

Affected: IC 13-15; IC 13-17

Sec. 5. (a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x ozone season trading program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x ozone season trading program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x ozone season trading program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

(d) The appeal procedures for decisions of the U.S. EPA under the CAIR NO_x ozone season trading program will follow those procedures set forth in 40 CFR 78*.

***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 Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Air Pollution Control Board; 326 IAC 24-3-5; filed Jan 26, 2007, 10:25 a.m.: 20070221-IR-326050117FRA)

326 IAC 24-3-6 CAIR designated representative for CAIR NO_x ozone season sources

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Except as provided under subsection (f), each CAIR NO_x ozone season source, including all CAIR NO_x ozone season units at the source, shall have one (1) and only one (1) CAIR designated representative, with regard to all matters under the CAIR NO_x ozone season trading program concerning the source or any CAIR NO_x ozone season unit at the source.

(b) The CAIR designated representative of the CAIR NO_x ozone season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x ozone season units at the source and shall act in accordance with the certification statement in subsection (h)(4).

(c) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), the CAIR designated representative of the source shall represent and, by its representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x ozone season source represented and each

CAIR NO_x ozone season unit at the source in all matters pertaining to the CAIR NO_x ozone season trading program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the department, the U.S. EPA, or a court regarding the source or unit.

(d) No CAIR permit shall be issued, no emissions data reports shall be accepted, and no CAIR NO_x ozone season allowance tracking system account shall be established for a CAIR NO_x ozone season unit at a source, until the U.S. EPA has received a complete certificate of representation under subsection (h) for a CAIR designated representative of the source and the CAIR NO_x ozone season units at the source.

(e) The following shall apply to submissions made under the CAIR NO_x ozone season trading program:

(1) Each submission under the CAIR NO_x ozone season trading program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x ozone season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The department and U.S. EPA will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x ozone season source or a CAIR NO_x ozone season unit only if the submission has been made, signed, and certified in accordance with subdivision (1).

(f) The following shall apply where the owners or operators of a CAIR NO_x source choose to designate an alternate CAIR designated representative:

(1) A certificate of representation under subsection (h) may designate one (1) and only one (1) alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(2) Upon receipt by the U.S. EPA of a complete certificate of representation under subsection (h), any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(3) Except in this subsection and subsections (a), (d), (g), (h), and (j), and sections 2, 9(a) through 9(c), and 12 (d) of this rule, whenever the term CAIR designated representative is used in this rule, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated

representative.

(g) The following shall apply when changing the CAIR designated representative, the alternate CAIR designated representative, or there are changes in the owners or operators:

(1) The CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x ozone season source and the CAIR NO_x ozone season units at the source.

(2) The alternate CAIR designated representative may be changed at any time upon receipt by the U.S. EPA of a superseding complete certificate of representation under subsection (h). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the U.S. EPA receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x ozone season source and the CAIR NO_x ozone season units at the source.

(3) Changes in the owner and operators shall be made as follows:

(A) In the event an owner or operator of a CAIR NO_x ozone season source or a CAIR NO_x ozone season unit is not included in the list of owners and operators in the certificate of representation under subsection (h), such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the department, the U.S. EPA, or a court, as if the owner or operator were included in such list.

(B) Within thirty (30) days following any change in the owners and operators of a CAIR NO_x ozone season source or a CAIR NO_x ozone season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under subsection (h) amending the list of owners and operators to include the change.

(h) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the U.S. EPA:

(1) Identification of the CAIR NO_x ozone season source, and each CAIR NO_x ozone season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address, if any, telephone number, and facsimile transmission number, if any, of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_x ozone season source and of each CAIR NO_x ozone season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative: "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x ozone season unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x ozone season trading program on behalf of the owners and operators of the source and of each CAIR NO_x ozone season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions. I certify that the owners and operators of the source and of each CAIR NO_x ozone season unit at the source shall be bound by any order issued to me by the U.S. EPA, the department, or a court regarding the source or unit. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x ozone season unit, or where a utility or industrial customer purchases power from a CAIR NO_x ozone season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x ozone season unit at the source; and CAIR NO_x ozone season allowances and proceeds of transactions involving CAIR NO_x ozone season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x ozone season allowances by contract, CAIR NO_x ozone season allowances and proceeds of transactions involving CAIR NO_x ozone season allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the certificate of representation shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(i) The following shall apply to objections concerning CAIR designated representatives:

(1) Once a complete certificate of representation under subsection (h) has been submitted and received, the department and the U.S. EPA will rely on the certificate of representation unless and until a superseding complete certificate of representation under subsection (h) is received by the U.S. EPA.

(2) Except as provided in subsection (g)(1) and (g)(2), no objection or other communication submitted to the department or the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the department or the U.S. EPA under the CAIR NO_x ozone season trading program.

(3) Neither the department nor the U.S. EPA will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or

submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x ozone season allowance transfers.

(j) The following shall apply to delegation by CAIR designated representative and alternate CAIR designated representative:

(1) A CAIR designated representative may delegate, to one (1) or more natural persons, his or her authority to make an electronic submission to the U.S. EPA provided for or required under this article.

(2) An alternate CAIR designated representative may delegate, to one (1) or more natural persons, his or her authority to make an electronic submission to the U.S. EPA provided for or required under this article.

(3) In order to delegate authority to make an electronic submission to the U.S. EPA in accordance with subdivision (1) or (2), the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the U.S. EPA a notice of delegation, in a format prescribed by the U.S. EPA, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number, if any, of the following:

(i) The CAIR designated representative or alternate CAIR designated representative.

(ii) The natural person, referred to as an "agent".

(B) For each such natural person, a list of the type or types of electronic submissions under subdivision (1) or (2) for which authority is delegated to him or her.

(C) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) "I agree that any electronic submission to the U.S. EPA that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 326 IAC 24-3-6(j)(4) shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under 326 IAC 24-3-6(j)(4), I agree to maintain an e-mail account and to notify the U.S. EPA immediately of any change in my e-mail address unless all delegation of authority by me under 326 IAC 24-3-6(j) is terminated."

(4) A notice of delegation submitted under subdivision (3) shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the U.S. EPA and until receipt by the U.S. EPA of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(5) Any electronic submission covered by the certification subdivision (3)(C)(i) and made in accordance with a notice of delegation effective under subdivision (4) shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(Air Pollution Control Board; 326 IAC 24-3-6; filed Jan 26, 2007, 10:25 a.m.: 20070221-IR-326050117FRA)

326 IAC 24-3-7 Permit requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 7. (a) For each CAIR NO_x ozone season source required to have a federally enforceable permit, the permit shall include a CAIR permit administered by the department as follows:

(1) For CAIR NO_x sources required to have a Part 70 operating permit under 326 IAC 2-7, the CAIR portion of the Part 70 permit shall be administered in accordance with 326 IAC 2-7, except as provided otherwise by this section and sections 3 and 12 of this rule.

(2) For CAIR NO_x sources required to have a FESOP under 326 IAC 2-8, the CAIR portion of the FESOP shall be administered in accordance with 326 IAC 2-8, except as provided otherwise by this section and sections 3 and 12 of this rule.

(3) Each CAIR permit, including a draft or proposed CAIR permit, if applicable, shall contain, with regard to the CAIR NO_x ozone season source and the CAIR NO_x ozone season units at the source covered by the CAIR permit, all applicable CAIR NO_x ozone season trading program, CAIR NO_x annual trading program, and CAIR SO₂ trading program requirements and shall be a complete and separable portion of the Part 70 operating permit or FESOP.

(b) Requirements for the submission of CAIR permit applications are as follows:

(1) The CAIR designated representative of any CAIR NO_x ozone season source required to have a Part 70 operating permit or FESOP shall submit to the department a complete CAIR permit application under subsection (c) for the source covering each CAIR NO_x ozone season unit at the source at least two hundred seventy (270) days before the later of January 1, 2009, or the date on which the CAIR NO_x ozone season unit commences commercial operation, except as provided in section 12(e) of this rule.

(2) For a CAIR NO_x ozone season source required to have a Part 70 operating permit or FESOP, the CAIR designated representative shall submit a complete CAIR permit application under subsection (c) for the source covering each CAIR NO_x ozone season unit at the source to renew the CAIR permit in accordance with 326 IAC 2-7-4(a)(1)(D) or 326 IAC 2-8-3(h), as applicable, except as provided in section 12(e) of this rule.

(c) In addition to the requirements of 326 IAC 2-7-4(c) or 326 IAC 2-8-3(c), a complete CAIR permit application shall include the following elements concerning the CAIR NO_x ozone season source for which the application is submitted:

(1) Identification of the CAIR NO_x ozone season source.

(2) Identification of each CAIR NO_x ozone season unit at the CAIR NO_x ozone season source.

(3) The standard requirements under section 4 of this rule.

(d) In addition to the requirements under 326 IAC 2-7 or 326 IAC 2-8, each CAIR

permit shall contain, in a format prescribed by the department, all elements required for a complete CAIR permit application under subsection (c).

(e) Each CAIR permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under section 9, 10, or 12 of this rule, every allocation, transfer, or deduction of a CAIR NO_x ozone season allowance to or from the compliance account of the CAIR NO_x ozone season source covered by the permit.

(f) The initial CAIR permit covering a CAIR unit for which a complete CAIR permit application is timely submitted under subsection (b) shall become effective upon issuance.

(g) The term of the CAIR permit shall be set by the department, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x ozone season source's Part 70 operating permit or FESOP.

(h) Except as provided in subsection (e), the department shall revise the CAIR permit, as necessary, in accordance with the following:

(1) The permit modification and revision provisions under 326 IAC 2-7, for a CAIR source with a Part 70 operating permit.

(2) The permit modification and revision provisions under 326 IAC 2-8, for a CAIR source with a FESOP.

(Air Pollution Control Board; 326 IAC 24-3-7; filed Jan 26, 2007, 10:25 a.m.:
20070221-IR-326050117FRA)

326 IAC 24-3-8 CAIR NO_x ozone season allowance allocations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 8. (a) The NO_x ozone season trading program budget allocated by the department under subsections (d) through (j) for each control period shall equal the total number of CAIR NO_x ozone season allowances apportioned to the CAIR NO_x ozone season units under section 1 of this rule for the control period, as determined by the procedures in this section. The total number of CAIR NO_x ozone season allowances that are available for each control period for allocation as CAIR NO_x ozone season allowances under this rule are fifty-five thousand seven hundred twenty-nine (55,729) tons in 2009 through 2014, and forty-nine thousand fifty (49,050) tons in 2015 and thereafter, apportioned as follows:

(1) For existing units (that is, units that have a baseline heat input, as determined under subsections (c) and (d)):

(A) forty-three thousand six hundred fifty-four (43,654) tons in 2009 through 2014 and thirty-eight thousand ninety-five (38,095) tons in 2015 and thereafter for CAIR NO_x ozone season units under section 1(a)(1) of this rule; and

(B) eight thousand five hundred sixty-four (8,564) tons in 2009 and eight thousand seven hundred twenty-seven (8,727) for large affected units under section 1(a)(2) of this rule for a control period during 2010 and thereafter.

(2) For new unit allocation set-asides:

(A) two thousand two hundred ninety-eight (2,298) tons in 2009 through 2014 and one thousand one hundred seventy-eight (1,178) tons in 2015 and thereafter for CAIR NO_x ozone season units under section 1(a)(1) of this rule; and

(B) ninety-eight (98) tons in 2009 and four hundred (400) tons in 2010 and thereafter for large affected units under section 1(a)(2) of this rule.

(3) For the energy efficiency and renewable energy allocation set-aside, one thousand one hundred fifteen (1,115) tons in 2009 and five hundred (500) tons in 2010 and thereafter.

(4) For a hardship set-aside for large affected units under section 1(a)(2) of this rule, one hundred fifty (150) tons in 2010 and thereafter.

(b) The department shall allocate CAIR NO_x ozone season allowances to CAIR NO_x ozone season units according to the following schedule:

(1) For CAIR NO_x ozone season units under section 1(a)(1) and large affected units under 1(a)(2) of this rule, an initial five (5) year allocation and then a six (6) year allocation that is recorded six (6) years in advance of the control period that the allowances may be used as follows:

(A) Within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the CAIR NO_x ozone season allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c), (d), and (e) for the control periods in 2010, 2011, 2012, 2013, and 2014.

(B) By October 31, 2008, and October 31 every six (6) years thereafter, the department shall submit to the U.S. EPA the CAIR NO_x ozone season allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (c), (d), and (e), for the control periods seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) years after the year of the allowance allocation.

(C) By July 31, 2009 and July 31 of each year thereafter, the department shall submit to the U.S. EPA the CAIR NO_x ozone season allowance allocations, in a format prescribed by the U.S. EPA and in accordance with subsections (f) through (h), for the control period in the year of the applicable deadline for submission under this rule.

(D) For the 2009 control period, the CAIR NO_x ozone season allowances are the 2009 ozone season allowances issued under 326 IAC 10-4-9 that have been recorded by U.S. EPA as of the effective date of this rule.

(2) The department shall make available for review to the public the CAIR NO_x allowance allocations under subdivision (1)(B) on July 31 of each year allocations are made and shall provide a thirty (30) day opportunity for submission of objections to the CAIR NO_x allowance allocations. Objections shall be limited to addressing whether the CAIR NO_x allowance allocations are in accordance with this section. Based on any such objections, the department shall consider any objections and input from affected sources and, if appropriate, adjust each determination to the extent necessary to ensure that it is in accordance with this section.

(c) The baseline heat input, in million British thermal units (MMBtu), used with respect to CAIR NO_x ozone season allowance allocations under subsection (d) for each CAIR NO_x ozone season unit shall be:

(1) For units commencing operation before January 1, 2001:

(A) For a CAIR NO_x ozone season allowance allocation under subsection (b)

(1)(A), the average of the three (3) highest amounts of the unit's adjusted control period heat input for 1998 through 2005, with the adjusted control period heat input for each year calculated as follows:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by one hundred percent (100%).

(ii) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by sixty percent (60%).

(iii) If the unit is not subject to item (i) or (ii), the unit's control period heat input for such year is multiplied by forty percent (40%).

(B) For a CAIR NO_x ozone season allowance allocation under subsection (b)

(1)(B), the unit's average of the three (3) highest amounts of the unit's adjusted control period heat input for the eight (8) years before when the CAIR NO_x ozone season allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by one hundred percent (100%).

(ii) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by sixty percent (60%).

(iii) If the unit is not subject to item (i) or (ii), the unit's control period heat input for such year is multiplied by forty percent (40%).

(2) For units commencing operation on or after January 1, 2001, and operating each calendar year during a period of three (3) or more consecutive calendar years, the average of the three (3) highest amounts of the unit's total converted control period heat input for the years before when the CAIR NO_x ozone season allocation is being calculated, not to exceed eight (8).

(3) A unit's control period heat input, and a unit's status as coal-fired or not coal-fired, for a calendar year under subdivision (1), and a unit's total tons of NO_x ozone season emissions during a control period in a calendar year under subsection (e)(3), shall be determined in accordance with 40 CFR 75*, to the extent the unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

(4) A unit's converted control period heat input for a calendar year under subdivision (2) equals one (1) of the following:

(A) The control period gross electrical output of the generator or generators served by the unit multiplied by eight thousand nine hundred (8,900) British thermal units per kilowatt hour (Btu/kWh) for coal-fired units or seven thousand six hundred (7,600) British thermal units per kilowatt hour (Btu/kWh) for a unit that is not coal-fired divided by one million (1,000,000) British thermal units per million British thermal units (Btu/MMBtu), provided that if a generator is served by two (2) or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year.

(B) For a unit that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes

through the sequential use of energy, the control period gross electrical output of the unit multiplied by eight thousand nine hundred (8,900) British thermal units per kilowatt hour (Btu/kWh) plus the useful energy, in British thermal units (Btu), produced during the control period divided by eight-tenths (0.8), and with the sum divided by one million (1,000,000) British thermal units per million British thermal units (Btu/MMBtu).

(d) The department shall allocate CAIR NO_x ozone season allowances to all CAIR NO_x ozone season units under section 1(a)(1) of this rule as follows:

(1) For the control period in 2009, the CAIR NO_x ozone season allowances are the 2009 ozone season allowances issued under 326 IAC 10-4-9 that have been recorded by U.S. EPA as of the effective date of this rule.

(2) For each control period in 2010 and thereafter, the department shall allocate to all CAIR NO_x ozone season units that have a baseline heat input, as determined under subsection (c), a total amount of CAIR NO_x ozone season allowances as listed in subsection (a)(1), except as provided in subsection (f).

(3) The department shall allocate CAIR NO_x ozone season allowances to each CAIR NO_x ozone season unit under this subsection, except large affected units, in an amount determined by multiplying the total amount of CAIR NO_x ozone season allowances allocated under this subsection by the ratio of the baseline heat input of such CAIR NO_x ozone season unit to the total amount of baseline heat input of all such CAIR NO_x ozone season units and rounding to the nearest whole allowance as appropriate.

(e) The department shall allocate CAIR NO_x ozone season allowances to each large affected unit under section 1(a)(2) of this rule as follows:

(1) For the control period in 2009, the CAIR NO_x ozone season allowances are the 2009 ozone season allowances issued under 326 IAC 10-4-9 that have been recorded by U.S. EPA as of the effective date of this rule.

(2) For the control period in 2010 and thereafter, a fixed CAIR NO_x ozone season allowance allocation to the following large affected units:

Source	Unit	Allowances
(A) American Electric Power-Rockport	Auxiliary Boiler 1	2
	Auxiliary Boiler 2	2
(B) Portside Energy	Auxiliary Boiler 1	50
	Auxiliary Boiler 2	5
	Combustion Turbine	34

(3) For the control period in 2010 and thereafter, all large affected units that commenced operation before January 1, 2001, and not identified in subdivision (2), CAIR ozone season NO_x allowances will be allocated as follows:

(A) The target NO_x emission rate for purposes of allowance allocation for all large affected units that commenced operation before January 1, 2001, shall be as follows:

Source	Target NO _x Emission Rate (lb NO _x /MMBtu)
(i) BP Whiting Business (units 1SPS13, 1SPS14, 1SPS15, 1SPS16, 1SPS17, 3SPS31, 3SPS32, 3SPS33, 3SPS34, 3SPS36)	0.184
(ii) C.C. Perry Steam (units 11, 13, 14)	0.17
(iii) C.C. Perry Steam (unit 12)	0.368
(iv) C.C. Perry Steam (units 15, 16)	0.240
(v) Mittal Steel Indiana Harbor (units 211, 212, 213, 401, 402, 403, 404, 405, 501, 502, 503)	0.17
(vi) New Energy (unit U400)	0.24
(vii) Purdue University (units 1, 2)	0.24
(viii) Purdue University (unit 3)	0.17
(ix) Purdue University (unit 5)	0.24
(x) U.S. Steel - Gary Works (units 701 B1, B2, B3)	0.09
(xi) U.S. Steel - Gary Works (units 701 B5)	0.08
(xii) U.S. Steel - Gary Works (units 701 B6)	0.05
(xiii) U.S. Steel - Gary Works (units 720 B1, B2, B3)	0.06
(xiv) Warrick (units 1, 2, 3)	0.28

(B) The maximum design heat input based NO_x rate allocation shall be the product of the design heat input (Design HI), in million British thermal units per hour (MMBtu/hr), multiplied by three thousand six hundred seventy-two (3,672) hours multiplied by the target NO_x emission rate in clause (A), in pounds per million British thermal units (lb/MMBtu), multiplied by fifty percent (50%), and divided by two thousand (2,000). The Design HI, in million British thermal units per hour (MMBtu/hr), shall be the value supplied to the U.S. EPA in the RT504 field of the quarterly electronic data report (EDR) as required in section 11 of this rule or equivalent quality assured and certified data.

(C) The actual heat input based NO_x rate allocation shall be the product of the actual control period heat input multiplied by the target NO_x emission rate in clause (A) divided by two thousand (2,000) where:

(i) the unit's actual control period heat input shall be determined using one hundred twenty percent (120%) of the highest actual control period heat input recorded in:

(AA) the years 2000 through 2005 for an allocation under subsection (b)(1)(A); and

(BB) the eight (8) years before the year the CAIR NO_x ozone season allocation is being calculated under subsection (b)(1)(B); and

(ii) actual control period heat input shall be based on the best available data for each control period reported in accordance with section 11 of this rule and 40 CFR Part 75* or for control periods prior to 2008 certified accurate by a responsible official in accordance with 326 IAC 2-7-4(f).

(D) The total ozone season CAIR NO_x allocation shall be the sum of the maximum design heat input based NO_x rate allocation and actual heat input based NO_x rate allocation.

(E) If the initial total number of NO_x allowances allocated to all large affected units for a control period under this subsection does not equal the amount under subsection (a)(1)(B), the department shall adjust the total number of NO_x allowances allocated to all large affected units for the control period under this subdivision so that the total number of NO_x allowances allocated equals the amount under subsection (a)(1)(B) minus the allocations under subdivision (2). This adjustment shall be made by:

- (i) multiplying each unit's allocation by the amount under subsection (a)(1)(B) minus the amounts allocated in subdivision (2); and
- (ii) dividing by the total number of NO_x allowances allocated under this subdivision, and rounding to the nearest whole NO_x allowance, as appropriate.

(f) For each control period in 2009 and thereafter, the department shall allocate CAIR NO_x ozone season allowances to CAIR NO_x ozone season units under section 1(a)(1) of this rule that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input, as determined under subsection (c), in accordance with the following procedures:

(1) For CAIR NO_x ozone season units under section 1(a)(1) of this rule, the department shall establish a separate new unit set-aside for each control period equal to two thousand two hundred ninety-eight (2,298) tons for a control period during 2009 through 2014 and one thousand one hundred seventy-eight (1,178) tons for a control period during 2015 and thereafter.

(2) The CAIR designated representative of such a CAIR NO_x ozone season unit may submit to the department a request, in a format specified by the department, to be allocated CAIR NO_x ozone season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x ozone season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x ozone season allowances under subsection (d). A separate CAIR NO_x ozone season allowance allocation request for each control period for which CAIR NO_x ozone season allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x ozone season unit commences commercial operation.

(3) In a CAIR NO_x ozone season allowance allocation request under subdivision (2), the CAIR designated representative may request for a control period CAIR NO_x ozone season allowances in an amount not exceeding the CAIR NO_x ozone season unit's total tons of NO_x ozone season emissions during the calendar year immediately before such control period.

(4) The department shall review each CAIR NO_x ozone season allowance allocation request under subdivision (2) and shall allocate CAIR NO_x ozone season allowances for each control period pursuant to such request as follows:

(A) The department shall accept an allowance allocation request only if the request meets, or is adjusted by the department as necessary to meet, the requirements of subdivisions (2) and (3).

(B) On or after February 1 of the control period, the department shall determine the sum of the CAIR NO_x ozone season allowances requested, as adjusted under clause (A), in all allowance allocation requests accepted under clause (A) for the control period.

(C) If the amount of CAIR NO_x ozone season allowances in the new unit set-aside for the control period is greater than or equal to the sum under clause (B), then the department shall allocate the amount of CAIR NO_x ozone season allowances requested, as adjusted under clause (A), to each CAIR NO_x ozone season unit covered by an allowance allocation request accepted under clause (A).

(D) If the amount of CAIR NO_x ozone season allowances in the new unit set-aside for the control period is less than the sum under clause (B), then the department shall allocate to each CAIR NO_x ozone season unit covered by an allowance allocation request accepted under clause (A) the amount of the CAIR NO_x ozone season allowances requested, as adjusted under clause (A), multiplied by the amount of CAIR NO_x ozone season allowances in the new unit set-aside for the control period, divided by the sum determined under clause (B), and rounded to the nearest whole allowance as appropriate.

(E) The department shall notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x ozone season allowances, if any, allocated for the control period to the CAIR NO_x ozone season unit covered by the request and submit to U.S. EPA according to section (b)(3).

(g) For each control period in 2009 and thereafter, the department shall allocate CAIR NO_x ozone season allowances to large affected units under section 1(a)(2) of this rule that commenced operation on or after January 1, 2001 in accordance with the following procedures:

(1) For large affected units under section 1(a)(2) of this rule, the department shall establish a separate new unit set-aside for each control period equal to ninety-eight (98) tons in 2009 and four hundred (400) tons in 2010 and thereafter.

(2) The CAIR designated representative of such a CAIR NO_x ozone season unit may submit to the department a request, in a format specified by the department, to be allocated CAIR NO_x ozone season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x ozone season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x ozone season allowances under subsection (e). A separate CAIR NO_x ozone season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x ozone season unit commences commercial operation.

(3) In a CAIR NO_x ozone season allowance allocation request under subdivision (2), the CAIR designated representative may request for a control period CAIR NO_x ozone season allowances in an amount not exceeding the following for determining the total ozone season CAIR NO_x allocation:

(A) The target NO_x emission rate for allowance allocation purposes for units that commence operation on or after January 1, 2001 shall be determined as the lesser of seventeen-hundredths (0.17) lb/MMBtu or the federally enforceable limit on NO_x emissions found in any applicable permit or rule for the emissions unit, except that a combined heat and power unit with an overall rated energy efficiency of sixty percent (60%) or higher may request

allowances based on seventeen-hundredths (0.17) lb/MMBtu notwithstanding the allowable emission rate.

(B) The maximum design heat input based NO_x rate allocation shall be the product of the design heat input (Design HI), in million British thermal units per hour (MMBtu/hr), multiplied by three thousand six hundred seventy-two (3,672) hours multiplied by the target NO_x emission rate in clause (A), pound per million British thermal units per hour (lb/MMBtu), multiplied by fifty percent (50%), and divided by two thousand (2,000). The Design HI, in million British thermal units per hour (MMBtu/hr), shall be the value supplied to the U.S. EPA in the RT504 field of the quarterly electronic data report (EDR) as required in section 11 of this rule or equivalent quality assured and certified data.

(C) The actual heat input based NO_x rate allocation shall be the product of the actual control period heat input multiplied by the target NO_x emission rate in clause (A) divided by two thousand (2,000) where:

- (i) the unit's actual control period heat input shall be determined using one hundred twenty percent (120%) of the highest actual control period heat input recorded in the calendar years, since the startup of the unit, immediately preceding the allocation year, not to exceed eight (8) years; and
- (ii) actual control period heat input shall be based on the best available data for each control period reported in accordance with section 11 of this rule and 40 CFR Part 75*.

(D) The total ozone season CAIR NO_x allocation that may be requested shall be the sum of the maximum design heat input based NO_x rate allocation and actual heat input based NO_x rate allocation.

(4) The department shall review each CAIR NO_x ozone season allowance allocation request under subdivision (2) and shall allocate CAIR NO_x ozone season allowances for each control period pursuant to such request as follows:

(A) The department shall accept an allowance allocation request only if the request meets, or is adjusted by the department as necessary to meet, the requirements of subdivisions (2) and (3).

(B) On or after February 1 of the control period, the department shall determine the sum of the CAIR NO_x ozone season allowances requested, as adjusted under clause (A), in all allowance allocation requests accepted under clause (A) for the control period.

(C) If the amount of CAIR NO_x ozone season allowances in the new unit set-aside for the control period is greater than or equal to the sum under clause (B), then the department shall allocate the amount of CAIR NO_x ozone season allowances requested, as adjusted under clause (A), to each CAIR NO_x ozone season unit covered by an allowance allocation request accepted under clause (A).

(D) If the new unit set-aside for the control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), but the energy efficiency and renewable energy allocation set-aside or hardship set-aside for large affected units is under-subscribed, the department shall allocate the amount of the NO_x allowances requested with the difference allocated from the energy efficiency and renewable energy allocation or hardship set-aside.

(E) If the new unit set-aside for the control period for which NO_x allowances

are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), and the energy efficiency and renewable energy allocation set-aside or hardship set-aside for large affected units is over-subscribed, the department shall allocate the allocation set-aside on a pro rata basis, multiplied by the amount of CAIR NO_x ozone season allowances in the new unit set-aside for the control period, divided by the sum determined under clause (B), and rounded to the nearest whole allowance as appropriate.

(F) The department shall notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x ozone season allowances, if any, allocated for the control period to the CAIR NO_x ozone season unit covered by the request.

(5) Large affected units commencing operation after January 1, 2001, and allocated allowances under this subsection shall be eligible to receive allowances from the new unit set-aside until allocated allowances in accordance with the provisions of subsection (e). The inventory of sources in subsection (e) shall be updated prior to the allowance allocations in calendar year 2008 (for compliance years 2015-2020), in calendar year 2014 (for compliance years 2021-2026) and every six (6) years thereafter.

(h) If, after completion of the procedures under subsections (f), (g), and (i) for a control period, any unallocated CAIR NO_x ozone season allowances remain in a new unit set-aside for the control period, the department shall allocate to each CAIR NO_x ozone season unit that was allocated CAIR NO_x ozone season allowances under subsection (d) an amount of CAIR NO_x ozone season allowances equal to the following:

(1) For CAIR NO_x units under section 1(a)(1), the total amount of such remaining unallocated CAIR NO_x ozone season allowances, multiplied by the unit's allocation under subsection (d), divided by forty-three thousand six hundred fifty-four (43,654) for a control period during 2009 through 2014, and thirty-eight thousand ninety-five (38,095) for a control period during 2015 and thereafter.

(2) For large affected units, the total amount of such remaining unallocated CAIR NO_x ozone season allowances, multiplied by the unit's allocation under subsection (d), divided by eight thousand five hundred sixty-four (8,564) in 2009 and eight thousand seven hundred twenty-seven (8,727) in 2010 and thereafter.

(i) For projects that reduce NO_x emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during a control period beginning May 1, 2009, the department shall allocate NO_x allowances in accordance with the following procedures:

(1) The energy efficiency and renewable energy allocation set-aside shall be allocated NO_x allowances equal to one thousand one hundred fifteen (1,115) tons in 2009 and five hundred (500) tons in 2010 and thereafter.

(2) Any person may submit to the department a request, in writing, or in a format specified by the department, for NO_x allowances as follows:

(A) Sponsors of energy efficiency or renewable energy projects in section 2(38)(A) through 2(38)(H) of this rule may request the reservation of NO_x allowances, for one (1) control period in which the project is implemented. Project sponsors may reapply each year, not to exceed five (5) control periods for energy efficiency projects in sections 2(38)(A), 2(38)(B), 2(38)

(E), and 2(38)(F) of this rule and for an unlimited number of years for projects in sections 2(38)(C), 2(38)(D), and 2(38)(H) of this rule. Requests for allowances may be made for projects implemented two (2) years before the effective date of this rule. Projects must equal at least one (1) ton of NO_x emissions and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_x emissions.

(B) The NO_x allowance allocation request must be submitted by May 1 of the calendar year for which the NO_x allowance allocation is requested.

(C) The NO_x allowance allocation request for an integrated gasification combined cycle project under section 2(38)(G) of this rule must be submitted by May 1 of the calendar year for which the NO_x allowance allocation is requested and after the date on which the department issues a permit to construct the CAIR NO_x unit. For integrated gasification combined cycle projects, project sponsors may request the reservation of NO_x allowances, based on the number of kilowatt hours of electricity generated based on an eighty-five percent (85%) capacity factor and expected heat rate of the unit. Project sponsors may reapply each year, not to exceed five (5) control periods. Requests for allowances may be made only for integrated gasification combined cycle projects which first start commercial operations in 2009 and beyond.

(3) In a NO_x allowance allocation request made under this subsection, the CAIR designated representative may request for a control period, NO_x allowances not to exceed the following:

(A) Projects in section 2(38)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by end-users or nonutility third parties receive allowances based upon the number of kilowatt hours of electricity saved during a control period and the following formula:

$$\text{Allowances} = (\text{kWS} \times 0.0015) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(B) Projects in section 2(38)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by electric generating units shall be awarded allowances according to the following formula:

$$\text{Allowances} = (\text{kWS} \times 0.00075) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(C) Projects in section 2(38)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are not CAIR NO_x ozone season units shall be awarded allowances according to the following formula:

$$\text{Allowances} = (((\text{Et1}/\text{Pt1}) - (\text{Et2}/\text{Pt2})) \times \text{Pt2} \times \text{NPt2} \times (\text{NPt1}/\text{NPt2})) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period before project implementation.

Pt1 = Units of product produced per ozone control period before project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units before project implementation.

NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

(D) Projects in section 2(38)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are CAIR NO_x ozone season units shall be awarded allowances according to the following formula:

$$\text{Allowances} = (((\text{Et1}/\text{Pt1}) - (\text{Et2}/\text{Pt2})) \times \text{Pt2} \times \text{NPt2} \times (\text{NPt1}/\text{NPt2}) \times 0.5) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period before project implementation.

Pt1 = Units of product produced per ozone control period before project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the production process, measured in pounds per million British thermal units before project implementation.

NPt2 = NO_x produced during the production process, measured in pounds per million British thermal units in the most recent ozone control period.

Product produced, as used in the formulas in this clause and clause (C), may include manufactured items; raw, intermediate, or final materials; or other products measured in discrete units and produced as a result of the consumption of energy in a specific process or piece of equipment. Claims for allowances must include documentation of NO_x emissions per British thermal unit both before and after implementation of the project for the energy-consuming process for which energy savings are claimed.

(E) Projects in section 2(38)(B) of this rule that claim allowances based upon highly efficient electricity generation using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end user, that meet the thresholds specified in section 2(38)(B) of this rule, that are not CAIR NO_x ozone season units under section 1 of this rule or large affected units as defined in section 2 of this rule, and that are sponsored by

end-users or nonutility third parties, receive allowances based upon the net amount of electricity generated during a control period and the following formula:

$$\text{Allowances} = (\text{kWG} \times (0.0015 - \text{NO}_x)) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.

NO_x = The amount of NO_x produced during the generation of electricity, measured in pounds per kilowatt hour.

(F) Projects in section 2(38)(B) of this rule that claim allowances based upon highly efficient combined heat and power systems for the predominant use of a single end user, that meet the thresholds specified in section 2(38)(B) of this rule, that are not CAIR NO_x ozone season units under section 1 of this rule or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties, receive allowances based upon the net amount of energy generated and used during an ozone control period and the following formula:

$$\text{Allowances} = (\text{NO}_x \text{ conventional} - \text{NO}_x \text{ CHP}) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

$$\text{NO}_x \text{ conventional} = [(0.15 \times 3,412 \times \text{kWG} / 0.34) + (0.17 \times \text{HeatOut} / 0.8)] / 1,000,000$$

$$\text{NO}_x \text{ CHP} = (\text{BtuIn} \times \text{NO}_x \text{ Rate}) / 1,000,000$$

Where: kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.

HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project.

NO_x Rate = NO_x emitted during normal system operation by the project, measured in pounds per million Btu of fuel input.

BtuIn = The number of British thermal units (Btu) of fuel used to produce electricity, heat, or steam during an ozone control period by the project.

(G) Projects in section 2(38)(B) and 2(38)(G) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period. Highly efficient electricity generation projects using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end user, that meet a rated energy efficiency threshold of sixty percent (60%) for combined cycle systems and forty percent (40%) for microturbines and fuel cells; or integrated gasification combined cycle, and that are sponsored by NO_x allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule receive allowances based upon the net amount of electricity generated during an ozone control period and the following formula:

$$\text{Allowances} = (\text{kWG} \times (0.0015 - \text{NO}_x) \times 0.5) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.

NO_x = The amount of NO_x produced during the generation of electricity, measured in pounds per kilowatt hour.

(H) Projects in section 2(38)(C) and 2(38)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period and according to the following formula:

$$\text{Allowances} = (\text{kWG} \times 0.0015) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of kilowatt hours of electricity generated during an ozone control period by the project.

(I) Projects in section 2(38)(E), 2(38)(G), and 2(38)(F) of this rule receive allowances based upon the difference in emitted NO_x per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

$$\text{Allowances} = ((\text{Et1} - \text{Et2}) \times h) \times 0.5 / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = The emission rate in pounds per megawatt hour of NO_x of the unit before improvement or replacement.

Et2 = The emission rate in pounds per megawatt hour of NO_x of the unit after improvement or replacement.

h = The number of megawatt hours of operation during the ozone control period.

(J) Projects in section 2(38)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are large affected units shall be awarded allowances according to the following formula:

$$\text{Allowances} = (\text{kWS} \times \text{NO}_x \times 0.5) / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

NO_x = The amount of NO_x produced during the generation of electricity, measured in pounds per kilowatt hour.

(K) Projects in section 2(38)(A) of this rule based upon energy efficiency other than electricity savings shall be awarded allowances according to the following formula:

$$\text{Allowances} = (\text{NO}_x \text{ Rate} \times \text{HeatOut} / 0.8) / 1,000,000 / 2,000$$

Where: Allowances = The number of allowances awarded to a project sponsor.

NO_x Rate = 0.17 lb/MMBtu or the actual NO_x emission rate, whichever is greater.

HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project.

(L) Projects in section 2(38)(H) of this rule using renewable energy to displace coal, natural gas, or oil combustion and reduce NO_x emissions shall be awarded allowances according to the following formula:

$$\text{Allowances} = ((0.17 \times \text{Fuel-Input}) / 1,000,000) / 2,000$$

Where: **Allowances** = The number of allowances awarded to a project sponsor.

