
TITLE 326 AIR POLLUTION CONTROL DIVISION**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #22-388****CLARK, FLOYD, LAKE, AND PORTER COUNTY OZONE REDESIGNATIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 1-4-11](#), [326 IAC 1-4-23](#), [326 IAC 1-4-46](#), and [326 IAC 1-4-65](#), concerning the attainment designation status for Clark, Floyd, Lake, and Porter counties under the 2008 and 2015 8-hour National Ambient Air Quality Standards (NAAQS) for ozone and related updates to emissions reporting requirements at [326 IAC 2-6-1](#). IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-4-11](#); [326 IAC 1-4-23](#); [326 IAC 1-4-46](#); [326 IAC 1-4-65](#); [326 IAC 2-6-1](#).

AUTHORITY: [IC 13-14-8-1](#); [IC 13-15](#); [IC 13-17](#); [IC 13-17-3-14](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the draft rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to 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 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) an 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 [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 October 26, 2015, the United States Environmental Protection Agency (U.S. EPA) published a final rule in the Federal Register (FR) lowering the National Ambient Air Quality Standards (NAAQS) for ozone from 75 parts per billion (ppb) to 70 ppb (80 FR 65291). Ozone is one of the six criteria air pollutants established by the Clean Air Act and is known for being hazardous to human health and the environment.

An exceedance of the 2015 8-hour ozone NAAQS occurs when a monitor measures ozone above 70 ppb on average for an 8-hour period. A violation occurs when the average of the annual fourth highest daily maximum 8-hour ozone values over three consecutive years is greater than 70 ppb. This three-year average is termed the "design value" for the monitor. The design value for a nonattainment area is the highest monitor design value in the area.

Following the establishment of the 2015 NAAQS for ozone, U.S. EPA designated the Louisville, KY-IN area, which includes Clark and Floyd counties in Indiana, as "marginal nonattainment", effective August 3, 2018. U.S.

EPA also gave the same designation to the northern townships of Lake County as part of the Chicago, IL-IN-WI area (83 FR 25776). Subsequently, U.S. EPA designated the northern townships of Porter County as part of the Chicago marginal nonattainment area, effective July 14, 2021 (86 FR 31438).

During the 2019 to 2021 period, all ozone monitoring sites in the Louisville, KY-IN area recorded design values at or below the 2015 8-hour NAAQS for ozone. Accordingly, on February 21, 2022, IDEM submitted a formal request for redesignation, along with the requisite maintenance plan, for Clark and Floyd counties. In response, U.S. EPA finalized rules on July 5, 2022, that redesignated Clark and Floyd counties to attainment for the 2015 8-hour NAAQS for ozone (87 FR 39750).

Additionally, during the 2019 to 2021 period, all ozone monitoring sites in the Chicago-Naperville, IL-IN-WI area recorded design values at or below the 2008 8-hour NAAQS for ozone. Accordingly, on December 6, 2021, IDEM submitted a formal request for redesignation, along with the requisite maintenance plan for Lake and Porter counties. In response, U.S. EPA finalized rules on May 20, 2022, that redesignated Lake and Porter counties to attainment for the 2008 8-hour ozone standard (87 FR 30821).

However, during the 2018 to 2020 period, design values in the Chicago area remained above the 2015 8-hour NAAQS for ozone. In accordance with the Clean Air Act, on October 7, 2022, U.S. EPA changed the nonattainment status for the Chicago area, including the northern townships of Lake and Porter counties, from "marginal" to "moderate" nonattainment, effective November 7, 2022 (87 FR 60897).

This rulemaking will change the designation status tables for Clark, Floyd, Lake, and Porter counties, which can be found at [326 IAC 1-4-11](#), [326 IAC 1-4-23](#), [326 IAC 1-4-46](#), and [326 IAC 1-4-65](#). The changes are required by [IC 13-17-3-14](#) and will reflect U.S. EPA's current designations. This will allow for the use of appropriate permitting requirements for affected sources in the applicable counties and townships. Specifically, with the new designation, permits for affected sources in Clark and Floyd counties and the southern townships of Lake and Porter counties will be issued under the less stringent Prevention of Significant Deterioration (PSD) rules under [326 IAC 2-2](#).

There will be no fiscal impact on existing permitted sources as emission thresholds for major sources in "marginal" and "moderate" nonattainment areas under the ozone NAAQS are the same. The "moderate" nonattainment classification carries with it a requirement to implement certain measures unrelated to permitting, however the required measures, such as vehicle inspection and maintenance, are already in place in Lake and Porter counties due to the area's history of nonattainment under the ozone NAAQS. An area reclassified as "moderate" is required to reach attainment within six years. In accordance with the Clean Air Act, should the Chicago area fail to reach attainment within six years, the area, including the northern townships of Lake and Porter counties, will be reclassified as "serious" nonattainment under the 2015 8-hour NAAQS for ozone and major source permitting thresholds will decrease from 100 to 50 tons per year.

