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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 #05-230(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-1-3 concerning incorporation by reference of Code of Federal Regulations (CFR) 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 1-1-3.

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 forego 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

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 Indiana Administrative Code (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 2005 edition of the CFR is a codification of the general and permanent rules published in the FR as of June 30, 2005. 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, 2004. 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.

A non-exhaustive list of examples of rules and changes that occurred between July 1, 2004, and June 30, 2005, that will be updated with this rulemaking follow:

- Amendments to regulations that relate to hazardous waste combustors. Removes the requirement to use the method found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*. Amends 40 CFR 63.1208(b)(8) as follows: “Feedstream analytical methods. You may use any reliable analytical method to determine feedstream concentrations of metals, chlorine, and other constituents. It is the source’s responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream”. This amendment affects 326 IAC 20-28-1. (FR 34537; June 14, 2005)
- U.S. EPA changed the listing of HCFC-141b from acceptable to unacceptable for use as a foam blowing agent. Information was received that indicated dangers to human health and the environment. Updates the reference to 40 CFR 82* at 326 IAC 22-1-1(a). (FR 58269; September 30, 2004)
- On April 22, 2004 U.S. EPA issued national emission standards to control for hazardous air pollutants from iron and steel foundries. These standards were adopted by the air pollution control board on May 4, 2005 and are in the process of being promulgated. By updating the reference to the CFR to 2005, recent amendments to work practice requirements for the material certification and scrap selection/inspection programs will be clarified and additional flexibility provided without materially changing the requirements of the rule. This amendment affects 326 IAC 20-92-1. (70 FR 29399; May 2, 2005)
- On May 13, 2005, U.S. EPA in a direct final rule amended the national emission standards for pharmaceuticals production. The direct final rule amendments include provisions for planned routine maintenance of wastewater tanks, alternative monitoring provisions for caustic scrubbers and condensers, and references general standards for containers. This amendment affects 326 IAC 20-57. (70 FR 25669; May 13, 2005)
- Amendments to national emission standards to control hazardous air pollutants from cellulose products manufacturing, 40 CFR Subpart UUUU. Corrects the date in the definition of a “process change” that was included in the final rule. This amendment affects 326 IAC 20-54-1. (70 FR 36523; June 24, 2005)
- Revision to the list of major source categories for hazardous air pollutants under section 112(c) of the Clean Air Act. The amino resins and phenolic resins source categories were combined as one category, Amino/Phenolic Resins. The Engine Test Facilities and Rocket Engine test firing source categories were combined as one category, Engine Test Cells/Stands. The Fume Silica Production source category was subsumed into the Hydrochloric Acid category. The Institutional/Commercial Boilers, the Process Heaters, and the Industrial Boiler source categories were combined into the Industrial/Commercial/Institutional Boilers and Process Heaters source category. Iron and Steel Foundries were combined into one category. The Asphalt/Coal Tar Application Metal Pipes source category were subsumed into the Surface Coating of Miscellaneous Metal Parts and Products source category. Many categories were subsumed into the Miscellaneous Organic Chemical Manufacturing source category. This amendment affects 326 IAC 20. (70 FR 37819; June 30, 2005)

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

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

Incorporation by reference of the latest edition of the Code of Federal Rules allows federal and state rules to be consistent with each other and would not establish any new requirements. There is no increased costs to the regulated entities.

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/ctap.

Small businesses affected by this rulemaking may contact the 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

The Small Business Assistance Program Ombudsman is:

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

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation by reference of the 2005 version of the Code of Federal Regulations (CFR) 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).
- (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.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

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).

DRAFT RULE

SECTION 1. 326 IAC 1-1-3, PROPOSED TO BE AMENDED AT 28 IR 1815, 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, ~~2004~~, **2005**, 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)

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 October 5, 2005 at 2:00 p.m, at the Pike County Court House, 801 Main Street, Auditorium, Petersburg, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-1-3.

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

Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). 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 East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.