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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**  
LSA Document #22-216

**UPDATES TO THE IDENTIFICATION OF IGNITABLE HAZARDOUS WASTE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 3.1-6-1](#) concerning the adoption of federal requirements for the identification of liquid waste as an ignitable hazardous waste. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [329 IAC 3.1-6-1](#).

**AUTHORITY:** [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#).

**STATUTORY REQUIREMENTS**

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the first notice of public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#) . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

**BACKGROUND**

In accordance with 42 U.S.C. 6926, the United States Environmental Protection Agency (U.S. EPA) granted IDEM the authority to administer and enforce a hazardous waste program in Indiana. To maintain authorization for this program, IDEM must comply with the requirements for state authorization in 40 CFR 271. Indiana is required to revise its hazardous waste program by adopting recent amendments to federal hazardous waste rules that are more stringent than current requirements. Indiana's hazardous waste rules must be no less stringent than and consistent with the rules promulgated by U.S. EPA, with the option of adopting state-specific requirements if they are applicable for a particular situation. When U.S. EPA promulgates a final rule that is less stringent than the previous requirements, Indiana may maintain more stringent requirements or adopt the less stringent requirements to maintain consistency with U.S. EPA hazardous waste rules and to offer potential compliance flexibility and cost savings for regulated entities.

IDEM is proposing amendments to Indiana's hazardous waste rules at [329 IAC 3.1-6-1](#) that include the incorporation by reference of recent updates to the identification of liquid waste as an ignitable hazardous waste. The rule amendments are primarily related to the incorporation by reference of the federal hazardous waste rules and no other types of amendments are proposed in this rulemaking.

The federal requirements proposed for incorporation by reference were included in the U.S. EPA final rule titled Modernizing Ignitable Liquids Determinations, which published in the Federal Register on July 7, 2020, at 85 FR 40594. The main purpose of the U.S. EPA final rule is to modernize the test methods for measuring the flash point of a liquid waste when determining if the liquid waste is an ignitable hazardous waste. The amendments eliminate the requirements in the test methods to use mercury-containing thermometers as a temperature-containing device. Other amendments include greater clarity to hazardous waste identification, additional flexibility in testing requirements, improved environmental compliance, and enhanced protection of human health and the environment. These revisions are considered neither more nor less stringent than current requirements for the subject matter. While authorized states are not required to adopt the revisions, Indiana is adopting them to provide compliance flexibility and potential cost savings for regulated entities.

The main entities potentially affected by this rulemaking include commercial laboratories and government

laboratories that conduct testing for the determination of ignitable hazardous waste. Laboratories that currently use the flash point methods or mercury thermometer methods are both potentially impacted.

For this rulemaking, IDEM is using the abbreviated rulemaking process authorized in [IC 13-14-9-7](#) because the rulemaking only proposes the incorporation by reference of a recent U.S. EPA final rule that amends hazardous waste requirements and does not include any additional amendments. The policy alternatives available to IDEM are so limited that the first notice of public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule. IDEM also is adopting the federal rules to maintain equivalent and consistent requirements for Indiana's authorized hazardous waste program. For these reasons, IDEM has determined that the available policy alternatives are limited and the additional comment period will not provide substantial benefit to the environment or the persons to be regulated or otherwise affected by the rulemaking.

#### **[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**

The proposed rule only includes the incorporation by reference of federal rules without additional state-specific requirements. Therefore, any potential fiscal impact derives from the federal rules rather than additional requirements proposed by IDEM. Because the federal rules primarily provide additional compliance options rather than impose new requirements on regulated entities, the proposed rule creates cost saving opportunities rather than additional costs for regulated entities.

