

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Hazardous Waste Updates
LSA Document #18-481

Overview

This rulemaking proposes amendments to 329 IAC 3.1 that update the hazardous waste rules to be consistent and equivalent with recently promulgated federal hazardous waste rules and also proposes technical amendments, clarifications, and corrections to existing hazardous waste rules. The federal hazardous waste rules that are proposed for incorporation by reference include the following:

- Improvements to the hazardous waste generator requirements, promulgated by the United States Environmental Protection Agency (U.S. EPA) in a final rule published on November 28, 2016, at 81 FR 85732. The generator improvements are intended to clarify existing requirements, increase compliance flexibility, improve environmental protection, reorganize the requirements to make them easier to follow, and make technical corrections.
- Revisions to the requirements for the import-export of hazardous waste, promulgated by U.S. EPA in final rules published on November 28, 2016, at 81 FR 85696, and on December 26, 2017, at 82 FR 60894. The Indiana Department of Environment Management (IDEM) is proposing to incorporate these requirements to maintain equivalency and consistency with the federal hazardous waste requirements. However, U.S. EPA administers these requirements because they are matters of international transboundary shipments of hazardous waste, which are administered by the federal government rather than state government agencies. IDEM is proposing to adopt these requirements because they are applicable to regulated entities in Indiana and adoption ensures that regulated entities are aware that they are subject to the requirements, regardless of the enforcement authority.
- Revisions to the requirements for the hazardous waste electronic manifest system that establish the methodology to determine and revise the user fees and the anticipated operation date of the system, promulgated by U.S. EPA in a final rule published on January 3, 2018, at 83 FR 420. This U.S. EPA final rule is a follow-up to the Hazardous Waste Electronic Manifest System One Year Rule that was promulgated federally on February 7, 2014, and adopted in Indiana in LSA Document #16-93. IDEM is proposing to incorporate these requirements to maintain equivalency and consistency with the federal hazardous waste requirements, although most of the requirements are administered by U.S. EPA rather than state agencies.
- Conforming amendments throughout 329 IAC 3.1 that correct the exceptions, additions, deletions, and substitutions to the incorporated parts of the Code of Federal Regulations (CFR), including updates to the CFR sections that are excluded from the conversion of federal terms to state-specific terms. IDEM is proposing these amendments because the

incorporated federal hazardous waste rules reorganize, delete, and add requirements in the CFR, and IDEM must amend 329 IAC 3.1 to accurately conform with those changes.

In addition to the amendments related to the federal hazardous waste rule changes, the rulemaking includes technical amendments that update contact information, clarify existing rule language, and correct inaccurate rule language. IDEM is including these technical amendments to improve existing rules without having a substantive effect on the scope or application of the rules.

Since the publication of the draft rule in the Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7 and Second Notice of Comment Period (DIN: 20181121-IR-329180481FDA), IDEM has added sections from 329 IAC 10, 11, and 13 with technical amendments and corrections related to the hazardous waste generator improvements rule. The amendments replace references to conditionally exempt small quantity generators with references to very small quantity generators, add a definition for “very small quantity generator” to 329 IAC 10 and 329 IAC 11, and make other conforming changes and technical amendments. Because these changes are non-substantive in nature and intended to make the rule consistent with the updated federal requirements proposed for incorporation by reference, the changes are within the original purpose and scope of this rulemaking.

The rulemaking originally was scheduled for preliminary adoption at the February 13, 2019, ERB meeting. However, before the February meeting, IDEM was informed that the proposed amendments inadvertently readopted vacated requirements from the 2015 U.S. EPA final rule for the definition of solid waste, which IDEM did not intend to include in this rulemaking. In response, IDEM delayed preliminary adoption to the May 8, 2019, ERB meeting to make changes that remove the 2017 CFR update and only incorporate the requirements in the Federal Register notices for the recent federal hazardous waste rules that IDEM originally proposed to adopt in this rulemaking. IDEM plans to address the recent changes to the definition of solid waste requirements in a future rulemaking and limits the scope of this rulemaking to the recent hazardous waste updates that are described in the initial notice of rulemaking.

IDEM is proceeding with this rulemaking using the abbreviated rulemaking process authorized under IC 13-14-9-7, which eliminates the first notice of comment period and initially publishes the second notice of comment period with the draft rule. IDEM is using this abbreviated rulemaking process because the rulemaking mainly incorporates by reference recent federal hazardous waste rules and makes technical amendments and corrections, which do not include amendments that will have a substantive effect on the scope or application of the rules. For this reason, IDEM determined that the available policy alternatives were limited and the first comment period did not provide substantial benefit to the environment or the persons to be regulated or otherwise affected by the rulemaking.

Affected Persons

The rulemaking will affect certain entities involved in the management of hazardous waste in Indiana. Generators of hazardous waste are affected by the generator improvements portion of the rulemaking. Importers and exporters of hazardous waste for recycling or disposal are

affected by the revisions to the import-export requirements. Any person or entity required to use the hazardous waste manifest system or pay electronic manifest system user fees is affected by the revisions to the hazardous waste electronic manifest system. Because of the expansive nature of the electronic manifest system, those affected may include hazardous waste generators, transporters, treatment, storage, or disposal facilities, and other entities in the hazardous waste industry. The technical amendments, clarifications, and corrections affect any person that must comply with or interpret the hazardous waste rules, but these amendments do not impose any additional requirements on regulated entities.

Reasons for the Rule

IDEM initiated the rulemaking to adopt the most recent U.S. EPA final rules that amend the federal hazardous waste requirements. In accordance with the state hazardous waste program authorization requirements at 40 CFR 271, Subpart A, IDEM must adopt hazardous waste rules that are no less stringent than and consistent with the federal hazardous waste rules. In some cases, U.S. EPA final rules include less stringent requirements than the previous federal requirements, and IDEM adopts these requirements to maintain consistency and offer potential cost savings and regulatory flexibility for regulated entities.

A secondary reason for the rulemaking is to make technical amendments and corrections to the hazardous waste rules. With any hazardous waste updates rulemaking, IDEM prefers to make technical amendments and corrections to existing rules, whenever possible. Also, updates to incorporated federal requirements may create the need for conforming technical amendments and corrections in order for the rule language to remain accurate and up-to-date.

Economic Impact of the Rule

IDEM estimates that this rulemaking will not have an economic impact beyond compliance with the federal requirements that are incorporated by reference. Any potential economic impact caused by this rulemaking is related to the amended requirements in U.S. EPA final rules that IDEM is proposing to incorporate by reference. Because IDEM is not proposing any rule amendments that are more stringent than the U.S. EPA requirements, this rulemaking will not have an additional economic impact deriving from IDEM-initiated rule amendments.

The technical amendments and corrections will not have an economic impact because the amendments do not have a substantive effect on the scope or application of the existing rules. The technical amendments and corrections do not include additional rule provisions or require regulated entities to modify their current operations to comply with existing or new requirements. In addition, no new entities will be subject to regulation as a result of the technical amendments and corrections. Therefore, IDEM does not anticipate an economic impact from this element of the rulemaking.

Scheduled Board Action and Hearings

First Public Hearing: May 8, 2019, Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, Indiana.

IDEM Contact

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