Fuel-Input = The amount of heat input, in Btu, from the renewable energy.

(M) Projects in section 2(38)(B) of this rule that claim allowances based upon highly efficient combined heat and power systems for the predominant use of a single end user, that meet the thresholds specified in section 2(38)(B) of this rule, that are large affected units as defined in section 2 of this rule, receive allowances based upon the net amount of energy generated and used during an ozone control period and the following formula:

$$\text{Allowances} = ((\text{NO}_x \text{ conventional} - \text{NO}_x \text{ CHP}) / 2,000) \times 0.5$$

Where: **Allowances** = The number of allowances awarded to a project sponsor.

$$\text{NO}_x \text{ conventional} = [(0.15 \times 3,412 \times \text{kWG} / 0.34) + (0.17 \times \text{HeatOut} / 0.8)] / 1,000,000$$

$$\text{NO}_x \text{ CHP} = (\text{BtuIn} \times \text{NO}_x \text{ Rate}) / 1,000,000$$

Where: **kWG** = The number of net kilowatt hours of electricity generated during an ozone control period by the project.

HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project.

NO_x Rate = NO_x emitted during normal system operation by the project, measured in pounds per million Btu of fuel input.

BtuIn = The number of British thermal units (Btu) of fuel used to produce electricity, heat, or steam during an ozone control period by the project.

(4) The department shall review, and reserve CAIR NO_x allowances pursuant to, each allowance allocation request by July 31 each year as follows:

(A) Upon receipt of the NO_x allowance allocation request, the department shall make any necessary adjustments to the request to ensure that the number of allowances specified in the request is consistent with the requirements of subdivision (3).

(B) If the energy efficiency and renewable energy allocation set-aside for the control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall reserve the amount of the NO_x allowances requested, as adjusted under clause (A), to the energy efficiency and renewable energy projects.

(C) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), but the new unit set-aside or hardship set-aside for large affected units is under-subscribed, the department shall reserve the amount of the NO_x allowances requested with the difference reserved from the new unit or hardship set-aside.

(D) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), and the new unit set-aside and hardship set-aside for large affected units are over-subscribed, the department shall reserve the allocation set-aside on a pro rata basis, except that allowances requested for projects under section 2(38)(A), 2(38)(C), 2(38)(D), and 2(38)(H) of this rule shall be reserved first, reserved for projects under section 2(38)(B) and 2(38)(G) of this rule second, reserved for projects under section 2(38)(E) of this rule third, and reserved for projects under section 2(38)(F) of this rule fourth.

(E) Any unreserved allowances shall be distributed as follows:

(i) Fifty percent (50%) of the unreserved allowances shall be retained by the state to fund a grant program for energy efficiency and renewable energy projects. The grant program projects do not need to meet the one (1) tons of NO_x emissions for singular or aggregated projects under subdivision (2). The unreserved NO_x allowances shall be deposited in a general allowance account established in accordance with this rule by the Indiana office of energy and defense development in accordance with the allowance allocation requirements of this rule, subject to the following:

(AA) The Indiana office of energy and defense development shall deposit revenue from the sale of unreserved NO_x allowances in a dedicated general NO_x account established by these rules used exclusively to provide matching grant funds for energy efficiency and renewable energy projects, including, but not limited to, the purchase and installation of alternative energy systems and programs to support energy efficiency projects.

(BB) The Indiana office of energy and defense development shall hold the unreserved NO_x allowances in a general NO_x account until such time that project(s) are approved for grant funding, at which time NO_x allowances shall be sold to provide cash dollars for the grant funding.

(CC) Revenue from the sale of unreserved NO_x allowances held by the state of Indiana through the Indiana office of energy and defense development shall not revert to the state general fund, and shall only be used to provide matching grant funds for the installation of energy efficiency and renewable energy projects as defined in this subsection.

(DD) Effective November 1, 2009, and annually thereafter, the Indiana office of energy and defense development shall provide a report to the commissioner and the air pollution control board regarding the allowance transaction activity and the distribution and the balance of the matching grant funds for energy efficiency and renewable energy projects during that period. At a minimum,

the report shall contain the following:

(aa) The number of NO_x allowances currently held in general NO_x account(s) by the Indiana office of energy and defense development.

(bb) A summary of transactions in the market, including the date(s) of transactions, the number of allowances transacted, and the distribution of proceeds from transactions (including brokerage fees).

(cc) The distribution of grant funding by recipient.

(dd) A full description of type of project(s) funded.

(ee) A summary of the benefits of each project.

(EE) If at any time after November 1, 2009, the total number of unreserved ozone season NO_x allowances held by the Indiana office of energy and defense development is greater than five hundred (500) tons, fifty percent (50%) of the total amount of NO_x allowances shall be returned to the department for redistribution to existing large affected units on a pro rata basis.

(ii) Fifty percent (50%) of the unreserved allowances shall be returned to existing large affected units on a pro rata basis.

(5) After the completion of the control period for which CAIR ozone season NO_x allowances had been reserved, the project sponsor shall submit the results of the actual savings or generation by October 31 of that year. Allowances shall be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department shall consult the Indiana office of energy and defense development concerning verification and certification.

(6) The department shall allocate the appropriate amount of CAIR NO_x allowances based on the review of the submittal of actual savings or generation results under subdivision (5) and notify the CAIR NO_x designated representative that submitted the request and the U.S. EPA of the number of NO_x allowances allocated for the control period by March 31 of each year. Any person to whom the department allocates NO_x allowances shall establish a general account under section 9(b) of this rule.

(j) The department shall make available CAIR NO_x ozone season allowances from the hardship set-aside for large affected units under section 1(a)(2) of this rule. The amount of CAIR NO_x ozone season allowances in the set-aside shall equal one hundred fifty (150) tons in 2010 and thereafter. The department shall allocate CAIR NO_x ozone season allowances as follows:

(1) The CAIR NO_x designated representative shall submit a request by May 1 of the year for which CAIR NO_x ozone season allowances are needed that includes the following:

(A) A demonstration that compliance with this rule absent hardship allowances could pose an unacceptable risk either to the source's own operation or its associated industry.

(B) A demonstration that the cost of compliance with the requirements in this rule will not be cost-effective without an allocation of hardship allowances. The owner or operator can show that it meets this cost factor if the unit's average cost of seasonal compliance with requirements in this rule will exceed two thousand four hundred dollars (\$2,400) per ton of NO_x.

reduced. Such a showing can be based on cost methodology assessments or engineering studies which are reliably indicative of NO_x compliance costs for these entities, including data produced through the use of the U.S. EPA Air Pollution Control Cost Manual.

(2) If the hardship set-aside for the control period for which NO_x ozone season allowances are requested has an amount of NO_x allowances less than the number requested, but the energy efficiency and renewable energy allocation set-aside or new unit set-aside for large affected units is under-subscribed, the department shall allocate the amount of the NO_x ozone season allowances requested with the difference allocated from the energy efficiency and renewable energy allocation or new unit set-aside.

(3) If the hardship set-aside for the control period for which NO_x ozone season allowances are requested has an amount of NO_x allowances less than the number requested and the energy efficiency and renewable energy set-aside or new unit set-aside for large affected units is over-subscribed, the department shall allocate NO_x allowances from the hardship set-aside on a pro rata basis.

(4) Any unallocated allowances shall be distributed to existing large affected units on a pro rata basis.

(5) Any transfer of allowances under this subsection shall be submitted to U.S. EPA by July 31 of each year.

*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 Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.
(Air Pollution Control Board; 326 IAC 24-3-8; filed Jan 26, 2007, 10:25 a.m.: 20070221-IR-326050117FRA)

326 IAC 24-3-9 CAIR NO_x ozone season allowance tracking system

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 9. (a) Except as provided in section 12(f)(7) of this rule, upon receipt of a complete certificate of representation under section 6(h) of this rule, the U.S. EPA will establish a compliance account for the CAIR NO_x ozone season source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x ozone season allowances. An application for a general account may designate one (1) and only one (1) CAIR authorized account representative and one (1) and only one (1) alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account

representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative. The establishment of the general account shall be subject to the following:

(1) A complete application for a general account shall be submitted to the U.S. EPA and shall include the following elements in a format prescribed by the U.S. EPA:

(A) The following information concerning the CAIR authorized account representative and any alternate CAIR authorized account representative:

- (i) Name.
- (ii) Mailing address.
- (iii) E-mail address, if any.
- (iv) Telephone number.
- (v) Facsimile transmission number, if any.

(B) Organization name and type of organization, if applicable.

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x ozone season allowances held in the general account.

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x ozone season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x ozone season trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the U.S. EPA or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(F) Unless otherwise required by the department or the U.S. EPA, documents of agreement referred to in the application for a general account shall not be submitted to the department or the U.S. EPA. Neither the department nor the U.S. EPA shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the U.S. EPA of a complete application for a general account under subdivision (1), the following shall apply:

(A) The U.S. EPA will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x ozone season allowances held in the general account in all matters pertaining to the CAIR NO_x ozone season trading program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account

representative by the U.S. EPA or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(D) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x ozone season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x ozone season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(E) The U.S. EPA will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with clause (D).

(3) The following shall apply to changing the CAIR authorized account representative or alternate CAIR authorized account representative, and changes in persons with ownership interest:

(A) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subsection (b)(1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x ozone season allowances in the general account.

(B) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the U.S. EPA of a superseding complete application for a general account under subsection (b)(1). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the U.S. EPA receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x ozone season allowances in the general account.

(C) In the event a person having an ownership interest with respect to CAIR NO_x ozone season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR

authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the U.S. EPA or a court, as if the person were included in such list.

(D) Within thirty (30) days following any change in the persons having an ownership interest with respect to CAIR NO_x ozone season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x ozone season allowances in the general account to include the change.

(4) Once a complete application for a general account under subdivision (1) has been submitted and received, the U.S. EPA will rely on the application unless and until a superseding complete application for a general account under subdivision (1) is received by the U.S. EPA.

(5) Except as provided in subdivision (3)(A) or (3)(B), no objection or other communication submitted to the U.S. EPA concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the U.S. EPA under the CAIR NO_x ozone season trading program.

(6) The U.S. EPA will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x ozone season allowance transfers.

(7) The following shall apply to delegation by CAIR authorized account representative and alternate CAIR authorized account representative:

(A) A CAIR authorized account representative may delegate, to one (1) or more natural persons, his or her authority to make an electronic submission to the U.S. EPA provided for or required under sections 9 and 10 of this rule.

(B) An alternate CAIR authorized account representative may delegate, to one (1) or more natural persons, his or her authority to make an electronic submission to the U.S. EPA provided for or required under sections 9 and 10 of this rule.

(C) In order to delegate authority to make an electronic submission to the U.S. EPA in accordance with clause (A) or (B), the CAIR authorized account representative, as appropriate, must submit to the U.S. EPA a notice of delegation, in a format prescribed by U.S. EPA, that includes the following elements:

(i) The name, address, e-mail address, telephone number, and facsimile transmission number, if any, of the following:

(AA) The CAIR authorized account representative or alternate CAIR authorized account representative.

(BB) Each natural person, referred to as an "agent".

(ii) For each such natural person, a list of the type or types of electronic submissions under clause (A) or (B) for which authority is delegated to him or her.

(iii) The following certification statements by such CAIR authorized account representative or alternate CAIR authorized account

representative:

(AA) "I agree that any electronic submission to the U.S. EPA that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 326 IAC 24-3-9(b)(7)(D) shall be deemed to be an electronic submission by me."

(BB) "Until this notice of delegation is superseded by another notice of delegation under 326 IAC 24-3-9(b)(7)(D), I agree to maintain an e-mail account and to notify the U.S. EPA immediately of any change in my e-mail address unless all delegation of authority by me under 326 IAC 24-3-9(b)(7) is terminated."

(D) A notice of delegation submitted under clause (C) shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the U.S. EPA and until receipt by the U.S. EPA of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(E) Any electronic submission covered by the certification in clause (C)(iii) (AA) and made in accordance with a notice of delegation effective under clause (D) shall be deemed to be an electronic submission by the CAIR authorized account representative or alternate CAIR authorized account representative submitting such notice of delegation.

(c) The U.S. EPA will assign a unique identifying number to each account established under subsection (a) or (b).

(d) Following the establishment of a CAIR NO_x ozone season allowance tracking system account, all submissions to the U.S. EPA pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x ozone season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

(e) By September 30, 2007, the U.S. EPA will record in the CAIR NO_x ozone season source's compliance account the CAIR NO_x ozone season allowances allocated for the CAIR NO_x ozone season units at the source, as submitted by the department in accordance with section 8(b)(1)(A) of this rule, for the control periods in 2010, 2011, 2012, 2013, and 2014.

(f) By December 1, 2008, and December 1 every six (6) years thereafter, the U.S. EPA will record in the CAIR NO_x ozone season source's compliance account the CAIR NO_x ozone season allowances allocated for the CAIR NO_x ozone season units at the source, as submitted by the department in accordance with section 8(b)(1)(B) of this rule, for the control periods seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) years after the year of the allowance allocation.

(g) By September 1, 2009, and September 1 of each year thereafter, the U.S. EPA

will record in the CAIR NO_x ozone season source's compliance account the CAIR NO_x ozone season allowances allocated for the CAIR NO_x ozone season units at the source, as submitted by the department in accordance with section 8(b)(1)(C) of this rule, for the control period in the year of the applicable deadline for recordation under this subsection.

(h) When recording the allocation of CAIR NO_x ozone season allowances for a CAIR NO_x ozone season unit in a compliance account, the U.S. EPA will assign each CAIR NO_x ozone season allowance a unique identification number that shall include digits identifying the year of the control period for which the CAIR NO_x ozone season allowance is allocated.

(i) The CAIR NO_x ozone season allowances are available to be deducted for compliance with a source's CAIR NO_x ozone season emissions limitation for a control period in a given calendar year only if the CAIR NO_x ozone season allowances:

- (1) were allocated for the control period in the year or a prior year; and
- (2) are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x ozone season allowance transfer correctly submitted for recordation under section 10(a) through 10(d) of this rule by the allowance transfer deadline for the control period.

(j) The following shall apply to deductions for purposes of compliance with a source's emissions limitation:

(1) Following the recordation, in accordance with section 10(b) and 10(c) of this rule, of CAIR NO_x ozone season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the U.S. EPA will deduct from the compliance account CAIR NO_x ozone season allowances available under subsection (i) in order to determine whether the source meets the CAIR NO_x ozone season emissions limitation for the control period in one (1) of the following ways:

(A) Until the amount of CAIR NO_x ozone season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with section 11 of this rule, from all CAIR NO_x ozone season units at the source for the control period.

(B) If there are insufficient CAIR NO_x ozone season allowances to complete the deductions in clause (A), until no more CAIR NO_x ozone season allowances available under subsection (i) remain in the compliance account.

(2) The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x ozone season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subdivision (1), (4), or (5). Such request shall be submitted to the U.S. EPA by the allowance transfer deadline for the control period and include, in a format prescribed by the U.S. EPA, the identification of the CAIR NO_x ozone season source and the appropriate serial numbers.

(3) The U.S. EPA will deduct CAIR NO_x ozone season allowances under subdivision (1), (4), or (5) from the source's compliance account, in the absence of an

identification or in the case of a partial identification of CAIR NO_x ozone season allowances by serial number under subdivision (2), on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Any CAIR NO_x ozone season allowances that were allocated to the units at the source, in the order of recordation.

(B) Any CAIR NO_x ozone season allowances that were allocated to any entity and transferred and recorded in the compliance account under section 10 of this rule, in the order of recordation.

(4) After making the deductions for compliance under subdivision (1) for a control period in a calendar year in which the CAIR NO_x ozone season source has excess emissions, the U.S. EPA will deduct from the source's compliance account an amount of CAIR NO_x ozone season allowances, allocated for the control period in the immediately following calendar year, equal to three (3) times the number of tons of the source's excess emissions.

(5) Any allowance deduction required under subdivision (4) shall not affect the liability of the owners and operators of the CAIR NO_x ozone season source or the CAIR NO_x ozone season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable state law.

(6) The U.S. EPA will record in the appropriate compliance account all deductions from such an account under subdivision (1), (4), and (5), and section 12 of this rule.

(7) The U.S. EPA may review and conduct independent audits concerning any submission under the CAIR NO_x ozone season trading program and make appropriate adjustments of the information in the submissions.

(8) The U.S. EPA may deduct CAIR NO_x ozone season allowances from or transfer CAIR NO_x ozone season allowances to a source's compliance account based on the information in the submissions, as adjusted under subdivision (7), and record such deductions and transfers.

(k) CAIR NO_x ozone season allowances may be banked for future use or transfer in a compliance account or a general account. Any CAIR NO_x ozone season allowance that is held in a compliance account or a general account shall remain in such account unless and until the CAIR NO_x ozone season allowance is deducted or transferred under subsection (i), (j), or (l) or section 10 or 12 of this rule.

(l) The U.S. EPA may, at its sole discretion and on its own motion, correct any error in any CAIR NO_x ozone season allowance tracking system account. Within ten (10) business days of making such correction, the U.S. EPA will notify the CAIR authorized account representative for the account.

(m) The CAIR authorized account representative of a general account may submit to the U.S. EPA a request to close the account, which shall include a correctly submitted allowance transfer under section 10(a) through 10(d) of this rule for any CAIR NO_x ozone season allowances in the account to one (1) or more other CAIR NO_x ozone season allowance tracking system accounts.

(n) If a general account has no allowance transfers in or out of the account for a twelve (12) month period or longer and does not contain any CAIR NO_x ozone season allowances, the U.S. EPA may notify the CAIR authorized account

representative for the account that the account will be closed following twenty (20) business days after the notice is sent. The account will be closed after the twenty (20) day period unless, before the end of the twenty (20) day period, the U.S. EPA receives a correctly submitted transfer of CAIR NO_x ozone season allowances into the account under section 10(a) through 10(d) of this rule or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the U.S. EPA good cause as to why the account should not be closed.

(Air Pollution Control Board; 326 IAC 24-3-9; filed Jan 26, 2007, 10:25 a.m.:
20070221-IR-326050117FRA)

326 IAC 24-3-10 CAIR NO_x ozone season allowance transfers

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 10. (a) A CAIR authorized account representative seeking recordation of a CAIR NO_x ozone season allowance transfer shall submit the transfer to the U.S. EPA. To be considered correctly submitted, the CAIR NO_x ozone season allowance transfer shall include the following elements, in a format specified by the U.S. EPA:

- (1) The account numbers for both the transferor and transferee accounts.**
- (2) The serial number of each CAIR NO_x ozone season allowance that is in the transferor account and is to be transferred.**
- (3) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.**

(b) Within five (5) business days, except as provided in subsection (c), of receiving a CAIR NO_x ozone season allowance transfer, the U.S. EPA will record a CAIR NO_x ozone season allowance transfer by moving each CAIR NO_x ozone season allowance from the transferor account to the transferee account as specified by the request, provided the following:

- (1) The transfer is correctly submitted under subsection (a).**
- (2) The transferor account includes each CAIR NO_x ozone season allowance identified by serial number in the transfer.**

(c) A CAIR NO_x ozone season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x ozone season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the U.S. EPA completes the deductions under section 9(i) and 9(j) of this rule for the control period immediately before such allowance transfer deadline.

(d) Where a CAIR NO_x ozone season allowance transfer submitted for recordation fails to meet the requirements of subsection (b), the U.S. EPA will not record such transfer.

(e) The following notification requirements shall apply to CAIR NO_x allowance transfers:

(1) Within five (5) business days of recordation of a CAIR NO_x ozone season allowance transfer under subsections (b) and (c) the U.S. EPA will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(2) Within ten (10) business days of receipt of a CAIR NO_x ozone season allowance transfer that fails to meet the requirements of subsection (b), the U.S. EPA will notify the CAIR authorized account representatives of both accounts subject to the transfer of the decision not to record the transfer and the reasons for such nonrecordation.

(f) Nothing in this section shall preclude the submission of a CAIR NO_x ozone season allowance transfer for recordation following notification of nonrecordation. (Air Pollution Control Board; 326 IAC 24-3-10; filed Jan 26, 2007, 10:25 a.m.: 20070221-IR-326050117FRA)

326 IAC 24-3-11 Monitoring and reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 11. (a) The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x ozone season unit, shall comply with the monitoring, record keeping, and reporting requirements as provided in this rule and in 40 CFR 75, Subpart H*. For purposes of complying with such requirements, the definitions in section 2 of this rule and 40 CFR 72.2* shall apply, and the terms affected unit, designated representative, and continuous emission monitoring system (CEMS) in 40 CFR 75* shall be replaced by the terms CAIR NO_x ozone season unit, CAIR designated representative, and continuous emission monitoring system (CEMS) respectively, as defined in section 2 of this rule. The owner or operator of a unit that is not a CAIR NO_x ozone season unit but that is monitored under 40 CFR 75.72(b)(2)(ii)* shall comply with the same monitoring, record keeping, and reporting requirements as a CAIR NO_x ozone season unit.

(b) The owner or operator of each CAIR NO_x ozone season unit shall do the following:

(1) Install all monitoring systems required under this section for monitoring NO_x ozone season mass emissions and individual unit heat input. This includes all systems required to monitor NO_x ozone season emission rate, NO_x ozone season concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with 40 CFR 75.71* and 40 CFR 75.72*.

(2) Successfully complete all certification tests required under subsections (f) through (j) and meet all other requirements of this section and 40 CFR 75* applicable to the monitoring systems under subdivision (1).

(3) Record, report, and quality-assure the data from the monitoring systems under subdivision (1).

(c) Except as provided in subsection (p), the owner or operator shall meet the monitoring system certification and other requirements of subsection (b)(1) and (b)(2) on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subsection (b)(1) on and after the following dates:

(1) For the owner or operator of a CAIR NO_x ozone season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_x ozone season unit that commences commercial operation on or after July 1, 2007, and that reports on an annual basis under subsection (n)(3), by the later of the following dates:

(A) May 1, 2008.

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which the unit commences commercial operation; or

(ii) ninety (90) unit operating days after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_x ozone season unit that commences commercial operation on or after July 1, 2007, and that reports on a control period basis under subsection (n)(3)(B)(ii), by the later of the following dates:

(A) If the compliance date under clause (B) is not during a control period, May 1 immediately following the compliance date under clause (B).

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which the unit commences commercial operation; or

(ii) ninety (90) unit operating days after the date on which the unit commences commercial operation.

(4) For the owner or operator of a CAIR NO_x ozone season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under subdivisions (1), (2), (6), or (7) and that reports on an annual basis under subsection (n)(3), compliance by the earlier of:

(A) one hundred eighty (180) calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or

(B) ninety (90) unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(5) For the owner or operator of a CAIR NO_x ozone season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under subdivision (1), (3), (6), or (7) and that reports on control period basis under subsection (n)(3)(B)(ii), by the later of the following dates:

(A) If the compliance date under clause (B) is not during a control period, May 1 immediately following the compliance date under clause (B).

(B) The earlier of:

(i) one hundred eighty (180) calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or

(ii) ninety (90) unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(6) Notwithstanding the dates in subdivisions (1) through (3), for the owner or operator of a unit for which a CAIR NO_x ozone season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, by the date specified in section 12(f)(2) through 12(f)(4) of this rule.

(7) Notwithstanding the dates in subdivisions (1), (2), and (3), for the owner or operator of a CAIR NO_x ozone season opt-in unit, by the date on which the CAIR NO_x ozone season opt-in unit under section 12 of this rule enters the CAIR NO_x ozone season trading program as provided in section 12(f)(9) of this rule.

(d) The owner or operator of a CAIR NO_x ozone season unit that does not meet the applicable compliance date set forth in subsection (c) for any monitoring system under subsection (b)(1) shall, for each such monitoring system, determine, record, and report maximum potential or, as appropriate, minimum potential, values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with 40 CFR 75.31(b)(2) or 40 CFR 75.31(c)(3)*, 40 CFR 75, Appendix D, Section 2.4*, or 40 CFR 75, Appendix E, Section 2.5*, as applicable.

(e) The following shall apply to any monitoring system, alternative monitoring system, alternative reference method, or any other alternative for a CEMS required under this rule:

(1) No owner or operator of a CAIR NO_x ozone season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section without having obtained prior written approval in accordance with subsection (o).

(2) No owner or operator of a CAIR NO_x ozone season unit shall operate the unit so as to discharge, or allow to be discharged, NO_x ozone season emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section and 40 CFR 75*.

(3) No owner or operator of a CAIR NO_x ozone season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x ozone season mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section and 40 CFR 75*.

(4) No owner or operator of a CAIR NO_x ozone season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this section, except under any one (1) of the following circumstances:

(A) During the period that the unit is covered by an exemption under section 3 of this rule.

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR 75*, by the department for

use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system.

(C) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with subsection (h)(3)(A).

(f) The owner or operator of a CAIR NO_x ozone season unit shall be exempt from the initial certification requirements of this subsection and subsections (g) through (j) for a monitoring system under subsection (b)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR 75*.

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21*, 40 CFR 75, Appendix B*, 40 CFR 75, Appendix D*, and 40 CFR 75, Appendix E* are fully met for the certified monitoring system described in subdivision (1).

The recertification provisions of this subsection and subsections (g) through (j) shall apply to a monitoring system under subsection (b)(1) exempt from initial certification requirements under this subsection.

(g) If the U.S. EPA has previously approved a petition under 40 CFR 75.17(a)* or 40 CFR 75.17(b)* for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66* for an alternative to a requirement in 40 CFR 75.12* or 40 CFR 75.17*, the CAIR designated representative shall resubmit the petition to the U.S. EPA under subsection (o)(1) to determine whether the approval applies under the CAIR NO_x ozone season trading program.

(h) Except as provided in subsection (f), the owner or operator of a CAIR NO_x ozone season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (that is, a continuous emission monitoring system and an excepted monitoring system under 40 CFR 75, Appendix D* and 40 CFR 75, Appendix E*) under subsection (b)(1). The owner or operator of a unit that qualifies to use the low mass emissions accepted monitoring methodology under 40 CFR 75.19* or that qualifies to use an alternative monitoring system under 40 CFR 75, Subpart E* shall comply with the procedures in subsection (i) or (j) respectively:

(1) The owner or operator shall ensure that each continuous monitoring system under subsection (b)(1), including the automated data acquisition and handling system, successfully completes all of the initial certification testing required under 40 CFR 75.20* by the applicable deadline in subsection (c). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this section in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20* is required.

(2) Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under subsection (b)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21* or 40 CFR 75, Appendix B*, the owner or operator shall recertify the monitoring system in accordance with 40 CFR 75.20(b)*. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or

the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b)*. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_x monitoring system under 40 CFR 75, Appendix E*, under subsection (b)(1) are subject to the recertification requirements in 40 CFR 75.20(g)(6)*.

(3) Clauses (A) through (D) apply to both initial certification and recertification of a continuous monitoring system under subsection (b)(1). For recertifications, replace the words certification and initial certification with the word recertification, replace the word certified with the word recertified, and follow the procedures in 40 CFR 75.20(b)(5)* and 40 CFR 75.20(g)(7)* in lieu of the procedures in clause (E). Requirements for the certification approval process for initial certification and recertification, and loss of certification are as follows:

(A) The CAIR designated representative shall submit to the department, the appropriate EPA Regional Office, and the U.S. EPA written notice of the dates of certification testing, in accordance with subsection (m).

(B) The CAIR designated representative shall submit to the department a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63*.

(C) The provisional certification date for a monitoring system shall be determined in accordance with 40 CFR 75.20(a)(3)*. A provisionally certified monitoring system may be used under the CAIR NO_x ozone season trading program for a period not to exceed one hundred twenty (120) days after receipt by the department of the complete certification application for the monitoring system under clause (B). Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR 75*, shall be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of the date of receipt of the complete certification application by the department.

(D) The department shall issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under clause (B). In the event the department does not issue such a notice within such one hundred twenty (120) day period, each monitoring system that meets the applicable performance requirements of 40 CFR 75* and is included in the certification application shall be deemed certified for use under the CAIR NO_x ozone season trading program. The issuance of notices shall be as follows:

(i) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75*, then the department shall issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(ii) If the certification application is not complete, then the department shall issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the

additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under item (iii). The one hundred twenty (120) day review period shall not begin before receipt of a complete certification application.

(iii) If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR 75* or if the certification application is incomplete and the requirement for disapproval under item (ii) is met, then the department shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification, as defined under 40 CFR 75.20(a)(3)*. The owner or operator shall follow the procedures for loss of certification in clause (E) for each monitoring system that is disapproved for initial certification.

(iv) The department or, for a CAIR NO_x ozone season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the U.S. EPA may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (I).

(E) If the department or the U.S. EPA issues a notice of disapproval of a certification application under clause (D)(iii) or a notice of disapproval of certification status under clause (D)(iv), then the following shall apply:

(i) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii)*, 40 CFR 75.20(g)(7)*, or 40 CFR 75.21(e)* and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i)* or 40 CFR 75.20(g)(7)*:

(AA) For a disapproved NO_x emission rate, NO_x-diluent, system, the maximum potential NO_x emission rate, as defined in 40 CFR 72.2*.

(BB) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in 40 CFR 75, Appendix A, Sections 2.1.2.1 and 2.1.4.1*.

(CC) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration, as applicable, as defined in 40 CFR 75, Appendix A, Sections 2.1.5, 2.1.3.1, and 2.1.3.2*.

(DD) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in 40 CFR 75, Appendix D, Section 2.4.2.1*.

(EE) For a disapproved excepted NO_x ozone season monitoring system under 40 CFR 75, Appendix E, the fuel-specific maximum potential NO_x ozone season emission rate, as defined in 40 CFR

72.2*.

(ii) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with clauses (A) and (B).

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's or the U.S. EPA's notice of disapproval, not later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

(i) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under 40 CFR 75.19* shall meet the applicable certification and recertification requirements in 40 CFR 75.19(a)(2)* and 40 CFR 75.20(h)*. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g)*.

(j) The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the U.S. EPA and, if applicable, the department under 40 CFR 75, Subpart E* shall comply with the applicable notification and application procedures of 40 CFR 75.20(f)*.

(k) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR 75*, data shall be substituted using the applicable missing data procedures in 40 CFR, Subpart D*, 40 CFR 75, Subpart H*, 40 CFR 75, Appendix D*, or 40 CFR 75, Appendix E*.

(l) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsections (f) through (j) or the applicable provisions of 40 CFR 75*, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or, for a CAIR NO_x ozone season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the U.S. EPA will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection and subsection (k), an audit shall be either a field audit or an audit of any information submitted to the department or the U.S. EPA. By issuing the notice of disapproval, the department or the U.S. EPA revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in subsections (f) through (j) for each disapproved monitoring system.

(m) The CAIR designated representative for a CAIR NO_x ozone season unit shall submit written notice to the department and the U.S. EPA in accordance with 40 CFR 75.61*.

(n) The CAIR designated representative shall comply with all record keeping and reporting requirements in this subsection, the applicable record keeping and reporting requirements under 40 CFR 75.73*, and the requirements of section 6(e)(1) of this rule as follows:

(1) The owner or operator of a CAIR NO_x ozone season unit shall comply with requirements of 40 CFR 75.73(c)* and 40 CFR 75.73(e)* and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule.

(2) The CAIR designated representative shall submit an application to the department within forty (45) days after completing all initial certification or recertification tests required under subsections (f) through (j), including the information required under 40 CFR 75.63*.

(3) The CAIR designated representative shall submit quarterly reports as follows:

(A) If the CAIR NO_x ozone season unit is subject to an acid rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this section, the CAIR designated representative shall meet the requirements of 40 CFR 75, Subpart H*, concerning monitoring of NO_x mass emissions, for such unit for the entire year and shall report the NO_x mass emissions data and heat input data for such unit, in a format prescribed by the U.S. EPA, for each calendar quarter beginning with:

(i) for a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008, through June 30, 2008;

(ii) for a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection (c), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering May 1, 2008, through June 30, 2008;

(iii) notwithstanding items (i) and (ii), for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the calendar quarter corresponding to the date specified in section 12(f)(2), 12(f)(3), and 12(f)(4) of this rule; and

(iv) notwithstanding items (i) and (ii), for a CAIR NO_x opt-in unit under section 12 of this rule, the calendar quarter corresponding to the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x annual trading program as provided in section 12(f)(9) of this rule.

(B) If the CAIR NO_x ozone season unit is not subject to an acid rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative shall meet either of the following:

(i) Meet the requirements of 40 CFR 75, Subpart H*, concerning monitoring of NO_x mass emissions, for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with clause (A).

(ii) Meet the requirements of 40 CFR 75, Subpart H* for the control period, including the requirements in 40 CFR 75.74(c)*, and report NO_x mass emissions data and heat input data, including the data described in 40 CFR 75.74(c)(6)*, for such unit only for the control period of each

year and report, in an electronic quarterly report in a format prescribed by the U.S. EPA, for each calendar quarter beginning with:

(AA) for a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(BB) for a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection (c), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(CC) notwithstanding subitems (AA) and (BB), for a unit for which a CAIR opt-in permit application submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under section 12 of this rule, the calendar quarter corresponding to the date specified in section 12(f)(2), 12 (f)(3), and 12(f)(4) of this rule; and

(DD) notwithstanding items (i) and (ii), for a CAIR NO_x opt-in unit under section 12 of this rule, the calendar quarter corresponding to the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x annual trading program as provided in section 12(f)(9) of this rule.

(C) The CAIR designated representative shall submit each quarterly report to the U.S. EPA within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75.73(f)*.

(D) For CAIR NO_x ozone season units that are also subject to an acid rain emissions limitation or the CAIR NO_x ozone season trading program, CAIR SO₂ trading program, or mercury budget trading program, quarterly reports shall include the applicable data and information required by 40 CFR 75, Subparts F through I* as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.

(4) The CAIR designated representative shall submit to the U.S. EPA a compliance certification, in a format prescribed by the U.S. EPA in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(A) the monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75*, including the quality assurance procedures and specifications;

(B) for a unit with add-on NO_x ozone season emission controls and for all hours where NO_x data are substituted in accordance with 40 CFR 75.34(a)(1)*, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR 75, Appendix B* and the substitute data values do not systematically underestimate NO_x emissions; and

(C) for a unit that is reporting on a control period basis under subdivision 3 (B)(ii), the NO_x mass emission rate and NO_x concentration values substituted for missing data under 40 CFR 75, Subpart D* are calculated using only values from a control period and do not systemically underestimate NO_x emissions.

(o) A petition requesting approval of alternatives to any requirement of this section may be made as follows:

(1) Except as provided in subdivision (3), the CAIR designated representative of a CAIR NO_x ozone season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the U.S. EPA requesting approval to apply an alternative to any requirement of this section. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved in writing by the U.S. EPA, in consultation with the department.

(2) The CAIR designated representative of a CAIR NO_x ozone season unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66* to the department and the U.S. EPA requesting approval to apply an alternative to any requirement of this section. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(3) The CAIR designated representative of a CAIR NO_x ozone season unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 * to the department and the U.S. EPA requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under 40 CFR 75.72*. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the department and the U.S. EPA.

(p) The owner or operator of a CAIR NO_x unit is subject to the applicable provisions of 40 CFR 75* concerning units in long-term cold storage.

*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 Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; 326 IAC 24-3-11; filed Jan 26, 2007, 10:25 a.m.: 20070221-IR-326050117FRA)

326 IAC 24-3-12 CAIR NO_x ozone season opt-in units

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 12. (a) A CAIR NO_x ozone season opt-in unit must be a unit that meets the following requirements:

(1) Is located in Indiana.

(2) Is not a CAIR NO_x ozone season unit under section 1 of this rule and is not covered by a retired unit exemption under section 3 of this rule that is in effect.

(3) Is not covered by a retired unit exemption under 40 CFR 72.8* that is in effect.

(4) Has or is required or qualified to have a Part 70 operating permit or other federally enforceable permit.

(5) Vents all of its NO_x emissions to a stack and can meet the monitoring, record keeping, and reporting requirements of section 11 of this rule.

(b) Except as otherwise provided sections 1, 2, 4 through 7, and 9 through 11 of this rule, a CAIR NO_x ozone season opt-in unit shall be treated as a CAIR NO_x ozone season unit for purposes of applying sections of this rule.

(c) Solely for purposes of applying, as provided in this section, the requirements of section 11 of this rule to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, such unit shall be treated as a CAIR NO_x ozone season unit before issuance of a CAIR opt-in permit for such unit.

(d) Any CAIR NO_x opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this section, located at the same source as one (1) or more CAIR NO_x ozone season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x ozone season units.

(e) The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x ozone season opt-in unit in subsection (a) may apply for an initial CAIR opt-in permit at any time, except as provided under subsection (h)(8) and (h)(9), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under section 7(c) of this rule.

(2) A certification, in a format specified by the department, that the unit:

(A) is not a CAIR NO_x ozone season unit under section 1 of this rule and is not covered by a retired unit exemption under section 3 of this rule that is in effect;

(B) is not covered by a retired unit exemption under 40 CFR 72.8* that is in effect;

(C) vents all of its NO_x emissions to a stack; and

(D) has documented heat input for more than eight hundred seventy-six (876) hours during the six (6) months immediately preceding submission of the CAIR permit application under section 7(c) of this rule.

