

Regulatory Analysis

Title 326 Indiana Department of Environmental Management LSA Document #26-31

I. Description of Rule

a. History and Background of the Rule

The U.S. Environmental Protection Agency (U.S. EPA) sets the National Ambient Air Quality Standards (NAAQS) for six common and widespread criteria air pollutants. When U.S. EPA issues a new or revised standard, it issues air quality designations determining which areas of the country are, or are not, meeting the NAAQS based on air quality data and any state recommendations. U.S. EPA maintains lists of these designations at 40 CFR 81. Indiana's designations, broken down by county and smaller subdivisions where necessary, are listed at 40 CFR 81.315.

On July 1, 2023, Public Law 25-2023 was codified at IC 13-17-3-14. It provides that any federal regulation adopting or amending a NAAQS designation for any area in Indiana is effective and enforceable upon the effective date of the federal regulation. Previously, Indiana's rules maintained NAAQS designation tables at 326 IAC 1-4, and IDEM individually updated each county for each criteria pollutant as their statuses changed or the federal regulations were updated. Indiana's codification of these tables was more informative than substantive: as noted above, U.S. EPA sets the NAAQS and related designations, and Indiana's rules merely reiterated the information in the federal designation tables.

On October 9, 2024, a final rule was adopted that repealed 326 IAC 1-4 and removed the NAAQS attainment status tables from state rules (LSA #23-809), which had become unnecessary due to IC 13-17-3-14. To avoid any potential confusion about where to find current NAAQS designations, this rulemaking proposes to add a new rule at 326 IAC 1-4.1 that incorporates by reference 40 CFR 81.315.

Additionally, this rulemaking corrects references to repealed rules and language indicating the "board" designates NAAQS attainment areas. References to the now-repealed 326 IAC 1-4 in 326 IAC 2-1.1, 326 IAC 2-2, 326 IAC 2-3, and 326 IAC 4-1 will be changed to reference the new rule at 326 IAC 1-4.1. At 326 IAC 1-2 and 326 IAC 6-5, language indicating the "board" makes NAAQS designations is being corrected to point to the federal NAAQS designations. Updating these citations in the permitting rules at 326 IAC 2 and elsewhere in Title 326 will ensure that the federal attainment designation statuses of all Indiana counties are clearly referenced in state rules and will maintain consistency between state and federal regulations. IDEM program staff continues to maintain a separate compilation of the attainment status designations for all counties in Indiana, including federal amendments to those designations, and it is posted for public review on the Office of Air Quality Air Programs web page at <https://www.in.gov/idem/sips/nonattainment-status-of-counties/>.

Finally, this rulemaking proposes to incorporate by reference the NAAQS rather than repeat them in 326 IAC 1-3-4. Accordingly, at 326 IAC 6-2-1, the reference to 326 IAC 1-4 has been changed to 326 IAC 1-3.

b. Scope of the Rule

This rulemaking makes non-substantive changes to implement IC 13-17-3-14(a). Specifically, it updates outdated citations to 326 IAC 1-4 to now reference the rule added at 326 IAC 1-4.1, which incorporates by reference the federal NAAQS attainment designation status for each county in Indiana at 40 CFR 81.315. It also incorporates by reference the NAAQS, rather than reiterating them in state rule, and makes other conforming changes.

c. Statement of Need

This rule is necessary to update Title 326 to remove the outdated references to the repealed rule at 326 IAC 1-4, and instead directly references the federal designations at 40 CFR 81.315 that are being incorporated by reference in the new rule at 326 IAC 1-4.1. These and other conforming changes are needed to resolve any conflicts created by the repeal of 326 IAC 1-4.

d. Statutory Authority for the Proposed Rule

IC 13-14-8; IC 13-14-9; IC 13-17-3-14.

e. Fees, Fines, and Civil Penalties

This rule is an administrative update to correct references to a previously repealed rule, and as such, there are no fines, fees, or civil penalties associated with this rule.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule

April, 2026.

b. Estimated Fiscal Impact on State and Local Government

There is no fiscal impact on state and local government as a result of this rulemaking. This rule is an administrative update that corrects references to the repealed rule at 326 IAC 1-4, adds a new rule at 326 IAC 1-4.1 to directly reference the federal regulations at 40 CFR 81.315 for NAAQS attainment designations in each of Indiana's counties, and makes other conforming changes.

c. Sources of Expenditures or Revenues Affected by the Rule

For the reasons given directly above, there are no sources of expenditures or revenues affected by this rulemaking.

III. Impacted Parties

This proposed rule has no substantive impact on any parties. The NAAQS, set by U.S. EPA, apply to Indiana regardless of whether this rule is promulgated. In general, because NAAQS affect the entire state, the parties impacted by this rulemaking are any sources of regulated air emissions in the state. There are over 2,000 permitted sources in Indiana.