Finally, this rulemaking will remove Clark and Floyd counties, as well as the southern townships of Lake and Porter counties, from [326 IAC 2-6-1](#). This section includes applicable sources for emissions reporting requirements.

[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. 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.

Potential Fiscal Impact

The fiscal impact will be no greater than what is required by federal regulations. Permitting requirements in Clark and Floyd counties and the southern townships of Lake and Porter counties will be lessened. The permitting requirements for the northern townships of Lake and Porter counties will be unchanged.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Seth Engdahl, Rules Development Branch, Office of Legal Counsel at sengdahl@idem.in.gov, (317) 234-9535 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) 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 CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Kari Clevenger

IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison

IGCN 1316

100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), 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:

Drake Abramson
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
dabramso@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the attainment designation status for Clark, Floyd, Lake, and Porter counties under the 2008 and 2015 8-hour NAAQS for ozone as revised by federal rule and related emissions reporting changes. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption 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 [IC 13-17-3-14](#) to adopt the appropriate designation for Indiana counties for the 2015 and 2008 8-hour NAAQS for ozone as established by U.S. EPA.
- (3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because it will result in the Indiana Administrative Code reflecting the proper attainment status and will allow IDEM to issue the appropriate permits in the specified areas for new sources or sources conducting major modifications.
- (4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the draft rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
- (5) The draft rule is hereby incorporated into these findings.

Brian Rockensuess
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #22-388 Clark, Floyd, Lake, and Porter County Ozone Redesignations
Seth Engdahl
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By electronic mail to sengdahl@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at kkindric@idem.in.gov or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than February 3, 2023.

Additional information regarding this action may be obtained from Seth Engdahl, Rules Development Branch, Office of Legal Counsel, at sengdahl@idem.in.gov, (317) 234-9535 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-4-11](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-11](#) Clark County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 11. The following attainment status designations are applicable to Clark County:

Pollutant	Designation
SO ₂	Better than national standards.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Marginal nonattainment Attainment effective August 3, 2018 , July 5, 2022 , for the 2015 8-hour ozone standard.
PM _{2.5}	Unclassifiable or attainment effective January 28, 2019, for the 2012 annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 2006 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Unclassifiable or attainment effective January 29, 2012, for the 2010 NO ₂ standard.
Pb	Unclassifiable or attainment effective December 31, 2011, for the 2008 lead standard.

(Air Pollution Control Division; [326 IAC 1-4-11](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#); filed Jul 16, 2018, 1:17 p.m.: [20180815-IR-326180001FRA](#); filed Oct 1, 2019, 9:40 a.m.: [20191030-IR-326190083FRA](#); filed Jan 15, 2021, 12:51 p.m.: [20210210-IR-326200010FRA](#))

SECTION 2. [326 IAC 1-4-23](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-23](#) Floyd County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 23. The following attainment status designations are applicable to Floyd County:

Pollutant	Designation
SO ₂	Better than national standards.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Marginal nonattainment Attainment effective August 3, 2018 , July 5, 2022 , for the 2015 8-hour ozone standard.

PM _{2.5}	Unclassifiable or attainment effective January 28, 2019, for the 2012 annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 2006 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Unclassifiable or attainment effective January 29, 2012, for the 2010 NO ₂ standard.
Pb	Unclassifiable or attainment effective December 31, 2011, for the 2008 lead standard.

(Air Pollution Control Division; [326 IAC 1-4-23](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#); filed Jul 16, 2018, 1:17 p.m.: [20180815-IR-326180001FRA](#); filed Oct 1, 2019, 9:40 a.m.: [20191030-IR-326190083FRA](#); filed Jan 15, 2021, 12:51 p.m.: [20210210-IR-326200010FRA](#))

SECTION 3. [326 IAC 1-4-46](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-46](#) Lake County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 46. The following attainment status designations are applicable to Lake County:

Pollutant	Designation
SO ₂	Better than national standards.
CO	Attainment effective February 18, 2000, for the part of the city of East Chicago bounded by Columbus Drive on the north; the Indiana Harbor Canal on the west; 148 th Street, if extended, on the south; and Euclid Avenue on the east. Unclassifiable or attainment effective November 15, 1990, for the remainder of East Chicago and Lake County.
O ₃	Serious nonattainment Attainment effective September 23, 2019, May 20, 2022 , for the 2008 8-hour ozone standard.
O ₃	Marginal Moderate nonattainment effective August 3, 2018 November 7, 2022 , for the 2015 8-hour ozone standard for Calumet, Township, Hobart, Township, North, Township, Ross, Township, and St. John Township townships. Unclassifiable or attainment effective August 3, 2018, for the 2015 8-hour ozone standard for the remainder of the county.
PM _{2.5}	Unclassifiable or attainment effective January 28, 2019, for the 2012 annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 2006 24-hour PM _{2.5} standard.
PM ₁₀	Attainment effective March 11, 2003, for the cities of East Chicago, Hammond, Whiting, and Gary. Unclassifiable effective November 15, 1990, for the remainder of Lake County.
NO ₂	Unclassifiable or attainment effective January 29, 2012, for the 2010 NO ₂ standard.
Pb	Unclassifiable or attainment effective December 31, 2011, for the 2008 lead standard.