(3) A monitoring plan in accordance with section 11 of this rule.

(4) A complete certificate of representation under section 6(h) of this rule consistent with subsection (d), if no CAIR designated representative has been previously designated for the source that includes the unit.

(5) A statement, in a format specified by the department, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x ozone season allowances under subsection (j)(3) or (j)(4), subject to the conditions in subsections (f)(10) and (h)(8). If allocation under subsection (j)(4) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015, and that they will provide, upon request, documentation demonstrating such intent.

The CAIR designated representative of a CAIR NO_x ozone season opt-in unit shall submit a complete CAIR permit application under section 7(c) of this rule to renew the CAIR NO_x ozone season opt-in unit permit in accordance with the department's regulations for Part 70 operating permits, or the department's regulations for other federally enforceable permits if applicable, addressing permit renewal. Unless the

department issues a notification of acceptance or withdrawal of the CAIR NO_x ozone season opt-in unit from the CAIR NO_x ozone season trading program in accordance with subsection (h) or the unit becomes a CAIR NO_x ozone season unit under section 1 of this rule, the CAIR NO_x ozone season opt-in unit shall remain subject to the requirements for a CAIR NO_x ozone season opt-in unit, even if the CAIR designated representative for the CAIR NO_x ozone season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit.

(f) The department shall issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under subsection (e) is submitted in accordance with the following:

(1) The department and the U.S. EPA will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under subsection (e). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with section 11 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(2) If the department and the U.S. EPA determine that the monitoring plan is sufficient under subdivision (1), the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with section 11 of this rule, starting on the date of certification of the appropriate monitoring systems under section 11 of this rule and continuing until a CAIR opt-in permit is denied under subdivision (8) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x ozone season trading program in accordance with subsection (h).

(3) The monitoring and reporting under subdivision (2) shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x ozone season trading program under subdivision (9), during which period monitoring system availability must not be less than ninety percent (90%) under section 11 of this rule and the unit must be in full compliance with any applicable state or federal emissions or emissions-related requirements.

(4) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with section 11 of this rule for one (1) or more control periods, in addition to the control period under subdivision (3), during which control periods monitoring system availability is not less than ninety percent (90%) under section 11 of this rule and the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements and which control periods begin not more than three (3) years before the unit enters the CAIR NO_x ozone season trading program under subdivision (9), such information shall be used as provided in subdivisions (5) and (6).

(5) The unit's baseline heat rate shall equal one (1) of the following:

(A) If the unit's NO_x emissions rate and heat input are monitored and reported for only one (1) control period, in accordance with subdivisions (2) and (3), the unit's total heat input, in million British thermal units (MMBtu), for the control period.

(B) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with

subdivisions (2) through (4), the average of the amounts of the unit's total heat input, in million British thermal units (MMBtu), for the control periods under subdivisions (3) and (4).

(6) The unit's baseline NO_x emission rate shall equal one (1) of the following:

(A) If the unit's NO_x emissions rate and heat input are monitored and reported for only one (1) control period, in accordance with subdivisions (2) and (3), the unit's NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu), for the control period.

(B) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (2) through (4), and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu), for the control periods under subdivisions (3) and (4).

(C) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one (1) control period, in accordance with subdivisions (2) through (4), and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu), for such control periods during which the unit has add-on NO_x emission controls.

(7) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subdivisions (5) and (6) and if the department determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x ozone season opt-in unit in subsection (a) and meets the elements certified in subsection (e)(2), the department shall issue a CAIR opt-in permit. The department shall provide a copy of the CAIR opt-in permit to the U.S. EPA, who will then establish a compliance account for the source that includes the CAIR NO_x ozone season opt-in unit unless the source already has a compliance account.

(8) Notwithstanding subdivisions (1) through (7), if at any time before issuance of a CAIR opt-in permit for the unit, the department determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x ozone season opt-in unit in subsection (a) or meets the elements certified in subsection (e)(2), the department shall issue a denial of a CAIR NO_x ozone season opt-in permit for the unit.

(9) A unit for which an initial CAIR opt-in permit is issued by the department shall become a CAIR NO_x ozone season opt-in unit, and a CAIR NO_x ozone season unit, as of the later of May 1, 2009, or May 1 of the first control period during which such CAIR opt-in permit is issued.

(10) If the CAIR designated representative requests, and the department issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x ozone season opt-in unit of CAIR NO_x ozone season allowances under subsection (j)(4) and such unit is repowered after its date of entry into the CAIR NO_x ozone season trading program under subdivision (9), the repowered unit shall be treated as a CAIR NO_x ozone season opt-in unit replacing the original CAIR NO_x ozone season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber. Notwithstanding subdivisions (5) and (6), as of the date of start-up, the repowered unit shall be deemed to have the same date of commencement of

operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x ozone season emission rate as the original CAIR NO_x ozone season opt-in unit, and the original CAIR NO_x ozone season opt-in unit shall no longer be treated as a CAIR NO_x ozone season opt-in unit or a CAIR NO_x ozone season unit.

(g) The following shall apply to the content of each CAIR opt-in permit:

(1) Each opt-in permit shall contain the following:

(A) All elements required for a complete CAIR permit application under section 7(c) of this rule.

(B) The certification in subsection (e)(2).

(C) The unit's baseline heat input under subsection (f)(5).

(D) The unit's baseline NO_x ozone season emission rate under subsection (f)(6).

(E) A statement whether the unit is to be allocated CAIR NO_x ozone season allowances under subsection (j)(3) or (j)(4), subject to the conditions in subsections (f)(10) and (h)(8).

(F) A statement that the unit may withdraw from the CAIR NO_x ozone season trading program only in accordance with subsection (h).

(G) A statement that the unit is subject to, and the owners and operators of the unit must comply with the requirements of subsection (i).

(2) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under this section and sections 9 and 10 of this rule, every allocation, transfer, or deduction of CAIR NO_x ozone season allowances to or from the compliance account of the source that includes a CAIR NO_x ozone season opt-in unit covered by the CAIR opt-in permit.

(3) The CAIR opt-in permit shall be included, in a format prescribed by the department, in the CAIR permit for the source where the CAIR NO_x ozone season opt-in unit is located and in a Part 70 operating permit or FESOP.

(h) The following requirements must be satisfied in order to withdraw an opt-in unit from the CAIR NO_x trading program:

(1) Except as provided under subdivision (8), a CAIR NO_x ozone season opt-in unit may withdraw from the CAIR NO_x ozone season trading program, but only if the department issues a notification to the CAIR designated representative of the CAIR NO_x ozone season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x ozone season opt-in unit in accordance with subdivision (6).

(2) In order to withdraw a CAIR NO_x ozone season opt-in unit from the CAIR NO_x ozone season trading program, the CAIR designated representative of the CAIR NO_x ozone season opt-in unit shall submit to the department a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least four (4) years after September 30 of the year of entry into the CAIR NO_x ozone season trading program under subsection (f)(9). The request must be submitted not later than ninety (90) days before the requested effective date of withdrawal.

(3) Before a CAIR NO_x ozone season opt-in unit covered by a request under subdivision (1) may withdraw from the CAIR NO_x ozone season trading program and the CAIR opt-in permit may be terminated under subdivision (7), the

following conditions must be met:

(A) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x ozone season opt-in unit must meet the requirement to hold CAIR NO_x ozone season allowances under section 4(c) of this rule and cannot have any excess emissions.

(B) After the requirement for withdrawal under clause (A) is met, the U.S. EPA will deduct from the compliance account of the source that includes the CAIR NO_x ozone season opt-in unit CAIR NO_x ozone season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x ozone season allowances allocated to the CAIR NO_x ozone season opt-in unit under section 12(j) of this rule for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x ozone season units at the source, the U.S. EPA will close the compliance account, and the owners and operators of the CAIR NO_x ozone season opt-in unit may submit a CAIR NO_x ozone season allowance transfer for any remaining CAIR NO_x ozone season allowances to another CAIR NO_x ozone season allowance tracking system in accordance with section 10 of this rule.

(4) After the requirements for withdrawal under subdivisions (2) and (3) are met, including deduction of the full amount of CAIR NO_x ozone season allowances required, the department shall issue a notification to the CAIR designated representative of the CAIR NO_x ozone season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x ozone season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

(5) If the requirements for withdrawal under subdivisions (2) and (3) are not met, the department shall issue a notification to the CAIR designated representative of the CAIR NO_x ozone season opt-in unit that the CAIR NO_x ozone season opt-in unit's request to withdraw is denied. Such CAIR NO_x ozone season opt-in unit shall continue to be a CAIR NO_x ozone season opt-in unit.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the CAIR permit covering the CAIR NO_x ozone season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under subdivision (4). The unit shall continue to be a CAIR NO_x ozone season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x ozone season trading program concerning any control periods for which the unit is a CAIR NO_x ozone season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(7) If the department denies the CAIR NO_x ozone season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with subdivisions (2) and (3).

(8) Notwithstanding subdivisions (1) through (7), a CAIR NO_x ozone season opt-in unit shall not be eligible to withdraw from the CAIR NO_x ozone season trading program if the CAIR designated representative of the CAIR NO_x ozone season opt-in unit requests, and the department issues a CAIR NO_x ozone season opt-in permit providing for, allocation to the CAIR NO_x ozone season opt-in unit of CAIR NO_x ozone season allowances under subsection (j)(4).

(9) Once a CAIR NO_x ozone season opt-in unit withdraws from the CAIR NO_x ozone season trading program and its CAIR opt-in permit is terminated under this

section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under subsection (e) for such CAIR NO_x ozone season opt-in unit before the date that is four (4) years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit shall be treated as an initial application for a CAIR opt-in permit under subsection (f).

(i) When a CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule, then the CAIR designated representative shall notify in, writing, the department and the U.S. EPA of such change in the CAIR NO_x ozone season opt-in unit's regulatory status, within thirty (30) days of such change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning the CAIR NO_x opt-in source:

(1) When the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule, the department shall revise the CAIR NO_x ozone season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under section 7(d) and (7)(e) of this rule, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account of the source that includes the CAIR NO_x ozone season opt-in unit that becomes a CAIR NO_x ozone season unit under section 1 of this rule, CAIR NO_x ozone season allowances equal in amount to, and allocated for, the same or a prior control period as follows:

(A) Any CAIR NO_x ozone season allowances allocated to the CAIR NO_x ozone season opt-in unit under subsection (j)(4) for any control period after the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule.

(B) If the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule is not September 30, the CAIR NO_x ozone season allowances allocated to the CAIR NO_x ozone season opt-in unit under section 12(j) of this rule for the control period that includes the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(3) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x ozone season unit that becomes a CAIR NO_x ozone season unit under section 1 of this rule contains the CAIR NO_x ozone season allowances necessary for completion of the deduction under subdivision (2).

(4) For every control period after the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule, the CAIR NO_x ozone season opt-in unit shall be allocated CAIR NO_x ozone season allowances under section 8(c) of this rule.

(5) Notwithstanding subdivision (4), if the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this

rule is not January 1, the following amount of CAIR NO_x ozone season allowances shall be allocated to the CAIR NO_x ozone season opt-in unit, as a CAIR NO_x ozone season unit, under section 8(c) of this rule for the control period that includes the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule:

- (A) the amount of CAIR NO_x ozone season allowances otherwise allocated to the CAIR NO_x ozone season opt-in unit, as a CAIR NO_x ozone season unit, under section 8(c) of this rule for the control period;
- (B) multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x ozone season opt-in unit becomes a CAIR NO_x ozone season unit under section 1 of this rule, divided by the total number of days in the control period; and
- (C) rounded to the nearest whole allowance, as appropriate.

(j) The department shall allocate CAIR NO_x allowances to CAIR NO_x opt-in sources as follows:

(1) When the CAIR opt-in permit is issued under subsection (f)(7), the department shall allocate CAIR NO_x ozone season allowances to the CAIR NO_x ozone season opt-in unit, and submit to the U.S. EPA the allocation for the control period in which a CAIR NO_x ozone season opt-in unit enters the CAIR NO_x ozone season trading program under subsection (f)(9), in accordance with subdivision (3) or (4).

(2) By not later than July 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_x ozone season trading program under subsection (f)(9) and July 31 of each year thereafter, the department shall allocate CAIR NO_x ozone season allowances to the CAIR NO_x ozone season opt-in unit, and submit to the U.S. EPA the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x ozone season opt-in unit, in accordance with subdivision (3) or (4).

(3) For each control period for which a CAIR NO_x ozone season opt-in unit is to be allocated CAIR NO_x ozone season allowances, the department shall allocate in accordance with the following procedures:

(A) The heat input, in million British thermal units (MMBtu), used for calculating the CAIR NO_x ozone season allowance allocation shall be the lesser of the following:

(i) The CAIR NO_x ozone season opt-in unit's baseline heat input determined under subsection (f)(5).

(ii) The CAIR NO_x ozone season opt-in unit's heat input, as determined in accordance with section 11 of this rule, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x ozone season opt-in unit enters the CAIR NO_x ozone season trading program under subsection (f)(9).

(B) The NO_x emission rate, in million British thermal units (MMBtu), used for calculating CAIR NO_x ozone season allowance allocations shall be the lesser of the following:

(i) The CAIR NO_x ozone season opt-in unit's baseline NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu), determined under subsection (f)(6) and multiplied by seventy percent

(70%).

(ii) The most stringent state or federal NO_x ozone season emissions limitation applicable to the CAIR NO_x ozone season opt-in unit at any time during the control period for which CAIR NO_x ozone season allowances are to be allocated.

(C) The department shall allocate CAIR NO_x ozone season allowances to the CAIR NO_x ozone season opt-in unit in an amount equaling the heat input under clause (A), multiplied by the NO_x ozone season emission rate under clause (B), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(4) Notwithstanding subdivision (3) and if the CAIR designated representative requests, and the department issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x ozone season opt-in unit of CAIR NO_x ozone season allowances under this subdivision, subject to the conditions in subsection (f)(10) and subsection (h), the department shall allocate to the CAIR NO_x ozone season opt-in unit as follows:

(A) For each control period in 2009 through 2014 for which the CAIR NO_x ozone season opt-in unit is to be allocated CAIR NO_x ozone season allowances as follows:

(i) The heat input, in million British thermal units (MMBtu), used for calculating CAIR NO_x ozone season allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The NO_x emission rate, in pounds per million British thermal units (lb/MMBtu), used for calculating CAIR NO_x ozone season allowance allocations shall be the lesser of:

(AA) the CAIR NO_x ozone season opt-in unit's baseline NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu), determined under subsection (f)(6); or

(BB) the most stringent state or federal NO_x emissions limitation applicable to the CAIR NO_x ozone season opt-in unit at any time during the control period in which the CAIR NO_x ozone season opt-in unit enters the CAIR NO_x ozone season trading program under subsection (f)(9).

(iii) The department shall allocate CAIR NO_x ozone season allowances to the CAIR NO_x ozone season opt-in unit in an amount equaling the heat input under clause (A)(i), multiplied by the NO_x emission rate under clause (A)(ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(B) For each control period in 2015 and thereafter for which the CAIR NO_x ozone season opt-in unit is to be allocated CAIR NO_x ozone season allowances as follows:

(i) The heat input, in million British thermal units (MMBtu), used for calculating the CAIR NO_x ozone season allowance allocations shall be determined as described in subdivision (3)(A).

(ii) The NO_x emission rate, in pounds per million British thermal units (lb/MMBtu), used for calculating the CAIR NO_x ozone season allowance allocation shall be the lesser of:

(AA) fifteen-hundredths (0.15) pounds per million British thermal

units (lb/MMBtu);
(BB) the CAIR NO_x ozone season opt-in unit's baseline NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu), determined under subsection (f)(6); or
(CC) the most stringent state or federal NO_x emissions limitation applicable to the CAIR NO_x ozone season opt-in unit at any time during the control period for which CAIR NO_x ozone season allowances are to be allocated.

(iii) The department shall allocate CAIR NO_x ozone season allowances to the CAIR NO_x ozone season opt-in unit in an amount equaling the heat input under clause (B)(i), multiplied by the NO_x emission rate under clause (B)(ii), divided by two thousand (2,000) pounds per ton, and rounded to the nearest whole allowance as appropriate.

(5) The U.S. EPA will record, in the compliance account of the source that includes the CAIR NO_x ozone season opt-in unit, the CAIR NO_x ozone season allowances allocated by the department to the CAIR NO_x ozone season opt-in unit under subdivision (1).

(6) By September 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_x ozone season trading program under subsection (f)(9) and September 1 of each year thereafter, the U.S. EPA will record, in the compliance account of the source that includes the CAIR NO_x ozone season ozone season opt-in unit, the CAIR NO_x ozone season ozone season allowances allocated by the department to the CAIR NO_x ozone season ozone season opt-in unit under subdivision (2).

***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 Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Air Pollution Control Board; 326 IAC 24-3-12; filed Jan 26, 2007, 10:25 a.m.: 20070221-IR-326050117FRA)

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Proposed Rule: 20060809-IR-326050117PRA

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Filed with Publisher: January 26, 2007, 10:25 a.m.

Documents Incorporated by Reference: 40 CFR 51.123; 40 CFR 51.124; 40 CFR 96; 40 CFR 52.35; 40 CFR 52.36

Small Business Regulatory Coordinator: Sandra El-Yusuf, IDEM Compliance and Technical Assistance Program, OPPTA - MC60-04, 100 N. Senate Avenue, W-041, Indianapolis, IN 46204-2251, 317-232-8578, selyusuf@idem.in.gov

Small Business Assistance Program Ombudsman: Eric Levenhagen, IDEM Small Business Assistance Program Ombudsman, External Affairs - MC50-01, 100 N. Senate Avenue, IGCN 1301, Indianapolis, IN 46204-2251, 317-234-3386, elevenha@idem.in.gov

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Consumer and Commercial Products (326 IAC 8)

TITLE 326 AIR POLLUTION CONTROL BOARD**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #07-351

DEVELOPMENT OF NEW RULES CONCERNING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule at [326 IAC 8-15](#) concerning emissions of volatile organic compounds from consumer and commercial products in Indiana. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 27, 2007, Indiana Register (DIN: [20070627-IR-326070351FNA](#)).

CITATIONS AFFECTED: [326 IAC 8-15](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

In the April 30, 2004, Federal Register (69 FR 23858), the U.S. EPA designated 23 counties as nonattainment for the 8-hour ozone standard of 0.085 parts per million (ppm). While the majority of Indiana has attained the current 8-hour ozone standard, it is prudent for Indiana to consider implementing additional cost-effective measures to reduce emissions that contribute to the formation of ozone. The reasons for considering additional reductions include the narrow margin between Indiana's current air quality and the current standard of 0.085 ppm, a number of Indiana counties do not meet the new 8-hour ozone standard of 0.075 ppm that the U.S. EPA issued on March 12, 2008, and the concerns expressed by other states that emissions from Indiana are contributing to their inability to attain the standard (the Clean Air Act provides a legal mechanism for those states to require Indiana to reduce Indiana's potential contribution to nonattainment in other states).

In an effort to assist neighboring states in the development of SIPs to comply with the federal requirements, the Lake Michigan Air Directors Consortium (LADCO) has been working with its member states to identify and recommend regional controls that would help states bring areas back into attainment for the 8-hour ozone standard. The LADCO states include Illinois, Indiana, Michigan, Ohio, and Wisconsin. The LADCO states have discussed applying certain VOC control measures to all counties in the region in order to provide a general benefit to all ozone and fine particle nonattainment areas. LADCO has evaluated potential reductions from various regulatory options that could be adopted on a multistate basis in the region. Based on discussions with other LADCO states and information provided by LADCO, IDEM proposes to develop a consumer and commercial products rule for Indiana as part of a regional effort to control ozone. This rule is part of a larger group of VOC control rules that have been agreed to by the LADCO states to address regional ozone and fine particle nonattainment. Other VOC control rules include automobile refinishing, architectural and industrial maintenance coatings, organic solvent degreasing, and stage I vapor recovery.

Consumer and commercial products are those items sold to retail customers for personal, household, or automotive use along with products marketed by wholesale distributors for use in commercial or institutional settings, such as beauty shops, schools, and hospitals. VOC emissions from these products are the result of evaporation of propellant and organic solvents during use. Consumer and commercial products include personal care products, household, automotive products, adhesives, and sealants, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) related insecticides, coatings (except coatings for architectural and industrial maintenance), and other miscellaneous products.

The U.S. EPA published the federal consumer and commercial products rule on September 11, 1998 (40 CFR Part 59, Subpart C) under the authority of Section 183(e) of the Clean Air Act. The federal rule limits the VOC content of 24 consumer product categories representing 47% of the consumer and commercial products inventory nationwide and requires all regulated products manufactured after December 10, 1998, to meet VOC content limits.

The Ozone Transport Commission (OTC) was created under the Clean Air Act and is responsible for advising the U.S. EPA on transport issues, with development and implementation of regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. It includes 12 states from Virginia to Maine and the District of Columbia. Since over half of the U.S. consumer and commercial products inventory is unregulated by

the federal rule, the OTC formed a workgroup to consider a model rule to reduce VOC emissions in consumer and commercial products. The OTC's final model rule for consumer and commercial products regulates approximately 80 consumer and commercial product categories and includes technologically feasible VOC content limits that are more stringent than the federal consumer and commercial products rule. The emission reductions for the OTC model rule are estimated to be 14.2% of the total product inventory beyond the reduction from the federal consumer and commercial products rule. The OTC model rule includes regulatory flexibility provisions for innovative products and alternative control plans.

To date, nine of the 13 member states have an effective rule including Delaware, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, and the District of Columbia. The other four member states are in the process of considering or adopting the OTC model rule. The LADCO states have committed to adopt the OTC model rule. Michigan and Ohio have adopted state versions of the OTC model rule, and Illinois has a state rule moving towards final adoption.

VOC emissions reductions can be obtained through product reformulation to obtain a lower VOC content. The product reformulation options vary with each product category and can involve: (1) replacing VOC solvents with a water-based reformulation; (2) replacing VOC solvents with acetone or another exempt solvent; (3) increasing the solids content of the product; (4) formulating a non-VOC propellant; or (5) changing the valve, container, or delivery system to reduce VOC content. The regulatory approach for reducing emissions is to establish VOC content limits for specific consumer and commercial products that manufacturers are required to meet either through reformulating products or substitution with compliant products.

The U.S. EPA is expected to propose amendments to the consumer and commercial product rules in 2008 with final rules expected in early 2009. These rules will most likely be based on the OTC model rule. At this time, U.S. EPA has not published the proposed amendments to the national consumer and commercial products rules.

In this rulemaking, Indiana is proposing to add a consumer and commercial products rule to the Article 8 VOC rules. The proposed rule is primarily based on the OTC model rule dated September 13, 2006. This rulemaking will contribute to the LADCO states' regional control efforts for VOC and will assist counties in reaching attainment or maintaining compliance for the newly revised 8-hour ozone standard. Upon completion, this rule will be submitted to the U.S. EPA for approval into the SIP and, along with other regional and state measures, will aid air pollution control efforts in Indiana.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

The following 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" (NIFL element or elements).

The following information is provided with each NIFL element:

- (1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana and examples in which federal law is inadequate to provide this protection for Indiana.
- (2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.
- (3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable, health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element A: The draft rule regulates additional categories of consumer and commercial products and establishes more stringent VOC limits than the current consumer and commercial products federal rule (40 CFR Part 59, Subpart C).

- (1) The application of certain VOC control measures to all consumer and commercial products in Indiana will provide a general benefit to nonattainment areas. This rule is part of a larger group of VOC control rules that have been agreed to by the LADCO states to address regional ozone nonattainment.
- (2) The fiscal impact of compliance is estimated to be approximately \$800 per ton for the OTC Model Rule emission limits. However, because many of the large consumer and commercial products producers already have experience with reformulating to the OTC limits, the cost of compliance in Indiana will likely be less than \$800 per ton.
- (3) LADCO evaluated potential reductions from various regulatory options that could be adopted on a multistate basis in the region. The information used for the evaluation is presented in a white paper on Consumer and Commercial Products at:

http://www.ladco.org/Regional_Air_Quality.html

Potential Fiscal Impact

The OTC model rule estimates a 14.2% reduction in VOC emissions beyond the federal consumer and commercial products rule at an estimated cost of \$800 per ton controlled. However, costs are expected to be lower than \$800 per ton. Many of the large consumer and commercial products producers already have experience with reformulating to the OTC limits. Additionally, multiple states have adopted the OTC model rule,

and therefore compliance costs are spread over a larger portion of sales.

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/4108.htm

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 North Senate Avenue
W041
Indianapolis, IN 46204-2251
(317) 232-8172
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
MC50-01 - IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Smith, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 27, 2007, through July 27, 2007, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Automotive Specialty Products Alliance (ASPA)
Consumer Specialty Products Association (CSPA)
Cosmetic, Toiletry, and Fragrance Association (CTFA)

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

Comments: The Automotive Specialty Products Alliance (ASPA) strongly supports Alternative #2, that IDEM defer action in light of EPA's pending revisions to the National Consumer Products Rule. ASPA supports this action by the EPA because the promulgation of a uniform national regulation will ensure that interstate commerce is not impaired by the promulgation of different (and potentially conflicting) state-specific regulations. ASPA strongly urges IDEM to suspend any future action to develop a proposed regulation and pursue Alternative #2 and work with the EPA in developing revisions to the National Consumer Products Rule. (ASPA)

The Consumer Specialty Products Association (CSPA) urges IDEM to pursue Alternative #2 and join other states in working with the EPA in developing revisions to the National Consumer Products Rule. (CSPA)

The Cosmetic, Toiletry, and Fragrance Association (CTFA) asks that IDEM suspend its intended regulatory action on Consumer and Commercial Products in deference to the EPA rulemaking that is currently underway. Avoiding an additional state rulemaking proceeding would substantially simplify compliance and enforcement, reduce the costs of regulation, and dispel any chance of unintended but significant differences between the regulations. (CTFA)

Response: The U.S. EPA has not yet published the proposed amendments to the National Consumer Products Rule. The May 30, 2007, memorandum issued by Mr. Stephen Page, director of the U.S. EPA's Office of Air Quality Planning and Standards, to U.S. EPA Regional Offices and all states preparing ozone State Implementation Plans stated that the U.S. EPA was planning to propose the revised consumer products regulations in either August or September of 2007 followed by promulgation as a final rule in December 2007, with new limits to take effect on January 1, 2009. IDEM did not proceed with this rulemaking in 2007 due to the expectation that the revised federal rules would be promulgated. However, to date, the U.S. EPA has not published their proposed revisions, and IDEM is now moving forward with this rulemaking. When the U.S. EPA publishes their proposed amendments to the federal rule, IDEM will update the rulemaking or final rule as necessary to ensure consistency with the federal regulations.

Comments: If IDEM pursues Alternative #1 (adoption of the OTC model rule), ASPA emphasizes the importance of promulgating uniform regulations for consumer products throughout the Midwest Region. ASPA supports the recently revised OTC model rule because it promotes uniform state regulations across the country. The VOC limits set forth in the OTC model rule may pose a significant challenge for small and medium sized companies that manufacture and market their products on a regional (as opposed to a nationwide) basis and thus, are not subject to the California (or OTC-based) VOC limits. However, ASPA supports the promulgation of uniform regulations because it is vitally important that interstate commerce is not impaired by the promulgation of different state regulations in the Midwest, Northeast, and Mid-Atlantic Regions. (ASPA)

If IDEM elects to pursue Alternative #1 and initiates the rulemaking process to adopt provisions of the recently revised OTC model rule, CSPA is on record as supporting the OTC model rule. CSPA has supported regulations based on the OTC Model Rule in nine Mid-Atlantic and Northeast States, Michigan, and the District of Columbia. CSPA strongly believes that it is critically important that Indiana and other Midwest States promulgate uniform regulatory requirements for consumer products to improve air quality without imposing unnecessary impediments to interstate commerce. (CSPA)

Response: IDEM understands the importance of consistency for a rulemaking that affects consumer and commercial products producers nationwide. IDEM is proposing to move forward and adopt the a rule that is substantively based on the OTC model rule (Alternative #1).

Comment: Indiana would have to commit a proportionate amount of personnel and resources if they elect to initiate a new state-specific regulatory program. However, IDEM's staff and resource commitment would be greatly reduced if IDEM relies upon the revised and soon-to-be-proposed National Consumer Products Rule. (CSPA)

Response: IDEM is proposing to adopt a rule based on the OTC model rule dated September 13, 2006. The U.S. EPA's revisions to the National Consumer and Commercial Products Rule are expected to be similar to the requirements in the OTC model rule. IDEM does not expect any significant increase in staff or resource commitment in order to implement the proposed consumer and commercial products rule.

Comment: CSPA believes that IDEM's assessment of the potential fiscal impact of the adopting the OTC model rule underestimates the significant costs to manufacturers, retailers and consumers. CSPA believes that the cost assessments do not take into account the administrative burdens of the regulations on manufacturers and retailers which may be passed on in some cases to consumers. However, in assessing the costs of complying with a regulation in Indiana, since many consumer products have been reformulated to meet the stringent California standards, much of the costs have already been absorbed by manufacturers who market their products on a nationwide basis. But, there are a significant number of Indiana-based or regional companies that make products that are not subject to California's (or other states') VOC limits. Thus, these companies will incur substantial costs to reformulate their products to meet either the EPA's soon-to-be-proposed revised National Rule or the OTC model rule. CSPA urges IDEM to more accurately calculate the fiscal impact on these small businesses. (CSPA)

Response: IDEM acknowledges that companies whose products are not distributed nationwide may have higher compliance costs than companies that currently sell products in states with the proposed OTC model rule emission limits. However, these regional companies will also be subject to any revisions that the U.S. EPA makes to the National Consumer and Commercial Products rule. This rulemaking will bring these companies into compliance before the federal rule is revised therefore reducing future compliance costs.

Comment: If IDEM adopts the OTC model rule, IDEM should set January 1, 2009 as the compliance date for the new VOC limits and related administrative and enforcement provisions. Additionally, a January 1, 2009 compliance date for all product categories would be consistent with the effective date in the revised OTC model rule. (ASPA) and (CSPA)

Reformulation of consumer products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Indiana Pesticide Registration Law requires approval by both EPA and the Office of Indiana State Chemist. The additional level of federal and state regulatory review required for a change in product formulation is burdensome. The OTC model rule provides an explicit one year extension for complying with applicable VOC limits. CSPA strongly urges IDEM to provide this reasonable and necessary provision in any future regulatory action. (CSPA)

Response: IDEM will not complete this rulemaking by the OTC model rule compliance date of January 1, 2009. Therefore, IDEM is proposing to set the effective date as July 1, 2010 in order to give affected sources in Indiana additional time for compliance.

IDEM will grant a one year extension from the date of compliance for those consumer products that are regulated under FIFRA.

Comment: CSPA believes that IDEM incorrectly calculates the emission reductions credits that states may include in SIP revisions. IDEM appears to rely on the LADCO Interim White Paper on Consumer Products dated March 10, 2006, and/or the LADCO document entitled "Identification and Evaluation of Candidate Control Measures, Phase II Final Report," dated June 2006. Since the issuance of the EPA's Page Memo on May 20, 2007, the conclusions present in both of these LADCO documents are now erroneous and irrelevant. CSPA urges

IDEM to use the correct amount of emission reductions credits that may be claimed from reliance on the soon-to-be-proposed EPA revised National Rule. (CSPA)

Response: IDEM acknowledges that the emission reductions credits in the LADCO documents are no longer relevant after the publication of the U.S. EPA's May 30, 2007, memorandum from Mr. Stephen D. Page, Director of the Office of Air Quality Planning and Standards. IDEM has made the necessary corrections.

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. Mailed comments should be addressed to:

#07-351(APCB) Consumer and Commercial Products
Amy Smith Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by February 20, 2009.

Additional information regarding this action may be obtained from Amy Smith, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 8-15](#) IS ADDED TO READ AS FOLLOWS:

Rule 15. Standards for Consumer and Commercial Products

[326 IAC 8-15-1](#) Applicability

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

Affected: [IC 13-12](#)

Sec. 1. This rule applies to any person who:

- (1) sells;
- (2) supplies;
- (3) offers for sale; or
- (4) manufactures;

consumer products, on or after July 1, 2010, for use in Indiana.

(Air Pollution Control Board; [326 IAC 8-15-1](#))

[326 IAC 8-15-2](#) Definitions

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

Affected: [IC 13-11-2-158](#); [IC 13-12](#); [IC 15-16-4](#)

Sec. 2. The following definitions apply throughout this rule:

- (1) "ACP" means alternative control plan.
- (2) "ACP agreement" means the document that:
 - (A) includes the conditions and requirements of the ACP; and
 - (B) allows manufacturers to sell ACP products in Indiana in accordance with section 6 of this rule.

(3) "ACP product" means any consumer product subject to the VOC content limits specified in section 3(a) of this rule, except those products that have been exempted under section 4 or 5 of this rule.

(4) "Adhesive" means any product that is used to bond one (1) surface to another by attachment. The term does not include the following:

- (A) Products used on humans and animals.
- (B) Adhesive tape.
- (C) Contact paper.
- (D) Wallpaper.
- (E) Shelf liners.
- (F) Any other product with an adhesive incorporated onto or in an inert substrate.
- (G) Units of product, less packaging, that consist of more than one (1) gallon that meet the definition for contact adhesive.
- (H) Units of product, less packaging, that:
 - (i) weigh more than one (1) pound and consist of more than sixteen (16) fluid ounces; and
 - (ii) meet the definition of either construction, panel, and floor covering adhesive or general purpose adhesive.

This limitation does not apply to aerosol adhesives.

(5) "Adhesive remover" means the following:

- (A) A product designed to remove adhesive from either a specific substrate or a variety of substrates.
- (B) The term includes the following:
 - (i) Floor or wall covering adhesive remover.
 - (ii) Gasket or thread locking adhesive remover.
 - (iii) General purpose adhesive remover.
 - (iv) Specialty adhesive remover.
- (C) The term does not include products that remove adhesive intended exclusively for use on humans or animals.
- (D) For the purpose of this definition, "adhesive" means a substance used to bond one (1) or more materials and includes, but is not limited to, the following:
 - (i) Caulks.
 - (ii) Sealants.
 - (iii) Glues.
 - (iv) Similar substances used for the purpose of forming a bond.

(6) "Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. The term includes the following:

- (A) Special purpose spray adhesives.
- (B) Mist spray adhesives.
- (C) Web spray adhesives.

(7) "Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

(8) "Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a:

- (A) propellant contained in a product or a product's container; or
- (B) mechanically induced force.

The term does not include pump spray.

(9) "Agricultural use" means the following:

(A) The use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop.

(B) The term does not include the sale or use of pesticides in properly labeled packages or containers that are intended for:

- (i) home use;
- (ii) use in structural pest control;
- (iii) industrial use; or
- (iv) institutional use.

(C) For the purposes of this definition only, the following apply:

(i) "Home use" means use in a household or its immediate environment.

(ii) "Industrial use" means use:

- (AA) for or in a manufacturing, mining, or chemical process; or
- (BB) in the operation of factories, processing plants, and similar sites.

(iii) "Institutional use" means use within the lines of, or on the property necessary for the operation

of, buildings, such as the following:

(AA) Hospitals.

(BB) Schools.

(CC) Libraries.

(DD) Auditoriums.

(EE) Office complexes.

(iv) "Structural pest control" means a use requiring a license under [IC 15-16-4](#).

(10) "Air freshener" means the following:

(A) Any consumer product designed for the purpose of masking odors or freshening, cleaning, scenting, or deodorizing the air, including, but not limited to, the following:

(i) Sprays.

(ii) Wicks.

(iii) Powders.

(iv) Crystals.

(B) To determine whether a product is an air freshener, all verbal and visual representation regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

(C) The term includes spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution.

(D) The term does not include the following:

(i) Products that are used on the human body.

(ii) Products that function primarily as cleaning products as indicated on a product label.

(iii) Toilet or urinal care products.

(iv) Disinfectant products claiming to deodorize by killing germs on surfaces.

(v) Institutional or industrial disinfectants when offered for sale solely through institutional or industrial channels of distribution.

(11) "All other carbon-containing compounds" means all other compounds that:

(A) contain at least one (1) carbon atom; and

(B) are not a Table B compound or an LVP-VOC.

(12) "All other forms" means all consumer product forms for which no form-specific VOC standard is specified. Unless otherwise specified by the applicable VOC standard in section 3(a) of this rule, the term includes, but is not limited to, the following:

(A) Solids.

(B) Liquids.

(C) Wicks.

(D) Powders.

(E) Crystals.

(F) Cloth or paper wipes (towelettes).

(13) "Alternative control plan" or "ACP" means any emissions averaging program approved by the department under section 6 of this rule.

