
TITLE 326 AIR POLLUTION CONTROL BOARD**CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD**

LSA Document #11-251

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING NEW SOURCE REVIEW PROVISIONS FOR PARTICULATE MATTER LESS THAN 2.5 MICRONS (PM_{2.5})**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2](#). The First Notice of Comment Period, published on May 4, 2011 (DIN: [20110504-IR-326110251FNA](#)), requested comments on new source review (NSR) provisions for particulate matter less than 2.5 microns (PM_{2.5}), as well as amendments to definitions of terms in [326 IAC 2](#) to defer from greenhouse gas permitting requirements carbon dioxide (CO₂) emissions from bioenergy and other biogenic sources. That comment period has ended; however, IDEM has identified an additional amendment to [326 IAC 2](#) required by the United States Environmental Protection Agency (U.S. EPA) concerning Indiana's prevention of significant deterioration (PSD) rules. IDEM seeks comment on the additional alternative described in this notice, the affected citation listed, and any other provisions in Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 2](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

A First Notice of Comment Period published in the Indiana Register on May 4, 2011 (DIN: [20110504-IR-326110251FNA](#)) concerning federally required amendments to [326 IAC 2](#) concerning NSR provisions for PM_{2.5} and amendments to the regulatory term "subject to regulation" to defer from greenhouse gas permitting requirements CO₂ emissions from bioenergy and other biogenic sources. This Continuation of First Notice of Comment Period addresses additional alternatives to be considered during this rulemaking.

On November 29, 2005, U.S. EPA published: "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Implementation Rule) (73 FR 71612). In this rule, U.S. EPA finalized a change to the PSD regulations under Part C of Title I of the Clean Air Act (CAA) by codifying nitrogen oxides (NO_x) as an ozone precursor in attainment and unclassifiable areas. IDEM is proposing to amend [326 IAC 2-2](#)^x to make Indiana's PSD rules consistent with U.S. EPA PSD regulations. Amendments may include identifying NO_x as a precursor for ozone in [326 IAC 2](#).

IDEM is seeking comments on proposed changes to [326 IAC 2](#) and any other rules that may be affected in Title 326 by this proposed rulemaking. These amendments will make Indiana's air permitting rules consistent with required federal air permitting regulations, on this topic.

Alternatives to Be Considered Within the Rulemaking

The First Notice of Comment Period, published on May 4, 2011 (DIN: [20110504-IR-326110251FNA](#)), included two alternatives for the rulemaking. This Continuation of First Notice of Comment Period adds one additional alternative to be considered.

Alternative 3. Update Indiana's air permitting rules at [326 IAC 2](#) to make Indiana's PSD air permitting rule consistent with federal PSD air permitting regulations by codifying that NO_x is a precursor for ozone.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards) and 40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) are applicable federal laws impacting this rulemaking. 40 CFR 50 contains the standards for criteria pollutants. 40 CFR 51 stipulates what states must include in their PSD programs in order to get U.S. EPA approval of their PSD rules.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 3. This alternative is an incorporation of federal regulations. The CAA requires states to develop a general plan to attain and maintain the national ambient air quality standards. U.S. EPA codified that NO_x is a precursor of ozone in their 2005 Final Rule to Implement the 8-hour Ozone NAAQS. Indiana is required to update the state's PSD air permitting rules to codify that NO_x is a precursor for ozone in

Indiana. This amendment is a clarification of rule language to make it consistent with federal regulations and, therefore, IDEM concludes that there is no fiscal impact as a result of this proposed rule amendment.

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

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 232-8962
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#11-251 PM, NSR Amendments
Amy Smith Mail Code 61-50

Rule and State Implementation Plan Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 7, 2011.

Additional information regarding this action may be obtained from Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

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