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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 #05-235(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PARTICULATE MATTER AMBIENT AIR QUALITY STANDARDS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for 326 IAC 1-3-4 concerning particulate matter ambient air quality standards 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 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

On July 18, 1997, U.S. EPA promulgated revisions to the primary and secondary national ambient air quality standards (NAAQS) for particulate matter (PM) (62 FR 38652), revising the PM NAAQS in several respects. New standards were added, using PM_{2.5} (defined as particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) as the indicator for standards adopted for the purpose of regulating fine particles, and continuing to use PM₁₀ (defined as particles with an aerodynamic diameter less than or equal to a nominal 10 µm) as the indicator for standards adopted for the purpose of regulating coarse-fraction particles

(referring to those particles with an aerodynamic diameter less than or equal to a nominal 10 µm but greater than 2.5 µm). The 1997 annual PM10 standard used the same form as the pre-existing annual PM10 standard adopted in 1987, whereas the 1997 24-hour PM10 standard incorporated a new statistical form, based on the 99th percentile of 24-hour PM10 concentrations at each monitor in an area. U.S. EPA also adopted various requirements related to the 1997 PM10 standards such as new measurement methods, a new attainment test, and air quality monitoring schedules.

Following promulgation of the 1997 PM NAAQS, numerous petitions for review of the PM standards were filed in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In part, although the court found “ample support” for U.S. EPA’s decision to regulate coarse-fraction particles, it vacated the 1997 PM10 standards on the basis of PM10 being a “poorly matched indicator for coarse particulate pollution” because PM10 includes fine particles. (American Trucking Associations; Inc. et al. v. Environmental Protection Agency, 175 F.3d 1027, 1054-55 (D.C. Cir. 1999).)

In a final rule promulgated on July 30, 2004, (69 FR 45595) U.S. EPA made changes including amending 40 CFR 50.3 (which specifies reference measurement conditions) to remove language that extended the scope of its applicability to the 1997 PM10 standards. There were additional changes in the July 20, 2004, rulemaking that will be addressed in the 2005 CFR annual update rulemaking.

The purpose of this rulemaking is to ensure that specified reference measurement conditions at 326 IAC 1-3-4 are consistent with 40 CFR 50.3.

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.

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 amendment of a full text incorporation of the particulate matter ambient air quality standards. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is the direct adoption of a federal rule that is 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 ambient air quality standards as established by the United States Environmental Protection Agency.
- (3) 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.

(4) 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 1-3-4, AS AMENDED AT 28 IR 1471, SECTION 5, 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) All measurements of air quality that are expressed as mass per unit volume, ~~micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)~~, other than for the particulate matter (~~PM_{10} and $\text{PM}_{2.5}$~~) standards **contained in subsection (b)(8)**, shall be corrected to a reference temperature of 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 ($\mu\text{g}/\text{m}^3$). Measurements of ~~PM_{10} and $\text{PM}_{2.5}$~~ , for purposes of **comparison to** the standards contained in subsection ~~(b)(7) and~~ (b)(8), shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

(b) Ambient air quality standards are as follows:

(1) Sulfur oxides as sulfur dioxide (SO_2) requirements are as follows:

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

(i) Eighty (80) $\mu\text{g}/\text{m}^3$ (three-hundredths (0.03) parts per million (ppm)) annual arithmetic mean not to be exceeded in a calendar year.

(ii) Three hundred sixty-five (365) $\mu\text{g}/\text{m}^3$ (fourteen-hundredths (0.14) ppm) maximum twenty-four (24) hour average concentration not to be exceeded more than once per calendar year. The twenty-four (24) hour averages shall be determined from successive nonoverlapping three (3) hour blocks starting at midnight each calendar day.

(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-tenths (0.5) ppm) maximum three (3) hour concentration not to be exceeded more than once per year. The three (3) hour averages shall be determined from successive nonoverlapping three (3) hour blocks starting at midnight each calendar day.

(C) SO_2 values may be converted to ppm using the conversion factor two thousand six hundred twenty ($2,620$) $\mu\text{g}/\text{m}^3 =$ one (1) ppm.

(2) Total suspended 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^3) (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) mg/m^3 (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) CO values may be converted to 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_3) requirements are as follows:

(A) For the one (1) hour ozone standards, 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*.

(C) O_3 values may be converted to ppm using the conversion factor one thousand nine hundred sixty-five (1,965) $\mu\text{g}/\text{m}^3 = 1.0$ ppm.

(5) Nitrogen dioxide (NO_2) requirements are as follows:

(A) For primary and secondary standards, the following value shall represent the maximum permissible ambient air quality level: one hundred (100) $\mu\text{g}/\text{m}^3$ (five-hundredths (0.053) [sic.] ppm) annual arithmetic mean concentration in a calendar year.

(B) NO_2 values may be converted to ppm using the conversion factor one thousand eight hundred eighty (1,880) $\mu\text{g}/\text{m}^3 =$ one (1) ppm.

(6) Lead (Pb): For primary and secondary standards, the following value shall represent the maximum permissible ambient air quality level: one and five-tenths (1.5) micrograms lead per cubic meter of air (μg of Pb/ m^3), averaged over a calendar quarter and measured as elemental lead.

(7) PM_{10} : For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(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) $\mu\text{g}/\text{m}^3$.

(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).

(8) $\text{PM}_{2.5}$: For primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(A) Fifteen (15) micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual arithmetic mean concentration. The standards are attained when the annual arithmetic mean concentration is less than or equal to fifteen (15) $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR 50, Appendix N* and measured in the ambient air as $\text{PM}_{2.5}$ by either:

(i) a reference method based on 40 CFR 50, Appendix L*, and designated in accordance with 40 CFR 53*; or

(ii) an equivalent method designated in accordance with 40 CFR 53*.

(B) Sixty-five (65) $\mu\text{g}/\text{m}^3$ twenty-four (24) hour average concentration. The standards are attained when the ninety-eighth percentile twenty-four (24) hour concentration is less than or equal to sixty-five (65) micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), as determined in accordance with 40 CFR 50, Appendix N and measured in the ambient air as $\text{PM}_{2.5}$ by either:

(i) a reference method based on 40 CFR 50, Appendix L*, and designated in accordance of 40 CFR 53*; or

(ii) an equivalent method designated in accordance with 40 CFR 53*.

*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; filed Mar 9, 2004, 3:45 p.m.: 27 IR 2224; filed Dec 20, 2004, 2:15 p.m.: 28 IR 1471*)

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, Auditorium, 801 Main Street, Petersburg, 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 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.