As described in the regulatory impact analysis conducted by the U.S. EPA (EPA Document ID#: EPA-HQ-OLEM-2018-0830-0180), the federal updates for the identification of ignitable hazardous waste will offer potential cost savings for affected entities compared to the existing compliance costs. These cost savings are for entities located in all states and territories rather than only Indiana because the U.S. EPA regulatory impact analysis provides information for all affected entities rather than a state-by-state analysis. The total annualized cost savings for all affected entities may range from \$78,500 to \$500,000, depending upon the discount rate (3% or 7%) and the amount of tests conducted by the laboratories. The lower bound of \$78,500 cost savings is based on a 7% discount rate and a lower amount of tests conducted annually. The upper bound of \$500,000 cost savings is based on a 3% discount rate and a higher amount of tests conducted annually. These cost savings are based on reduced compliance costs on an annual basis compared to the existing annual compliance costs for test methods for ignitable hazardous waste.

The rulemaking also includes some qualitative benefits from the potential reduction in use of mercury-containing thermometers. Because the updated test methods no longer require the use of mercury-containing thermometers, these thermometers may decline in use and reduce the likelihood of mercury releases. Mercury has various human health and environmental impacts, such as neurodevelopment effects on humans and toxic bioaccumulation in the natural environment. However, these benefits are difficult to quantify due to the unpredictable nature of mercury releases and the relative risk of each release.

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

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 Dan Watts, Rules Development Branch, Office of Legal Counsel at [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov), (317) 234-5345 or (800) 451-6027 (in Indiana).

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) 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 CTAP 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:

Jennifer Collins

IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison

IGCN 1316

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-9730 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 5-28-17-6](#) is:

Emily Totten

Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 402-3062  
etotten@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), 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:

Drake Abramson  
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8921 or (800) 451-6027  
dabramso@idem.in.gov

## FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on the identification of liquid waste as an ignitable hazardous waste, as required by federal rule. These findings are prepared under [IC 13-14-9-7](#) 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 may adopt federal requirements that are equivalent to or less stringent than previous federal requirements to maintain consistency, offer potential cost savings and compliance flexibility, and minimize variability between state and federal requirements.
- (3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because the particular hazardous waste requirements in this proposed rule will be no less stringent than and consistent with recent amendments to U.S. EPA's hazardous waste rules designed to protect public health and the environment.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (5) The draft rule is hereby incorporated into these findings.

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Brian Rockensuess  
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 #22-216 Updates to the Identification of Ignitable Hazardous Waste  
Dan Watts  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251
- (2) By electronic mail to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending 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 address indicated in this notice.**

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto:kkindric@idem.in.gov) or (317) 232-8922 if another method of submitting comments within the comment period is desired. 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 or time stamped not later than July 29, 2022.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, at [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov), (317) 234-5345 or (800) 451-6027 (in Indiana).

#### DRAFT RULE

SECTION 1. [329 IAC 3.1-6-1](#) IS AMENDED TO READ AS FOLLOWS:

#### [329 IAC 3.1-6-1](#) Adoption of federal identification and listing of hazardous waste

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-22-2-4](#)

Affected: [IC 13-22-2-3](#)

Sec. 1. (a) This rule identifies solid wastes that are subject to:

- (1) regulation as hazardous waste under this article; and
- (2) the notification requirements of [329 IAC 3.1-1](#).

(b) Except as provided in section 2 of this rule, the requirements of 40 CFR 261\*, as amended by:

- (1) 81 FR 85713 through 81 FR 85715\*;
- (2) 81 FR 85806\*;
- (3) 82 FR 60900\*;
- (4) 83 FR 61562 through 83 FR 61563\*;
- (5) 84 FR 5938 through 84 FR 5939\*; and
- (6) 84 FR 67217\*; and

**(7) 85 FR 40608;**

apply to the identification and listing of hazardous waste.

(c) For purposes of this article, a reference to any part of 40 CFR 261 means the version referenced in subsection (b).

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 3.1-6-1](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2062; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Nov 26, 2019, 11:36 a.m.: [20191225-IR-329180481FRA](#); filed Jan 15, 2021, 1:37 p.m.: [20210210-IR-329200204FRA](#))

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

Posted: 06/29/2022 by Legislative Services Agency

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