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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 #04-148(APCB)**

## **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT STATUS DESIGNATIONS FOR THE 8-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARD**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-4-1, concerning attainment status designations for the 8-hour ozone National Ambient Air Quality Standard (“the 8-hour ozone standard”). The purpose of this notice is to seek public comment on the draft rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** 326 IAC 1-4-1.

**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**

#### **Basic Purpose and Explanation of Limited Rulemaking Policy Alternatives**

Under the Clean Air Act, U.S. EPA is responsible for (1) establishing ambient air quality standards to protect the public health and welfare; (2) determining which areas of the country have air quality that does not meet those standards; and (3) overseeing states' efforts to develop and implement plans to improve air quality in those areas. The Clean Air Act establishes basic requirements and procedures for the clean air planning process, but U.S. EPA issues more specific guidance to help states, citizens, businesses and local governments comply with the Clean Air Act's requirements. U.S. EPA also promulgates rules to meet the Clean Air Act requirements. In this case, U.S. EPA is promulgating a rule designating certain counties, entirely or in part, as nonattainment for the 8-hour ozone standard.

On December 3, 2003, U.S. EPA made a preliminary determination, based on two (2) letters from IDEM, that certain Indiana counties should be designated as nonattainment for the 8-hour ozone standard. On February 6, 2004, IDEM presented additional information regarding U.S. EPA's findings. U.S. EPA issued the final designations on April 30, 2004 (69 FR 23858).

From U.S. EPA's final determination, the following twenty-four (24) counties, entirely or in part, have been designated as nonattainment of the 8-hour ozone standard on April 30, 2004: Allen, Boone, Clark, Dearborn (Lawrenceburg Township), Delaware, Elkhart, Floyd, Greene, Hamilton, Hancock, Hendricks, Jackson, Johnson, Lake, LaPorte, Madison, Marion, Morgan, Porter, St. Joseph, Shelby, Vanderburgh, Vigo, and Warrick. All of these counties are designated in basic nonattainment, except for Lake, Porter, and LaPorte counties which are in moderate nonattainment for the 8-hour ozone standard.

In order to apply the state nonattainment rules to the newly designated counties, Indiana must adopt the federal designations as soon as possible. Because this can be accomplished through incorporation by reference of the federal rules, IDEM proposes the use of IC 13-14-9-8 to adopt the designations. A provision has been added to clarify the applicability of the nonattainment emission offset rules under 326 IAC 2-3 to the newly designated counties.

Proper designation of the counties determined to be nonattainment for the 8-hour ozone standard will provide the basis in state law for IDEM to develop attainment plans for the newly designated counties. It will also ensure that air permits in these counties are issued under the correct permitting rules. If Indiana does not adopt the federal ozone designations, it is possible that U.S. EPA would have to issue new source review permits for certain types of projects in the affected areas. Stricter permitting rules will apply in nonattainment counties for new and expanding sources, however, these rules only apply to certain larger sources.

#### **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 rule is required by the Clean Air Act.

#### **Potential Fiscal Impact**

There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process. The rule may impact economic development in the counties designated nonattainment of the 8-hour ozone standard, but that impact would be difficult to quantify.

#### **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 Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

### **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking on attainment status designations for 8-hour ozone NAAQS as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule contains both the direct adoption of a federal requirement that is applicable to Indiana and a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule. The direct adoption of the federal requirement 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 federal attainment status designations as established by the United States Environmental Protection Agency.
- (3) Prompt adoption of this rule will be beneficial because regulated sources in newly designated nonattainment counties will be subject to the state nonattainment rules, rather than the federal permitting process.
- (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 Christine Pedersen, Rules Development Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 27 IR 1167, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

##### **326 IAC 1-4-1 Designations**

**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)** The air pollution control board incorporates by reference **the following documents concerning attainment status designations:**

- (1) 40 CFR 81.315\*.
- (2) 66 FR 53665 (October 23, 2001)\*. ~~and~~
- (3) 68 FR 1370 (January 10, 2003)\*.
- (4) 69 FR 23858 (April 30, 2004)\*.**

~~concerning attainment status designations:~~

**(b) For purposes of permits that are subject to 326 IAC 2-3 due to the designations in subsection (a)(4), notwithstanding 326 IAC 2-3-2(a) and 326 IAC 2-3-2(e), the requirements of 326 IAC 2-3 apply to any permit that:**

- (1) would otherwise be subject to 326 IAC 2-3; and**
- (2) is issued on or after the effective date of the incorporation of 69 FR 23858.**

\*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 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077; filed Dec 1, 2003, 10:00 a.m.: 27 IR 1167*)

#### **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 July 7, 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 amendments to 326 IAC 1-4-1.*

*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 Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 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.*