(14) "Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. The term:

(A) includes, but is not limited to:

(i) antimicrobial hand or body washes or cleaners, or both;

(ii) food handler hand washes;

(iii) health care personnel hand washes;

(iv) preoperative skin preparations; and

(v) surgical scrubs; and

(B) does not include:

(i) prescription drug products;

(ii) antiperspirants;

(iii) astringents or toner;

(iv) deodorant;

(v) facial cleaner or soap;

(vi) general use hand or body cleaner or soap;

(vii) hand dishwashing detergent (including antimicrobial);

(viii) heavy-duty hand cleaner or soap;

(ix) medicated astringent or medicated toner; and

(x) rubbing alcohol.

(15) "Antiperspirant" means any product that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least twenty percent (20%) in at least fifty percent (50%) of a target population. The term includes, but is not limited to, the following:

- (A) Aerosols.
- (B) Roll-ons.
- (C) Sticks.
- (D) Pumps.
- (E) Pads.
- (F) Creams.
- (G) Squeeze bottles.

(16) "Antistatic product" means a product that is labeled to eliminate, prevent, or inhibit the accumulation of static electricity. The term does not include the following products:

- (A) Electronic cleaner.
- (B) Floor polish or wax.
- (C) Floor coating.
- (D) Aerosol coating product.
- (E) Architectural coating.

(17) "Architectural coating" means a coating applied to the following:

- (A) Stationary structures and their appurtenances.
- (B) Mobile homes.
- (C) Pavements.
- (D) Curbs.

(18) "ASTM" means the American Society for Testing Materials.

(19) "Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. The term:

- (A) includes:
 - (i) clarifiers; and
 - (ii) substrate-impregnated products; and
- (B) does not include:
 - (i) hand, face, or body cleaner or soap product;
 - (ii) medicated astringent;
 - (iii) medicated toner;
 - (iv) cold cream;
 - (v) lotion; and
 - (vi) antiperspirant.

(20) "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(21) "Automotive brake cleaner" means a cleaning product designed to remove the following from motor vehicle brake mechanisms:

- (A) Oil.
- (B) Grease.
- (C) Brake fluid.
- (D) Brake pad material.
- (E) Dirt.

(22) "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance and high shear strength at temperatures of two hundred (200) degrees Fahrenheit through two hundred seventy-five (275) degrees Fahrenheit.

(23) "Automotive hard paste wax" means an automotive wax or polish that:

- (A) is designed to protect and improve the appearance of automotive paint surfaces;
- (B) is a solid at room temperature; and
- (C) contains zero percent (0%) water by formulation.

(24) "Automotive instant detailer" means a product designed for use in a pump spray that is:

- (A) applied to the painted surface of automobiles; and
- (B) wiped off prior to the product being allowed to dry.

(25) "Automotive rubbing or polishing compound" means a product designed primarily to remove, from the painted surfaces of motor vehicles without leaving a protective barrier, the following:

- (A) Oxidation.
- (B) Old paint.
- (C) Scratches or swirl marks.

(D) Other defects.

(26) "Automotive wax, polish, sealant, or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. The term:

(A) includes, but is not limited to, products designed for:

- (i) use in auto body repair shops;
- (ii) use in "drive-through" car washes; and
- (iii) the general public; and

(B) does not include:

- (i) automotive rubbing or polishing compounds;
- (ii) automotive wash and wax products;
- (iii) surfactant-containing car wash products; and
- (iv) products designed for use on unpainted surfaces, including, but not limited to:
 - (AA) bare metal;
 - (BB) chrome;
 - (CC) glass; and
 - (DD) plastic.

(27) "Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either:

(A) as an antifreeze; or

(B) for the purpose of:

- (i) cleaning;
- (ii) washing; or
- (iii) wetting;

the windshield.

The term does not include fluids placed by the manufacturer in a new vehicle.

(28) "Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. The term does not include products designed primarily to clean the following:

(A) Toilet bowls.

(B) Toilet tanks.

(C) Urinals.

(29) "Bug and tar remover" means a product labeled to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

(A) Biological-type residues, such as the following:

- (i) Insect carcasses.
- (ii) Tree sap.

(B) Road grime, such as the following:

- (i) Road tar.
- (ii) Roadway paint markings.
- (iii) Asphalt.

(30) "CARB" means the California Air Resources Board.

(31) "Carburetor or fuel-injection air intake cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from the following:

(A) A carburetor.

(B) A choke.

(C) The throttle body of a fuel-injection system.

(D) Associated linkages.

The term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

(32) "Carpet and upholstery cleaner" means the following:

(A) A cleaning product designed for the purpose of eliminating dirt and stains on the following:

- (i) Rugs.
- (ii) Carpeting.
- (iii) The interior of motor vehicles.
- (iv) Household furniture.
- (v) Objects upholstered or covered with fabrics, such as the following:
 - (AA) Wool.
 - (BB) Cotton.
 - (CC) Nylon.
 - (DD) Other synthetic fabrics.

(B) The term includes, but is not limited to, products that make fabric protectant claims.

(C) The term does not include the following:

- (i) General purpose cleaners.
- (ii) Spot removers.
- (iii) Vinyl or leather cleaners.
- (iv) Dry cleaning fluids.
- (v) Products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

(33) "Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. The term does not include any of the following:

- (A) Electrical starters and probes.
- (B) Metallic cylinders using paper tinder.
- (C) Natural gas.
- (D) Propane.
- (E) Fat wood.

(34) "Colorant" means any pigment or coloring material used in a consumer product:

- (A) for an aesthetic effect; or
- (B) to dramatize an ingredient.

(35) "Construction, panel, and floor covering adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of the following:

(A) Structural and building components, including the following:

- (i) Beams.
- (ii) Trusses.
- (iii) Studs.
- (iv) Paneling, including, but not limited to, the following:
 - (AA) Dry wall or dry wall laminates.
 - (BB) Fiberglass reinforced plastic (FRP).
 - (CC) Plywood.
 - (DD) Particle board.
 - (EE) Insulation board.
 - (FF) Predecorated hardboard or tile board.

(v) Ceiling and acoustical tile.

(vi) Molding.

(vii) Fixtures.

(viii) Countertops.

(ix) Countertop laminates.

(x) Cove bases.

(xi) Wall bases.

(xii) Flooring or subflooring.

(B) Floor or wall coverings, including the following:

(i) Wood or simulated wood covering.

(ii) Carpet.

(iii) Carpet pad or cushion.

(iv) Vinyl-backed carpet.

(v) Flexible flooring material.

(vi) Nonresilient flooring material.

(vii) Mirror tiles and other types of tiles.

(viii) Artificial grass.

The term does not include floor seam sealer.

(36) "Consumer" means any person who purchases or acquires any consumer product for the following uses:

- (A) Personal.
- (B) Family.
- (C) Household.
- (D) Institutional.

The term does not include persons acquiring a consumer product for resale.

(37) "Consumer product" means the following:

(A) A chemically formulated product used by household and institutional consumers, including, but not limited to, the following:

- (i) Detergents.
- (ii) Cleaning compounds.
- (iii) Polishes.

- (iv) Floor finishes.
- (v) Cosmetics.
- (vi) Personal care products.
- (vii) Home, lawn, and garden products.
- (viii) Disinfectants.
- (ix) Sanitizers.
- (x) Aerosol paints.
- (xi) Automotive specialty products.
- (xii) Aerosol adhesives, including aerosol adhesives for the following uses:
 - (AA) Consumer.
 - (BB) Industrial.
 - (CC) Commercial.
- (B) The term does not include the following:
 - (i) Paint products.
 - (ii) Furniture coating.
 - (iii) Architectural coatings.
- (38) "Contact adhesive" means the following:
 - (A) An adhesive that:
 - (i) is designed for application to both surfaces to be bonded together;
 - (ii) is allowed to dry before the two (2) surfaces are placed in contact with each other;
 - (iii) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and
 - (iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.
 - (B) The term does not include the following:
 - (i) Rubber cements that are primarily intended for use on paper substrates.
 - (ii) Vulcanizing fluids that are designed and labeled for tire repair only.
- (39) "Contact adhesive-general purpose" means any contact adhesive that is not a contact adhesive-special purpose.
- (40) "Contact adhesive-special purpose" means a contact adhesive that is used:
 - (A) to bond:
 - (i) melamine-covered board;
 - (ii) unprimed metal;
 - (iii) unsupported vinyl;
 - (iv) Teflon;
 - (v) ultrahigh molecular weight polyethylene;
 - (vi) rubber; and
 - (vii) high pressure laminate or wood veneer, one-sixteenth (1/16) inch or less in thickness; to any porous or nonporous surface, and is sold in units of product, less packaging, that contain more than eight (8) fluid ounces; or
 - (B) in automotive applications that are:
 - (i) automotive under the hood applications requiring heat, oil, or gasoline resistance; or
 - (ii) body side molding, automotive weather strip, or decorative trim.
- (41) "Container or packaging" means the part or parts of the consumer or institutional product that serve only to:
 - (A) contain;
 - (B) enclose;
 - (C) incorporate;
 - (D) deliver;
 - (E) dispense;
 - (F) wrap; or
 - (G) store;the chemically formulated substance or mixture of substances that is solely responsible for accomplishing the purposes that the product was designed or intended. The term includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.
- (42) "Crawling bug insecticide" means the following:
 - (A) Any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to:
 - (i) mites;

(ii) silverfish; or

(iii) spiders.

(B) The term does not include products designed to be used exclusively on humans or animals, or any house dust mite product.

(C) For purposes of this definition only, the following apply:

(i) "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

(ii) "House dust mite" means mites that:

(AA) feed primarily on skin cells shed in the home by humans and pets; and

(BB) belong to the:

(aa) phylum Arthropoda;

(bb) subphylum Chelicerata;

(cc) class Arachnida;

(dd) subclass Acari;

(ee) order Astigmata; and

(ff) family Pyroglyphidae.

(43) "Date code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

(44) "Deodorant" means the following:

(A) For products manufactured before July 1, 2010, any product including, but not limited to:

(i) aerosols;

(ii) roll-ons;

(iii) sticks;

(iv) pumps;

(v) pads;

(vi) creams; and

(vii) squeeze bottles;

that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria that cause the decomposition of perspiration.

(B) For products manufactured on or after July 1, 2010, any product including, but not limited to:

(i) aerosol;

(ii) roll-ons;

(iii) sticks;

(iv) pumps;

(v) pads;

(vi) creams; and

(vii) squeeze bottles;

that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can be used on or applied to the human axilla to provide a scent or minimize odor, or both.

(C) A deodorant body spray product that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla is a deodorant.

(45) "Deodorant body spray" means the following:

(A) For products manufactured before July 1, 2010, a personal fragrance product with twenty percent (20%) or less fragrance.

(B) For products manufactured on or after July 1, 2010, a personal fragrance product with twenty percent (20%) or less fragrance that is designed for application all over the human body to provide a scent.

(C) A deodorant body spray product that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that it can be used on or applied to the human axilla is a deodorant.

(46) "Device" means any instrument or contrivance (other than a firearm) that is designed for:

(A) trapping;

(B) destroying;

(C) repelling; or

(D) mitigating;

any pest or any other form of plant or animal life (other than man and other than a bacterium, a virus, or another microorganism on or in a living man or other living animals). The term does not include equipment used for the application of pesticides when sold separately therefrom.

(47) "Disinfectant" means the following:

(A) Any product:

- (i) intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects; and**
- (ii) whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.).**

(B) The term does not include any of the following:

- (i) Products designed solely for use on human or animals.**
- (ii) Products designed for agricultural use.**
- (iii) Products designed solely for use in:**
 - (AA) swimming pools;**
 - (BB) therapeutic tubs; or**
 - (CC) hot tubs.**

(iv) Products that, as indicated on the principal display panel or label, are designed primarily for use as:

- (AA) bathroom and tile cleaners;**
- (BB) glass cleaners;**
- (CC) general purpose cleaners;**
- (DD) toilet bowl cleaners; or**
- (EE) metal polishes.**

(48) "Distributor" means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce. The term does not include the following:

- (A) Manufacturers.**
- (B) Retailers.**
- (C) Consumers.**

(49) "Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two (2) or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

(50) "Dry cleaning fluid" means the following:

(A) Any nonaqueous liquid product designed and labeled exclusively for use on:

- (i) fabrics that are labeled "for dry clean only", such as clothing or drapery; or**
- (ii) "S-coded" fabrics, that for the purpose of this definition, means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.**

(B) The term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics, such as draperies, at the customer's residence or workplace.

(C) The term does not include:

- (i) spot remover; or**
- (ii) carpet and upholstery cleaner.**

(51) "Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include a pressurized gas duster.

(52) "Electrical cleaner" means the following:

(A) A product labeled to remove heavy soils, such as grease, grime, or oil, from electrical equipment, including, but not limited to, the following:

- (i) Electric motors.**
- (ii) Armatures.**
- (iii) Relays.**
- (iv) Electric panels.**
- (v) Generators.**

(B) The term does not include the following:

- (i) General purpose cleaners.**
- (ii) General purpose degreasers.**
- (iii) Dusting aids.**
- (iv) Electronic cleaners.**
- (v) Energized electrical cleaners.**
- (vi) Pressurized gas dusters.**
- (vii) Engine degreasers.**
- (viii) Antistatic products.**
- (ix) Products designed to clean the casings or housings of electrical equipment.**

(53) "Electronic cleaner" means the following:

(A) A product labeled for the removal of dirt, moisture, dust, flux, or oxides from the internal components of electronic or precision equipment, such as circuit boards, and the internal components of electronic devices, including, but not limited to, the following:

- (i) Radios.
- (ii) Compact disc (CD) players.
- (iii) Digital video disc (DVD) players.
- (iv) Computers.

(B) The term does not include the following products:

- (i) General purpose cleaners.
- (ii) General purpose degreasers.
- (iii) Dusting aids.
- (iv) Pressurized gas dusters.
- (v) Engine degreasers.
- (vi) Electrical cleaners.
- (vii) Energized electrical cleaners.
- (viii) Antistatic products.

(ix) Products designed to clean the casings or housings of electronic equipment.

(54) "Energized electrical cleaner" means a product that meets the following criteria:

(A) The product is labeled to clean or degrease, or both, electrical equipment where cleaning or degreasing, or both, is accomplished when:

- (i) electrical current exists; or
- (ii) there is a residual electrical potential from a component, such as a capacitor.

(B) The product label clearly displays the statements: "Energized Equipment use only. Not to be used for motorized vehicle maintenance, or their parts."

The term does not include electronic cleaners.

(55) "Engine degreaser" means a cleaning product designed to remove:

- (A) grease;
- (B) grime;
- (C) oil; and
- (D) other contaminants;

from the external surfaces of engines and other mechanical parts.

(56) "Existing product" means any:

(A) formulation of the same product category and form:

- (i) sold;
- (ii) supplied;
- (iii) manufactured; or
- (iv) offered for sale;

in Indiana prior to July 1, 2010; or

(B) subsequently introduced identical formulation.

(57) "Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include the following:

(A) Waterproofers.

(B) Products designed for use solely on:

- (i) leather; or
- (ii) fabrics that are labeled "for dry clean only" and sold in containers of ten (10) fluid ounces or less.

(58) "Fabric refresher" means the following:

(A) A product labeled to neutralize or eliminate odors on the following:

(i) Nonlaundered fabric, including, but not limited to, the following:

- (AA) Soft household surfaces.
- (BB) Rugs.
- (CC) Carpeting.
- (DD) Draperies.
- (EE) Bedding.
- (FF) Automotive interiors.
- (GG) Footwear.
- (HH) Athletic equipment.

(II) Clothing.

(ii) Household furniture or objects upholstered or covered with fabrics, including, but not limited to,

the following:

- (AA) Wool.
- (BB) Cotton.
- (CC) Nylon.

(B) The term does not include the following:

- (i) Antistatic products.
- (ii) Carpet and upholstery cleaners.
- (iii) Footwear or leather care products.
- (iv) Spot removers.
- (v) Disinfectants.
- (vi) Products labeled for application to both fabric and human skin.
- (vii) Soft household surface sanitizers. For the purposes of this definition only, "soft household surface sanitizer" means a product labeled to neutralize or eliminate odors on surfaces listed in clause (A) whose label is registered as a sanitizer under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

(59) "Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. The term:

(A) includes, but is not limited to:

- (i) facial cleansing creams;
- (ii) semisolids;
- (iii) liquids;
- (iv) lotions; and
- (v) substrate-impregnated forms; and

(B) does not include:

- (i) prescription drug products;
- (ii) antimicrobial hand or body cleaner or soap;
- (iii) astringent or toner;
- (iv) general use hand or body cleaner or soap;
- (v) medicated astringent or medicated toner; and
- (vi) rubbing alcohol.

(60) "Fat wood" means pieces of wood kindling with high naturally occurring levels of sap or resin that enhance ignition of the kindling. The term does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood based products.

(61) "Flea and tick insecticide" means any insecticide product that is designed for use against:

- (A) fleas;
- (B) ticks;
- (C) their larvae; or
- (D) their eggs.

The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

(62) "Flexible flooring material" means the following:

- (A) Asphalt.
- (B) Cork.
- (C) Linoleum.
- (D) No-wax.
- (E) Rubber.
- (F) Seamless vinyl flooring.
- (G) Vinyl composite flooring.

(63) "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent (5%), by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-91*, or from product formulation data.

(64) "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

(65) "Floor coating" means an opaque coating that is labeled and designed for application to flooring that may be subject to foot traffic, including, but not limited to, the following:

- (A) Decks.
- (B) Porches.
- (C) Steps.
- (D) Other horizontal surfaces.

(66) "Floor or wall covering adhesive remover" means a product designed or labeled to remove floor or wall coverings and associated adhesive from the underlying substrate.

(67) "Floor polish or wax" means a wax, polish, or any other product designed to polish, protect, or

enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished.

The term does not include the following:

- (A) Spray buff products.
- (B) Products designed solely for the purpose of cleaning floors.
- (C) Floor finish strippers.
- (D) Products designed for unfinished wood floors.
- (E) Coatings subject to architectural coatings regulations.

(68) "Floor seam sealer" means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

(69) "Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes:

- (A) through breakdown of the polish or wax polymers; or
- (B) by dissolving or emulsifying the polish or wax.

The term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

(70) "Flying bug insecticide" means the following:

(A) Any insecticide product that is designed for use against flying insects or other flying arthropods, including, but not limited to, the following:

- (i) Flies.
- (ii) Mosquitoes.
- (iii) Moths.
- (iv) Gnats.

(B) The term does not include the following:

- (i) Wasp and hornet insecticide.
- (ii) Products that are designed to be used exclusively on humans or animals.
- (iii) Any moth-proofing product. For purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

(71) "Footwear or leather care product" means the following:

(A) Any product designed or labeled to be applied to footwear or to other leather articles or components, to:

- (i) maintain;
- (ii) enhance;
- (iii) clean;
- (iv) protect; or
- (v) modify;

the appearance, durability, fit, or flexibility of the footwear or leather article or component. Footwear includes both leather and nonleather foot apparel.

(B) The term does not include the following:

- (i) Fabric protectants.
- (ii) General purpose adhesives.
- (iii) Contact adhesives.
- (iv) Vinyl, fabric, leather, or polycarbonate coatings.
- (v) Rubber and vinyl protectants.
- (vi) Fabric refreshers.
- (vii) Products solely for deodorizing.
- (viii) Sealant products with adhesive properties used to create external protective layers greater than two (2) millimeters thick.

(72) "Fragrance" means a substance or complex mixture of:

- (A) aroma chemicals;
- (B) natural essential oils; and
- (C) other functional components;

with a combined vapor pressure not in excess of two (2) millimeters of mercury (mm Hg) at twenty (20) degrees Celsius, the sole purpose of which is to impart an odor or scent or to counteract a malodor.

(73) "Furniture coating" means any paint designed for application to room furnishings, including, but not limited to, the following:

- (A) Cabinets (kitchen, bath, and vanity).
- (B) Tables.
- (C) Chairs.
- (D) Beds.

(E) Sofas.

(74) "Furniture maintenance product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting, or enhancing finished wood surfaces other than floors. The term does not include the following:

(A) Dusting aids.

(B) Wood cleaners.

(C) Products designed solely for the purpose of cleaning.

(D) Products designed to leave a permanent finish, such as the following:

(i) Stains.

(ii) Sanding sealers.

(iii) Lacquers.

(75) "Gasket or thread locking adhesive remover" means a product designed or labeled to remove gaskets or thread locking adhesives. The term includes products labeled for dual use as a paint stripper and gasket remover or thread locking adhesive remover.

(76) "Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

(77) "General purpose adhesive" means any nonaerosol adhesive designed for use on a variety of substrates. The term does not include the following:

(A) Contact adhesives.

(B) Construction, panel, and floor covering adhesives.

(C) Adhesives designed exclusively for application on one (1) specific category of substrates that are composed of similar materials, including, but not limited to, different types of the following:

(i) Metals.

(ii) Paper products.

(iii) Ceramics.

(iv) Plastics.

(v) Rubbers.

(vi) Vinyls.

(D) Adhesives designed exclusively for use on one (1) specific category of articles, such as articles that may be composed of different materials but perform a specific function, including, but not limited to, the following:

(i) Gaskets.

(ii) Automotive trim.

(iii) Weather stripping.

(iv) Carpets.

(78) "General purpose adhesive remover" means a product designed or labeled to remove cyanoacrylate adhesives and nonreactive adhesives or residue from a variety of substrates. The term includes, but is not limited to, products that remove the following:

(A) Thermoplastic adhesives.

(B) Pressure sensitive adhesives.

(C) Dextrine or starch based adhesives.

(D) Casein glues.

(E) Rubber or latex based adhesives.

(F) Stickers.

(G) Decals.

(H) Stencils.

The term does not include floor or wall covering adhesive remover.

(79) "General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. The term includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces. The term does not include general purpose degreasers and electronic cleaners.

(80) "General purpose degreaser" means the following:

(A) Any product labeled to remove or dissolve grease, grime, oil, and other oil based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(B) The term does not include the following:

(i) Engine degreasers.

(ii) General purpose cleaners.

(iii) Adhesive removers.

(iv) Electronic cleaners.

(v) Electrical cleaners.

- (vi) Energized electrical cleaners.
 - (vii) Metal polish or cleansers.
 - (viii) Products used exclusively in solvent cleaning tanks or related equipment, including, but not limited to, the following:
 - (AA) Cold cleaners.
 - (BB) Vapor degreasers.
 - (CC) Conveyorized degreasers.
 - (DD) Film cleaning machines.
 - (EE) Products designed to clean miscellaneous metallic parts by immersion in a container.
 - (ix) Products that are:
 - (AA) sold exclusively to establishments that manufacture or construct goods or commodities; and
 - (BB) labeled "not for retail sale".
- (81) "General use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. The term:
- (A) includes, but is not limited to:
 - (i) hand or body washes;
 - (ii) dual-purpose shampoo and body cleaners;
 - (iii) shower or bath gels; and
 - (iv) moisturizing cleaners or soaps; and
 - (B) does not include:
 - (i) prescription drug products;
 - (ii) antimicrobial hand or body cleaner or soap;
 - (iii) astringent or toner;
 - (iv) facial cleaner or soap;
 - (v) hand dishwashing detergent (including antimicrobial);
 - (vi) heavy-duty hand cleaner or soap;
 - (vii) medicated astringent or medicated toner; and
 - (viii) rubbing alcohol.
- (82) "Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in the following:
- (A) Eyeglasses.
 - (B) Photographic equipment.
 - (C) Scientific equipment.
 - (D) Photocopying machines.
- (83) "Graffiti remover" means the following:
- (A) A product labeled to remove, from a variety of noncloth or nonfabric substrates, the following:
 - (i) Spray paint.
 - (ii) Ink.
 - (iii) Marker.
 - (iv) Crayon.
 - (v) Lipstick.
 - (vi) Nail polish.
 - (vii) Shoe polish.
 - (B) The term does not include the following:
 - (i) Paint remover or stripper.
 - (ii) Nail polish remover.
 - (iii) Spot remover.
 - (C) Products labeled for dual use as both a paint stripper and graffiti remover are considered graffiti removers.
- (84) "Hair mousse" means a hairstyling foam designed to:
- (A) facilitate styling of a coiffure; and
 - (B) provide limited holding power.
- (85) "Hair shine" means any product designed for the primary purpose of creating a shine when applied to the hair. The term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. The term does not include the following:
- (A) Hair sprays.
 - (B) Hair mousses.
 - (C) Hairstyling products.
 - (D) Hairstyling gels.
 - (E) Products whose primary purpose is to condition or hold the hair.

(86) "Hair spray" means the following:

(A) For products manufactured before July 1, 2010, a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

(B) For products manufactured on or after July 1, 2010, a consumer product that is:

(i) applied to styled hair; and

(ii) designed or labeled to provide sufficient rigidity to hold, retain, or finish, or both, the style of the hair for a period of time.

(C) The term includes the following:

(i) Aerosol hair sprays.

(ii) Pump hair sprays.

(iii) Spray waxes.

(iv) Products that are both a styling and a finishing product.

(v) Color, glitter, or sparkle hair sprays that make finishing claims.

(D) The term does not include spray products that are intended to aid in styling but do not provide finishing of a hairstyle.

(E) For purposes of this definition, the following apply:

(i) "Finish" or "finishing" means the maintaining or holding, or both, of previously styled hair for a period of time.

(ii) "Styling" means forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

(87) "Hairstyling gel" means a consumer product manufactured before July 1, 2010, that is:

(A) a high viscosity, often gelatinous, product that contains a resin; and

(B) designed for the application to hair to aid in styling and sculpting of the hair coiffure.

(88) "Hairstyling product" means the following:

(A) A consumer product manufactured on or after July 1, 2010, that is designed or labeled for application to wet, damp, or dry hair to aid in:

(i) defining;

(ii) shaping;

(iii) lifting;

(iv) styling; or

(v) sculpting;

the hair.

(B) The term includes, but is not limited to, the following:

(i) Products that aid in styling but do not provide finishing of a hairstyle, including, but not limited to, the following:

(AA) Hair balm.

(BB) Clay.

(CC) Cream.

(DD) Creme.

(EE) Curl straightener.

(FF) Gel.

(GG) Liquid.

(HH) Lotion.

(II) Paste.

(JJ) Pomade.

(KK) Putty.

(LL) Root lifter.

(MM) Serum.

(NN) Spray gel.

(OO) Stick.

(PP) Temporary hair straightener.

(QQ) Wax.

(RR) Spray products.

(ii) Detanglers or conditioners, or both, and leave-in volumizers that make styling claims.

(C) The term does not include the following:

(i) Hair mousses.

(ii) Hair shines.

(iii) Hair sprays.

(iv) Shampoos or conditioners, or both, that are rinsed from the hair prior to styling.

(D) For purposes of this definition, the following apply:

(i) "Finish" or "finishing" means the maintaining or holding, or both, of previously styled hair for a period of time.

(ii) "Styling" means forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

(89) "Heavy-duty hand cleaner or soap" means the following:

(A) A product designed to clean or remove from the hand with or without the use of water difficult dirt and soils, including, but not limited to, the following:

(i) Oil.

(ii) Grease.

(iii) Grime.

(iv) Tar.

(v) Shellac.

(vi) Putty.

(vii) Printer's ink.

(viii) Paint.

(ix) Graphite.

(x) Cement.

(xi) Carbon.

(xii) Asphalt.

(xiii) Adhesives.

(B) The term does not include the following:

(i) Prescription drug products.

(ii) Antimicrobial hand or body cleaner or soap.

(iii) Astringent or toner.

(iv) Facial cleaner or soap.

(v) General use hand or body cleaner or soap.

(vi) Medicated astringent or medicated toner.

(vii) Rubbing alcohol.

(90) "Herbicide" means a pesticide product designed to kill or retard a plant's growth. The term does not include products that are:

(A) for agricultural use; or

(B) restricted materials that require a permit for use and possession.

(91) "High volatility organic compound" or "HVOC" means any volatile organic compound that exerts a vapor pressure greater than eighty (80) millimeters of mercury (mm Hg) when measured at twenty (20) degrees Celsius.

(92) "Household product" means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

(93) "Indiana sales" means the sales (net pounds of product, less packaging and container, per year) in Indiana for either:

(A) the calendar year immediately prior to the year that the registration is due; or

(B) if that data is not available, any consecutive twelve (12) month period commencing not earlier than two (2) years prior to the due date of the registration.

If direct sales data for Indiana is not available, sales may be estimated by prorating national or regional sales data by population.

(94) "Insecticide" means a pesticide product that is designed for use against insects or other arthropods. The term does not include products that are:

(A) for agricultural use;

(B) for a use that requires a structural pest control license under [IC 15-16-4](#); or

(C) restricted materials that require a permit for use and possession.

(95) "Insecticide fogger" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

(96) "Institutional product", "industrial and institutional product", or "I & I product" means the following:

(A) A consumer product that is designed for use in the maintenance or operation of an establishment that:

(i) manufactures, transports, or sells goods or commodities or provides services for profit; or

(ii) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

(B) The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

(C) For purposes of this definition, "establishments" includes, but is not limited to, the following:

- (i) Government agencies.
- (ii) Factories.
- (iii) Schools.
- (iv) Hospitals.
- (v) Sanitariums.
- (vi) Prisons.
- (vii) Restaurants.
- (viii) Hotels.
- (ix) Stores.
- (x) Automobile service and parts centers.
- (xi) Health clubs.
- (xii) Theaters.
- (xiii) Transportation companies.

(97) "Label" means any written, printed, or graphic matter:

- (A) affixed to;
- (B) applied to;
- (C) attached to;
- (D) blown into;
- (E) formed into;
- (F) molded into;
- (G) embossed on; or
- (H) appearing upon;

any consumer product or consumer product package for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

(98) "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for the following:

(A) The touchup or repair of items laminated with high pressure laminates, for example, lifted edges, delaminates, etc. For purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at:

- (i) temperatures exceeding two hundred sixty-five (265) degrees Fahrenheit; and
- (ii) pressures between one thousand (1,000) and one thousand four hundred (1,400) psi.

(B) The touchup, repair, or attachment of edgebanding materials, including, but not limited to, the following:

- (i) Other laminates.
- (ii) Synthetic marble.
- (iii) Veneers.
- (iv) Wood molding.
- (v) Decorative metals.

(99) "Laundry prewash" means a product that:

- (A) is designed for application to a fabric prior to laundering; and
- (B) supplements and contributes to the effectiveness of laundry detergents or provides specialized performance, or both.

(100) "Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. The term includes, but is not limited to, fabric finish, sizing, and starch.

(101) "Lawn and garden insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of section 7(d) of this rule, aerosol lawn and garden insecticides may claim to kill insects or other arthropods.

(102) "Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90(2000)e1*. The term does not include powders or other materials that are composed entirely of solid particles.

(103) "Lubricant" means the following:

- (A) A product designed to:
 - (i) reduce friction, heat, noise, or wear between moving parts; or
 - (ii) loosen rusted or immovable parts or mechanisms.
- (B) The term does not include the following:
 - (i) Automotive power steering fluids.
 - (ii) Products for use inside power generating motors, engines, and turbines and their associated power-transfer gearboxes.

(iii) Two (2) cycle oils or other products designed to be added to fuels.

(iv) Products for use on the human body or animals.

(v) Products that are:

(AA) sold exclusively to establishments that manufacture or construct goods or commodities; and

(BB) labeled "not for retail sale".

(104) "LVP-VOC" means a chemical compound or mixture that contains at least one (1) carbon atom and meets one (1) of the following:

(A) Has a vapor pressure less than one-tenth (0.1) millimeter of mercury (mm Hg) at twenty (20) degrees Celsius, as determined by CARB Method 310*.

(B) Is a chemical compound with more than twelve (12) carbon atoms, or a chemical mixture comprised solely of compounds with more than twelve (12) carbon atoms as verified by formulation data, and the vapor pressure and boiling point are unknown.

(C) Is a chemical compound with a boiling point greater than two hundred sixteen (216) degrees Celsius, as determined by CARB Method 310*.

(D) Is the weight percent of a chemical mixture that boils above two hundred sixteen (216) degrees Celsius, as determined by CARB Method 310*.

For purposes of this definition, "chemical compound" means a molecule of definite chemical formula and isomeric structure, and "chemical mixture" means a substrate comprised of two (2) or more chemical compounds.

(105) "Manufacturer" means any person who:

(A) imports;

(B) manufactures;

(C) assembles;

(D) produces;

(E) packages;

(F) repackages; or

(G) relabels;

a consumer product.

(106) "Medicated astringent or medicated toner" means any product regulated as a drug by the FDA that is applied to the skin for the purpose of cleaning or tightening pores. The term:

(A) includes, but is not limited to:

(i) clarifiers; and

(ii) substrate-impregnated products; and

(B) does not include:

(i) hand, face, or body cleaners or soap products;

(ii) astringents or toners;

(iii) cold creams;

(iv) lotions;

(v) antiperspirants; and

(vi) products that must be purchased with a doctor's prescription.

(107) "Medium volatility organic compound" or "MVOC" means any volatile organic compound that exerts a vapor pressure greater than two (2) millimeters of mercury (mm Hg) and less than or equal to eighty (80) mm Hg when measured at twenty (20) degrees Celsius.

(108) "Metal polish or cleanser" means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. For purposes of this definition, "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. The term:

(A) includes, but is not limited to, metal polishes used on:

(i) brass;

(ii) silver;

(iii) chrome;

(iv) copper;

(v) stainless steel; and

(vi) other ornamental metals; and

(B) does not include:

(i) automotive waxes, polishes, sealants, or glazes;

(ii) wheel cleaners;

(iii) paint removers or strippers;

(iv) products designed and labeled exclusively for automotive and marine detailing; or

(v) products designed for use in degreasing tanks.

(109) "Mist spray adhesive" means any aerosol that:

- (A) is not a special purpose spray adhesive; and
 - (B) delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.
- (110) "Mounting adhesive" means an aerosol adhesive designed to permanently mount:
- (A) photographs;
 - (B) artwork; and
 - (C) any other drawn or printed media;
- to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.
- (111) "Multipurpose dry lubricant" means any lubricant that is:
- (A) designed and labeled to provide lubricity by depositing a thin film of:
 - (i) graphite;
 - (ii) molybdenum disulfide (moly);
 - (iii) polytetrafluoroethylene; or
 - (iv) closely related fluoropolymer (Teflon) on surfaces; and
 - (B) designed for general purpose lubrication or for use in a wide variety of applications.
- (112) "Multipurpose lubricant" means any lubricant designed for general purpose lubrication or for use in a wide variety of applications. The term does not include the following:
- (A) Multipurpose dry lubricants.
 - (B) Penetrants.
 - (C) Silicone based multipurpose lubricants.
- (113) "Multipurpose solvent" means the following:
- (A) Any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing, or dissolving other organic materials.
 - (B) The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories.
 - (C) The term does not include the following:
 - (i) Solvents used in the following:
 - (AA) Cold cleaners.
 - (BB) Vapor degreasers.
 - (CC) Conveyorized degreasers.
 - (DD) Film cleaning machines.
 - (ii) Solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.
- (114) "Nail polish" means any clear or colored coating designed for application to the fingernails or toenails, including, but not limited to, the following:
- (A) Lacquers.
 - (B) Enamels.
 - (C) Acrylics.
 - (D) Base coats.
 - (E) Top coats.
- (115) "Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.
- (116) "Nonaerosol product" means any consumer product that is not dispensed by a pressurized spray system.
- (117) "Noncarbon containing compound" means any compound that does not contain any carbon atoms.
- (118) "Nonresilient flooring" means flooring of a mineral content that is not flexible, including, but not limited to, the following:
- (A) Terrazzo.
 - (B) Marble.
 - (C) Slate.
 - (D) Granite.
 - (E) Brick.
 - (F) Stone.
 - (G) Ceramic tile.
 - (H) Concrete.
- (119) "Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.
- (120) "Oven cleaner" means any cleaning product designed to clean and remove dried food deposits from oven walls.
- (121) "Paint" means any pigmented liquid, liquefiable, or mastic composition designed for application

to a substrate in a thin layer that is:

(A) converted to an opaque solid film after application; and

(B) used for protection, decoration, or identification or to serve some functional purpose, such as the:

(i) filling or concealing of surface irregularities; or

(ii) modification of light and heat radiation characteristics.

(122) "Paint remover or stripper" means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. The term does not include the following:

(A) Multipurpose solvents.

(B) Paint brush cleaners.

(C) Products designed and labeled exclusively graffiti removers.

(D) Hand cleaner products that claim to remove paints and other related coatings from skin.

(123) "Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. The term does not include multipurpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

(124) "Person" has the meaning set forth in [IC 13-11-2-158](#).

(125) "Personal fragrance product" means any product that is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, after-shave, and toilet water. The term does not include the following:

(A) Deodorant.

(B) Medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body.

(C) Mouthwashes, breath fresheners, and deodorizers.

(D) Lotions, moisturizers, powders, or other skin care products used primarily to alleviate skin conditions, such as dryness and irritations.

(E) Products designed exclusively for use on human genitalia.

(F) Soaps, shampoos, and products primarily used to clean the human body.

(G) Fragrance products designed to be used exclusively on nonhuman animals.

