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TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE #04-299(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR), AND COMPILATION OF AIR POLLUTION EMISSION FACTORS AP-42 AND SUPPLEMENTS (AP-42)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-1-3 concerning references to the Code of Federal Regulations (CFR) to update any references to the CFR in Title 326 of the Indiana Administrative Code (IAC) to mean the July 1, 2004, edition. This change will have the effect of updating every rule in Title 326 of the IAC that incorporates the CFR to ensure it is consistent with the federal rule, except for rules in which a CFR edition is mentioned by a specific year. IDEM also has drafted language to amend 326 IAC 1-1-3.5 concerning references to the compilation of air pollution emission factors AP-42 and supplements. IDEM has scheduled a public hearing before the air pollution control board for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-1-3; 326 IAC 1-1-3.5.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-15; IC 13-17-3; IC 13-17-8.

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

CODE OF FEDERAL REGULATIONS (CFR)

326 IAC 1-1-3, References to the Code of Federal Regulations (CFR), indicates the yearly edition of the CFR that is applicable to rules that have been incorporated by reference throughout Title 326 of the IAC, unless a different edition is specified in a given rule. By annually updating the reference to the CFR, IDEM is able to incorporate by reference the latest version of the parts of the CFR already incorporated into the air rules, with the exception of those most recently published in the Federal Register (FR).

The 2004 edition of the CFR is a codification of the general and permanent rules published in the FR as of June 30, 2004. IDEM incorporates citations by reference from Titles 29 and 40 of the CFR.

Title 29 of the CFR, entitled "Intergovernmental Review of Environmental Protection Agency Programs and Activities", contains federal rules for the asbestos and lead programs. Title 29 of the CFR is referenced in 326 IAC 14 (Emission Standards for Hazardous Air Pollutants), 326 IAC 20 (Asbestos Management), and 326 IAC 23 (Lead-Based Paint Program). Many of these regulations are either directly incorporated by reference into Title 326 of the IAC as state-enforceable rule provisions or they are incorporated into Title 326 of the IAC as federal authority for the implementation and enforcement of state rule provisions.

Title 40 of the CFR entitled "Protection of Environment," includes all federal environmental regulations promulgated by the U.S. Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

The latest version of the CFR adopted by the Air Pollution Control Board is dated July 1, 2002. Since that date, a number of new federal rules were promulgated that later were incorporated and referenced in the state rules using their FR citation.

Examples of rules and changes that occurred between July 1, 2002, and June 30, 2004, that will be updated with this rulemaking follow. However, these examples are not exhaustive.

- Correction to Title 40 of the Code of Federal Regulations, Parts 81 to 85, revised as of July 1, 2002, on page 342, in Sec. 82.4, remove Table I at the end of paragraph (t)(4) (68 FR 10370). This correction affects 326 IAC 22.
- EPA's Guideline on Air Quality Models (*Guideline*) addresses the regulatory application of air quality models for assessing criteria pollutants under the Clean Air Act. In an action published in the April 15, 2003 Federal Register (68 FR 18439), U.S. EPA promulgated several additions and changes to the *Guideline*. The *Guideline* adopted a new dispersion model, CALPUFF, in Appendix A. CALPUFF becomes the preferred technique for assessing long range transport of pollutants and their impacts on Federal Class I areas. Action on AERMOD and the Emissions and Dispersion Modeling System (EDMS) was deferred. Also various editorial changes were made to update and reorganize information, and remove obsolete models. The *Guideline* affects modeling for planning and rules throughout Title 326.
- U.S. EPA created an exemption from the consumption and production phaseout for quantities of Class 1, Group VI controlled substances (methyl bromide) that are used for quarantine and preshipment (68 FR 237). This final rule affects 326 IAC 22.

INCORPORATION OF COMPILATION OF AIR POLLUTION EMISSION FACTORS AP-42 INCLUDING SUPPLEMENTS (AP-42)

Compilation of Air Pollution Emission Factors (AP-42) is a document issued by U.S. EPA that is currently referenced in Title 326 of the IAC. This rulemaking updates the References to the Compilation of Air Emissions Factors AP-42 and Supplements to include updates through 2004 to allow sources to use the most recent version of AP-42.

AP-42 is a fundamental tool for air quality management and is used for developing emission control strategies, determining applicability of permitting and control programs, ascertaining the effects of sources and appropriate mitigation strategies, and a number of related applications. The Fifth Edition of AP-42, Volume I, contains information on over 200 stationary source categories. This information includes brief descriptions of processes used, potential sources of air emissions from the processes and common methods used to control these air emissions. Methodologies for estimating the quantity of air pollutants emissions are presented in the emission factors.

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.

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 Gayl Killough, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation by reference of the 2004 version of the Code of Federal Regulations (CFR) and addition of references to Compilation of Air Pollution Factors AP-42 and supplements (AP-42) 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 incorporation 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, in many cases, is required by the CAA to adopt these requirements as state rules.

(3) The public will benefit from the prompt adoption of this rule because it alleviates unnecessary duplication of rulemaking efforts by the state by directly incorporating the Code of Federal Regulations (CFR) and updating the references to the compilation of air pollution emission factors and supplements (AP-42).

(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 F. Kaplan

Commissioner

Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for extension 3-8628 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-1-3, AS AMENDED AT 28 IR 17, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-1-3 References to the Code of Federal Regulations

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

Affected: IC 13-15; IC 13-17

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the July 1, ~~2002~~, **2004**, edition*.

*This body of documents 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 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 1-1-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; filed Oct 30, 2000, 2:13 p.m.: 24 IR 667; filed May 21, 2002, 10:20 a.m.: 25 IR 3054; filed Aug 26, 2004, 11:30 a.m.: 28 IR 17*)

SECTION 2. 326 IAC 1-1-3.5, AS AMENDED AT 28 IR 18, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-1-3.5 References to the Compilation of Air Pollution Emission Factors AP-42 and Supplements

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

Affected: IC 13-15; IC 13-17

Sec. 3.5. Unless otherwise indicated, any reference to the Compilation of Air Pollution Emission Factors AP-42 (AP-42) means the January 1995, Fifth Edition, Volume I*, including the following AP-42, Fifth Edition, Volume I supplements:

- (1) Supplement A, February 1996*.
- (2) Supplement B, November 1996*.
- (3) Supplement C, November 1997*.
- (4) Supplement D, August 1998*.
- (5) Supplement E, September 1999*.
- (6) Supplement F, September 2000*.
- (7) Update 2001*.
- (8) Update 2002*.
- (9) Update 2003*.**
- (10) Update 2004*.**

*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 1-1-3.5; filed May 21, 2002, 10:20 a.m.: 25 IR 3055; filed Aug 26, 2004, 11:30 a.m.: 28 IR 18)

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 February 2, 2005, 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 amendments to 326 IAC 1-1-3, 326 IAC 1-1-3.5, and Title 326.

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 amendments. 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 Gayl Killough, Rules Section, Office of Air Quality, (317) 233-8628 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) 232-6565. 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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana and are open for public inspection.