and requested that the preconstruction approval and permit revision be combined, the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.

(2) For a source that has a final Part 70 permit and requested only a preconstruction approval, the source may begin operation in accordance with section 12 of this rule.

(3) For a source that has a complete Part 70 permit application on file, but does not have a final Part 70 permit

and requested only preconstruction approval, the modification approval:

(A) shall be deemed incorporated in the Part 70 permit application; and

(B) will be included in the Part 70 permit when issued.

**(4) For a source that has a final Part 70 permit and requested a modification under subsection (b), the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.**

~~\*This document 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, 400 North Senate Avenue, Indianapolis, Indiana 46204.~~

~~(Air Pollution Control Division; [326 IAC 2-7-10.5](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1039; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Oct 23, 2000, 9:47 a.m.: 24 IR 672; filed May 21, 2002, 10:20 a.m.: 25 IR 3065; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3947; errata filed Jul 23, 2007, 4:19 p.m.: [20070815-IR-326070466ACA](#); filed Oct 1, 2010, 3:48 p.m.: [20101027-IR-326070372FRA](#); filed Feb 6, 2012, 2:54 p.m.: [20120307-IR-326090493FRA](#); filed Jun 11, 2012, 3:15 p.m.: [20120711-IR-326110251FRA](#))~~

SECTION 2. [326 IAC 2-8-11.1](#) IS AMENDED TO READ AS FOLLOWS:

### **[326 IAC 2-8-11.1](#) Permit revisions**

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

**Affected:** [IC 13-15-5](#); [IC 13-17](#)

Sec. 11.1. (a) Any person proposing to add additional emission units, modify existing emission units, or otherwise modify a FESOP source as described in this section shall submit a permit revision request in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment, or components thereof, without prior approval, if the repair or replacement:

- (1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit for the equipment or the affected emissions unit that was repaired or replaced;
- (2) is not a major modification under [326 IAC 2-2-1](#), [326 IAC 2-3-1](#), or [326 IAC 2-4.1](#); and
- (3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner not later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application required under this section shall meet the requirements of section 3(c) of this rule and include the following information:

- (1) The company name and address.
- (2) A description of the change and the emissions resulting from the change.
- (3) An identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.
- (4) Proposed permit terms and conditions required to implement the change, including limitations and methods to be used to comply with the limitations for modifications described in subsection (d)(4).
- (5) A schedule of compliance, if applicable.
- (6) A certification consistent with section 3(d) of this rule.

(d) ~~The following modifications shall require Minor permit revisions and shall require~~ **are required for** approval prior to construction and operation **for modifications that have a potential to emit within the following ranges:**

- (1) ~~Modifications that reduce the frequency of any monitoring or reporting required by a permit condition or~~

applicable requirement.

~~(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.~~

~~(3) Modifications that would have a potential to emit within the following ranges:~~

~~(A) (1) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either PM, PM<sub>10</sub>, or direct PM<sub>2.5</sub>.~~

~~(B) (2) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of sulfur dioxide (SO<sub>2</sub>).~~

~~(C) (3) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of nitrogen oxides (NO<sub>x</sub>).~~

~~(D) (4) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of VOC for modifications that are not described in clause (E).~~

~~(E) (5) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of VOC for modifications that require the use of air pollution control equipment to comply with the applicable provisions of [326 IAC 8](#).~~

~~(F) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).~~

~~(G) (6) Less than five (5) tons **one (1) ton** per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).~~

~~(H) (7) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:~~

~~(i) (A) Hydrogen sulfide (H<sub>2</sub>S).~~

~~(ii) (B) Total reduced sulfur (TRS).~~

~~(iii) (C) Reduced sulfur compounds.~~

~~(iv) (D) Fluorides.~~

~~(4) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than HAPs, ten (10) tons per year of any single HAP as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of HAPs by complying with one (1) of the following constraints:~~

~~(A) Limiting total annual solvent usage or maximum VOC content, or both.~~

~~(B) Limiting annual hours of operation of the process or business.~~

~~(C) Using a particulate air pollution control device as follows:~~

~~(i) Achieving and maintaining ninety-nine percent (99%) efficiency.~~

~~(ii) Complying with a no-visible emission standard.~~

~~(iii) The potential to emit before air pollution controls does not exceed major source thresholds for federal permitting programs.~~

~~(iv) Certifying to the commissioner that the air pollution control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of PM, or fifteen (15) tons per year of PM<sub>10</sub> or direct PM<sub>2.5</sub>.~~

~~(D) Limiting individual fuel usage and fuel type for a combustion source.~~

~~(E) Limiting raw material throughput or sulfur content of raw materials, or both.~~

~~(5) A change that is not described under section 10(a)(15) or 10(a)(16) of this rule and is subject to a RACT, a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources\*. As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.~~

~~(6) A modification for which a source requests an emission limit to avoid [326 IAC 8-1-6](#).~~

(e) Minor permit revision procedures shall be as follows:

(1) Any person proposing to make a change described in subsection (d) shall:

(A) submit an application concerning the change; and

(B) include the information under subsection (c).