(126) "Pesticide" means any substance or mixture of substances labeled, designed, or intended for use:

(A) in preventing, destroying, repelling, or mitigating any pest; or

(B) as a defoliant, desiccant, or plant regulator.

The term does not include any substance, mixture of substances, or device that the U.S. EPA does not consider to be a pesticide.

(127) "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

(128) "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

(129) "Pressurized gas duster" means a pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including the following surfaces:

(A) Photographs.

(B) Photographic film negatives.

(C) Computer keyboards.

(D) Other types of surfaces that cannot be cleaned with solvents.

The term does not include dusting aids.

(130) "Principal display panel or panels" means the part or parts of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all the principal display panels.

(131) "Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

(132) "Product category" means the applicable category that best describes the product as listed in this section and section 3(a) of this rule.

(133) "Product form" means, for the purpose of complying with section 7 of this rule only, the applicable form that most accurately describes the product's dispensing form as follows:

A = Aerosol Product

S = Solid

P = Pump Spray

L = Liquid

SS = Semisolid

O = Other

(134) "Product line" means a group of products of identical form and function belonging to the same product category or categories.

(135) "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

(136) "Pump spray" means a packaging system in which the product ingredients within the container are:

- (A) not under pressure; and
- (B) expelled only while a pumping action is applied to:
 - (i) a button;
 - (ii) a trigger; or
 - (iii) another actuator.

(137) "Responsible ACP party" means the company, firm, or establishment that is listed on the ACP product's label. If the label lists two (2) or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by", as noted on the label.

(138) "Responsible party" means the company, firm, or establishment that is listed on the product's label. If the label lists two (2) companies, firms, or establishments, the responsible party is the party that the product was "manufactured for" or "distributed by", as noted on the label.

(139) "Restricted materials" means pesticides established as restricted materials under applicable [IC 15-16-4](#).

(140) "Retailer" means any person who sells, supplies, or offers consumer products for sale directly to consumers.

(141) "Retail outlet" means any establishment where consumer products are sold, supplied, or offered for sale directly to consumers.

(142) "Roll-on product" means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

(143) "Rubber and vinyl protectant" means the following:

- (A) Any product designed to protect, preserve, or renew vinyl, rubber, and plastic on the following:
 - (i) Vehicles.
 - (ii) Tires.
 - (iii) Luggage.
 - (iv) Furniture.
 - (v) Household products, such as the following:
 - (AA) Vinyl covers.
 - (BB) Clothing.
 - (CC) Accessories.

(B) The term does not include the following:

- (i) Products designed primarily to clean the wheel rim, such as aluminum or magnesium wheel cleaners.
- (ii) Tire cleaners that do not leave an appearance enhancing or protective substance on the tire.

(144) "Rubbing alcohol" means any product:

- (A) containing isopropyl alcohol (also called isopropanol) or denatured ethanol; and
- (B) labeled for topical use, usually to:
 - (i) decrease germs in minor cuts and scrapes; and
 - (ii) relieve minor muscle aches, as a rubefacient, and for massage.

(145) "Sealant and caulking compound" means the following:

(A) Any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two (2) surfaces.

(B) The term does not include the following:

- (i) Roof cements and roof sealants.
- (ii) Insulating foams.
- (iii) Removable caulking compounds. For purposes of this definition only, "removable caulking compounds" means a compound that temporarily seals windows or doors for three (3) to six (6) month time intervals
- (iv) Clear, paintable, or water resistant caulking compounds. For purposes of this definition, "clear, paintable, or water resistant caulking compounds" means a compound:
 - (AA) that contains no appreciable level of opaque fillers or pigments;
 - (BB) transmits most or all visible light through the caulk when cured;
 - (CC) is paintable; and
 - (DD) is immediately resistant to precipitation upon application.

(v) Floor seam sealers.

(vi) Products designed exclusively for automotive uses.

(vii) Sealers that are applied as continuous coatings.

(viii) Units of product, less packaging, that weigh more than one (1) pound and consist of more than sixteen (16) fluid ounces.

(146) "Semisolid" means a product that, at room temperature, will not pour but will spread or deform easily including, but not limited to, the following:

(A) Gels.

(B) Pastes.

(C) Greases.

(147) "Shaving cream" means an aerosol product that dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair. The term does not include shaving gel.

(148) "Shaving gel" means an aerosol product that dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other bodily hair. The term does not include shaving cream.

(149) "Silicone based multipurpose lubricant" means any lubricant that is designed and labeled:

(A) to provide lubricity primarily through the use of silicone compounds, including, but not limited to, polydimethylsiloxane; and

(B) for general purpose lubrication or for use in a wide variety of applications.

The term does not include products designed and labeled exclusively to release manufactured products from molds.

(150) "Single phase aerosol air freshener" means an aerosol air freshener:

(A) with the liquid contents in a single homogeneous phase; and

(B) that does not require that the product container be shaken before use.

(151) "Solid" means a substance or mixture of substances that, either whole or subdivided, such as the particles comprising a powder, is not capable of visually detectable flow as determined under ASTM D-4359-90(2000)e1*.

(152) "Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

(A) Mounting adhesive.

(B) Flexible vinyl adhesive.

(C) Polystyrene foam adhesive.

(D) Automobile headliner adhesive.

(E) Polyolefin adhesive.

(F) Laminar repair or edgebanding adhesive.

(G) Automotive engine compartment adhesive.

(153) "Specialty adhesive remover" means a product designed to remove reactive adhesives from a variety of substrates. Reactive adhesives include adhesives that require a hardener or catalyst in order for the bond to occur including, but not limited to, the following:

(A) Epoxies.

(B) Urethanes.

(C) Silicones.

The term does not include gasket or thread locking adhesive remover.

(154) "Spot remover" means the following:

(A) Any product labeled to clean localized areas or remove localized spots or stains on cloth or fabric, such as:

(i) drapes;

(ii) carpets;

(iii) upholstery; and

(iv) clothing;

that does not require subsequent laundering to achieve stain removal.

(B) The term does not include the following:

(i) Dry cleaning fluid.

(ii) Laundry prewash.

(iii) Multipurpose solvent.

(155) "Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

(156) "Stick product" means any antiperspirant or deodorant that:

(A) contains active ingredients in a solid matrix form; and

(B) dispenses the active ingredients by frictional action on the affected area.

- (157) "Structural waterproof adhesive" means an adhesive:
- (A) whose bond lines are resistant to conditions of continuous immersion in fresh or salt water; and
 - (B) that conforms with Federal Specification MMM-A-181D (Type 1, Grade A)*.
- (158) "Table B compound" means any carbon-containing compound listed as an exception to the definition of VOC identified by the CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Section 94508*.
- (159) "Terrestrial" means to live on or grow from land.
- (160) "Tire sealant and inflation" means any pressurized product that is designed to temporarily inflate and seal a leaking tire.
- (161) "Toilet or urinal care product" means the following:
- (A) Any product designed or labeled to clean, deodorize, or clean and deodorize toilet bowls, toilet tanks, or urinals. Toilet bowls, toilet tanks, or urinals include, but are not limited to, the following:
 - (i) Toilets or urinals connected to permanent plumbing in buildings and other structures.
 - (ii) Portable toilets or urinals placed at temporary or remote locations.
 - (iii) Toilets or urinals in vehicles, such as the following:
 - (AA) Buses.
 - (BB) Recreational motor homes.
 - (CC) Boats.
 - (DD) Ships.
 - (EE) Aircraft.
 - (B) The term does not include the following:
 - (i) Bathroom and tile cleaner.
 - (ii) General purpose cleaner.
- (162) "Type A propellant" means a compressed gas, such as carbon dioxide (CO₂), nitrogen (N₂), or nitrous oxide (N₂O), or compressed air that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.
- (163) "Type B propellant" means any halocarbon that is used as a propellant including the following:
- (A) Chlorofluorocarbons (CFCs).
 - (B) Hydrochlorofluorocarbons (HCFCs).
 - (C) Hydrofluorocarbons (HFCs).
- (164) "Type C propellant" means any propellant that is not a Type A or Type B propellant, including the following:
- (A) Propane.
 - (B) Isobutane.
 - (C) n-butane.
 - (D) Dimethyl ether (also known as dimethyl oxide).
- (165) "Undercoating" means any aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. The term includes, but is not limited to, rubberized, mastic, or asphaltic products.
- (166) "Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how and in what quantity the product is to be used.
- (167) "Vinyl, fabric, leather, or polycarbonate coating" means a coating designed and labeled exclusively to coat vinyl, fabric, leather, or polycarbonate substrates.
- (168) "VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined under section 9 of this rule.
- (169) "Volatile organic compound" or "VOC" has the meaning set forth in [326 IAC 1-2-90](#).
- (170) "Wasp and hornet insecticide" means any insecticide product that is designed for use against:
- (A) wasps;
 - (B) hornets;
 - (C) yellow jackets; or
 - (D) bees;
- by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.
- (171) "Waterproof" means a product designed and labeled exclusively to repel water from fabric or leather substrates. The term does not include fabric protectants.
- (172) "Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). The term includes, but is not limited to, the following:
- (A) Substances derived from the secretions of plants and animals, such as carnauba wax and

beeswax.

(B) Substances of a mineral origin, such as ozocerite and paraffin.

(C) Synthetic polymers, such as polyethylene.

(173) "Web spray adhesive" means any aerosol adhesive that is not a mist spray or special purpose spray adhesive.

(174) "Wood cleaner" means the following:

(A) A product labeled to clean wooden materials, including, but not limited to, the following:

(i) Decking.

(ii) Fences.

(iii) Flooring.

(iv) Logs.

(v) Cabinetry.

(vi) Furniture.

(B) The term does not include the following:

(i) Dusting aids.

(ii) General purpose cleaners.

(iii) Furniture maintenance products.

(iv) Floor wax strippers.

(v) Floor polishes or waxes.

(vi) Products designed and labeled exclusively to preserve or color wood.

(175) "Wood floor wax" means wax based products for use solely on wood floors.

*These documents are incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-15-2](#))

[326 IAC 8-15-3](#) Standards

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

Affected: [IC 13-12](#)

Sec. 3. (a) Except as provided in sections 4 through 6 of this rule, no person shall sell, supply, offer for sale, or manufacture for sale in Indiana any consumer product manufactured on or after July 1, 2010, that contains VOCs in excess of the VOC content limits specified in the following table of standards:

Product Category	VOC Standard (percent VOC by weight)
Adhesives:	
Aerosol mist spray	65
Aerosol web spray	55
Special purpose spray adhesives:	
Mounting, automotive engine compartment, and flexible vinyl	70
Polystyrene foam and automotive headliner	65
Polyolefin and laminate repair or edgebanding	60
Construction, panel, and floor	15
Contact	80
Contact general purpose	55
Contact special purpose	80
General purpose	10
Structural waterproof	15
Adhesive removers:	
Floor or wall covering	5
Gasket or thread locking	50
General purpose	20
Specialty	70
Air fresheners:	

Single phase aerosol	30
Double phase aerosol	25
Liquids or pump sprays	18
Solids or semisolids	3
Antiperspirants:	
Aerosol	40 HVOC 10 MVOC
Nonaerosol	0 HVOC 0 MVOC
Antistatic product, nonaerosol	11
Automotive brake cleaners	45
Automotive rubbing or polishing compound	17
Automotive wax, polish, sealant, or glaze:	
Hard paste waxes	45
Instant detailers	3
All other forms	15
Automotive windshield washer fluids	35
Bathroom and tile cleaners:	
Aerosol	7
All other forms	5
Bug and tar remover	40
Carburetor or fuel injection air intake cleaners	45
Carpet and upholstery cleaners:	
Aerosols	7
Nonaerosol (dilutables)	0.1
Nonaerosol (ready-to-use)	3.0
Charcoal lighter material ¹	
Cooking spray, aerosols	18
Deodorants:	
Aerosol	0 HVOC 10 MVOC
Nonaerosol	0 HVOC 0 MVOC
Dusting aids:	
Aerosols	25
All other forms	7
Electrical cleaner	45
Electronic cleaner	75
Engine degreasers:	
Aerosol	35
Nonaerosol	5
Fabric protectants	60
Fabric refresher:	
Aerosol	15
Nonaerosol	6
Floor polishes or waxes:	
Products for flexible flooring materials	7
Products for nonresilient flooring	10
Wood floor wax	90
Floor wax strippers, nonaerosol ²	
Footwear or leather care products:	
Aerosol	75
Solid	55
Other forms	15

Furniture maintenance products:	
Aerosol	17
All other forms except solid or paste	7
General purpose cleaners:	
Aerosol	10
Nonaerosol	4
General purpose degreasers:	
Aerosol	50
Nonaerosol	4
Glass cleaners:	
Aerosols	12
Nonaerosol	4
Graffiti remover:	
Aerosol	50
Nonaerosol	30
Hair mousses	6
Hair shines	55
Hair sprays	55
Hairstyling gels	6
Hairstyling products:	
Aerosol and pump sprays	6
All other forms	2
Heavy-duty hand cleaner or soap	8
Insecticides:	
Crawling bug (aerosol)	15
Crawling bug (all other forms)	20
Flea and tick	25
Flying bug (aerosol)	25
Flying bug (all other forms)	35
Foggers	45
Lawn and garden (nonaerosol)	3
Lawn and garden (all other forms)	20
Wasp and hornet	40
Laundry prewash:	
Aerosol or solids	22
All other forms	5
Laundry starch products	5
Metal polish or cleaners	30
Multipurpose lubricant (excluding solid or semisolid products)	50
Nail polish remover	75
Nonselective terrestrial herbicide, nonaerosol	3
Oven cleaners:	
Aerosol or pump sprays	8
Liquids	5
Paint removers or strippers	50
Penetrants	50
Rubber and vinyl protectants:	
Aerosol	10
Nonaerosol	3
Sealants and caulking compounds	4
Shaving creams	5
Shaving gels	7
Silicone based multipurpose lubricants (excluding solid or semisolid products)	60
Spot removers:	
Aerosol	25

Nonaerosol	8
Tire sealants and inflators	20
Toilet or urinal care:	
Aerosol	10
Nonaerosol	3
Undercoatings, aerosol	40
Wood cleaner:	
Aerosol	17
Nonaerosol	4

¹ See subsection (f) regarding charcoal lighter material standards.

² See subsection (h) regarding floor wax strippers.

(b) No person shall:

- (1) sell;
- (2) supply;
- (3) offer for sale; or
- (4) manufacture for sale;

in Indiana any antiperspirant or deodorant that contains any compound that has been identified by the CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, Section 93000* as a toxic air contaminant.

(c) Products that are diluted prior to use shall satisfy the following requirements:

- (1) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content limits specified in subsection (a) shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this rule, minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.
- (2) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the limits specified in subsection (a) shall apply to the product only after the maximum recommended dilution has taken place.

(d) The following provisions apply to the sell-through of products:

- (1) Notwithstanding the provisions of subsections (a) and (g), a consumer product manufactured prior to the effective date of this rule, July 1, 2010, may be sold, supplied, or offered for sale after the effective date of this rule, July 1, 2010.
- (2) Subdivision (1) does not apply to any consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating the date, in accordance with section 6(a) of this rule.

(e) For consumer products subject to this rule that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. Section 136, et seq.), the effective date of the VOC standards specified in subsection (a) is July 1, 2011.

(f) The following requirements apply to all charcoal lighter materials:

- (1) No person shall sell, supply, or offer for sale after July 1, 2010, any charcoal lighter material product unless at the time of the transaction the manufacturer can demonstrate that the product has been issued a currently effective certification by one (1) of the following:
 - (A) The CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, Section 94509(h), of Title 17 of the California Code of Regulations*. The certification remains in effect for Indiana for as long as the CARB certification remains in effect.
 - (B) A certification by an air pollution control agency of another state and the U.S. EPA. The certification must be current at the time of the transaction.
- (2) Upon request by the department, a manufacturer claiming certification in accordance with subdivision (1) shall submit to the department a copy of the certification decision, that is, the Executive Order, including all conditions established by CARB applicable to the certification.

(g) The following requirements apply to aerosol adhesives:

- (1) The VOC standards for aerosol adhesives apply to all uses of aerosol adhesives including consumer, industrial, and commercial uses. Except as otherwise provided in sections 4 and 5 of this rule, no person shall sell, supply, offer for sale, use, or manufacture for sale in Indiana any aerosol adhesive that, at the time of sale, use, or manufacture, contains VOCs in excess of the VOC limits specified in subsection (a).
- (2) In order to qualify as a special purpose spray adhesive, the product must meet one (1) or more of the definitions in section 2 of this rule, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one (1) of the definitions for special purpose spray adhesive, then the product shall be classified as either a web spray adhesive or a mist spray adhesive. If a product:
 - (A) meets more than one (1) of the definitions in section 2 of this rule for a special purpose spray adhesive; and
 - (B) is not classified as a web spray adhesive or mist spray adhesive;then the VOC content limit for the product shall be the lowest applicable VOC content limit specified in subsection (a).
- (3) Effective, July 1, 2010, no person shall sell, supply, offer for sale, or manufacture for use in Indiana any aerosol adhesive that contains any of the following compounds:
 - (A) Methylene chloride.
 - (B) Perchloroethylene.
 - (C) Trichloroethylene.
- (4) All aerosol adhesives must comply with the labeling requirements specified in section 6 of this rule.

(h) The following requirements apply to floor wax strippers:

- (1) The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium buildup of polish that results in an as-used VOC concentration of three percent (3%) by weight or less.
- (2) If a nonaerosol floor wax stripper is also intended to be used for removal of heavy buildup of polish, the label of that floor wax stripper must specify a dilution ratio for heavy buildup of polish that results in an as-used VOC concentration of twelve percent (12%) by weight or less.
- (3) The terms "light buildup", "medium buildup", or "heavy buildup" are not specifically required as long as comparable terminology is used.

(i) The following requirements apply to products containing ozone depleting compounds:

- (1) For any consumer product subject to subsection (a), no person shall sell, supply, offer for sale, or manufacture for sale in Indiana any consumer product that contains any of the following ozone depleting compounds:
 - (A) Trichlorofluoromethane (CFC-11).
 - (B) Dichlorodifluoromethane (CFC-12).
 - (C) 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113).
 - (D) 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114).
 - (E) Chloropentafluoroethane (CFC-115).
 - (F) Bromochlorodifluoromethane (Halon 1211).
 - (G) Bromotrifluoromethane (Halon 1301).
 - (H) Dibromotetrafluoroethane (Halon 2402).
 - (I) Chlorodifluoromethane (HCFC-22).
 - (J) 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123).
 - (K) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124).
 - (L) 1,1-dichloro-1-fluoroethane (HCFC-141b).
 - (M) 1-chloro-1,1-difluoroethane (HCFC-142b).
 - (N) 1,1,1-trichloroethane.
 - (O) Carbon tetrachloride.
- (2) The requirements in subdivision (1) shall not apply to any existing product formulation that:
 - (A) complies with the VOC content limits listed in subsection (a); or
 - (B) is reformulated to meet the VOC content limits in subsection (a) provided the ozone depleting compound content of the reformulated product does not increase.
- (3) The requirements of subdivision (1) shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than one-hundredth of one percent (0.01%) by weight of the product.

(j) The following requirements apply to adhesive removers, contact adhesives, electrical cleaners, electronic cleaners, footwear or leather care products, general purpose degreasers, and graffiti removers:

(1) Except as provided in subdivisions (2) and (4), effective July 1, 2010, no person shall sell, supply, offer for sale, or manufacture for use in Indiana any contact adhesive, electronic cleaner, footwear or leather care product, or general purpose degreaser that contains any of the following compounds:

- (A) Methylene chloride.
- (B) Perchloroethylene.
- (C) Trichloroethylene.

(2) Products manufactured before July 1, 2010, may be sold, supplied, or offered for sale until July 1, 2013, so long as the product container or package displays the date on which the product was manufactured, or a code indicating the date, in accordance with section 6(a) of this rule.

(3) Any person who sells or supplies a consumer product identified in subdivision (1) must notify the purchaser of the product in writing that the sell-through period for that product will end on July 1, 2013, if both of the following conditions are met:

- (A) The product is sold or supplied to a distributor or retailer.
- (B) The product is sold or supplied on or after June 30, 2012.

(4) The requirements of subdivisions (1) and (3) shall not apply to any contact adhesive, electronic cleaner, footwear or leather care product, or general purpose degreaser containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than one-hundredth of one percent (0.01%) by weight.

(k) The following requirements apply to solid air fresheners and toilet or urinal care products:

(1) Notwithstanding subdivision (2), effective July 1, 2010, no person shall:

- (A) sell;
- (B) supply;
- (C) offer for sale; or
- (D) manufacture for use;

in Indiana any solid air fresheners or toilet or urinal care products that contain para-dichlorobenzene.

(2) Solid air fresheners and toilet or urinal care products that:

- (A) contain para-dichlorobenzene; and
- (B) were manufactured before July 1, 2010;

may be sold, supplied, or offered for sale until July 1, 2011, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with section 6(a) of this rule.

(3) Notification for products sold during the sell-through period. Any person who sells or supplies any solid air fresheners or toilet or urinal care product that contains para-dichlorobenzene must notify the purchaser of the product in writing that the sell-through period for the product will end on July 1, 2011, if both of the following conditions are met:

- (A) The product is sold or supplied to a distributor or retailer.
- (B) The product is sold or supplied on or after December 30, 2010.

*These documents are incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-15-3](#))

[326 IAC 8-15-4](#) Exemptions

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

Affected: [IC 13-12](#)

Sec. 4. (a) This rule shall not apply to any consumer product manufactured in Indiana for shipment and use outside of Indiana.

(b) This rule shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in Indiana a consumer product that does not comply with the VOC standards specified in section 3(a) of this

rule, as long as the manufacturer or distributor can demonstrate both that the:

- (1) consumer product is intended for shipment and use outside of Indiana; and
- (2) manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed in Indiana.

(c) Subsection (b) does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in Indiana.

(d) The MVOC content standards specified in section 3(a) of this rule for antiperspirants or deodorants shall not apply to ethanol.

(e) The VOC limits specified in section 3(a) of this rule shall not apply to the following:

- (1) Fragrances up to a combined level of two percent (2%) by weight contained in any consumer product and shall not apply to colorants up to a combined level of two percent (2%) by weight contained in any antiperspirant or deodorant.
- (2) Antiperspirants or deodorants, for those VOCs that contain more than ten (10) carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two (2) mm Hg or less at twenty (20) degrees Celsius.
- (3) Any LVP-VOC.
- (4) Air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under section 2 of this rule or exempted under subdivision (3).
- (5) Insecticides containing at least ninety-eight percent (98%) para-dichlorobenzene.
- (6) Adhesives sold in containers of one (1) fluid ounce or less.
- (7) Bait station insecticides. For purposes of this subsection, "bait station insecticides" means containers enclosing an insecticidal bait that is not more than five-tenths (0.5) ounce by weight, where the bait is:
 - (A) designed to be ingested by insects; and
 - (B) composed of solid material feeding stimulants with less than five percent (5%) active ingredients.

(f) The requirements of section 6(a) of this rule shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.).*

*This document is incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-15-4](#))

[326 IAC 8-15-5](#) Innovative products exemption

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

Affected: [IC 13-12](#)

Sec. 5. (a) A consumer product is exempt from the VOC limit requirements of section 3(a) of this rule if the manufacturer has been granted an innovative product exemption by one (1) of the following:

- (1) The CARB under the Innovative Products provisions in:
 - (A) Subchapter 8.5, Article 2, Section 94511 of Title 17 of the California Code of Regulations; or
 - (B) Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the California Code of Regulations.
- (2) The air pollution control agency of another state that has adopted a consumer and commercial product rule with an innovative products exemption provision substantially equivalent to the OTC "Model Rule for Consumer Products*", September 13, 2006.

(b) An innovative products exemption in accordance with subsection (a) shall be valid for use in Indiana when all of the following requirements are met:

- (1) The innovative product exemption is still in effect and has not expired.
- (2) The manufacturer claiming an innovative products exemption in accordance with subsection (a)(1)

shall do the following:

- (A) Submit to the department a copy of the CARB innovative product exemption decision, that is, the Executive Order, including all conditions established by CARB applicable to the exemption.
 - (B) Maintain all information specified in the innovative product exemption approving an innovative product application for a minimum of three (3) years after the expiration of the exemption.
 - (C) Make all records available to the department or the U.S. EPA upon request.
- (3) The manufacturer claiming an innovative products exemption in accordance with subsection (a)(2) shall certify to the department the following:
- (A) The product (including its form) for which the innovative products exemption is being used to comply with this rule satisfies the following requirements:
 - (i) The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit in section 3(a) of this rule.
 - (ii) The VOC content limit promulgated for this product by the air pollution control agency that issued the innovative products exemption is equal to or more stringent than the most stringent applicable VOC content limit specified in section 3(a) of this rule.
 - (B) The manufacturer must demonstrate to the department by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other fact, the use of the product will result in less VOC emissions compared to either the VOC emissions from a representative chemically formulated consumer product that complies with the VOC content limits in section 3(a) of this rule, or as compared to the calculated VOC emissions from a noncomplying representative product, if the product has been reformulated to comply with the VOC limits specified in section 3(a) of this rule.
 - (C) Prior to relying on an innovative products exemption for compliance, the manufacturer must submit to the department the following information:
 - (i) A statement that, for a specified chemically formulated consumer product that it manufactures, the manufacturer intends to comply with this section under an innovative products exemption rather than meet the applicable VOC content limits in section 3(a) of this rule.
 - (ii) The brand name of the consumer product, and the specific chemically formulated consumer product category in section 3(a) of this rule that the product belongs to, including its forms (if applicable).
 - (iii) A copy of the following:
 - (AA) The documents setting forth the innovative products exemption.
 - (BB) The issuing state's air pollution control agency's approval.
 - (CC) The issuing state's air pollution control agency's conditions of approval.
 - (DD) The demonstration of clause (B).
 - (EE) Any documents from the issuing state's air pollution control agency that subsequently modifies or terminates its conditions of approval.
 - (FF) Documentation demonstrating compliance with the innovative products exemption.
 - (iv) A statement that the innovative products exemption and the product or products for which the innovative products exemption is being used conform with the requirements of clauses (A) and (B) and this clause.

(c) If the VOC limits specified in section 3(a) of this rule are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard. This subsection shall not apply to those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the department at least sixty (60) days before the effective date of the limits.

(d) If the consumer product for which an exemption has been granted no longer meets the criteria for an innovative product exemption, the department may revoke the exemption as necessary.

*These documents are incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-15-5](#))

Sec. 6. (a) The purpose of this section is to provide an alternative method to comply with the limits in section 3(a) of this rule by allowing responsible ACP parties the option of voluntarily entering into separate ACPs for consumer products as specified in this section. Only responsible ACP parties for consumer products may enter into an ACP.

(b) Any manufacturer of consumer products shall be exempt from the VOC limit requirements of section 3(a) of this rule if they have been granted an ACP agreement by one (1) of the following:

- (1) The CARB under the provisions in Subchapter 8.5, Article 4, Sections 9450-94555, of Title 17 of the California Code of Regulations.
- (2) The air pollution control agency of another state that has adopted a consumer and commercial product rule with ACP provisions substantially equivalent to the OTC "Model Rule for Consumer Products"*, September 13, 2006.

(c) An ACP agreement in accordance with subsection (b) shall be valid for use in Indiana when all of the following requirements are met:

- (1) The ACP agreement is in effect and has not expired.
- (2) The responsible ACP party claiming an exemption in accordance with subsection (b)(1) shall do the following:

(A) Submit to the department the following:

- (i) A copy of the CARB ACP decision, that is, the Executive Order, including all conditions established by CARB applicable to the exemption.
- (ii) A statement that all ACP products within the ACP agreement are subject to the VOC limits in section 3(a) of this rule.

(B) Maintain all information specified in the ACP agreement approving an ACP exemption for a minimum of three (3) years after the expiration of the ACP.

(C) Make all records available to the department or the U.S. EPA upon request.

(3) The responsible ACP party claiming an exemption in accordance with subsection (b)(2) shall certify to the department the following:

(A) The product (including its form) for which ACP agreement exemption is being used to comply with this rule satisfies the following requirements:

- (i) The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit in section 3(a) of this rule.
- (ii) The VOC content limit promulgated for this product by the air pollution control agency that issued the ACP agreement is equal to or more stringent than the most stringent applicable VOC content limit specified in section 3(a) of this rule.

(B) Prior to relying on an ACP agreement for compliance, the responsible ACP party must submit to the department the following information:

- (i) A statement that, for a specified chemically formulated consumer product that it manufactures, the manufacturer intends to comply with this section under an ACP agreement rather than meet the applicable VOC content limits in section 3(a) of this rule.
- (ii) The brand name of the consumer product, and the specific chemically formulated consumer product category in section 3(a) of this rule that the product belongs to, including its forms (if applicable).
- (iii) A copy of the following:
 - (AA) The documents setting forth the ACP agreement.
 - (BB) The issuing state's air pollution control agency's approval.
 - (CC) The issuing state's air pollution control agency's conditions of approval.
 - (DD) Any documents from the issuing state's air pollution control agency that subsequently modifies or terminates its conditions of approval.
 - (EE) Documentation demonstrating compliance with the ACP agreement.
- (iv) A statement that the ACP agreement and the product or products for which the ACP agreement is being used conform with the requirements of clause (A) and this clause.

(d) The responsible ACP party shall notify the department, in writing, of any change not later than

- (e) If the VOC limits specified in section 3(a) of this rule are lowered for a product category through any subsequent rulemaking, all ACP agreements granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard. This subsection shall not apply to those ACP agreements that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the department at least sixty (60) days before the effective dates of the limits.

(f) The responsible ACP party shall notify the department, in writing, upon learning that a requirement of subsection (c) is no longer satisfied.

(g) If the ACP agreement does not meet the requirements of subsection (c), the department may revoke the exemption as necessary.

326 IAC 8-15-7 Administrative requirements

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

Affected: [IC 13-12](#)

Sec. 7. (a) Each manufacturer of a consumer product subject to this rule shall clearly display on each consumer product container or package, the day, month, and year that the product was manufactured, or a code indicating the date according to the following requirements:

- (1) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of subsection (b) if the code is represented separately from other codes on the product container so that it is easily recognizable:**

YY DDD = year year day day day

Where: YY = two (2) digits representing the year in which the product was manufactured; and
DDD = three (3) digits representing the day of the year on which the product was manufactured, with 001 representing the first day of the year, 002 representing the second day of the year, and so forth, that is, the Julian date.

- (2) The date or code shall be displayed on each consumer product container or package not later than January 1, 2010.
- (3) The date or code information shall be located on the container or inside the cover or cap so that it is readily observable or obtainable without irreversibly disassembling any part of the container or packaging. For the purpose of this subdivision, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.
- (4) The requirements of this subsection shall not apply to product containing no VOCs or containing VOCs at one-tenth percent (0.10%) by weight or less.

(b) Additional product dating requirements are as follows:

- (1) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to this rule, an explanation of the date portion of the code shall be filed with the department**

not later than January 1, 2010.

(2) If a manufacturer changes any code indicating the date of manufacture for any product subject to subdivision (1), an explanation of the modified code shall be submitted to the department before any products displaying the modified code are sold, supplied, or offered for sale in Indiana.

(3) No person shall:

- (A) erase;
- (B) alter;
- (C) deface;
- (D) otherwise remove; or
- (E) make illegible;

any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

(4) Date code explanations for codes indicating the date of manufacture:

- (A) are public information; and
- (B) may not be claimed as confidential.

(c) Additional labeling requirements for aerosol adhesives, adhesive removers, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesives are as follows:

(1) In addition to the requirements specified in this section and section 7 of this rule, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this rule shall ensure that all products clearly display the following information on each product container that is manufactured on or after July 1, 2010:

- (A) The product category as specified in section 3(a) of this rule or an abbreviation of the category.
- (B) The applicable VOC standard for the product as specified in section 3(a) of this rule, except for energized electrical cleaner, expressed as a percentage by weight, unless the product is included in an ACP approved by the department in accordance with section 5 of this rule, and the product exceeds the applicable VOC content limit.
- (C) If the product is included in an approved ACP and the product exceeds the applicable VOC content limits in section 3(a) of this rule, the product shall be labeled with the term "ACP" or "ACP product".
- (D) If the product is classified as a special purpose spray adhesive, the applicable substrate or application, or both, or an abbreviation of the substrate or application that qualifies the product as special purpose.
- (E) If the manufacturer or responsible party uses an abbreviation as allowed by clause (D), an explanation of the abbreviation must be filed with the department before the abbreviation is used.

(2) The information required by subsection (a) shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this rule, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(3) No person shall:

- (A) remove;
- (B) alter;
- (C) conceal; or
- (D) deface;

the information required in subdivision (1) prior to final sale of the product.

(d) The following most restrictive limits apply:

(1) For products manufactured before July 1, 2010, and FIFRA registered insecticides manufactured before July 1, 2011, the following apply:

- (A) Notwithstanding the definition of product category, as defined in section 2 of this rule, if anywhere on the principal display panel of any consumer product any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC content limit is specified in section 3(a) of this rule, then the lowest VOC limit shall apply.
- (B) This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

(2) For products manufactured on or after July 1, 2010, and FIFRA registered insecticides manufactured on or after July 1, 2011, the following apply:

- (A) Notwithstanding the definition of product category, as defined in section 2 of this rule, if anywhere on the container or packaging of any consumer product, or on any sticker or label affixed

thereto, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC content limit is specified in section 3(a) of this rule, then the lowest VOC limit shall apply.

(B) This requirement does not apply to general purpose cleaners, antiperspirant or deodorant products, and insecticide foggers.

(Air Pollution Control Board; [326 IAC 8-15-7](#))

[326 IAC 8-15-8](#) Record keeping and reporting requirements

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

Affected: [IC 13-12](#)

Sec. 8. (a) The department may require any responsible party to report information, within ninety (90) days written notice, for any consumer product or products the department may specify, including, but not limited to, all or part of the following information:

- (1) The name, address, and telephone number of the responsible party and the name and telephone number of the responsible party's designated contact person.
- (2) Any claim of confidentiality made under [326 IAC 17.1](#).
- (3) The product brand name for each consumer product and the product label.
- (4) The product category to which the consumer product belongs.
- (5) The applicable product form or forms listed separately.
- (6) An identification of each product brand name and form as a "Household Product" or "I & I Product", or both.
- (7) Separate Indiana sales in pounds per year, to the nearest pound, and the method used to calculate Indiana sales for each product form.
- (8) For information submitted by multiple companies, an identification of each company that is submitting relevant data, separate from that submitted by the responsible party. All information from all companies shall be submitted within ninety (90) days written notice from the department.
- (9) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one-tenth percent (0.1%):
 - (A) Total of Table B compounds.
 - (B) Total of LVP-VOCs that are not fragrances.
 - (C) Total of all other carbon containing compounds that are not fragrances.
 - (D) Total of all noncarbon containing compounds.
 - (E) Total of fragrance.
 - (F) For products containing greater than two percent (2%), by weight, fragrance:
 - (i) the percent of fragrance that is LVP-VOCs; and
 - (ii) the percent of fragrance that is all other carbon containing compounds.
 - (G) Total of para-dichlorobenzene.
- (10) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:
 - (A) Each Table B compound.
 - (B) Each LVP-VOC that is not a fragrance.
- (11) If applicable, the weight percent comprised of propellant for each product.
- (12) If applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

(b) If the responsible party does not have or does not provide the information requested, the department may require the reporting of this information by the person that has the information, including, but not limited to, any of, the following:

- (1) The formulator.
- (2) The manufacturer.
- (3) The supplier.
- (4) The parent company.
- (5) The private labeler.
- (6) The distributor.
- (7) The repackager.

(c) The following special reporting requirements apply to consumer products subject to this rule that contain perchloroethylene or methylene chloride:

(1) For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold in Indiana upon request of the department within ninety (90) days written notice:

(A) The product brand name and a copy of the product label with legible usage instructions.

(B) The product category to which the consumer product belongs.

(C) The applicable product form or forms (listed separately).

(D) For each product form listed, the total sales in Indiana during the calendar year, to the nearest pound (exclusive of the container and packaging), and the method used for calculating the Indiana sales.

(E) The weight percent, to the nearest one-tenth percent (0.10%), of perchloroethylene and methylene chloride in the consumer product.

(2) For purposes of this subsection, "contains perchloroethylene or methylene chloride" means the product contains one percent (1.0%) or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

(d) Persons subject to this rule shall do the following:

(1) Maintain all records for a minimum of three (3) years.

(2) Make records available to the department and U.S. EPA upon request.

(e) Any person supplying information under this rule may request that the information be kept confidential as trade secret information, and the department will evaluate the claim in accordance with [326 IAC 17.1](#).

(Air Pollution Control Board; [326 IAC 8-15-8](#))

[326 IAC 8-15-9](#) Test methods

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

Affected: [IC 13-12](#)

Sec. 8. (a) Testing to determine compliance with the VOC content limits specified in section 3(a) of this rule shall be performed using either of the following:

(1) CARB Method 310*, "Determination of Volatile Organic Compounds in Consumer Products".