IV. Changes in Proposed Rule

- Updates 326 IAC 1-2-5 and 326 IAC 1-2-46 to specify the geographical areas mentioned in the “attainment area” and “nonattainment areas” definitions are determined by federal regulations at 40 CFR 81.315
- Updates outdated language in 326 IAC 1-3-1
- Strikes out old language in 326 IAC 1-3-4 and states that NAAQS can be found in 40 CFR 50. The stricken language mirrors the federal regulations being incorporated by reference.
- Adds a new rule at 326 IAC 1-4.1 that clarifies, per IC 13-17-3-14, the attainment status for NAAQS as being made under U.S. EPA authority and can be found at 40 CFR 81.315
- Updates several citations in 326 IAC 2-1.1-4, 326 IAC 2-1.1-5, 326 IAC 2-2-1, 326 IAC 2-2-2, 326 IAC 2-3-2, and 326 IAC 4-1-4.1 to reference the new rule at 326 IAC 1-4.1
- Revises 326 IAC 6-2-1 to reference violation of the NAAQS standards at 326 IAC 1-3
- Revises 326 IAC 6-5-1 to remove the reference to “the board”. IDEM proposes this change in response to discovering a mistake in its original proposed rule, which referenced the NAAQS found at 40 CFR 81.315. Instead of referencing federal law, this introductory rule language needs to reference old air quality designations, found in subdivisions (a)(1) and (2), that no longer exist in federal law. IDEM maintains these designations for purposes of state law and to clarify applicability of state fugitive dust rules at 326 IAC 6-4. This change does not affect the proposed rule’s regulatory analysis whatsoever because the designations listed in 326 IAC 6-5-1 apply regardless of whether the leading language references federal code. Removing the federal code reference from the draft rule simply fixes an oversight and maintains the rule’s status quo.

V. Benefit Analysis

a. Estimate of Primary and Direct Benefits of the Rule

It is not possible to quantify the primary and direct benefits of this rule. The attainment designation status tables for each county in Indiana serve as a reference for sources that help them maintain air emissions at or under federally designated levels. Therefore, the primary and direct benefit of this rulemaking is to implement IC 13-17-3-14(a) by harmonizing the language in Title 326 after the 2024 repeal of 326 IAC 1-4. This rulemaking helps clarify cross-references to NAAQS designations and specifies where to find them in federal law. Generally, the regulated community benefits from clear,

corrected rule language, free from erroneous cross-references, and the incorporation by reference of federal regulations should mitigate potential confusion among the public and simplify Indiana's rule language. IDEM believes this benefit is significant.

b. Estimate of Secondary or Indirect Benefits of the Rule

There are no indirect benefits to this rulemaking.

c. Estimate of Any Cost Savings to Regulated Industries

There are no cost savings to regulated industries resulting from this rulemaking because they are already required to operate under federal NAAQS regulations, and this rulemaking is an administrative update to correct citations to repealed rule language at 326 IAC 1-4 and make other conforming changes.

VI. Cost Analysis

a. Estimate of Compliance Costs for Regulated Entities

There are no costs for regulated entities, either direct or indirect, as a result of this rulemaking. This rule ensures that regulated entities are following the federal regulations for NAAQS at 40 CFR 81.315 by updating references in Title 326 to the new rule at 326 IAC 1-4.1. These federal regulations apply throughout the state regardless of whether IDEM undertakes this rulemaking; therefore, this rulemaking action does not create any compliance costs for any regulated entities.

b. Estimate of Administrative Expenses Imposed by the Rules

There are no administrative expenses imposed by this rulemaking. It does not require any additional actions or procedures that are outside of those regularly completed for other administrative rulemakings by IDEM staff or the Legislative Services Agency to update and publish the rule.

c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6

There are no fees, fines, or civil penalties associated with this rulemaking.

d. If the implementation costs of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6)

No, there are no implementation costs associated with this rulemaking.

VII. Sources of Information

a. Independent Verifications or Studies

For this rulemaking, IDEM relied on U.S. EPA's federal designations at 40 CFR 81.315. Indiana state law at IC 13-17-3-14 was amended by Public Law 25-2023 to make the federal attainment status designations immediately applicable for each county in the state.

b. Sources Relied Upon in Determining and Calculating Costs and Benefits

For this rulemaking, IDEM relied on information obtained from the Code of Federal Regulations, Indiana Administrative Code, and program staff in the Office of Air Quality.

VIII. Regulatory Analysis

There are marginal benefits and zero costs associated with this rulemaking, as this rule is a largely administrative update that changes citations in IDEM's air rules from the repealed rule at 326 IAC 1-4, to instead reference the federal regulations at 40 CFR 81.315, which are added in the new rule at 326 IAC 1-4.1. These changes simplify Indiana's environmental regulations and further implement the legislature's directive at IC 13-17-3-14. Accordingly, IDEM has determined that the benefits of the rules outweigh their costs.

IX. Contact Information of Staff to Answer Substantive Questions

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