(2) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the change until the commissioner has revised the permit.

(3) Within forty-five (45) calendar days from receipt of an application for a minor permit revision, the commissioner shall either:

(A) approve the minor permit revision request;

(B) deny the minor permit revision; or

- (C) determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards, would allow for an increase in emissions greater than the thresholds in subsection (f), or would not provide for compliance monitoring consistent with this rule and should be processed as a significant permit revision.
- (4) If approved, the permit shall be revised by incorporating the minor permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the minor permit revision to the permit. The commissioner shall do the following:
- (A) Notify the permittee upon incorporation of the minor permit revision to the permit.
  - (B) Provide a copy of the minor permit revision to the permittee.
- Notwithstanding [IC 13-15-5](#), the commissioner's decision shall become effective immediately.

(f) Significant permit revision procedures are as follows:

(1) A significant permit revision is a modification that is not an administrative amendment under section 10 of this rule or subject to subsection (d) and includes the following:

- (A) Any modification that would be subject to [326 IAC 2-2](#), [326 IAC 2-3](#), or [326 IAC 2-4.1](#).
- (B) Any modification that results in the source needing to obtain a Part 70 permit under [326 IAC 2-7](#).
- (C) A modification that is subject to [326 IAC 8-1-6](#).
- (D) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.
- (E) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of the following pollutants:
  - (i) PM, PM<sub>10</sub>, or direct PM<sub>2.5</sub>.
  - (ii) Sulfur dioxide (SO<sub>2</sub>).
  - (iii) Nitrogen oxides (NO<sub>x</sub>).
  - (iv) VOC.
  - (v) Hydrogen sulfide (H<sub>2</sub>S).
  - (vi) Total reduced sulfur (TRS).
  - (vii) Reduced sulfur compounds.
  - (viii) Fluorides.

**(ix) Carbon monoxide (CO).**

(F) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(G) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single HAP as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of HAPs.

~~(H) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).~~

~~(H)~~ **(H)** Any modification that removes or reduces compliance monitoring, testing, record keeping, reporting, or its frequency.

(2) The following conditions shall apply to significant permit revisions:

(A) Any person proposing to make a modification described in this subsection shall:

- (i) submit an application concerning the modification; and
- (ii) include the information under subsection (c).

(B) The commissioner shall provide a copy of the significant permit revision application and draft and final operating permit revision to the U.S. EPA.

(C) Except as provided in [326 IAC 2-13](#), the source may not begin construction on any emissions unit that is necessary to implement the change until the commissioner has revised the permit.

(D) The commissioner shall provide for public notice and comment in accordance with section 13 of this rule.

(E) The commissioner shall approve or deny the significant permit revision as follows:

- (i) Within one hundred twenty (120) calendar days from receipt of an application for a significant permit revision, except for a significant permit revision under subdivision (1)(A).
- (ii) Within two hundred seventy (270) calendar days from receipt of an application for a significant permit revision under subdivision (1)(A).

(F) If approved, the permit shall be revised by incorporating the significant permit revision into the permit.

The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the significant permit revision to the permit.

(g) Notwithstanding a permit requirement for emissions to remain below major source thresholds under Part 70 in [326 IAC 2-7](#), PSD in [326 IAC 2-2](#), or emission offset in [326 IAC 2-3](#), any modifications that require an adjustment to the FESOP emission limitations shall be required to be reviewed in accordance with the procedures in subsection (f).

\*This document 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, 400 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 2-8-11.1](#); filed Nov 25, 1998, 12:13 p.m.: 22 IR 1055; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed May 21, 2002, 10:20 a.m.: 25 IR 3072; errata filed Jul 23, 2007, 4:19 p.m.: [20070815-IR-326070466ACA](#); filed Oct 1, 2010, 3:48 p.m.: [20101027-IR-326070372FRA](#); filed Feb 6, 2012, 2:54 p.m.: [20120307-IR-326090493FRA](#); filed Jun 11, 2012, 3:15 p.m.: [20120711-IR-326110251FRA](#))

[Notice of Public Hearing](#)

Posted: 06/12/2013 by Legislative Services Agency  
An [html](#) version of this document.