(2) An alternative method that is shown to accurately determine the concentration of VOCs in a product. The alternative method must first be approved in writing by the department and U.S. EPA.

(b) Compliance with the VOC content limits specified in section 3(a) of this rule may be demonstrated through calculation of the VOC content of a consumer product from records of the amounts of constituents used to make the product (excluding packaging), under the following criteria:

(1) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. A manufacturer subject to this rule shall do the following:

(A) Maintain all records for a minimum of three (3) years.

(B) Make records available to the department and U.S. EPA upon request.

(2) For purposes of this section, the VOC content of a product shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{B - C}{A} \times 100$$

Where: A = Total net weight of a unit of product (excluding any packaging).

B = Total weight of all VOCs, per unit.

C = Total weight of VOCs exempted, per unit.

(3) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310*, the results of CARB Method

310*:

(A) shall take precedence over the product records; and

(B) may be used to establish a violation of the requirements of the VOC content limits in section 3(a) of this rule.

(c) Testing to determine whether a product is a liquid or a solid shall be performed using ASTM D 4359-90(2000)e1*.

(d) Testing to determine distillation points of petroleum distillate based charcoal lighter materials shall be performed using ASTM D 86-04b (2004)*.

(e) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect:

(1) the constituents used to manufacture a product;

(2) the chemical composition of the individual product; and

(3) any other test, processes, or records used in connection with product manufacture.

***These documents are incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Air Pollution Control Board; [326 IAC 8-15-9](#))

[Notice of Public Hearing](#)

Posted: 01/21/2009 by Legislative Services Agency

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

**Architectural and Industrial
Maintenance (AIM) Coatings (326
IAC 8-14)**

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #06-604

DEVELOPMENT OF NEW RULES CONCERNING VOLATILE ORGANIC COMPOUNDS FOR ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules at [326 IAC 8-14](#) concerning architectural and industrial maintenance (AIM) coatings. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: January 10, 2007, Indiana Register (DIN: [20070110-IR-326060604FNA](#)).

CITATIONS AFFECTED: [326 IAC 8-14](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

In the April 30, 2004, Federal Register (69 FR 23858), the U.S. EPA designated 23 counties as nonattainment for the 8-hour ozone standard. Only one monitoring location in Indiana does not currently meet the 8-hour ozone standard of 0.085 parts per million (ppm), and 21 of the 23 counties have been redesignated to attainment. While Lake and Porter counties measured air quality that met the 8-hour ozone standard from 2004 through 2006, a single monitoring location in Lake County measured air quality just above the standard in 2007. IDEM expects this site to reattain in 2008, and the department continues to work with the U.S. EPA to have Lake County and Porter County redesignated to attainment. Additionally, since the Cincinnati, Ohio, metropolitan area has not yet attained the 8-hour standard, IDEM has prepared a state implementation plan (SIP) revision for Lawrenceburg Township in Dearborn County that addresses its contribution to Cincinnati's ozone nonattainment.

It is prudent for Indiana to consider implementing additional cost-effective measures to reduce emissions that contribute to the formation of ozone. The reasons for considering additional reductions include: the narrow margin between Indiana's current air quality and the existing 8-hour ozone standard as well as the challenges Indiana faces in improving air quality to meet the new 8-hour ozone standard of 0.075 ppm that the U.S. EPA lowered on March 12, 2008, and the concerns expressed by other states that emissions from Indiana are contributing to their inability to attain the standard (the Clean Air Act provides a legal mechanism for those states to require Indiana to reduce Indiana's potential contribution to nonattainment in other states).

In an effort to assist neighboring states in the development of SIPs to comply with the federal requirements, the Lake Michigan Air Directors Consortium (LADCO) has been working with its member states to identify and recommend regional controls that would help states bring areas back into attainment for the 8-hour ozone standard. The LADCO states include Illinois, Indiana, Michigan, Ohio, and Wisconsin. The LADCO states have discussed applying certain VOC control measures to all counties in the region in order to provide a general benefit to all ozone and fine particle nonattainment areas. LADCO has evaluated potential reductions from various regulatory options that could be adopted on a multistate basis in the region. Based on discussions with other LADCO states and information provided by LADCO, IDEM proposes to develop an AIM coatings rule for Indiana as part of a regional effort to control ozone. This rule is part of a larger group of VOC control rules that have been agreed to by the LADCO states to address regional ozone and fine particle nonattainment. Other VOC control rules include automobile refinishing, consumer products, organic solvent degreasing, and stage I vapor recovery.

AIM coatings are applied to a variety of surfaces and may be applied by brush, roller, or spray gun and by consumers, painting contractors, or maintenance personnel. VOC emissions result from the evaporation of solvents in the coatings during application and drying. The U.S. EPA published the federal AIM coatings rule on September 11, 1998 (63 FR 48848) (40 CFR Part 59 Subpart D) under the authority of Section 183(e) of the Clean Air Act. This rule limits the amount of VOC that manufacturers and importers of AIM coatings can put into their products. The rule also has container labeling requirements for AIM coatings. There are different options for complying with the VOC limits, including exemptions for products that may be difficult to reformulate. VOC content limits in the national rule took effect on September 11, 1999. The federal AIM rule is estimated to yield VOC reductions of 20 percent from uncontrolled levels.

The U.S. EPA defines an architectural coating as "a coating recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. This definition excludes

adhesives and coatings recommended by the manufacturer or importer solely for shop applications or solely for application to non-stationary structures, such as airplanes, ships, boats, and railcars."

The U.S. EPA defines an industrial maintenance coating as "a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions in an industrial, commercial, or institutional setting:

- (1) immersion in water, wastewater, or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
- (2) acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;
- (3) repeated exposure to temperatures above 120°C (250°F);
- (4) repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or
- (5) exterior exposure of metal structures and structural components."

On August 31, 2005, the U.S. EPA published an Advance Notice of Proposed Rulemaking on AIM Coatings for determining how to calculate VOC reductions from AIM coatings in nonattainment and maintenance areas. The comment period was extended on October 13, 2005, and December 20, 2005, to request comments, data, and information. At this time, the U.S. EPA has not published an updated AIM rule.

In an effort to assist northeastern states to meet and maintain the ozone National Ambient Air Quality Standards (NAAQS), the Ozone Transport Commission (OTC) formed a workgroup to consider a model rule to reduce VOC emissions in AIM coatings. The workgroup formed for this purpose conducted meetings and received comments from interested parties that resulted in a recommendation that the OTC AIM Coatings model rule be the same as the National Association of Clean Air Agencies, formerly known as the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials model rule. The OTC identified several implementation options applicable to states in the northeast. The model rule emission limits were established at a level at which a substantial number of coatings already exist that comply with the VOC content limits for each product category. In conjunction with the OTC model rule, LADCO considered implementation of a Wisconsin rule limiting the VOC content of traffic markings in the MRPO states. For certain categories of coatings, LADCO estimates that implementation of the OTC model rule and the Wisconsin traffic marking rule will reduce VOC emissions by about 20% beyond the current federal AIM rule, or 2,986 tons VOC per year in Indiana.

In this rulemaking, Indiana is proposing to add an AIM coatings rule to the Article 8 VOC rules. The proposed rule is primarily based on the OTC model rule and contains additional VOC content requirements and application standards for traffic marking coatings that will be applicable during the ozone season (April 1 through October 31). This rulemaking will contribute to the MRPO states' regional control efforts for VOC and will assist counties in reaching attainment or maintaining compliance for the newly revised 8-hour ozone standard. Upon completion, this rule will be submitted to the U.S. EPA for approval into the SIP and, along with other regional and state measures, will guide air pollution control efforts in Indiana.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

The following elements 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" (NIFL element or elements).

The following information is provided with each NIFL element:

- (1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and the environment in Indiana and examples in which federal law is inadequate to provide this protection for Indiana.
- (2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.
- (3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element A: Adopting the OTC model rule for AIM coatings that requires manufacturers of coatings to comply with VOC content limits that are more stringent than the federal AIM rule (40 CFR 59, Subpart D).

- (1) The application of VOC control measures to AIM coatings in Indiana will provide a general benefit to nonattainment areas. This rule is part of a larger group of VOC control rules that have been agreed to by the LADCO states to address regional ozone nonattainment.
- (2) The analyses for the OTC model rule estimates a cost of \$6,400 per ton of VOC reduced. The model rule estimates a reduction of 2,986 tons of VOC emissions per year beyond the current federal rule for a total estimated cost of approximately \$19 million per year. However, since many of the large AIM coatings manufacturers already have experience reformulating to the OTC VOC limits, the cost of compliance in Indiana will likely be less than originally estimated.

(3) LADCO evaluated potential reductions from various regulatory options that could be adopted on a multistate basis in the region. The information used for the evaluation is presented in a white paper on Architectural and Industrial Maintenance Coatings at:

http://www.ladco.org/Regional_Air_Quality.html

NIFL Element B: Adopting standards for traffic markings coatings that are applied during the ozone season that are more stringent than the federal rule (40 CFR 59, Subpart D).

(1) The use of more stringent VOC content limits and application standards for traffic markings in Indiana will provide a general benefit to nonattainment areas. The VOC content limit for traffic markings is about 39 percent lower than the limit imposed by the federal rule. This rulemaking is part of a larger group of VOC control rules that address regional ozone nonattainment.

(2) The Indiana Department of Transportation (INDOT) estimates that approximately 280,000 gallons of white paint and 200,000 gallons of yellow paint are used annually. The white paint currently meets the proposed VOC content limit. However, the yellow paint would need to be reformulated to meet the standard at an approximate additional cost of 10 cents per gallon. Approximately 80% of the total volume of paint is used during the months of May, June, July, and August. IDEM estimates a cost of \$408 per ton of VOC reduced.

(3) LADCO evaluated potential reductions from various regulatory options that could be adopted on a multistate basis in the region. The information used for the evaluation is presented in a white paper on Architectural and Industrial Maintenance Coatings at:

http://www.ladco.org/Regional_Air_Quality.html

Potential Fiscal Impact

The OTC model rule estimates a 31% reduction in VOC emissions beyond the federal AIM rule. The analyses for the OTC model rule estimated a cost of \$6,400 per ton of VOC reduced. This estimate included costs for more stringent VOC content limits on traffic marking coatings that will be used during the ozone season. However, costs are not expected to be this high since many of the large AIM coatings producers already have experience with reformulating to the OTC limits and compliant formulations are currently available for all coating categories. Additionally, multiple states have now adopted the OTC model rule and therefore compliance costs are spread over a larger portion of sales.

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/compliance/ctap/index.html

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface

IDEM Compliance and Technical Assistance Program

OPPTA - MC60-04

100 North Senate Avenue

W041

Indianapolis, IN 46204-2251

(317) 232-8172

ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter

IDEM Small Business Assistance Program Ombudsman

MC 50-01 - IGCN 1307

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

mtretter@idem.in.gov

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Smith, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from January 10, 2007, through February 9, 2007, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Improving Kids' Environment (IKE)

National Paint & Coatings Association (NPCA)

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

Comment: IKE supports the agency moving forward with this rulemaking. Although ozone levels have been improving in Indiana, high ozone levels still present a public health threat to our citizens throughout the state. Ozone pollution is regional in nature and concentrating control programs in the urban areas is no longer sufficient to address unhealthy ozone levels. Implementing cleaner AIM coatings across a broad geographic region will be most effective in improving air quality. The market for AIM coatings is regional and national. Having different requirements in different states or different regions within states is disruptive, confusing and does not lead to the most economically efficient result. (IKE)

Response: This rulemaking, in conjunction with the rulemakings conducted by other LADCO states, will assist in controlling VOCs in order to ensure compliance with U.S. EPA's newly issued 8-hour ozone standard. IDEM is cognizant of the importance in addressing this issue from a regional perspective. IDEM's proposed draft rule language is consistent with other LADCO states' requirements and will ease the compliance burden for AIM coatings manufacturers by ensuring consistency with other states in the region.

Comment: NPCA strongly suggests that Indiana wait for EPA to revise the National AIM Rule later this year. The greatest problem with Indiana independently revising its AIM rule is that it may be different than other state AIM rules. Even when the OTC states revised their AIM rules via the OTC "Model Rule" different rules resulted. These differences—some major and some seemingly minor—can make compliance very difficult for the paint and coatings industry. The greatest benefit of Indiana waiting for the EPA is that hopefully the state AIM rules will be as consistent as possible. (NPCA)

Response: IDEM understands the importance of consistency for a rulemaking which affects AIM coatings producers nation-wide. However, the U.S. EPA has not yet published the proposed amendments to the national AIM coatings rule. The May 30, 2007 memorandum issued by Mr. Stephen Page, director of the U.S. EPA's Office of Air Quality Planning and Standards, to U.S. EPA Regional Offices and all states preparing ozone State Implementation Plans stated that the U.S. EPA was planning to propose the revised AIM coatings regulations in either August or September of 2007 followed by promulgation as a final rule in December 2007, with new limits to take effect on January 1, 2009. However, to date, the U.S. EPA has not published their proposed revisions. Therefore, IDEM is moving forward with this rulemaking. When the U.S. EPA amends the federal rule then IDEM will update its state rule.

Comment: If IDEM does not wait for EPA to revise the National AIM Rule, NPCA suggests that Indiana propose an AIM rulemaking similar to the recent proposed Ohio AIM rulemaking. For consistency purposes NPCA does not support Indiana's adoption of the Wisconsin traffic marking rule.

NPCA makes the following recommendations:

1. Definition of VOC—NPCA supports the current Indiana definition of VOC, but suggests that Indiana drop any references to amendment dates in the language.
2. Applicability Date—Coatings manufacturers need at least 9-12 months advance notice before the effective of the rule limits and other requirements. The industry is based on mass production and distribution of thousands of products, each which requires separate labeling instructions. Additionally, production operations must be altered and coordinated in light of the new requirements. All of this assumes that reformulation and testing of the new products mandated by the OTC Model rule will already have been accomplished. This may not be the case for regional or local companies that do not sell into OTC states. NPCA request that Indiana extend the implementation date out at least 9-12 months past any rule adoption/finalization date.
3. Implementation Date—NPCA strongly suggests an implementation date of January 1, 2009.
4. Sell Through Provision—NPCA supports the Ohio proposal to allow a three-year sell through date.
5. Reporting—It appears that Ohio has included an overly burdensome and unnecessary reporting requirements. The proposed regulation should be revised to make the reporting requirements consistent with six of the existing ten OTC state AIM rules by amending the reporting requirements section to eliminate the annual reports mandated for certain coatings. If Indiana still wishes to have this information available, we recommend that it replace this requirement with one that only requires the manufacturers to maintain records of the sales of these AIM products and report these sales only when requested by Indiana.
6. Conversion Varnish—For consistency with both the National AIM Rule and the OTC rules, NPCA suggests that Indiana include a definition and VOC limit (725g/l) for Conversion Varnishes.
7. Varnish Definition—NPCA suggests that the definition of varnish should be amended to delete the phrase "on exposure to air" and to change the typo "fetal" to "final".
8. Specialty Primer—For consistency with other rules, NPCA suggests that the definition of Specialty Primer be amended to include the phrase "to seal in efflorescence". Additionally, the NPCA suggests that Indiana add the language "to seal in efflorescence" to the container labeling requirements for Specialty primer, sealer, and undercoater.
9. Definitions Comments—NPCA suggests inserting the following definitions that correspond to categories that are identified in the VOC limit table but do not currently have definitions. Please note that the definitions came directly from the New York and Pennsylvania OTC rules: a) Calcimine recoaters; b) Concrete surface

retarder; c) Impacted immersion coating; d) Nuclear coating; e) Thermoplastic rubber coating and mastics. 10. ASTM Methods—Incorporation by Method—Please note that NPCA's suggested definition for Nuclear coatings includes two ASTM methods (D4082-89 and D 912-80) that should be included for the proposed rule. (NPCA)

Response: Indiana is moving forward with its AIM rulemaking. The addition of more stringent VOC content limits for traffic markings coatings and application standards is not overly burdensome on the practices of the Indiana Department of Transportation. Therefore, Indiana is seeking comment on a draft rule based on the OTC model rule and VOC content limits on an ozone season basis for traffic marking coatings.

In the draft rule language IDEM has included NPCA's requested changes to the definitions of VOC, conversion varnish, varnish, and specialty primer. IDEM has also added definitions for calcimine recoaters, concrete surface retarder, impacted immersion coating, nuclear coating, and thermoplastic rubber coating and mastics to provide definitions for categories that are identified in the VOC content limit table but that do not have definitions in the OTC model rule. IDEM has included the two requested ASTM methods (D4082-89 and D3912-80) as part of the definition for nuclear coatings.

NPCA suggested an implementation date of January 1, 2009. However, this rulemaking will not be completed by this date. Therefore IDEM is proposing an implementation date of January 1, 2010. This implementation date will provide adequate time for coatings manufacturers to meet rule requirements. Additionally, IDEM is including a three-year sell through provision in the draft rule language for products that were in compliance with the standards in effect at the time the coating was manufactured and that are properly labeled.

The reporting requirements in the draft rule language are consistent with the majority of the OTC states AIM rules. IDEM is not requiring annual reports for certain categories of coatings. However, the draft rule language does require that manufacturers of those coatings maintain records of sales and be able to report sales, when requested, to the department.

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. Mailed comments should be addressed to:

#06-604(APCB) Architectural and Industrial Maintenance Coatings
Amy Smith Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by November 14, 2008.

Additional information regarding this action may be obtained from Amy Smith, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 8-14](#) IS ADDED TO READ AS FOLLOWS:

Rule 14. Architectural and Industrial Maintenance (AIM) Coatings

[326 IAC 8-14-1](#) Applicability

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

Affected: [IC 13-12](#)

Sec. 1. This rule applies to any person who supplies, sells, offers for sale, or manufactures any AIM coating for use within the state of Indiana, as well as any person who applies or solicits the application of

any AIM coating within the state of Indiana, except for the following:

- (1) Any AIM coating that is sold or manufactured for:
 - (A) use outside of the state of Indiana; or
 - (B) shipment to other manufacturers for reformulation or repackaging.
- (2) Any aerosol coating product.
- (3) Any AIM coating that is sold in a container with a volume of one (1) liter (one and fifty-seven thousandths (1.057) quarts) or less.

(Air Pollution Control Board; [326 IAC 8-14-1](#))

[326 IAC 8-14-2](#) Definitions

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

Affected: [IC 13-12](#)

Sec. 2. The following definitions apply throughout this rule:

- (1) "Adhesive" means any chemical substance that is applied for the purpose of bonding two (2) surfaces together other than by mechanical means.
- (2) "Aerosol coating product" means a pressurized coating product containing pigments or resins that:
 - (A) dispenses product ingredients by means of a propellant; and
 - (B) is packaged in a disposable can for hand-held application or for use in specialized equipment for ground traffic or ground marking applications.
- (3) "AIM coating" means architectural coatings and industrial maintenance coatings.
- (4) "Antenna coating" means a coating labeled and formulated exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.
- (5) "Antifouling coating" means a coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating must be registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136)*.
- (6) "Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to, any of the following:
 - (A) Bathroom and kitchen fixtures.
 - (B) Cabinets.
 - (C) Concrete forms.
 - (D) Doors.
 - (E) Elevators.
 - (F) Fences.
 - (G) Hand railings.
 - (H) Heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools.
 - (I) Lampposts.
 - (J) Partitions pipes and piping systems.
 - (K) Rain gutters and downspouts.
 - (L) Stairways.
 - (M) Fixed ladders.
 - (N) Catwalks and fire escapes.
 - (O) Window screens.
- (7) "Architectural coating" means a coating to be applied to any of the following:
 - (A) Stationary structures or the appurtenances at the site of installation.
 - (B) Portable buildings at the site of installation.
 - (C) Pavements.
 - (D) Curbs.

The term does not include adhesives, coatings applied in shop applications, or coatings applied to nonstationary structures, such as airplanes, ships, boats, railcars, and automobiles.

- (8) "Bitumens" means black or brown materials, including, but not limited to, asphalt, tar, pitch, or asphaltite, that:

- (A) are soluble in carbon disulfide;
 - (B) consist mainly of hydrocarbons; and
 - (C) are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.
- (9) "Bituminous roof coating" means a coating that incorporates bitumens that is labeled and formulated exclusively for roofing.
- (10) "Bituminous roof primer" means a primer that incorporates bitumens that is labeled and formulated exclusively for roofing.
- (11) "Bond breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.
- (12) "Calcimine recoaters" means flat solvent borne coatings formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-painted substrates.
- (13) "Clear brushing lacquers" means clear wood finishes, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, that are:
- (A) intended exclusively for application by brush; and
 - (B) labeled as specified in section 4(5) of this rule.
- (14) "Clear wood coatings" means clear and semitransparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.
- (15) "Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, the following:
- (A) Paints.
 - (B) Varnishes.
 - (C) Sealers.
 - (D) Stains.
- (16) "Colorant" means a concentrated pigment dispersion of water, solvent, or binder that is added to an architectural coating after packaging in sale units to produce the desired color.
- (17) "Concrete curing compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.
- (18) "Concrete surface retarder" means a mixture of retarding ingredients, such as:
- (A) extender pigments;
 - (B) primary pigments;
 - (C) resin; and
 - (D) solvent;
- that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.
- (19) "Conjugated oil varnish" means a clear or semitransparent wood coating, labeled as such, excluding lacquers or shellacs, based on a natural occurring conjugated vegetable oil (tung oil) and modified with other natural or synthetic resins, a minimum of fifty percent (50%) of the resin solids consisting of conjugated oil. Supplied as a single component product, conjugated oil varnishes penetrate and seal the wood. Film formation is due to polymerization of the oil. These varnishes may contain small amounts of pigment to control the final gloss or sheen.
- (20) "Conversion varnish" means a clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two (2) component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.
- (21) "Dry fog coating" means a coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.
- (22) "Exempt compound" means a compound identified as exempt under the definition of VOC. The exempt compounds content of a coating shall be determined in accordance with Method 24 of 40 CFR Part 60, Appendix A* or SCAQMD Method 303-91* "Determination of Exempt Compounds", approved June 1, 1991, and revised February 1993.
- (23) "Faux finishing coating" means a coating labeled and formulated as a stain or a glaze to create artistic effects including, but not limited to, the following:
- (A) Dirt.
 - (B) Old age.
 - (C) Smoke damage.
 - (D) Simulated marble.

(E) Simulated wood grain.

(24) "Fire-resistive coating" means an opaque coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials, that has been:

(A) fire tested and rated by a nationally recognized testing organization; and

(B) approved for use in bringing assemblies of structural materials into compliance with federal, state, and local building code requirements.

The fire-resistive coating shall be tested in accordance with ASTM E119-05a* "Standard Test Methods for Fire Tests of Building Construction and Materials", November 2005.

(25) "Fire-retardant coating" means a coating labeled and formulated to retard ignition and flame spread, that has been:

(A) fire tested and rated by a nationally recognized testing organization; and

(B) approved for use in bringing building and construction materials into compliance with federal, state, and local building code requirements.

The fire-retardant coating shall be tested in accordance with ASTM E84-05e1* "Standard Test Method for Surface Burning Characteristics of Building Materials", February 2005.

(26) "Flat coating" means a coating that:

(A) is not defined under any other definition in this rule; and

(B) registers gloss less than fifteen (15) on an eighty-five (85) degree meter or less than five (5) on a sixty (60) degree meter according to ASTM D523-89* "Standard Test Method for Specular Gloss", May 1999.

(27) "Floor coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, the following:

(A) Decks.

(B) Porches.

(C) Steps.

(D) Other horizontal surfaces that may be subjected to foot traffic.

(28) "Flow coating" means a coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

(29) "Form-release compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

(30) "Graphic arts coating or sign paint" means a coating labeled and formulated for hand application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including the following:

(A) Letter enamels.

(B) Poster colors.

(C) Copy blockers.

(D) Bulletin enamels.

(31) "High-temperature coating" means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above two hundred four (204) degrees Celsius (four hundred (400) degrees Fahrenheit).

(32) "Impacted immersion coating" means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high energy impact damage by floating ice or debris.

(33) "Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, or topcoats, formulated for application to substrates exposed to one (1) or more of the following extreme environmental conditions and labeled as specified in section 4(4) of this rule:

(A) Immersion in water, wastewater, or chemical solutions (aqueous and nonaqueous solutions), or chronic exposures of interior surfaces to moisture condensation.

(B) Acute or chronic exposure to:

(i) corrosive, caustic, or acidic agents;

(ii) chemicals;

(iii) chemical fumes; or

(iv) chemical mixtures or solutions.

(C) Repeated exposure to temperatures above one hundred twenty-one (121) degrees Celsius (two hundred fifty (250) degrees Fahrenheit).

(D) Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents.

- (E) Exterior exposure of metal structures and structural components.
- (34) "Lacquer" means a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to:
- (A) dry by evaporation without chemical reaction; and
 - (B) provide a solid, protective film.
- (35) "Low-solids coating" means a coating containing twelve-hundredths (0.12) kilogram or less of solids per liter (one (1) pound or less of solids per gallon) of coating material.
- (36) "Magnesite cement coating" means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.
- (37) "Manufacturer's maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.
- (38) "Mastic texture coating" means a coating labeled and formulated to:
- (A) cover holes and minor cracks; and
 - (B) conceal surface irregularities;
- that is applied in a single coat of at least ten mils (0.010 inch) dry film thickness.
- (39) "Metallic pigmented coating" means a coating containing at least forty-eight (48) grams of elemental metallic pigment per liter of coating as applied (four-tenths (0.4) pounds per gallon) when tested in accordance with SCAQMD Method 318-95* "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction", July 1996.
- (40) "Multicolor coating" means a coating that:
- (A) is packaged in a single container; and
 - (B) exhibits more than one (1) color when applied in a single coat.
- (41) "Nonflat coating" means a coating that:
- (A) is not defined under any other definition in this rule; and
 - (B) registers a gloss of fifteen (15) or greater on an eighty-five (85) degree meter and five (5) or greater on a sixty (60) degree meter according to ASTM D523-89* "Standard Test Method for Specular Gloss", May 1999.
- (42) "Nonflat-high-gloss coating" means a nonflat coating that registers a gloss of seventy (70) or above on a sixty (60) degree meter according to ASTM D523-89* "Standard Test Method for Specular Gloss", May 1999.
- (43) "Nonindustrial" use means any use of architectural coatings except in the construction or maintenance of any of the following:
- (A) Facilities used in the manufacturing of goods and commodities.
 - (B) Transportation infrastructures, including the following:
 - (i) Highways.
 - (ii) Bridges.
 - (iii) Airports.
 - (iv) Railroads.
 - (C) Facilities used in mining activities, including petroleum extraction.
 - (D) Utilities infrastructures, including power generation and distribution and water treatment and distribution systems.
- (44) "Nuclear coating" means a protective coating formulated and recommended to seal porous surfaces, such as steel (or concrete), that otherwise would be subject to intrusions by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure and be tested in accordance with ASTM Method D4082-89* "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants", January 2002 readily easy to decontaminate, and resistant to various chemicals to which coatings are likely to be exposed and be tested in accordance with ASTM Method D3912-80 "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants", approved January 2001.
- (45) "Person" has the meaning set forth in [IC 13-11-2-158\(a\)](#).
- (46) "Postconsumer coating" means a finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer. The term does not include manufacturing wastes.
- (47) "Pretreatment wash primer" means a primer that:
- (A) contains a minimum of five-tenths percent (0.5%) acid, by weight, when tested in accordance with ASTM D1613-03* "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products", October 2003; and
 - (B) is labeled and formulated for application directly to bare metal surfaces to:
 - (i) provide corrosion resistance; and
 - (ii) promote adhesion of subsequent topcoats.
- (48) "Primer" means a coating labeled and formulated for application to a substrate to provide a firm bind between the substrate and subsequent coats.

(49) "Quick-dry enamel" means a nonflat coating that is labeled as specified in section 4(8) of this rule and that is formulated to have the following characteristics:

(A) Is capable of being applied directly from the container under normal conditions with ambient temperatures between sixteen (16) and twenty-seven (27) degrees Celsius (sixty (60) and eighty (80) degrees Fahrenheit).

(B) When tested in accordance with ASTM D1640-03* "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature", December 2003:

(i) sets to touch in two (2) hours or less;

(ii) is tack free in four (4) hours or less;

(iii) dries hard in eight (8) hours or less by the mechanical test method; and

(iv) has a dried film gloss of seventy (70) or above on a sixty (60) degree meter.

(50) "Quick-dry primer, sealer, and undercoater" means a primer, sealer, or undercoater that:

(A) is dry to the touch in thirty (30) minutes; and

(B) can be recoated in two (2) hours when tested in accordance with ASTM D1640-03* "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature", December 2003.

(51) "Recycled coating" means an architectural coating formulated such that not less than fifty percent (50%) of the total weight consists of secondary and postconsumer coating, with not less than ten percent (10%) of the total weight consisting of postconsumer coating.

(52) "Residence" means areas where people reside or lodge, including, but not limited to, the following:

(A) Single and multiple family dwellings.

(B) Condominiums.

(C) Mobile homes.

(D) Apartment complexes.

(E) Motels.

(F) Hotels.

(53) "Roof coating" means a nonbituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation. The term does not include metallic pigmented roof coatings that qualify as metallic pigmented coatings. These roof coatings shall be considered to be in the metallic pigmented coatings category.

(54) "Rust preventive coating" means a coating:

(A) formulated:

(i) exclusively for nonindustrial use; and

(ii) to prevent the corrosion of metal surfaces; and

(B) labeled as specified in section 4(6) of this rule.

(55) "Sanding sealer" means a clear or semitransparent wood coating labeled and formulated for application to bare wood to:

(A) seal the wood; and

(B) provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings.

The term does not include a sanding sealer that also meets the definition of a lacquer, but it is included in the lacquer category.

(56) "SCAQMD" means the South Coast Air Quality Management District in California.

(57) "Sealer" means a coating labeled and formulated for application to a substrate to prevent:

(A) subsequent coatings from being absorbed by the substrate; or

(B) harm to subsequent coatings by materials in the substrate.

(58) "Secondary coating (rework)" means a fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value. The term does not include excess virgin resources of the manufacturing process.

(59) "Shellac" means a clear or opaque coating:

(A) formulated solely with the resinous secretions of the lac beetle (*Lacifer lacca*);

(B) thinned with alcohol; and

(C) formulated to dry by evaporation without a chemical reaction.

(60) "Shop application" means an application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a:

(A) manufacturing;

(B) production; or

(C) repairing;

process.

(61) "Solicit" means to require for use or to specify, by written or oral contract.

(62) "Specialty primer, sealer, and undercoater" means a coating:

(A) labeled as required in section 4(7) of this rule; and

(B) formulated for application to:

(i) a substrate to seal fire, smoke, or water damage;

(ii) condition excessively chalky surfaces;

(iii) seal in efflorescence; or

(iv) block stains.

An excessively chalky surface is one that is defined as having a chalk rating of four (4) or less as determined by ASTM D4214-98* "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films", August 1998.

(63) "Stain" means a clear, semitransparent, or opaque coating labeled and formulated to change the color of a surface but not conceal the grain pattern or texture.

(64) "Stone consolidant" means a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. Stone consolidants must:

(A) penetrate into stone substrates to create bonds between particles and consolidate deteriorated material; and

(B) be specified and used in accordance with ASTM E2167-01* "Standard Guide for Selection and Use of Stone Consolidants".

(65) "Swimming pool coating" means a coating labeled and formulated to:

(A) coat the interior of swimming pools; and

(B) resist swimming pool chemicals.

(66) "Swimming pool repair and maintenance coating" means a rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

(67) "Temperature-indicator safety coating" means a coating labeled and formulated as a color-changing indicator coating for:

(A) the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment; and

(B) application to substrates exposed continuously or intermittently to temperatures above two hundred four (204) degrees Celsius (four hundred (400) degrees Fahrenheit).

(68) "Thermoplastic rubber coating and mastics" means a coating or mastic:

(A) formulated and recommended for application to roofing or other structural surfaces; and

(B) that incorporates not less than forty percent (40%) by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to:

(i) fillers;

(ii) pigments; and

(iii) modifying resins.

(69) "Tint base" means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

(70) "Traffic marking coating" means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces, including, but not limited to, the following:

(A) Curbs.

(B) Berms.

(C) Driveways.

(D) Parking lots.

(E) Sidewalks.

(F) Airport runways.

(71) "Undercoater" means a coating labeled and formulated to provide a smooth surface for subsequent coatings.

(72) "U.S. EPA" means United States Environmental Protection Agency.

(73) "Varnish" means a clear or semitransparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction. Varnishes may contain small amounts of pigment to:

(A) color a surface; or

(B) control the final sheen or gloss of the finish.

(74) "Volatile organic compound" or "VOC" means a compound as defined in [326 IAC 1-2-90](#).

(75) "Waterproofing concrete or masonry sealer" means a clear or pigmented film forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against the following:

(A) Water.

(B) Alkalis.

(C) Acids.

(D) Ultraviolet light.

(E) Staining.

(76) "Waterproofing sealer" means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

(77) "Wood preservative" means a coating:

(A) labeled and formulated to protect exposed wood from decay or insect attack; and

(B) that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136)*.

* These documents are incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-14-2](#))

[326 IAC 8-14-3](#) Standards for AIM coatings

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

Affected: [IC 13-12](#)

Sec. 3. (a) Except as provided in subsections (c) and (d), on or after January 1, 2010, no person shall:

(1) manufacture, blend, or repackage for sale within the state of Indiana;

(2) supply, sell, or offer for sale within the state of Indiana; or

(3) solicit for application or apply within the state of Indiana;

any AIM coating with a VOC content in excess of the corresponding limit specified in subsection (b).

(b) Compliance with the VOC content limits shall not exceed the following limits:

Coating Category	VOC Limit (grams/liter)	VOC Limit (pounds/gallon)
Flat coatings	100	0.83
Nonflat coatings	150	1.25
Nonflat-high-gloss coatings	250	2.08
Specialty coatings:		
Antenna coatings	530	4.42
Antifouling coatings	400	3.33
Bituminous roof coatings	300	2.50
Bituminous roof primers	350	2.92
Bond breakers	350	2.92
Calcimine recoaters	475	3.96
Clear wood coatings:		
Clear brushing lacquers	680	5.67
Lacquers, including clear lacquer sanding sealers	550	4.59
Sanding sealers, excluding clear lacquers	350	2.92
Varnishes other than conversion varnishes	350	2.92
Conjugated oil varnish	450	3.75
Conversion varnish	725	6.04
Concrete curing compounds	350	2.92
Concrete surface retarders	780	6.50
Dry fog coatings	400	3.33
Faux finishing coatings	350	2.92
Fire-resistive coatings	350	2.92
Fire-retardant coatings (clear)	650	5.42

Fire-retardant coatings (opaque)	350	2.92
Floor coatings	250	2.08
Flow coatings	420	3.50
Form-release compounds	250	2.08
Graphic arts coatings (sign paints)	500	4.17
High temperature coatings	420	3.50
Impacted immersion coatings	780	6.50
Industrial maintenance coatings	340	2.83
Low-solids coatings	120	1.00
Magnesite cement coatings	450	3.75
Mastic texture coatings	300	2.50
Metallic pigmented coatings	500	4.17
Multicolor coatings	250	2.08
Nuclear coatings	450	3.75
Pretreatment wash primers	420	3.50
Primers, sealers, and undercoaters	200	1.67
Quick-dry enamels	250	2.08
Quick-dry primers, sealers, and undercoaters	200	1.67
Recycled coatings	250	2.08
Roof coatings	250	2.08
Rust preventive coatings	400	3.33
Shellacs (clear)	730	6.09
Shellacs (opaque)	550	4.59
Specialty primers, sealers, and undercoaters	350	2.92
Stains	250	2.08
Stone consolidants	450	
Swimming pool coatings	340	2.83
Swimming pool repair and maintenance coatings	340	2.83
Temperature-indicator safety coatings	550	4.59
Thermoplastic rubber coatings and mastics	550	4.59
Traffic marking coatings (ozone season-April 1 to October 31)	91	0.76
Traffic marking coatings (nonozone season- November 1 to March 31)	150	1.25
Waterproofing sealers	250	2.08
Waterproofing concrete or masonry sealers	400	3.33
Wood preservatives	350	2.92

Conversion factor: one pound VOC per gallon (U.S.) = 119.95 grams per liter.

(c) If anywhere on the container of an AIM coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition or is recommended for use for more than one (1) of the categories listed in subsection (b), then the category with the most restrictive VOC content limit shall apply. This provision does not apply to the coating categories specified as follows:

- (1) Lacquer coatings (including lacquer sending sealers).
- (2) Metallic pigmented coatings.
- (3) Shellacs.
- (4) Fire-retardant coatings.
- (5) Pretreatment wash primers.
- (6) Industrial maintenance coatings.
- (7) Low-solids coatings.
- (8) Wood preservatives.
- (9) High temperature coatings.
- (10) Temperature-indicator safety coatings.
- (11) Antenna coatings.
- (12) Antifouling coatings.
- (13) Flow coatings.