(Air Pollution Control Division; [326 IAC 1-4-46](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Oct 15, 2010, 1:51 p.m.: [20101110-IR-326100342FRA](#); filed Jun 7, 2012, 11:21 a.m.: [20120704-IR-326110742FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#); filed Jul 16, 2018, 1:17 p.m.: [20180815-IR-326180001FRA](#); filed Oct 1, 2019, 9:40 a.m.: [20191030-IR-326190083FRA](#); filed Jan 15, 2021, 12:51 p.m.: [20210210-IR-326200010FRA](#))

SECTION 4. [326 IAC 1-4-65](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-65](#) Porter County

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 65. The following attainment status designations are applicable to Porter County:

Pollutant	Designation
SO ₂	Cannot be classified for the area bounded on the north by Lake Michigan; on the west by the Lake County and Porter County line; on the south by I-80 and I-90; and on the east by the LaPorte County and Porter County line. The remainder of Porter County is better than national standards.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Serious nonattainment Attainment effective September 23, 2019; May 20, 2022 , for the 2008 8-hour ozone standard.
O ₃	Unclassifiable or attainment Moderate nonattainment effective August 3, 2018; November 7, 2022 , for the 2015 8-hour ozone standard for Center, Jackson, Liberty, Pine, Portage, Union, Washington, and Westchester townships. Unclassifiable or attainment effective August 3, 2018, for the remainder of the county.
PM _{2.5}	Unclassifiable or attainment effective January 28, 2019, for the 2012 annual PM _{2.5} standard.
PM _{2.5}	Unclassifiable or attainment effective December 13, 2009, for the 2006 24-hour PM _{2.5} standard.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Unclassifiable or attainment effective January 29, 2012, for the 2010 NO ₂ standard.
Pb	Unclassifiable or attainment effective December 31, 2011, for the 2008 lead standard.

(Air Pollution Control Division; [326 IAC 1-4-65](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Oct 15, 2010, 1:51 p.m.: [20101110-IR-326100342FRA](#); filed Jun 7, 2012, 11:21 a.m.: [20120704-IR-326110742FRA](#); filed Jan 30, 2013, 12:34 p.m.: [20130227-IR-326110774FRA](#); filed Oct 25, 2013, 2:41 p.m.: [20131120-IR-326130164FRA](#); filed Jul 16, 2018, 1:17 p.m.: [20180815-IR-326180001FRA](#); filed Oct 1, 2019, 9:40 a.m.: [20191030-IR-326190083FRA](#); filed Jan 15, 2021, 12:51 p.m.: [20210210-IR-326200010FRA](#))

SECTION 5. [326 IAC 2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-6-1](#) Applicability

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) This rule applies to all of the following:

(1) Sources required to have a Part 70 operating permit under [326 IAC 2-7](#).

(2) Sources located in the following counties that emit volatile organic compounds (VOC) or oxides of nitrogen (NO_x) into the ambient air at levels equal to or greater than twenty-five (25) tons per year:

(A) Lake; **Calumet, Hobart, North, Ross, and St. John townships only.**

(B) Porter; **Center, Jackson, Liberty, Pine, Portage, Union, Washington, and Westchester townships only.**

~~(C) Clark.~~

~~(D) Floyd.~~

(3) Sources that emit lead into the ambient air at levels equal to or greater than five (5) tons per year.

(b) All sources permitted by the department are subject to section 5 of this rule concerning additional information requests.

(c) Sources covered by subsection (a) must comply with the compliance schedule in section 3 of this rule.

(Air Pollution Control Division; [326 IAC 2-6-1](#); filed Nov 12, 1993, 4:00 p.m.: 17 IR 732; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2210; filed Jul 14, 2006, 1:25 p.m.: [20060809-IR-326050078FRA](#); filed Oct 21, 2016, 10:24 a.m.: [20161116-IR-326160162FRA](#); filed Apr 24, 2020, 4:52 p.m.: [20200506-IR-326190409FRA](#), eff Apr 24, 2020, see Executive Order 20-15, posted at [20200422-IR-GOV200234EOA](#))

[Notice of Public Hearing](#)

Posted: 01/04/2023 by Legislative Services Agency
An [html](#) version of this document.