

**Document:** IC 13-14-9 Notice, **Register Page Number:** 26 IR 2485

**Source:** April 1, 2003, Indiana Register, Volume 26, Number 7

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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 #03-69(APCB)**

## **DEVELOPMENT OF AMENDMENTS TO AMBIENT AIR QUALITY STANDARDS**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to amend 326 IAC 1-3-4 that would add the new federal standard for ozone to Article 326 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 1-3-4.

**AUTHORITY:** IC 13-14-8; 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 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**

United States Environmental Protection Agency (EPA) has set National Ambient Air Quality Standards (NAAQS) for six common air pollutants, also called "criteria" pollutants. The criteria pollutants are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. NAAQS are often referred to as federal health standards for outdoor air.

The Clean Air Act, which was passed in 1970 and last amended in 1990, requires EPA to set NAAQS for pollutants that cause adverse effects to public health and the environment. The Clean Air Act established primary and secondary air quality standards.

Primary standards protect public health, including the health of “sensitive” populations such as asthmatics, children, and the elderly. The primary standard is often referred to as the health standard. Secondary standards protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings. Standards are reviewed periodically to ensure that they include the most recent scientific information.

On July 18, 1997, EPA announced a new stricter NAAQS for ozone. After a lengthy scientific review process, including extensive external scientific review, EPA determined that these changes were necessary to protect public health and the environment. The new standard is intended to be more protective of the health of children and adults who play and work outdoors in the summer.

In establishing the 8-hour standard, EPA set the standard at 0.08 parts per million (ppm) as an average over an 8-hour period and defines the new standard as a “concentration-based” form, specifically the 3-year average of the annual 4<sup>th</sup>-highest daily maximum 8-hour ozone concentrations. This standard is in addition to the existing one-hour ozone standard, which remains effective nationwide. EPA is expected to clarify the transition between the two ozone standards in upcoming rules to implement the 8-hour ozone standard. In addition, IDEM has updated the one-hour ozone standard language to ensure consistency with the most current version of the federal ozone standards.

EPA intends to designate areas of the county that do not meet the 8-hour ozone standard as “nonattainment areas” in 2004. Indiana is expected to have a number of areas designated nonattainment, mostly large urban areas. Those designations will start a process in which the state will work with local communities, businesses and citizens to develop plans to bring the areas into attainment in the future.

The new PM<sub>2.5</sub> air quality standards will be addressed in a separate rulemaking that may also amend the current definition of particulate matter.

## FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation of the new federal standard for ozone, as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is an 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 is required by the Clean Air Act to adopt the standards as state rules.
- (3) U.S. EPA conducted extensive public process prior to promulgating the eight hour standard. Moreover, the standard was challenged in court and ultimately upheld by the United States Supreme Court. There has been ample opportunity for public comment and all appeals have been exhausted.
- (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 Gayla Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 extension 3-8628 (in Indiana).

## DRAFT RULE

SECTION 1. 326 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

### 326 IAC 1-3-4 Ambient air quality standards

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

**Affected:** IC 13-15; IC 13-17

Sec. 4. (a) The following ambient air quality standards, corrected to a reference temperature of 25° C: **twenty-five (25) degrees Celsius** and to a reference pressure of seven hundred sixty (760) millimeters of mercury (one thousand thirteen and two-tenths (1,013.2 millibars)), as micrograms per cubic meter (µg/m<sup>3</sup>). ~~shall apply.~~

**(b) Ambient air quality standards are as follows:**

- (1) Sulfur oxides as sulfur dioxide (SO<sub>2</sub>) **requirements are as follows:**

(A) For primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Eighty (80) **micrograms per cubic meter** ( $\mu\text{g}/\text{m}^3$ ) (three-hundredth (0.03) **parts per million** (ppm)) annual arithmetic mean.

(ii) Three hundred sixty-five (365)  $\mu\text{g}/\text{m}^3$  (fourteen-hundredth (0.14) ppm) maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(B) For secondary standards, the following value shall represent the maximum permissible ambient air quality levels: one thousand three hundred (1,300)  $\mu\text{g}/\text{m}^3$  (five-tenth (0.5) ppm) maximum three (3) hour concentration not to be exceeded more than once per year.

(C) ~~Sulfur dioxide~~ **SO<sub>2</sub>** values may be converted to ~~parts per million~~ ppm using the conversion factor two thousand six hundred twenty (2,620)  $\mu\text{g}/\text{m}^3$  = one (1) ppm.

(2) Total suspended ~~Particulate~~ **particulates (TSP) requirements are as follows:**

(A) For primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Seventy-five (75)  $\mu\text{g}/\text{m}^3$  annual geometric mean.