- (14) Bituminous roof primers.
- (15) Specialty primers, sealers, and undercoaters.
- (16) Thermoplastic rubber coatings and mastics.
- (17) Calcamine recoaters.
- (18) Impacted immersion coatings.
- (19) Nuclear coatings.

(d) The following sell through provisions apply to AIM coatings:

- (1) A coating manufactured prior to January 1, 2010, may be sold, supplied, or offered for sale until December 31, 2013.
- (2) A coating manufactured before January 1, 2010, may be applied at any time both before and after January 1, 2010, so long as the coating complied with the standards in effect at the time the coating was manufactured.
- (3) The provisions in subdivisions (1) and (2) do not apply to any coating that does not display the date or date code required by section 4(1) of this rule.

(e) The following work practices are required:

(1) All AIM coatings containers used to apply the contents therein to a surface directly from the container by:

- (A) pouring;
- (B) siphoning;
- (C) brushing;
- (D) rolling;
- (E) padding;
- (F) ragging; or
- (G) other means;

shall be closed when not in use.

(2) Containers of any VOC-containing materials used for thinning and cleanup shall be closed when not in use.

(f) No person who applies or solicits the application of any AIM coating shall apply a coating that is thinned to exceed the applicable VOC limit specified in subsection (b).

(g) No person shall apply or solicit the application of any rust preventative coating for industrial use, unless the rust preventative coating complies with the industrial maintenance coating VOC content limit specified in subsection (b). No person shall sell or offer for sale any rust preventative coating for application to any nonmetallic substrate, nor shall any person apply a rust preventative coating to any nonmetallic substrate.

(h) If a coating does not meet any of the definitions for the specialty coatings categories listed in subsection (b), the VOC content limit shall be determined by classifying the coating as a flat coating, nonflat coating, or nonflat-high-gloss coating as defined in section 2 of this rule. The corresponding flat or nonflat coating VOC content limit shall apply.

(Air Pollution Control Board; [326 IAC 8-14-3](#))

[326 IAC 8-14-4](#) Container labeling

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

Affected: [IC 13-12](#)

Sec. 4. On and after January 1, 2010, each manufacturer of any AIM coating subject to this rule shall prominently display the following information on the coating container (or label) in which the coating is sold or distributed:

(1) A date code, as follows:

(A) The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container.

(B) If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation

of each code with the department.

(2) Thinning recommendations, as follows:

(A) A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container.

(B) This requirement does not apply to the thinning of architectural coatings with water.

(C) If thinning of a coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

(3) VOC content, as follows:

(A) Each container of any coating subject to this rule shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning recommended by the manufacturer.

(B) VOC content shall be displayed in grams of VOC per liter of coating.

(C) VOC content displayed shall be:

(i) calculated using product formulation data; or

(ii) determined using the test methods in section 6(b) of this rule.

The equations in section 6(a) of this rule shall be used to calculate VOC content.

(4) The label or the lid of the container in which the coating is sold or distributed shall display one (1) or more of the following industrial maintenance coatings descriptions:

(A) "For industrial use only".

(B) "For professional use only".

(C) "Not for residential use".

(D) "Not intended for residential use".

(5) The labels of all clear brushing lacquers shall prominently display the following statements:

(A) "For brush application only".

(B) "This product must not be thinned or sprayed".

(6) The labels of all rust preventive coatings shall prominently display the statement "For metal substrates only".

(7) The labels of all specialty primers, sealers, and undercoaters shall prominently display one (1) or more of the following descriptions:

(A) "For blocking stains".

(B) "For fire-damaged substrates".

(C) "For smoke-damaged substrates".

(D) "For water-damaged substrates".

(E) "For excessively chalky substrates".

(F) "To seal in efflorescence".

(8) The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.

(9) The labels of all nonflat-high-gloss coatings shall prominently display the words "High Gloss".

(10) The labels of all stone consolidants shall prominently display the statement "Stone Consolidant—For Professional Use Only".

(Air Pollution Control Board; [326 IAC 8-14-4](#))

[326 IAC 8-14-5](#) Recordkeeping and reporting requirements

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

Affected: [IC 13-12](#)

Sec. 5. (a) Each manufacturer of a product subject to a VOC content limit in section 3(b) of this rule shall keep records demonstrating compliance with the VOC content limits. The records shall clearly list each product by all of the following:

(1) Name.

(2) Identifying number (if applicable).

(3) VOC content as determined by section 6 of this rule.

(4) Name or names and chemical abstract service (CAS) number of the VOC constituents in the product.

(5) Dates of the VOC content determinations.

(6) Coating category and applicable VOC content limit.

(b) The records required by subsection (a) shall be:

- (1) kept for a period not less than five (5) years; and
- (2) made available to the department for inspection within ninety (90) days of request.

(c) Each manufacturer shall, upon request of the department, provide data concerning the distribution and sales of coatings subject to a VOC content limit in section 3(b) of this rule. The manufacturer shall within ninety (90) days provide the following information:

- (1) The name and mailing address of the manufacturer.
- (2) The name, address, and telephone number of a contact person.
- (3) The name of the product as it appears on the label and the coating category under which it is regulated, as listed in section 3(b) of this rule.
- (4) Whether the coating is marketed for interior use or exterior use, or both.
- (5) The number of gallons sold in the state of Indiana in containers greater than one (1) liter.
- (6) The actual VOC content and VOC content in grams per liter. If thinning is recommended, list the actual VOC content and VOC content limit after recommended thinning.
- (7) The names and CAS number of the VOC constituents in the product.

(d) For each AIM coating that contains perchloroethylene or methylene chloride, the manufacturer shall, on or before May 1 of each calendar year beginning with the year 2011, report to the department the following information for the product sold in the state during the preceding calendar year:

- (1) The product's brand name and a copy of the product label with the legible usage instructions.
- (2) The coating category, listed in section 3(b) of this rule, to which the coating belongs.
- (3) The total sales during the calendar year to the nearest gallon.
- (4) The volume percent, to the nearest one-tenth of one percent (0.10%), of perchloroethylene and methylene chloride in the coating.

(e) Manufacturers of recycled coatings must submit a letter to the department certifying their status as a recycled paint manufacturer. The manufacturer shall, on or before May 1 of each calendar year beginning with the year 2011, submit an annual report for the previous calendar year to the department. The report shall include for all recycled coatings the following information:

- (1) The total number of gallons distributed in Indiana during the preceding year.
- (2) A description of the method used by the manufacturer to calculate state distribution.

(f) Manufacturers of bituminous roof coatings or bituminous roof primers shall, on or before May 1 of each calendar year beginning with the year 2011, submit an annual report for the previous calendar year to the department. The report shall include the following information:

- (1) The total number of gallons of bituminous roof coatings or bituminous roof primers sold in Indiana during the preceding year.
- (2) A description of the method used by the manufacturer to calculate state sales.

(Air Pollution Control Board; [326 IAC 8-14-5](#))

[326 IAC 8-14-6](#) Compliance provisions and test methods

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

Affected: [IC 13-12](#)

Sec. 6. (a) For the purpose of determining compliance with the VOC content limits in section 3(b) of this rule, the VOC content of a coating shall be determined using the procedures described in subdivision (1) or (2), as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured. VOC content shall be determined as follows:

- (1) With the exception of low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds, using the following equation:

$$\text{VOC Content} = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})}$$

Where:	VOC Content	=	grams of VOC per liter of coating
	W_s	=	weight of volatiles, in grams
	W_w	=	weight of water, in grams
	W_{ec}	=	weight of exempt compounds, in grams
	V_m	=	volume of coating, in liters
	V_w	=	volume of water, in liters
	V_{ec}	=	volume of exempt compounds, in liters

(2) For low solid coatings, determine the VOC content in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds, using the following equation:

$$\text{VOC Content}_{ls} = \frac{(W_s - W_w - W_{ec})}{(V_m)}$$

Where:	VOC Content _{ls}	=	the VOC content of a low-solids coating in grams per liter of coating
	W_s	=	weight of volatiles, in grams
	W_w	=	weight of water, in grams
	W_{ec}	=	weight of exempt compounds, in grams
	V_m	=	volume of coating, in liters

(b) To determine the physical properties of a coating in order to perform the calculations in subsection (a), the reference method for VOC content is Method 24 of 40 CFR Part 60, Appendix A*, except as provided in subsections (c) and (d). An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91* "Determination of Volatile Organic Compounds in Various Materials", February 1996. The exempt compounds content shall be determined by SCAQMD Method 303-91* "Determination of Exempt Compounds", February 1993. To determine the VOC content of a coating, the manufacturer may use Method 24 of 40 CFR Part 60, Appendix A*, or an alternative method, as provided in subsection (c), formulation data, or any other reasonable means for predicting that the coating has been formulated as intended, for example, quality assurance checks, recordkeeping. However, if there are any inconsistencies between the results of a test conducted utilizing Method 24 of 40 CFR Part 60, Appendix A* and any other means for determining VOC content, the results of the test utilizing Method 24 of 40 CFR Part 60, Appendix A* will govern, except when an alternative method is approved as specified in subsection (c). The department may require the manufacturer to conduct an analysis using Method 24 of 40 CFR Part 60, Appendix A*.

(c) The use of alternative test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subsection (b) after review and approval in writing by the department and the U.S. EPA may be used.

(d) Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of Method 24* of 40 CFR 59 Part 60, Appendix A*. This method has not been approved for methacrylate multicomponent coatings used for purposes other than as traffic marking coatings or for other classes of multicomponent coatings.

*These documents are incorporated by reference. Copies are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-14-6](#))

[326 IAC 8-14-7](#) Application of traffic marking materials

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

Affected: [IC 13-12](#)

Sec. 7. (a) After January 1, 2011, during the ozone season (April 1 to October 31), no person may cause, allow, or permit the application of traffic marking material that exceeds the following limits:

- (1) For traffic marking material that is a liquid at the time of application, the VOC content limits listed in section 3(b) of this rule.
- (2) For field-reacted traffic marking material, or for traffic marking material that is not measurable as a liquid at the time of application, a VOC emission rate of three and six-tenths (3.6) kilograms per stripe-kilometer or twelve and two-tenths (12.2) pounds per stripe-mile.

(b) Any person subject to this section who applies traffic marking material shall maintain the following records:

- (1) Types and amounts of traffic marking materials purchased annually.
- (2) The VOC content or emission rate of each type of traffic marking material applied in any of the following:
 - (A) Grams per liter.
 - (B) Pounds per gallon.
 - (C) Kilograms per stripe-kilometer.
 - (D) Pounds per stripe-mile.
- (3) Monthly quantities of each type of traffic marking material applied.

(c) The records required in subsection (b) shall be:

- (1) kept for a period of three (3) years after the traffic marking material is applied; and
- (2) made available to the department for inspection within ninety (90) days of the request.

(Air Pollution Control Board; [326 IAC 8-14-7](#))

[Notice of Public Hearing](#)

Posted: 10/15/2008 by Legislative Services Agency

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

Automobile Refinishing Operations (326 IAC 8-10)

TITLE 326 AIR POLLUTION CONTROL BOARD

Final Rule

LSA Document #06-603(F)

DIGEST

Amends [326 IAC 8-10-1](#) through [326 IAC 8-10-7](#) and [326 IAC 8-10-9](#) concerning volatile organic compounds for automobile refinishing operations in Indiana. Repeals [326 IAC 8-10-8](#). Effective 30 days after filing with the Publisher.

HISTORY

First Notice: December 27, 2006, Indiana Register (DIN: [20061227-IR-326060603FNA](#)).

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Date of First Hearing: October 1, 2008.

Proposed Rule: October 22, 2008, Indiana Register (DIN: [20081022-IR-326060603PRA](#)).

Notice of Second Hearing: October 22, 2008, Indiana Register (DIN: [20081022-IR-326060603PHA](#)).

Change of Notice of Second Hearing: December 3, 2008, Indiana Register (DIN: [20081203-IR-326060603CHA](#)).

Date of Second Hearing: January 7, 2009.

[326 IAC 8-10-1](#); [326 IAC 8-10-2](#); [326 IAC 8-10-3](#); [326 IAC 8-10-4](#); [326 IAC 8-10-5](#); [326 IAC 8-10-6](#); [326 IAC 8-10-7](#); [326 IAC 8-10-8](#); [326 IAC 8-10-9](#)

SECTION 1. [326 IAC 8-10-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-1](#) Applicability

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) ~~All sections of This rule apply~~ **applies** to any person who **does the following:**

(1) Sells, offers for sale, or manufactures for sale in ~~Clark, Floyd, Lake, or Porter County~~ refinishing coatings **or surface preparation products in the following:**

(A) Clark, Floyd, Lake, or Porter County.

(B) All other counties on or after June 1, 2009.

(2) Owns, leases, operates, or controls a facility, as defined in [326 IAC 1-2-27](#), that refinishes motor vehicles, **motor vehicle parts, motor vehicle components**, or mobile equipment, as defined in section ~~2(34)~~ **2(25)** and ~~2(30)~~ **2(26)** of this rule, in the following:

(A) Clark, Floyd, Lake, or Porter County.

(B) All other counties on or after June 1, 2009.

(b) The following activities are exempt from this rule:

(1) Application of aerosol coating products.

(2) Graphic design application.

(3) Touch-up coating application.

(c) This rule does not apply to individuals who:

(1) own;

(2) lease;

(3) operate; or

(4) control;

a facility, as defined in [326 IAC 1-2-27](#), that refinishes three (3) or fewer motor vehicles per calendar year.

(d) The exemption provided by [326 IAC 8-2-9\(b\)\(4\)](#) shall not ~~apply to~~ **exempt** any facility ~~subject to~~ **from the requirements of** this rule.

(e) Sections 2 and 3(e) of this rule apply to any person who owns, leases, operates, or controls a facility, as defined in [326 IAC 1-2-27](#), that refinishes motor vehicles or mobile equipment, as defined in section 2(31) and 2(30) of this rule, in Vanderburgh County.

(Air Pollution Control Board; [326 IAC 8-10-1](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 194; filed Jul 14, 1998, 5:04 p.m.: 21 IR 4518; filed Apr 23, 1999, 2:12 p.m.: 22 IR 2856; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 2. [326 IAC 8-10-2](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-2](#) Definitions

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

Affected: [IC 13-12](#)

Sec. 2. The following definitions shall apply throughout this rule:

(1) "Adhesion promoter" means a coating:

(A) used to promote adhesion of a topcoat on surfaces such as:

(i) trim moldings;

(ii) door locks; and

(iii) door sills; or any coating which

(B) that provides adhesion to plastic substrates, where sanding is impracticable.

This definition The term excludes primers, primer sealers, primer surfacers, and topcoats.

(2) "Aerosol coating products" means a mixture of:

(A) resins;

(B) pigments;

(C) liquid solvents; and

(D) gaseous propellants;

packaged in a disposable can for hand-held application.

(3) "Anti-glare/safety coating" means a low gloss coating formulated to eliminate or reduce glare for safety purposes on interior surfaces of a vehicle, as specified under the United States Department of Transportation Motor Vehicle Safety Standards.

(4) "Application station" means the part of an automobile refinishing facility where coatings are applied.

(5) "Automobile refinishing" means refinishing operations for after-market motor vehicles, **motor vehicle parts, motor vehicle components**, or mobile equipment performed in:

(A) auto body and repair shops;

(B) production paint shops;

(C) new car dealer repair and paint shops;

(D) fleet operation repair and paint shops; and

(E) any other facility which that coats vehicles under the Standard Industrial Classification (SIC) code 7532 (top, body, and upholstery repair shops and paint shops).

including The term includes dealer repair of vehicles damaged in transit.

(6) "Basecoat" means a pigmented topcoat which that is the first topcoat applied as part of a multistage topcoat system.

(7) "Basecoat/clearcoat system" means a topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound VOC content of a basecoat/clearcoat system shall be calculated according to the following formula:

$$VOC_{Tbc/cc} = \frac{VOC_{bc} + 2VOC_{cc}}{3}$$

Where: $VOC_{Tbc/cc}$ = VOC content as applied of the basecoat (bc) and clearcoat (cc) systems.

VOC_{bc} = VOC content as applied of any given basecoat.

VOC_{cc} = VOC content as applied of any given clearcoat.

(8) "Capture device" means a hood, enclosed room, floor sweep, or other means of collecting solvent

~~emissions or other pollutants into a duct so that the pollutant can be directed to a pollution control device such as an incinerator or carbon adsorber.~~

~~(9) "Capture efficiency" means the fraction of all VOC applied that is directed to a control device.~~

~~(10) (8) "Catalyst" means a substance whose presence enhances the reaction between chemical compounds.~~

~~(11) (9) "Clearcoat" means a topcoat which that:~~

~~(A) contains no pigments or only transparent pigments; and which~~

~~(B) is the final topcoat applied as a part of a multistage topcoat system.~~

~~(12) (10) "Coating" means a protective, decorative, or functional material with VOC content greater than zero (0) used in automobile refinishing operations.~~

~~(13) (11) "Color match" means the ability of a repair coating to blend in an existing coating so that color difference is not visible.~~

~~(14) (12) "Container" means a vessel or tank used to store any of the following:~~

~~(A) Coatings.~~

~~(B) Surface preparation products.~~

~~(C) Solvents. or~~

~~(D) Waste.~~

~~(15) "Control device" means any equipment that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery. Control devices include, but are not limited to, incinerators or carbon adsorbers.~~

~~(16) "Control device efficiency" means the ratio of the pollution destroyed or secured by a control device and the pollution introduced to the control device, expressed as a fraction.~~

~~(17) "Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.~~

~~(18) (13) "Disposed off site" means sending outside of the refinishing facility the used:~~

~~(A) coatings;~~

~~(B) surface preparation products;~~

~~(C) solvents; or~~

~~(D) wastes.~~

~~(19) (14) "Elastomeric materials" means topcoats and primers that are specifically formulated for application over flexible parts such as the following:~~

~~(A) Filler panels. and~~

~~(B) Elastomeric bumpers.~~

~~(20) (15) "Electrostatic application" means the application to a substrate of charged atomized paint droplets which that are deposited by electrostatic attraction.~~

~~(21) (16) "Equipment" means devices that are used to transfer or apply coating, surface preparation product, or solvent, such as, but not limited to, the following:~~

~~(A) Spray guns. and~~

~~(B) Brushes. or~~

~~(C) Nonrefillable aerosol cans.~~

~~(22) (17) "Exempt compounds" means a nonphotochemically reactive hydrocarbon as defined in [326 IAC 1-2-48](#).~~

~~(23) (18) "Gloss flatteners" means coatings that are formulated to provide low gloss to match original equipment manufacturer's (OEM) specifications.~~

~~(24) (19) "Graphic design application" means the application of:~~

~~(A) logos;~~

~~(B) letters;~~

~~(C) numbers; and~~

~~(D) graphics;~~

~~to a painted surface, with or without the use of a template.~~

~~(25) (20) "Ground support" means vehicles used in support of aircraft activities at airports.~~

~~(26) (21) "Hardener" means an additive designed to promote a faster cure of coatings which that cure by cross-linking of the resin components.~~

~~(27) (22) "High-volume, low-pressure (HVLP) spray" means technology used to apply coating to a substrate by means of coating application equipment which that operates between one-tenth (0.1) and ten (10) pounds per square inch gauge (psig) air pressure measured dynamically at the center of the air cap and at the air horns of the spray system.~~

~~(28) (23) "Material safety data sheet" or "MSDS" means the chemical, physical, technical, and safety information document supplied by the manufacturer of the coating, solvent, or other chemical product, usually through the distribution network or retailers.~~

~~(29) (24) "Midcoat" means a semitransparent topcoat which that is the middle topcoat applied as part of a three (3) stage topcoat system.~~

~~(30)~~ **(25)** "Mobile equipment" means any equipment ~~which~~ **that** may be driven or drawn on a roadway, including, but not limited to, the following:

- (A) Truck bodies.
- (B) Truck trailers.
- (C) Cargo vaults.
- (D) Utility bodies.
- (E) Camper shells.
- (F) Construction equipment, such as **the following**:
 - (i)** Mobile cranes.
 - (ii)** Bulldozers. ~~and~~
 - (iii)** Concrete mixers.
- (G) Farming equipment, such as **the following**:
 - (i)** Tractors.
 - (ii)** Plows. ~~and~~
 - (iii)** Pesticide sprayers.
- (H) Miscellaneous equipment, such as **the following**:
 - (i)** Street cleaners.
 - (ii)** Golf carts.
 - (iii)** Ground support vehicles.
 - (iv)** Tow motors. ~~and~~
 - (v)** Fork lifts.

~~(31)~~ **(26)** "Motor vehicles" means the following:

- (A) Automobiles.
- (B) Buses.
- (C) Trucks.
- (D) Vans.
- (E) Motor homes.
- (F) Recreational vehicles.
- (G) Motorcycles.

~~(32) "Multicolor coating"~~ **(27) "Multicolored topcoat"** means a topcoat ~~which is a coating that:~~

- (A)** exhibits more than one (1) color; ~~when applied, and which~~
- (B)** is packaged in a single container; ~~and applied in a single coat.~~
- (C)** **camouflages surface defects on areas of heavy use, such as cargo beds and other surfaces of trucks and other utility vehicles.**

~~(33)~~ **(28)** "Multistage topcoat system" means any basecoat/clearcoat topcoat system or any three (3) stage topcoat system:

- (A)** manufactured as a system; and
- (B)** used as specified by the manufacturer.

~~(34) "Overall control efficiency" means the efficiency of a control system, calculated as the product of the capture and control device efficiencies, expressed as a percentage.~~

~~(35)~~ **(29)** "Precoat" means any coating ~~which~~ **that** is applied to bare metal primarily to deactivate the metal surface to provide corrosion resistance against a subsequent water-based primer.

~~(36)~~ **(30)** "Pretreatment wash primer" means the first coat applied to bare metal if solvent-based primers will be applied. This coating:

- (A) contains a minimum of five-tenths percent (0.5%) acid by weight;
- (B) is necessary to provide surface etching; and
- (C) is applied directly to bare metal surfaces to provide corrosion resistance.

~~(37)~~ **(31)** "Primer" means any coating applied to a substrate prior to the application of a topcoat for the purpose of providing **any of the following**:

- (A)** Corrosion resistance.
- (B)** Adhesion of subsequent coatings. ~~or~~
- (C)** Color uniformity.

~~(38)~~ **(32)** "Primer sealer" means any coating applied to a substrate prior to the application of a topcoat to:

- (A) provide:
 - (i)** corrosion resistance;
 - (ii)** adhesion of the topcoat; and
 - (iii)** color uniformity; and
- (B) promote the ability of an undercoat to resist penetration by the topcoat.

~~(39)~~ **(33)** "Primer surfacer" means any coating applied to a substrate prior to the application of a topcoat to:

- (A) provide:
 - (i)** corrosion resistance; and

- (ii) adhesion of the topcoat; and
 (B) promote a uniform surface by filling in surface imperfections.
- ~~(40)~~ **(34)** "Reducer" means the solvent added to dilute a coating, usually for the purpose of lowering the viscosity of a coating.
- ~~(44)~~ **(35)** "Refinishing" means any coating of motor vehicles, **motor vehicle** parts, and **motor vehicle** components, or mobile equipment, including partial body collision repairs, for the purpose of protection or beautification and ~~which that~~ is subsequent to the original coating applied at an original equipment manufacturing (OEM) plant coating assembly line.
- ~~(42)~~ **(36)** "Refinishing job" means for each motor vehicle or piece of mobile equipment any or all of the following:
- (A) Surface preparation.
 - (B) Primer application.
 - (C) Primer surfacer application.
 - (D) Primer sealer application.
 - (E) Topcoat application.
- ~~(43)~~ **(37)** "Repair coating" means a coating that is used in the repair of:
- ~~(A)~~ a motor vehicle;
 - (B) a motor vehicle part;**
 - (C) a motor vehicle component;** or
 - ~~(D)~~ mobile equipment.
- ~~(44)~~ **(38)** "Reused on site" means the reuse of a:
- ~~(A)~~ coating;
 - ~~(B)~~ surface preparation product; or
 - ~~(C)~~ solvent;
- in the refinishing facility.
- (39) "Solvent" means a liquid containing VOCs that is used for:**
- (A) dissolving or dispersing constituents in a coating;**
 - (B) adjusting the viscosity of a coating; or**
 - (C) cleaning application stations, equipment, or containers.**
- ~~(45)~~ **(40)** "Specialty coatings" means coatings ~~which that~~ are necessary due to unusual and uncommon job performance requirements, including, but not limited to, the following:
- (A) Weld-through primers.
 - (B) Adhesion promoters.
 - (C) Uniform finish blenders.
 - (D) Elastomeric materials.
 - (E) Gloss flatteners.
 - (F) Bright metal trim repair.
 - (G) Anti-glare/safety coatings.
 - ~~(H) Multicolor coatings.~~ **Multicolored topcoat.**
- ~~(46) "Solvent" means a liquid containing volatile organic compounds that is used for dissolving or dispersing constituents in a coating, adjusting the viscosity of a coating, or cleaning application stations, equipment, or containers.~~
- ~~(47)~~ **(41)** "Spot repairs" means repairs to motor vehicles in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.
- ~~(48)~~ **(42)** "Substrate" means the surface onto which coatings or surface preparation products are applied.
- ~~(49)~~ **(43)** "Surface preparation products" means products with VOC content greater than zero (0) used to remove:
- ~~(A)~~ wax;
 - ~~(B)~~ tar;
 - ~~(C)~~ grease; and
 - ~~(D)~~ other undesirable contaminants;
- from the surface to be refinished.
- ~~(50)~~ **(44)** "Three (3) or four (4) stage topcoat system" means a topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The VOC content of a three (3) stage coating system shall be calculated according to the following formula:

$$VOC_{T3\text{-stage}} = \frac{VOC_{bc} + VOC_{mc} + 2VOC_{cc}}{4}$$

Where: $VOC_{T3-stage}$ = VOC content as applied of the three (3) stage coating system.
 VOC_{bc} = VOC content as applied of any given basecoat.
 VOC_{mc} = VOC content as applied of any given midcoat.
 VOC_{cc} = VOC content as applied of any given clearcoat.

The VOC content of a four (4) stage system shall be calculated using the same formula specified for the three (3) stage coating system except that there would be an additional coating in the numerator, and the denominator would be five (5).

~~(51)~~ **(45)** "Topcoat" means the final film or series of films of coating applied to a substrate for the purpose of protection or appearance.

~~(52)~~ **(46)** "Touch-up coating" means a coating applied by brush or hand-held, nonrefillable aerosol cans to repair minor surface damage and imperfections.

~~(53)~~ **(47)** "Uniform finish blenders" means coatings that are utilized to ensure that the coatings applied during the refinishing of a vehicle imperceptibly blend in with the undamaged finish of repaired and undamaged portions of the:

(A) motor vehicle;

(B) motor vehicle parts;

(C) motor vehicle components; or

(D) mobile equipment.

~~(54)~~ **(48)** "VOC content" of coating or surface preparation products means the weight of VOC, less water, and less exempt solvent, **compounds**, per unit volume, of coating or surface preparation product.

~~(55)~~ **(49)** "VOC content as applied" of coatings or surface preparation products means the VOC content of the coating or surface preparation product, as applied to the substrate.

~~(56)~~ **(50)** "VOC content as supplied" means the VOC content of coating or surface preparation products, sold and delivered by the manufacturer to the user.

(51) "Volatile organic compound" or "VOC" has the meaning set forth in 326 IAC 1-2-90.

~~(57)~~ **(52)** "Weld-through primer" means primers that have the characteristics of withstanding high temperatures associated with welding without catching fire.

(Air Pollution Control Board; [326 IAC 8-10-2](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 194; errata filed Dec 11, 1995, 3:00 p.m.: 19 IR 674; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 3. [326 IAC 8-10-3](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-3](#) Requirements

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

Affected: [IC 13-12](#)

Sec. 3. (a) ~~On and after November 1, 1995~~, Each manufacturer or distributor of coatings or surface preparation products manufactured or distributed for use in ~~Clark, Floyd, Lake, or Porter County~~ **Indiana** shall comply with the following:

(1) ~~Except as provided in section 4(a)(2) of this rule~~, The ~~volatile organic compound~~ VOC content limits listed in section ~~4(b)~~ **4(a)** of this rule.

(2) The compliance procedures outlined in section 6(a) of this rule.

(b) ~~On and after February 1, 1996~~, Any person commercially providing refinishing coatings or surface preparation products for use in ~~Clark, Floyd, Lake, or Porter County~~ **Indiana** ~~that were manufactured after November 1, 1995~~, **January 11, 1999**, shall comply with the following:

(1) ~~Except as provided in section 4(a)(2) of this rule~~, The VOC content limits listed in section ~~4(b)~~ **4(a)** of this rule.

(2) The compliance procedures outlined in section 6(b) of this rule.

(c) ~~On and after May 1, 1996~~, Any person applying any coating or surface preparation product in ~~Clark, Floyd, Lake, or Porter County~~ **Indiana** shall comply with the following:

(1) The provisions of section ~~4(a)~~ **4** of this rule.

(2) The work practice standards of section 5 of this rule.

(3) The compliance procedures outlined in section 6(c) of this rule.

- (4) The test procedures in section 7 of this rule.
~~(5) The control system operation, maintenance, and monitoring provisions in section 8 of this rule.~~
~~(6) (5) The record keeping and reporting provisions in section 9 of this rule.~~

(d) ~~On and after May 1, 1996, No person shall solicit or require any refinishing facility subject to this rule to use a refinishing coating or surface preparation product that does not comply with the VOC content limits listed in section 4(b) 4(a) of this rule. unless that facility complies with section 4(a)(2) or 4(a)(3) of this rule.~~

(e) ~~On and after May 1, 1999, any person applying any coating or surface preparation product in Vanderburgh County shall comply with the following:~~

(1) ~~The following requirements:~~

(A) ~~Section 5(b) of this rule.~~

(B) ~~Section 5(c)(5) through 5(c)(7) of this rule.~~

(C) ~~Section 5(d)(1)(C) and 5(d)(1)(E) of this rule.~~

(D) ~~Section 5(d)(2) through 5(d)(4) of this rule. The requirement to provide refresher training under section 5(d)(2) of this rule shall begin no later than July 1, 1999.~~

(2) ~~On or before May 1, 1999, the owner or operator of a refinishing facility that is subject to this rule and is located in Vanderburgh County shall submit to the agency a statement signed by a responsible official of the facility, certifying that the facility will continuously comply with all the applicable requirements of this rule. The statement is a record to be kept in accordance with section 9(d) of this rule.~~

(3) ~~The record keeping and reporting provisions in the following:~~

(A) ~~Section 9(c)(1) of this rule.~~

(B) ~~Section 9(c)(3) of this rule.~~

(C) ~~Section 9(d) through 9(e) of this rule.~~

(Air Pollution Control Board; [326 IAC 8-10-3](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 197; filed Apr 23, 1999, 2:12 p.m.: 22 IR 2856; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 4. [326 IAC 8-10-4](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-4](#) Means to limit volatile organic compound emissions

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

Affected: [IC 13-12](#)

Sec. 4. (a) ~~On and after May 1, 1996, The owner or operator of a refinishing facility subject to this rule shall limit emissions of volatile organic compounds VOCs from refinishing operations by one (1) of the following means:~~

(1) ~~By using coatings or surface preparation products that meet with VOC limits based on the VOC content as applied. The VOC content shall not exceed the following limits: established in subsection (b).~~

(2) ~~By employing a control system meeting the requirements of subsection (c).~~

(3) ~~By using a combination of coatings as specified in subsection (b) and control system measures identified in subsection (c).~~

(b) ~~Compliance with the VOC limits shall be based on the VOC content on an as-applied basis. The VOC content shall not exceed the following limits:~~

Coating Category	VOC Limit	
	grams	lbs
	liter	gallon
Pretreatment wash primer	780	6.5
Precoat	660	5.5
Primer/primer surfacer	576	4.8
Primer sealer	552	4.6
Topcoat		
Single and two stage	600	5.0
Three and four stage	624	5.2
Multicolored topcoat	680	5.7
Specialty	840	7.0

For surface preparation products:

Type of Substrate	VOC Limit	
	grams	lbs
Plastic	liter	gallon
	780	6.5
Other	168	1.4

~~(c) A control system used to comply with the VOC emission requirements of this rule shall achieve an overall control efficiency of at least eighty-one percent (81%). An owner or operator complying with the VOC emission reduction requirements of this rule by means of a control system shall do the following:~~

- ~~(1) On or before May 1, 1996, demonstrate initial compliance with the emission limit by performing an emission test that demonstrates compliance according to procedures in section 7 of this rule.~~
- ~~(2) On or before July 31, 1996, submit to the department the results of the initial compliance test according to procedures in section 7 of this rule.~~
- ~~(3) Depending on the type of control device installed, choose an appropriate operating parameter according to procedures in section 8(b) of this rule.~~
- ~~(4) Calculate the site-specific operating parameter value, as an arithmetic average of the minimum or maximum values of the operating parameter as appropriate, that demonstrates initial compliance with the emission limit.~~
- ~~(5) On and after May 1, 1996, demonstrate continuous compliance with the emission limits in this section by ensuring that during the refinishing operation, the value of the operating parameter, as determined during the initial compliance test or subsequent compliance test, is within the range specified in the applicable subdivision of section 9(b) of this rule.~~

~~(d) (b)~~ Application of all specialty coatings except anti-glare/safety coatings shall not exceed five percent (5%) by volume of all coatings applied on a monthly basis.

(Air Pollution Control Board; [326 IAC 8-10-4](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 197; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 5. [326 IAC 8-10-5](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-5](#) Work practice standards

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

Affected: [IC 13-12](#)

Sec. 5. (a) ~~On and after May 1, 1996,~~ The owner or operator of a refinishing facility subject to this rule shall ensure that spray guns are cleaned in an enclosed device that:

- (1) is closed during:
 - (A) spray gun equipment cleaning operations except when depositing and removing objects to be cleaned; **and**
 - ~~(2) is closed during~~ (B) noncleaning operations with the exception of the maintenance and repair of the cleaning device itself; and
- ~~(3) (2)~~ recirculates cleaning solvent during the cleaning operation so that the solvent is available for reuse on site or for disposal off site.

The cleaning device shall be operated and maintained according to the manufacturer's recommendations. The owner or operator of the refinishing facility **subject to this rule** shall have the cleaning device manufacturer's recommendations available for inspection upon request by the department or the U.S. EPA.

~~(b) On and after May 1, 1996,~~ The owner or operator of a refinishing facility subject to this rule shall use one (1) or a combination of the following equipment for coating application:

- (1) Electrostatic equipment.
- (2) High-volume, low-pressure (HVLP) spray equipment.
- (3) Any other coating application equipment that has been demonstrated, by the owner or operator, to the satisfaction of the department to be capable of achieving at least sixty-five percent (65%) transfer efficiency. The owner or operator must submit sufficient data for the department to be able to determine the accuracy of the transfer efficiency claims.

Coating application equipment shall be operated and maintained according to the manufacturer's recommendations. The owner or operator shall have the manufacturer's recommendations available for inspection upon request by the department or the U.S. EPA.

(c) ~~On and after May 1, 1996,~~ The owner or operator of a refinishing facility subject to this rule shall implement housekeeping practices, which include the following:

(1) All:

(A) paper; or

(B) cloth;

(C) plastic; or

(D) other materials;

used for activities such as surface preparation and surface cleanup **that have been contaminated with coatings or solvent** shall be stored in closed containers until disposed of off site. The containers shall remain closed unless being filled or emptied.

(2) ~~All fresh or used solvent shall be stored~~ **Except when actively or directly applying, store** in closed containers, **all fresh or used refinishing materials including, but not limited to, the following:**

(A) Solvents.

(B) Coatings.

(C) VOC-containing additives and materials.

(D) VOC-containing waste materials.

(3) Storage containers and equipment shall be free from:

(A) cracks;

(B) holes; and

(C) leaks.

(4) Waste coatings ~~spray booth filters,~~ and used automotive fluids shall be stored in closed containers.

(5) Equipment cleanup shall be performed with methods that minimize the use of solvents. Reasonable efforts shall be made to reclaim the bulk of used solvents. No cleaning shall be performed by direct spraying of solvents into the atmosphere.

(6) Effort shall be made to schedule operations of a similar nature to significantly reduce total ~~volatile organic compound~~ **VOC** material consumption.

(7) Coatings or surface preparation products shall be applied in a manner that minimizes overspray.

(d) The owner or operator of a refinishing facility **subject to this rule** shall comply with the training requirements of this rule as follows:

(1) ~~On or before May 1, 1996,~~ Develop a written training program. The training program may include training provided by the manufacturer or supplier and shall include written procedures and hands-on demonstration, as appropriate, on the following topics:

(A) Identification of appropriate coatings or surface preparation products.

(B) Preparation of coatings or surface preparation products according to coating manufacturer, distributor, or owner or operator's recommendations.

(C) Application of coatings or surface preparation products or organic solvents using techniques that minimize their usage.

(D) Operation and maintenance of spray gun cleaning equipment to minimize evaporation of organic solvents to the atmosphere.

(E) Work practice standards established in subsection (c).

