

Document: IC 13-14-9 Notice, **Register Page Number:** 27 IR 4144

Source: September 1, 2004, Indiana Register, Volume 27, Number 12

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE #04-235(APCB)

DEVELOPMENT OF RULES CONCERNING INCORPORATION BY REFERENCE OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE), and has scheduled a public hearing before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 20-82.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Basic Purpose and Background

The 1990 Amendments to the Clean Air Act require the United States Environmental Protection Agency (U.S. EPA) to regulate major sources of hazardous air pollutants (HAPs). A major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that has the potential to emit, considering controls, ten (10) tons per year or more of any single hazardous air pollutant or twenty-five (25) tons per year or more of any combination of HAPs. HAPs are listed in the Clean Air Act because they are either known or suspected to cause cancer or other serious health effects. There are currently one hundred eighty-eight (188) HAPs listed in the Clean Air Act. On July 16, 1992 (57 FR 311576), U.S. EPA published a list of industrial groups or source categories that emit one (1) or more of the one hundred eighty-eight (188) listed HAPs. The Clean Air Act requires U.S. EPA to develop emission standards, referred to as national emission standards for hazardous air pollutants (NESHAPs), that require the application of air pollution reduction measures based on maximum achievable control technology (MACT) for the listed source categories. The “MACT floor” is the minimum control level allowed for NESHAPs and ensures that the standard is set at a level that assures that all existing major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source.

This rulemaking will incorporate by reference the Stationary Reciprocating Internal Combustion Engines (RICE) NESHAP. The majority of RICE units are used at pipeline compression stations, chemical and manufacturing plants, and power plants. Toxic emissions of formaldehyde, acrolein, methanol, and acetaldehyde are produced by RICE units, but EPA believes that this NESHAP can reduce those emissions by 5,600 tons nationwide in the fifth year after promulgation. Overall, nationwide emissions of formaldehyde, acrolein, acetaldehyde, and methanol from RICE units will be reduced by 40% to 90% depending on the type of unit. U.S. EPA estimates there are at least fifty-four (54) potential Indiana sources.

The final compliance deadline for existing sources is June 15, 2007. The compliance deadline for all new or reconstructed units started before August 16, 2004, and all operators who start a new or reconstructed unit after August 16, 2004, is August 16, 2004. IDEM must incorporate the federal requirements into state rules or establish state requirements that are no less stringent than the federal requirements.

IDENTIFICATION OF RESTRICTIONS AND REQUIREMENTS NOT IMPOSED UNDER FEDERAL LAW

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. Affected entities must comply with the federal rule, and IDEM does not propose to add more stringent requirements.

POTENTIAL FISCAL IMPACT

The RICE NESHAP is a federal rule and will likely require affected businesses to incur compliance costs. Adoption of the RICE NESHAP into Indiana’s state rules will not create an additional fiscal impact.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation by reference of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt the NESHAP for RICE as established by the United States Environmental Protection Agency.
- (3) The public will benefit from prompt adoption of this rule, because the state will have the legal authority to enforce this NESHAP.
- (4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (5) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Sky Schelle, Rule Development Section, Office of Air Quality (317) 234-3533 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 20-82 IS ADDED TO READ AS FOLLOWS:

Rule 82. Stationary Reciprocating Internal Combustion Engines

326 IAC 20-82-1 Applicability; incorporation by reference of federal standards

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

Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.6585* (69 FR 33506, June 15, 2004).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart ZZZZ* (69 FR 33506, June 15, 2004, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines).

*This document is 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 Environment Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-82-1*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on November 3, 2004, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new rule 326 IAC 20-82.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Sky Schelle, Rule Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.