(ii) Two hundred sixty (260)  $\mu\text{g}/\text{m}^3$  maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(B) For secondary standards, the following value shall represent maximum permissible ambient air quality levels: one hundred fifty (150)  $\mu\text{g}/\text{m}^3$  maximum twenty-four (24) hour average concentration not to be exceeded more than one (1) day per year.

(3) Carbon monoxide (CO) **requirements are as follows:**

(A) For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) Ten (10) milligrams per cubic meter (**mg/m<sup>3</sup>**) (ten thousand (10,000)  $\mu\text{g}/\text{m}^3$ ) (nine (9) ppm) maximum eight (8) hour average concentration not to be exceeded more than once per year.

(ii) Forty (40) ~~milligrams per cubic meter~~ **mg/m<sup>3</sup>** (forty thousand (40,000)  $\mu\text{g}/\text{m}^3$ ) (thirty-five (35) ppm) maximum one (1) hour average concentration not to be exceeded more than once per year.

(B) ~~Carbon monoxide~~ **CO** values may be converted to ~~parts per million~~ ppm using the conversion factor one thousand one hundred forty-five (1,145)  $\mu\text{g}/\text{m}^3$  = one (1) ppm.

(4) Ozone (O<sub>3</sub>) **requirements shall be as follows:**

(A) For ~~primary and secondary~~ **the one (1) hour ozone** standards, ~~the following values shall represent the maximum permissible ambient air quality level: the expected number of days with maximum hourly ozone concentrations above two hundred thirty-five (235)  $\mu\text{g}/\text{m}^3$  (twelve-hundredths (0.12) ppm) shall not exceed one (1) per calendar year: the level of the one (1) hour primary and secondary ambient air quality standards for ozone measured by a reference method based on 40 CFR 50, Appendix D\* and designated in accordance with 40 CFR 53\* is twelve-hundredths (0.12) ppm (two hundred thirty-five (235)  $\mu\text{g}/\text{m}^3$ ). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above twelve-hundredths (0.12) ppm (two hundred thirty-five (235)  $\mu\text{g}/\text{m}^3$ ) is equal to or less than one (1) as determined by 40 CFR 50, Appendix H\*.~~

(B) For the eight (8) hour ozone standards, the:

(i) level of the eight (8) hour primary and secondary ambient air quality standards for ozone, measured by a reference method based on 40 CFR 50, Appendix D\* and designated in accordance with 40 CFR 53\*, is eight-hundredths (0.08) ppm, daily maximum eight (8) hour average; and

(ii) eight (8) hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth highest daily maximum eight (8) hour average ozone concentration is less than or equal to eight-hundredths (0.08) ppm as determined in accordance with 40 CFR 50, Appendix I\*.

~~(B) Ozone~~ (C) O<sub>3</sub> values may be converted to ~~parts per million~~ ppm using the conversion factor one thousand nine hundred sixty-five (1,965)  $\mu\text{g}/\text{m}^3$  = ~~one (1)~~ **1.0** ppm.

(5) Nitrogen dioxide (NO<sub>2</sub>) **requirements shall be as follows:**

(A) For primary and secondary ~~standard; standards,~~ standards, the following value shall represent the maximum permissible ambient air quality level: one hundred (100)  $\mu\text{g}/\text{m}^3$  (five-hundredth (0.05) ppm) annual arithmetic mean.

(B) ~~Nitrogen dioxide~~ **NO<sub>2</sub>** values may be converted to ~~parts per million~~ ppm using the conversion factor one thousand eight hundred eighty (1,880)  $\mu\text{g}/\text{m}^3$  = one (1) ppm.

(6) Lead (Pb): ~~(A)~~ For primary and secondary ~~standard; standards,~~ standards, the following value shall represent the maximum permissible ambient air quality level: one and five-tenth (1.5) micrograms lead per cubic meter of air ( $\mu\text{g}$  of Pb/ $\text{m}^3$ ), averaged over a calendar quarter and measured as elemental lead.

(7) PM<sub>10</sub>: ~~(A)~~ For primary and secondary standards, the following values shall represent the maximum permissible ambient air

quality levels:

(i) **(A)** Fifty (50)  $\mu\text{g}/\text{m}^3$  annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix K\*, is less than or equal to fifty (50)  $\mu\text{g}/\text{m}^3$ .

(ii) **(B)** One hundred fifty (150)  $\mu\text{g}/\text{m}^3$  maximum twenty-four (24) hour average concentration. The standards are attained when the expected number of days per calendar year with a twenty-four (24) hour average concentration above one hundred fifty (150)  $\mu\text{g}/\text{m}^3$ , as determined in accordance with 40 CFR 50, Appendix K\*, is equal to or less than one (1).

~~\*This document is~~ **\*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 1-3-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2378; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3020; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3055*)

### ***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 June 4, 2003 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-3-4.*

*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 rules and 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 Gayla Killough, Rules Development 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) 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, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*