

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #23-29**

REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR)**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to update references to the Code of Federal Regulations (CFR) at [326 IAC 1-1-3](#), to bring it up to date with the July 1, 2022, edition, and to update [326 IAC 20-1-1](#) to incorporate by reference 40 CFR 63, Subpart C, into the state's emission standards for hazardous air pollutants. 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 1-1-3](#); [326 IAC 20-1-1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9-8](#); [IC 13-17-3](#).

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 draft 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

"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 [326 IAC](#), unless a previous edition is specified in the rule. The latest version of the CFR contained in [326 IAC 1-1-3](#) is July 1, 2018. Since that date, several new federal regulations have been promulgated that are not reflected in the current version of [326 IAC](#). By updating the reference date to July 1, 2022, [326 IAC](#) will be consistent with those regulations that the federal government promulgated between July 1, 2018, and June 30, 2022.

This rulemaking will incorporate citations by reference from Titles 29 and 40 of the CFR into [326 IAC](#). Title 29 of the CFR contains federal regulations for the asbestos program. Title 29 is referenced in [326 IAC 14](#) (Emission Standards for Hazardous Air Pollutants) and [326 IAC 18](#) (Asbestos Management). These regulations are either directly incorporated by reference into [326 IAC](#) as state-enforceable rule provisions or 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 State Environmental Protection Agency (U.S. EPA). Title 40 is referenced throughout [326 IAC](#). Some of the regulations and changes that have occurred since the last update to [326 IAC 1-1-3](#). References to the CFR, include:

83 FR 35122, Wednesday, July 25, 2018- National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland Cement Manufacturing Industry, Subpart LLL: This rule finalized the residual risk and technology review conducted for the Portland Cement Manufacturing Industry source category regulated under NESHAP.

84 FR 8422, Friday, March 8, 2019- Emissions Monitoring Provisions in State Implementation Plans (SIP) Required Under the Nitrogen Oxides (NO_x) SIP Call: This rule revised some of the regulations that were originally promulgated in 1998 to implement the NO_x SIP Call. It gave covered states greater flexibility concerning the form of NO_x emissions monitoring requirements that states must include in their SIPs for certain emission sources, and revised the requirement for large affected units in the state to monitor emissions as specified in 40 CFR 75.

85 FR 18448, Thursday, April 2, 2020- Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces: This final action amended the 2015 New Source Performance Standards for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces by removing certain requirements from the rule for pellet fuel to meet certain specifications regarding density, size, and content, while retaining a provision in the rule that requires U.S. EPA-approved third party organizations to specify minimum requirements as part of the pellet fuel certification process.

85 FR 73854, November 19, 2020- Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act: This final rule provides that a major source can be reclassified to area source status at any time upon reducing its potential to emit hazardous air pollutants to major source thresholds by amending general provision language at 40 CFR 63, Subpart A, incorporated by reference into state rules at [326 IAC 20-1-1](#). This rule updated the reporting and record keeping requirements for 40 CFR 63, Subpart L, for coke oven batteries, and 40 CFR 63, Subpart T, for halogenated solvent cleaning.

This rule also amends [326 IAC 20-1-1](#) to incorporate by reference 40 CFR 63, Subpart C (List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List). The federal rule was most recently amended on January 5, 2022 (87 FR 393), with the addition of 1-bromopropane to the Clean Air Act Section 112(b) List of Hazardous Air Pollutants (HAP). Previously, deletion of pollutants were the only changes made to the HAP list in Subpart C, but the January final rule contains the first addition to the HAP list of 1-bromopropane. Therefore, it is necessary to incorporate the list in state rules to ensure that permits are accurately issued and that state rules are consistent with federal standards.

[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 [326 IAC 1-1-3](#) to reference the July 1, 2022, edition of the CFR and updating [326 IAC 20-1-1](#) to incorporate 40 CFR 63, Subpart C, provides consistency between federal and state rules 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 1-1-3](#) and [326 IAC 20-1-1](#) 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 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 Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 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

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

Kari Clevenger

IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison

IGCN 1316

100 North Senate Avenue

Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
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:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@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 findings regarding this rulemaking updating references to the July 1, 2022, edition of the CFR and updating [326 IAC 20-1-1](#) to incorporate by reference 40 CFR 63, Subpart C, into the state's hazardous air pollutant rules. 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 federal law to adopt these requirements as established by the U.S. EPA.
- (3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because it ensures state and federal requirements are consistent by incorporating by reference federal regulations at 40 CFR 63, Subpart C, for hazardous air pollutants.
- (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 draft 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.

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 #23-29 2022 CFR Update
Keelyn Walsh
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 kwash@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 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 February 24, 2023.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, at kwash@idem.in.gov, (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 4-22-2-21](#); [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 4-22-9-5](#); [IC 13-15](#); [IC 13-17](#)

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means the July 1, ~~2018~~, **2022**, edition.

(Air Pollution Control Division; [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](#); filed Oct 1, 2010, 3:49 p.m.: [20101027-IR-326100112FRA](#); filed Mar 28, 2012, 12:51 p.m.: [20120425-IR-326110472FRA](#); filed Aug 1, 2014, 10:53 a.m.: [20140827-IR-326130501FRA](#); filed Nov 7, 2016, 3:35 p.m.: [20161207-IR-326160208FRA](#); filed Mar 5, 2020, 2:08 p.m.: [20200401-IR-326190382FRA](#))

SECTION 2. [326 IAC 20-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 20-1-1](#) Incorporation of federal regulations

Authority: [IC 13-15-2-1](#); [IC 13-17-3-4](#)

Affected: [IC 13-12-3-1](#)

Sec. 1. The air pollution control board incorporates by reference **following federal regulations are incorporated by reference:**

- (1) 40 CFR 63, Subpart A*, concerning general provisions for emission standards for hazardous air pollutants.
- (2) 40 CFR 63, Subpart C*, concerning the list of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

*These documents are incorporated by reference. Copies ~~section~~ may be obtained from the Government Printing **Publishing** Office, 732 North Capitol Street NW, Washington, D.C. 20404 www.gpo.gov, or are available for review ~~and copying~~ at the Indiana Department of Environmental Management, Office of Air Quality, **Legal Counsel**, Indiana Government Center North, ~~Tenth Floor~~, 100 North Senate Avenue, **Thirteenth Floor**, Indianapolis, Indiana IN 46204.

(Air Pollution Control Division; [326 IAC 20-1-1](#); filed May 25, 1994, 11:00 a.m.: 17 IR 2282; errata filed May 25, 1994, 11:10 a.m.: 17 IR 2358; filed Nov 1, 1995, 8:30 a.m.: 19 IR 340; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3089)

[Notice of Public Hearing](#)

Posted: 01/25/2023 by Legislative Services Agency