(F) Procedures to:

(i) gather;

(ii) record;

(iii) monitor; and

(iv) report;

data in accordance with section 9 of this rule.

(2) ~~Beginning in 1997,~~ Provide annual refresher training prior to **May 1 of each year** to any employee performing one (1) or more of the activities listed in subdivision (1). ~~Such~~ **The** training shall be appropriate to the job responsibilities of the employee.

(3) Any person may perform one (1) or more activities addressed in subdivision (1), for not more than one hundred eighty (180) days, notwithstanding the requirement of subdivision (2), provided each of the following:

(A) ~~Such~~ **The** untrained person works under the supervision of a person who meets the training requirements of subdivision (2).

(B) The owner or operator keeps the following records:

(i) The date the person was assigned to the activity.

- (ii) The date training was completed.
- (iii) The name of the person providing the supervision.
- (4) The owner or operator of the refinishing operation **subject to this rule** shall keep records of the training program. The records shall consist of the following:
 - (A) The date training was completed.
 - (B) A list of persons, by name and activity and the topics in which they have been trained.
 - (C) A statement signed by the trainer certifying each trainee who satisfactorily has completed training in the topics and is proficient in the procedures specified in subdivision (1).

(Air Pollution Control Board; [326 IAC 8-10-5](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 198; errata filed Dec 11, 1995, 3:00 p.m.: 19 IR 674; filed Jul 14, 1998, 5:04 p.m.: 21 IR 4518; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1568; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 6. [326 IAC 8-10-6](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-6](#) Compliance procedures

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

Affected: [IC 13-12](#)

Sec. 6. (a) ~~On and after November 1, 1995, Each manufacturer of coatings or surface preparation products who supplies coatings or surface preparation products to a distributor, retailer, or owner or operator of a refinishing facility in Clark, Floyd, Lake, or Porter County~~ **subject to this rule** shall, for each coating or surface preparation product supplied, keep records of and provide the owner or operator of a refinishing facility with a written record or document containing the following coating or surface preparation product information:

- (1) Product description.
- (2) Date of manufacture, date code, or batch number.
- (3) Thinning instructions.
- (4) The ~~volatile organic compound~~ VOC content in grams per liter and pounds per gallon, as packaged or as supplied:
 - (A) for single coat products, the VOC as applied after any thinning recommended by the manufacturer; or
 - (B) for multistage systems in which the VOC as applied is dependent upon the VOC content of a combination of products with varying VOC levels, provide: ~~one (1) of the following:~~
 - (i) a list of the maximum allowable packaged VOC for the individual layers;
 - (ii) a comprehensive chart of color combinations and the as-applied VOC content; **or**
 - (iii) a simple to use formula or grid for the end user to calculate the as-applied VOC content of their multistage system.
- (5) A statement that the coating is, or is not, in compliance with the VOC limits in section ~~4(b)~~ **4(a)** of this rule. ~~and that, if the coating is not in compliance, this rule prohibits its application at an automobile refinishing facility that does not control VOC emissions with the application of a control system.~~
- (6) The:
 - (A) name;
 - (B) address;
 - (C) telephone number; and
 - (D) signature;of the person purchasing the product.

(b) ~~On and after February 1, 1996, Any person who is engaged in commercially providing coating coatings or surface preparation products in Lake, Porter, Clark, or Floyd County Indiana~~ shall provide to the recipient and shall keep the following records of all coatings or surface preparation products supplied. ~~in these counties~~ The records shall include the following:

- (1) The product description.
- (2) The amount supplied.
- (3) The date supplied, date code, or batch number.
- (4) The ~~volatile organic compound~~ VOC content in grams per liter and pounds per gallon, as packaged or as supplied:
 - (A) for single coat products, the VOC as applied after any thinning recommended by the manufacturer; or
 - (B) for multistage systems in which the VOC as applied is dependent upon the VOC content of a combination of products with varying VOC levels, provide: ~~one (1) of the following:~~

- (i) a list of the maximum allowable packaged VOC for the individual layers;
- (ii) a comprehensive chart of color combinations and their as-applied VOC content; **or**
- (iii) a simple to use formula or grid for the end user to calculate the as-applied VOC content of their multistage system.

(5) The:

- (A) name;
- (B) address;
- (C) telephone number; and
- (D) signature;

of the person purchasing the product.

(c) ~~On or before May 1, 1996,~~ The owner or operator of a refinishing facility subject to this rule shall submit to the department a statement signed by a responsible official of the facility certifying that the facility has acquired and will continuously employ ~~coating~~ **coatings** or surface preparation products meeting the VOC limits of section ~~4(b)~~ **4(a)** of this rule. ~~or that an add-on control system meeting the requirements of section 4(c) of this rule has been installed, including a description of the control system.~~

(Air Pollution Control Board; [326 IAC 8-10-6](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 199; filed Jul 14, 1998, 5:04 p.m.: 21 IR 4519; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1568; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 7. [326 IAC 8-10-7](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-7](#) Test procedures

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

Affected: [IC 13-12](#)

Sec. 7. (a) Owners or operators of refinishing facilities subject to this rule shall be subject to the applicable test ~~method~~ **methods** and requirements of [326 IAC 8-1-4](#) and 40 CFR 60, Appendix A*.

(b) Owners or operators may use data provided with coatings or surface preparation products formulation information such as the:

- (1) container label; ~~the~~
- (2) product data sheet; and ~~the~~
- (3) MSDS sheet;

in order to comply with sections 4 and 9(a) of this rule. The department and U.S. EPA may require VOC content determination and verification of any coating or surface preparation product using 40 CFR 60, Appendix A, Method 24*. In the event of any inconsistency between 40 CFR 60, Appendix A, Method 24 and formulation data, 40 CFR 60, Appendix A, Method 24 shall govern.

~~(c) An owner or operator of a refinishing facility electing to meet the emission limit requirements of section 4(c) of this rule using a control device or devices shall test the control system according to the following schedule and under the following situations:~~

- ~~(1) An initial compliance test shall be conducted on or before May 1, 1996, and every two (2) years after the date of the initial compliance test.~~
- ~~(2) A compliance test shall be conducted whenever the owner or operator operates the control system under conditions different from those which were in place at the time of the previous compliance test.~~
- ~~(3) A compliance test shall be performed within ninety (90) days of the startup of a new facility or within thirty (30) days of a written request by the department or the U.S. EPA.~~
- ~~(4) All compliance tests shall be conducted according to a protocol developed by the owner or operator of the facility according to procedures in [326 IAC 3-2.1-2](#). The results of the tests shall be submitted to the department according to procedures in [326 IAC 3-2.1-4](#).~~

*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 Air Quality, Indiana Government Center North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 8-10-7](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 199; errata filed Dec 11, 1995, 3:00 p.m.: 19 IR 674; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1568; filed Aug 26, 2004, 11:30 a.m.: 28 IR 58; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 8. [326 IAC 8-10-9](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-10-9](#) Record keeping and reporting

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

Affected: [IC 13-12](#)

Sec. 9. (a) Owners or operators of refinishing facilities subject to the provisions of section ~~4(b)~~ **4(a)** of this rule shall keep records of the following:

- (1) For each batch of coating mixed or refinishing job performed, the following information:
 - (A) Batch or job identification number or name.
 - (B) Date batch made or job performed.
 - (C) Coating category, consistent with the coating categories in section ~~4(b)~~ **4(a)** of this rule.
 - (D) Coating manufacturer's name and identification number.
 - (E) Either the quantity used in making the mix or the mix ratio used.
 - (F) VOC content as supplied or packaged.
 - (G) Manufacturer's name and identification number of added components, such as **the following**:
 - (i) Catalysts.
 - (ii) Reducers. ~~and~~
 - (iii) Hardeners.
 - (H) Either the quantity of components added or the mix ratio used.
- (2) For each surface preparation product used, the following information:
 - (A) Manufacturer's name and identification number.
 - (B) Substrate to which the product is applied.
 - (C) VOC content as supplied per calendar month for:
 - (i) number of containers used; and
 - (ii) volume of each container in suitable units, such as quarts, gallons, pints, other similar units, and the ratio of components added.
- (3) ~~Owners or operators shall maintain~~ Documents such as MSDS, or product or other data sheets for a period of three (3) years following use of the product. MSDS or product or other data sheets may be used by the U.S. EPA or the department to verify the VOC content, as supplied, provided by the coating manufacturer, distributor, or supplier, of the coatings or surface preparation products.
- (4) ~~Except when complying with section 4(a)(2) or 4(a)(3) of this rule, owners or operators shall report within thirty (30) days to the department any incidence in which noncompliant coating was used, the reasons for use of the noncompliant coating, and corrective actions taken.~~

~~(b) Owners or operators choosing to meet the emission limit requirements of section 4 of this rule with the use of a control device or devices shall maintain the following records:~~

- ~~(1) A log of the operating time of the facility and the facility's capture system, control device, and monitoring equipment.~~
- ~~(2) A maintenance log for the control system and the monitoring equipment detailing all routine and nonroutine maintenance performed. The log shall include the dates and duration of any outages of the capture system, the control device, or the monitoring system.~~
- ~~(3) The following additional records shall be maintained for facilities using thermal incinerators:~~
 - ~~(A) Continuous records of the temperature in the gas stream in the combustion zone of the incinerator.~~
 - ~~(B) Records of all three (3) hour periods of operation for which the average combustion temperature of the gas stream in the combustion zone was more than fifty (50) degrees Fahrenheit below the combustion zone temperature which existed during the most recent compliance test that demonstrated that the facility was in compliance.~~
- ~~(4) The following additional records shall be maintained for facilities using catalytic incinerators:~~
 - ~~(A) Continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator.~~
 - ~~(B) Records of all three (3) hour periods of operation for which the average temperature measured at the process vent stream immediately before the catalyst bed is more than fifty (50) degrees Fahrenheit below~~

~~the average temperature of the process vent stream which existed during the most recent compliance test that demonstrated that the facility was in compliance.~~

~~(C) Records of all three (3) hour periods of operation for which the average temperature difference across the catalyst bed is less than eighty percent (80%) of the temperature difference measured during the most recent compliance test that demonstrated that the facility was in compliance.~~

~~(5) The following additional records shall be maintained for facilities using carbon adsorbers:~~

~~(A) Continuous records of the VOC concentration level or reading in the exhaust stream of the carbon adsorber.~~

~~(B) Records of all three (3) hour periods of operation during which the average VOC concentration level or reading in the exhaust gas is more than twenty percent (20%) greater than the average exhaust gas concentration level or reading measured by the organic monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the facility was in compliance.~~

~~(6) Facilities using VOC recovery devices other than carbon adsorbers shall maintain the monitoring records and meet the reporting requirements specified by section 8(b)(4) of this rule.~~

~~(7) Information requirements in subdivisions (2), (3)(B), (4)(B), (4)(C), and (5)(B) shall be submitted to the department within thirty (30) days of occurrence. The following information shall accompany the submittal:~~

~~(A) The name and location of the facility.~~

~~(B) Identification of the control system where the excess emission occurred and the facility it served.~~

~~(C) The time, date, and duration of the exceedance.~~

~~(D) Corrective action taken.~~

~~(e) (b) Owners or operators of refinishing facilities affected by~~ **subject to** ~~this rule shall maintain the following records:~~

~~(1) Records of training programs as required in section 5(d) of this rule.~~

~~(2) Initial compliance statements as required in section 6(c) of this rule.~~

~~(3) Records as required in this section.~~

~~(d) (c) Owners or operators of refinishing facilities affected by~~ **subject to** ~~this rule shall:~~

~~(1) maintain all records for a minimum of three (3) years; and shall~~

~~(2) make records available to the department and the U.S. EPA upon request.~~

~~(e) (d) Failure to maintain records required by subsections (a) through (e) and (b) shall constitute a violation of this rule for each day records are not maintained.~~

(e) Owners or operators of refinishing facilities subject to this rule shall report within thirty (30) days to the department the following:

(1) Any incidence in which noncompliant coating was used.

(2) The reasons for use of the noncompliant coating.

(3) Corrective actions taken.

(Air Pollution Control Board; [326 IAC 8-10-9](#); filed Oct 3, 1995, 3:00 p.m.: 19 IR 200; errata filed Dec 11, 1995, 3:00 p.m.: 19 IR 674; filed Jul 14, 1998, 5:04 p.m.: 21 IR 4520; filed Mar 27, 2009, 9:58 a.m.: [20090422-IR-326060603FRA](#))

SECTION 9. [326 IAC 8-10-8](#) IS REPEALED.

LSA Document #06-603(F)

Proposed Rule: [20081022-IR-326060603PRA](#)

Hearing Held: January 7, 2009

Approved by Attorney General: March 19, 2009

Approved by Governor: March 25, 2009

Filed with Publisher: March 27, 2009, 9:58 a.m.

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Alison Surface, IDEM Compliance and Technical Assistance Program, OPPTA - MC 60-04, 100 North Senate Avenue, W041, Indianapolis, IN 46204-2251, (317) 232-8172, ctap@idem.in.gov

Small Business Assistance Program Ombudsman: Megan Tretter, IDEM Small Business Assistance Program Ombudsman, MC 50-01 - IGCN 1307, 100 N. Senate Ave., Indianapolis, IN 46204-2251, (317) 234-3386,

Posted: 04/22/2009 by Legislative Services Agency

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Cold Cleaning Degreasing (326 IAC 8-9)

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-352

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING VOLATILE ORGANIC COMPOUNDS IN ORGANIC SOLVENT DEGREASERS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 8-3](#) concerning organic solvent degreasers in Indiana. The First Notice of Comment Period, published on June 27, 2007 (DIN: [20070627-IR-326070352FNA](#)), requested comments on expanding the existing solvent requirements rule for Clark, Floyd, Lake, and Porter counties to the entire state. That comment period has ended; however, IDEM has identified additional alternatives for this rulemaking and at this time is requesting comments on the additional alternatives described in this notice. IDEM seeks comment on the alternatives described in this notice, the affected citations listed, and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 27, 2007, Indiana Register (DIN: [20070627-IR-326070352FNA](#)).

CITATIONS AFFECTED: [326 IAC 8-3](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

A First Notice of Comment Period for the Organic Solvent Degreasers rule was published in the Indiana Register on June 27, 2007 (DIN: [20070627-IR-326070352FNA](#)). This Continuation of the First Notice of Comment Period addresses additional alternatives to be considered during this rulemaking.

In the April 30, 2004, Federal Register (69 FR 23858), the U.S. EPA designated 23 counties as nonattainment for the 8-hour ozone standard. Since that time, all monitoring locations in Indiana have met the 8-hour ozone standard and 21 of those counties have been redesignated to attainment. IDEM continues to work with U.S. EPA to have Lake County and Porter County redesignated to attainment. Additionally, since the Cincinnati, Ohio, metropolitan area has not yet attained the 8-hour standard, IDEM has prepared a state implementation plan (SIP) revision for Lawrenceburg Township in Dearborn County which addresses its contribution to Cincinnati's ozone nonattainment.

While all monitored portions of Indiana have attained the current 8-hour ozone standard, it is prudent for Indiana to consider implementing additional cost-effective measures to reduce emissions that contribute to the formation of ozone. The reasons for considering additional reductions include: the narrow margin between Indiana's current air quality and the new 8-hour ozone standard of 0.75 parts per million (ppm) that the U.S. EPA lowered on March 12, 2008, and the concerns expressed by other states that emissions from Indiana are contributing to their inability to attain the standard (the Clean Air Act provides a legal mechanism for those states to require Indiana to reduce Indiana's potential contribution to nonattainment in other states).

Indiana has been working with other states on a suite of measures to be considered by each of these states to reduce our mutual contribution to ozone formation in the upper Midwest and the eastern United States. These measures include regulation of volatile organic compounds (VOC) from: automotive refinishing; architectural and industrial maintenance coatings; consumer and commercial products; organic solvent degreasers (the subject of this notice); and stage I vapor recovery from gasoline dispensing facilities. In general, these proposed regulations would expand regulations that already exist in parts of Indiana to all counties statewide and other states to cover all similar emissions from each of the participating states. The potential benefits of this coordinated action include improved Indiana and regional air quality that may prevent future nonattainment designations if the U.S. EPA tightens the ozone standard, an improved margin of safety between current Indiana air quality and the current standard, and the reduced likelihood of the need to impose more costly emission reduction measures in the future.

Solvent cleaning operations are an integral part of many industries and involve the use of solvents or solvent vapor to remove water-insoluble contaminants such as grease, oils, waxes, carbon deposits, fluxes, and tars from metal, plastic, glass, and other surfaces. Solvent cleaning is usually performed prior to painting, plating, inspection, repair, assembly, heat treating, and machining. It is used in the manufacture of fabricated metal products, industrial and commercial machinery, computer equipment, electronic equipment, transportation equipment, furniture and fixtures, and various other products. With cold cleaning, one of four types of degreasing operations, the part is dipped into or sprayed with a solvent. Sources that commonly have cold cleaning

degreasers include auto body shops, auto repair shops, and industrial sources.

Emissions of VOCs occur as a result of evaporation from storage and handling of fresh and spent solvents: (1) evaporation as the solvent is splashed or sprayed, (2) evaporation from the cleaned surfaces, (3) evaporation from solvent-soaked rags or cleaning tools, and (4) fugitive emissions from flushing or spray systems. All solvent not recycled or sent to waste disposal is eventually emitted into the atmosphere.

In the First Notice of Comment Period, IDEM proposed to extend the existing material requirements for cold cleaning degreasers ([326 IAC 8-3-8](#)) currently effective in Clark, Floyd, Lake, and Porter counties to the rest of the state as part of a larger regional effort. With this Continuation of First Notice, IDEM has identified six additional alternatives for consideration in this rulemaking.

First, IDEM is considering an exemption for degreasers subject to 40 CFR 63, Subpart T, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. The NESHAP for Halogenated Solvent Cleaning is more stringent than the requirements of [326 IAC 8-3](#). An exemption from [326 IAC 8-3-2](#) through [326 IAC 8-3-7](#) would be applicable to degreasers statewide, while an exemption from [326 IAC 8-3-8](#) would be applicable to any organic solvent degreasing operation not located in Clark, Floyd, Lake, or Porter county. Providing this exemption will clarify the regulatory requirements for sources subject to [326 IAC 8-3](#). IDEM seeks comments on this alternative and on any other appropriate NESHAPs that might be exempted from the rule if they provide more stringent control requirements.

Second, IDEM is considering exempting degreasers subject to 40 CFR 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities, incorporated by reference in [326 IAC 20-15-1](#), which are not located in Clark, Floyd, Lake, or Porter county, from the requirements of [326 IAC 8-3-8](#) (Material requirements for cold cleaning degreasers). IDEM seeks comments on this alternative.

Third, IDEM is considering exempting degreasers that use organic solvent liquids or vapors that contain less than one percent of VOCs by weight from the requirements of [326 IAC 8-3](#). Exempting degreasers which use solvents that contain less than one percent VOC by weight promotes a switch from solvents to water-based cleaners which will reduce overall VOC emissions and aid in pollution prevention efforts. IDEM seeks comments on this alternative.

Fourth, IDEM is proposing to eliminate grandfathering. IDEM is proposing to require all degreasers, unless specifically exempted, to be subject to the appropriate sections of [326 IAC 8-3](#). IDEM invites comments on this alternative.

Fifth, IDEM is proposing to repeal [326 IAC 8-3-5](#) and amend [326 IAC 8-3-2](#). The operation requirements of [326 IAC 8-3-5](#) relating to solvent volatility will no longer be necessary if the material requirements of [326 IAC 8-3-8](#) are expanded to the whole state. Therefore, IDEM is proposing to restructure [326 IAC 8-3-2](#) to move the remaining operation requirement for cold cleaning degreasers regarding solvent spray from [326 IAC 8-3-5](#) into the operation requirements of [326 IAC 8-3-2](#). Degreasers that were subject to [326 IAC 8-3-5](#) would be subject to [326 IAC 8-3-2](#) unless they qualify for one of the exemptions listed in [326 IAC 8-3-1](#). By amending [326 IAC 8-3-2](#) and repealing [326 IAC 8-3-5](#), IDEM is clarifying and streamlining the rule. IDEM seeks comments on this proposed alternative.

Sixth, IDEM is proposing to revise the existing rule, as needed, to provide clarity, remove obsolete language, and streamline the structure of the rule. IDEM invites comments on ways to clarify and simplify the rule language.

In combination with other efforts to reduce VOCs in Indiana and the other states, the revisions to the organic solvent degreasers rule under consideration in Indiana will contribute to a regional control of VOC that will assist many counties in reaching and maintaining attainment for the 8-hour ozone standard while balancing the regulatory requirements across the state. Additionally, the proposed amendments to the material requirements for cold cleaning degreasers would update the rule to reflect the actuality that solvents meeting the proposed material requirements are already currently in extensive use throughout the state. Upon completion of the rulemaking, this rule will be submitted to U.S. EPA for approval into the SIP.

Alternatives To Be Considered Within the Rulemaking

The First Notice of Comment Period, published on June 27, 2007 (DIN: [20070627-IR-326070352FNA](#)), included one alternative for which comments were received. This Continuation of First Notice of Comment Period adds six additional alternatives to be considered.

Alternative 2. Exempting degreasers subject to 40 CFR 63, Subpart T, Halogenated Solvent Cleaning NESHAP from requirements in [326 IAC 8-3](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law. However, it will provide additional VOC reductions that will assist Indiana to comply with federal ozone requirements.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Exempting degreasers subject to 40 CFR 63, Subpart GG, Aerospace Manufacturing and Rework Facilities NESHAP from the requirements of [326 IAC 8-3-8](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.

- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law. However, it will provide additional VOC reductions that will assist Indiana to comply with federal ozone requirements.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 4. Exempting degreasers which use solvents that contain less than one percent VOC by weight from the requirements of [326 IAC 8-3](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law. However, it will provide additional VOC reductions that will assist Indiana to comply with federal ozone requirements.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 5. Eliminate grandfathering of organic solvent degreasing operations in Indiana.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law. However, it will provide additional VOC reductions that will assist Indiana to comply with federal ozone requirements.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 6. Repeal of [326 IAC 8-3-5](#) and amendments to update [326 IAC 8-3-2](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 7. Clarifying and streamlining the organic solvent degreasing operations rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards), 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes), 40 CFR 63, Subpart T (National Emission Standards for Halogenated Solvent Cleaning), and 40 CFR 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities are applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38856)) contains the standards for criteria pollutants. Ozone is considered a criteria pollutant and air pollution controls reduce emissions of volatile organic compounds (VOC) to reduce ozone formation. 40 CFR 81 (amended on April 30, 2004 (69 FR 23858)) lists the areas of the United States, specific to each state, that U.S. EPA has determined are not attaining the standards (nonattainment) for criteria pollutants such as ozone. The state rule for organic solvent degreasing operations, [326 IAC 8-3](#), applies to sources that perform degreasing operations and persons who sell, offer for sale, use or manufacture solvent for use in cold cleaning degreasers.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 2. Exempting degreasers subject to 40 CFR 63, Subpart T, will ease the compliance burden for sources that were previously subject to both the state rule and the federal rule. Reducing compliance costs will result in a cost savings to regulated entities.

Potential Fiscal Impact of Alternative 3. Exempting degreasers subject to 40 CFR 63, Subpart GG, will ease the compliance burden for sources that were previously subject to both the state rule and the federal rule. Reducing compliance costs will result in a cost savings to regulated entities.

Potential Fiscal Impact of Alternative 4. Exempting degreasers which use solvents that contain less than one percent VOC by weight, will ease the compliance burden and promote pollution prevention. Reducing compliance costs will result in a cost savings to regulated entities.

Potential Fiscal Impact of Alternative 5. Ending grandfathering will bring in degreasers that existed prior to 1980. There are few degreasers that are expected to be affected by ending the grandfathering provision. Additionally, degreasers in the state are generally using compliant solvents since suppliers are distributing compliant solvents statewide. Therefore, there is expected to be minimal fiscal impact from eliminating grandfathering.

Potential Fiscal Impact of Alternative 6. There is expected to be minimal fiscal impact from repealing [326 IAC 8-3-5](#) and amending [326 IAC 8-3-2](#). Sources that were subject to [326 IAC 8-3-5](#) would be subject to [326 IAC 8-3-2](#) with the addition of an operation control requirement if the degreaser uses a solvent spray. This is expected to affect very few degreasing operations.

Potential Fiscal Impact of Alternative 7. There will be no fiscal impact from clarifying and streamlining the

organic solvent degreasing operations rule.

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/compliance/ctap/index.html

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Stacey Pfeffer
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 North Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8172
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
MC 50-01 - IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Smith, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#07-352(APCB) Degreasers
Amy Smith Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 2, 2008.

Additional information regarding this action may be obtained from Amy Smith, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

Posted: 04/02/2008 by Legislative Services Agency

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

Stage I Vapor Recovery

(326 IAC 8-4)

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-353

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING STAGE I VAPOR RECOVERY MEASURES FOR GASOLINE DISPENSING FACILITIES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 8-1-3](#) and [326 IAC 8-4](#) concerning stage I vapor recovery measures for gasoline dispensing facilities in Indiana. The First Notice of Comment Period, published on June 27, 2007 (DIN: [20070627-IR-326070353FNA](#)), requested comments on expanding the applicability of the existing stage I vapor recovery rule. That comment period has ended; however, IDEM has identified additional amendments to rules implementing stage I vapor recovery to assure clarity and consistency in the rulemaking. IDEM seeks comment on the alternatives described in this notice, the affected citations listed, and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: June 27, 2007, Indiana Register (DIN: [20070627-IR-326070353FNA](#)).

CITATIONS AFFECTED: [326 IAC 8-1-3](#); [326 IAC 8-4](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

A First Notice of Comment Period for the stage I vapor recovery rule was published in the Indiana Register on June 27, 2007 (DIN: [20070627-IR-326070353FNA](#)). This Continuation of First Notice of Comment Period addresses additional amendments to be considered during this rulemaking.

Stage I vapor recovery refers to the collection of gasoline vapors displaced from underground storage tanks when filled by delivery trucks. VOC emissions are released into the atmosphere when the gasoline vapors in the underground storage tank are displaced by gasoline being loaded into the tank. In the absence of systems designed to recapture the gasoline vapors otherwise lost into the atmosphere, about 7.6 pounds of VOCs are released into the air for every 1,000 gallons of gasoline that is dispensed.

Stage I vapor recovery requirements apply to the following:

- (1) Gasoline storage tanks at gasoline dispensing facilities located in Boone, Dearborn, Hamilton, Hancock, Harrison, Johnson, Morgan, Shelby, Clark, Elkhart, Floyd, Hendricks, Lake, Marion, Porter, St. Joseph, and Vanderburgh counties.
- (2) Any gasoline storage tank installed after July 1, 1989, at a gasoline dispensing facility.

Stage I vapor recovery requirements do not apply to gasoline dispensing facilities that have monthly gasoline throughputs of less than 10,000 gallons per month and that were in existence prior to July 1, 1989. Stage I vapor recovery requirements also do not apply to gasoline dispensing facilities that have monthly gasoline throughputs of less than 10,000 gallons per month and that are located at farms or private residences.

Stage I vapor recovery requirements are implemented under [326 IAC 8-4-6](#) and require the use of a submerged fill pipe to minimize the creation of vapors and the connection of a vapor balance system between the tank and transport that allows gasoline vapors from the underground storage tank to be displaced back to the tank truck during loading.

IDEM estimates that rules requiring submerged loading and vapor balancing achieve a 90% reduction in VOC emissions versus uncontrolled underground storage tank loading. Currently, virtually all gasoline dispensing facilities in Indiana with monthly gasoline throughputs of greater than 10,000 gallons per month already meet current stage I vapor recovery requirements.

In the First Notice of Comment Period, IDEM proposed to amend [326 IAC 8-4-1](#), applicability, to remove the applicability date of July 1, 1989, for gasoline storage tanks at gasoline dispensing facilities in order for IDEM to reduce VOC emissions from tanks installed before July 1, 1989, if those tanks do not already have stage I controls. With this Continuation of First Notice of Comment Period, IDEM is clarifying the purpose of this rulemaking and those rules the department proposes to amend.

First, IDEM is proposing to amend [326 IAC 8-4-1\(e\)](#), applicability, to remove the applicability date of July 1, 1989. The result of this amendment would be to require stage I vapor recovery controls at all gasoline dispensing facilities statewide.

Second, IDEM is proposing to amend [326 IAC 8-1-3](#), compliance schedules, to clarify the compliance

schedule for stage I vapor recovery controls for gasoline storage tanks at gasoline dispensing facilities that have a monthly gasoline throughput that exceeds 10,000 gallons per month and that were in existence prior to July 1, 1989.

Third, IDEM is proposing to amend the definition of a "gasoline dispensing facility" in [326 IAC 8-4-6\(a\)\(8\)](#) to decrease the minimum capacity of a storage tank to 250 gallons from the current minimum capacity of 575 gallons to comply with the January 10, 2008, area source NESHAP for Source Categories: Gasoline Dispensing Facilities, 73 FR 1916.

Fourth, IDEM is proposing to amend [326 IAC 8-4-6\(b\)\(1\)](#) to include specific guidelines for the installation of a submerged fill pipe (12 inches from the bottom of the gasoline storage tank if the fill pipe was installed on or before November 9, 2006, or six inches from the bottom of the gasoline storage tank if the fill pipe was installed after November 9, 2006) to comply with the January 10, 2008, area source NESHAP for Source Categories: Gasoline Dispensing Facilities.\

In combination with other efforts to reduce VOCs in Indiana and the other states, the revisions to the stage I vapor recovery rule under consideration in Indiana will contribute to regional control of VOC that will assist many counties in reaching and maintaining attainment for the eight-hour ozone standard while balancing the regulatory requirements across the state. This rule will require stage I vapor recovery at gasoline dispensing facilities, located in counties that have never been in nonattainment for the ozone NAAQS, with a monthly gasoline throughput of 10,000 gallons per month or greater where gasoline storage tanks were installed before July 1, 1989. The proposed amendments to the stage I vapor recovery rule would update the rule to reflect the actuality that stage I vapor recovery systems are already currently in extensive use at gasoline dispensing facilities throughout the state. IDEM is specifically requesting comments on whether to decrease the minimum capacity of a storage tank to 250 gallons from the current minimum capacity of 575 gallons and to include specific guidelines for the installation of a submerged fill pipe to comply with the January 10, 2008, area source NESHAP for Source Categories: Gasoline Dispensing Facilities. Upon completion of the rulemaking, this rule will be submitted to the U.S. EPA for approval into the SIP.

Alternatives To Be Considered Within the Rulemaking

The First Notice of Comment Period, published on June 27, 2007 (DIN: [20070627-IR-326070353FNA](#)), included two alternatives for which comments were received. This Continuation of First Notice of Comment Period restates the two alternatives from the First Notice of Comment Period and adds three additional alternatives to be considered.

Alternative 1. Adopt amendments to rules expanding applicability of stage I vapor recovery requirements.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, there is a comparable federal law that requires stage I vapor recovery at gasoline dispensing facilities with a monthly throughput of 100,000 gallons or more. All gasoline dispensing facilities above 10,000 gallons per month throughput must employ submerged filling of gasoline storage tanks. However, gasoline dispensing facilities that have tanks with a capacity of less than 250 gallons, regardless of monthly throughput, are not required to comply with either the submerged fill or vapor balancing requirements. This alternative is designed to provide statewide credit for VOC emission reductions and will help Indiana and other states more accurately document and account for VOC emissions reductions and demonstrate attainment with the eight-hour federal ozone standard under the Clean Air Act.
- If it is a federal requirement, is it different from federal law? The applicability differs, the requirements do not.
- If it is different, describe the differences. Not applicable.

Alternative 2. Amend the compliance schedule for stage I vapor recovery to provide a new compliance schedule for those gasoline dispensing facilities and gasoline storage tanks in existence prior to July 1, 1989, that were exempt under the current [326 IAC 8-4-1](#), but would be included if the applicability of stage I vapor recovery requirements was expanded to all gasoline storage tanks.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Amend the definition of a "gasoline dispensing facility" in [326 IAC 8-4-6\(a\)\(8\)](#) to decrease the minimum capacity of a storage tank to 250 gallons from the current minimum capacity of 575 gallons to comply with the January 10, 2008, area source NESHAP for Source Categories: Gasoline Dispensing Facilities.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, there is a comparable federal law that requires that all gasoline dispensing facilities that have a monthly throughput of 10,000 gallons or greater employ submerged filling of gasoline storage tanks if the storage tanks at those gasoline dispensing facilities have a capacity of 250 gallons or greater. This alternative is designed to provide statewide credit for VOC emission reductions and will help Indiana and other states more accurately

document and account for VOC emissions reductions and demonstrate attainment with the eight-hour federal ozone standard under the Clean Air Act.

- If it is a federal requirement, is it different from federal law? The applicability differs, the requirements do not.
- If it is different, describe the differences. Not applicable.

Alternative 4. Amend [326 IAC 8-4-6\(b\)\(1\)](#) to include specific guidelines for the installation of a submerged fill pipe (12 inches from the bottom of the gasoline storage tank if the fill pipe was installed on or before November 9, 2006, or six inches from the bottom of the gasoline storage tank if the fill pipe was installed after November 9, 2006) to comply with the January 10, 2008, area source NESHAP for Source Categories: Gasoline Dispensing Facilities.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, there is a comparable federal law that requires that all gasoline dispensing facilities that have a monthly throughput of 10,000 gallons or greater employ submerged filling of gasoline storage tanks if the storage tanks at those gasoline dispensing facilities have a capacity of 250 gallons or greater. The submerged filling requirement is met by either bottom filling the storage tank or by using a fill pipe to load the storage tank that extends not more than 12 inches from the bottom of the storage tank for fill pipes installed on or before November 9, 2006, and not more than six inches from the bottom of the storage tank for fill pipes installed after November 9, 2006. This alternative is designed to provide statewide credit for VOC emission reductions, and will help Indiana and other states more accurately document and account for VOC emissions reductions and demonstrate attainment with the eight-hour federal ozone standard under the Clean Air Act.
- If it is a federal requirement, is it different from federal law? The applicability differs, the requirements do not.
- If it is different, describe the differences. Not applicable.

Alternative 5. Do not amend the rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards); 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes); and 40 CFR 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities) are applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38856)) contains the standards for criteria pollutants. Ozone is considered a criteria pollutant and air pollution controls reduce emissions of volatile organic compounds (VOC) to reduce ozone formation. 40 CFR 81 (amended on April 30, 2004 (69 FR 23858)) lists the areas of the United States, specific to each state, that the U.S. EPA has determined are not attaining the standards (nonattainment) for criteria pollutants such as ozone.

Section 182 of the Clean Air Act requires states to develop a State Implementation Plan requiring the implementation of RACT in areas classified as moderate, serious, severe, or extreme nonattainment with respect to each category of VOC sources in the area covered by a Control Techniques Guidelines (CTG) document issued by the U.S. EPA. The U.S. EPA issued a CTG regarding stage I vapor recovery "Design Criteria for Stage I Vapor Control Systems Gasoline Service Stations" in November 1975.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative would extend the applicability of stage I vapor recovery requirements for gasoline storage tanks at gasoline dispensing facilities to all counties in Indiana. The cost of installing stage I vapor recovery on a gasoline storage tank with a "single point coax" system is in the range of \$700 to \$900, and the cost of installing stage I vapor recovery on a gasoline storage tank with a "dual point" fill system is in the range of \$300 to \$500. Therefore, the fiscal impact is expected to be minimal.

Potential Fiscal Impact of Alternative 2. There are few gasoline dispensing facilities and gasoline storage tanks that are expected to be affected by an amended compliance schedule because most gasoline dispensing facilities are already using stage I vapor recovery systems. Therefore, there is expected to be minimal fiscal impact from amending the compliance schedule for stage I vapor recovery systems.

Potential Fiscal Impact of Alternative 3. This alternative would extend the applicability of stage I vapor recovery requirements to gasoline storage tanks with a minimum capacity of 250 gallons. The cost of installing stage I vapor recovery on a gasoline storage tank with a "single point coax" system is in the range of \$700 to \$900, and the cost of installing stage I vapor recovery on a gasoline storage tank with a "dual point" fill system is in the range of \$300 to \$500. Therefore, the fiscal impact is expected to be minimal.

Potential Fiscal Impact of Alternative 4. A majority of gasoline dispensing facilities in Indiana already utilize a

fill pipe that is submerged not more than six inches from the bottom of the storage tank; therefore, there are few gasoline dispensing facilities and gasoline storage tanks that are expected to be affected by an addition of specific guidelines for the installation of a submerged fill pipe. The fiscal impact is expected to be minimal.

Potential Fiscal Impact of Alternative 5. This alternative will have no fiscal impact.

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/compliance/ctap/index.html

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface, Senior Environmental Manager
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 North Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
MC50-01 - IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Manda Clevenger, Rules Development Section, Office of Air Quality at (317) 232-8229 or (800) 451-6021 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#07-353(APCB) Stage I Vapor Recovery
Manda Clevenger Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 10, 2008.

Additional information regarding this action may be obtained from Manda Clevenger, Rules Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

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