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**TITLE 326 AIR POLLUTION CONTROL DIVISION****FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE  
LSA Document #13-488****NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS FROM COAL-FIRED AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule at [326 IAC 20-89](#) concerning the national emission standard for hazardous air pollutants (NESHAP) for coal-fired and oil-fired electric utility steam generating units and the repeal of [326 IAC 24-4](#) concerning the Clean Air Mercury Rule (CAMR). IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

**CITATIONS AFFECTED:** [326 IAC 20-89](#); [326 IAC 24-4](#).

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

**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 usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the proposed rule, IDEM may forgo these comment periods 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) an 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**

The United States Environmental Protection Agency (U.S. EPA) published a rule in the Federal Register (FR) on February 16, 2012, to reduce emissions of toxic air pollutants from power plants (77 FR 9304). The rule is titled the National Emission Standard for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units. The federal rule consisting of the NESHAP and the new source performance standard (NSPS) amendments is also known as the mercury and air toxics standards (MATS). The subject of this rulemaking is the incorporation by reference of 40 CFR 63, Subpart UUUUU, referred to as the Utility NESHAP throughout the rest of this document, into state rule at [326 IAC 20-89](#), and the repeal of the state Clean Air Mercury Rule (CAMR) at [326 IAC 24-4](#). Federal revisions to the NSPS will be incorporated into state rule during the next annual update to the definition of the Code of Federal Regulations (CFR) as 40 CFR 60 is incorporated by reference in [326 IAC 12](#). U.S. EPA also

published amendments to 40 CFR 60 and the 40 CFR 63 on April 19, 2012 (77 FR 23399) and April 24, 2013 (78 FR 24073).

Power plants subject to this rule are electric generating units larger than 25 megawatts that burn coal or oil for the purpose of generating electricity for sale and distribution through the national electric grid to the public. These are the same power plants that were initially subject to the Clean Air Mercury Rule adopted into state rules at [326 IAC 24-4](#). The Clean Air Mercury Rule was vacated by the D.C. Circuit Court on February 8, 2008. The final rule published on February 16, 2012, with subsequent amendments as previously noted, is U.S. EPA's replacement rule for the Clean Air Mercury Rule.

This rulemaking puts in place federal requirements at the state level with no changes; therefore, the department is using the expedited Section 8 rulemaking process. The February 16, 2012 final rule also removed and reserved the Clean Air Mercury Rule at 40 CFR 60, Subpart HHHH. The state Clean Air Mercury Rule at [326 IAC 24-4](#), a full text adoption of the federal rule, is repealed in this rulemaking consistent with the vacatur of the federal rule.

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

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it 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. The final rule published in the Federal Register on February 16, 2012, removed and reserved the Clean Air Mercury Rule at 40 CFR 60, Subpart HHHH. The state Clean Air Mercury Rule at [326 IAC 24-4](#), a full text adoption of the federal rule, is repealed in this rulemaking consistent with the vacatur of the federal rule.

#### **Potential Fiscal Impact**

There is no fiscal impact above what is required by the federal rule. U.S. EPA estimated the benefits of this rule at \$33 to \$81 billion in 2007 dollars using a 7% discount rate with the great majority of the estimate attributable to co-benefits from reductions in fine particulate related mortality. Annual social costs, approximated by the sum of the compliance costs and reporting costs, are \$9.6 billion in 2007 dollars. (77 FR 9306)

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule Development Branch, Office of Legal Counsel at (317) 233-5697 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/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
402 West Washington Street  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 234-3997  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1301

100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386 or (800) 451-6027  
bbaughn@idem.in.gov

## FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the Utility NESHAP and the repeal of the state Clean Air Mercury Rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is a 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. The final rule published in the Federal Register on February 16, 2012, removed and reserved the Clean Air Mercury Rule at 40 CFR 60, Subpart HHHH. The state Clean Air Mercury Rule at [326 IAC 24-4](#), a full text adoption of the federal rule, is repealed in this rulemaking consistent with federal rule.
- (2) Indiana is required by federal law to adopt the Utility NESHAP as established by the U.S. Environmental Protection Agency.
- (3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, because it will provide consistency between federal and state rules.
- (4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the proposed rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
- (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 draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:  
LSA Document #13-488 Utility NESHAP/CAMR Repeal  
Susan Bem  
Rule Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Mail Code 61-49  
Indianapolis, IN 46204-2251
- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rule Development Branch at (317) 233-8903.
- (3) By electronic mail to [sbem@idem.in.gov](mailto:sbem@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

## COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than December 2, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Susan Bem, Rule Development Branch, Office of Legal Counsel, (317) 233-5697 or (800) 451-6027 (in Indiana).

## DRAFT RULE

SECTION 1. [326 IAC 20-89](#) IS ADDED TO READ AS FOLLOWS:

## Rule 89. Coal-Fired and Oil-Fired Electric Utility Steam Generating Units

[326 IAC 20-89-1](#) 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 applies to sources as provided in 40 CFR 63.9981.

(b) The board incorporates by reference 40 CFR 63, Subpart UUUUU\*, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, as added by the following:

- (1) 77 FR 9464, February 16, 2012\*.
- (2) 77 FR 23402, April 19, 2012\*.
- (3) 78 FR 24084, April 24, 2013\*.

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

(Air Pollution Control Division; [326 IAC 20-89-1](#))

SECTION 2. [326 IAC 24-4](#) IS REPEALED.

[Notice of Public Hearing](#)

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An [html](#) version of this document.