

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #12-44**

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE REDESIGNATION OF PART OF DEARBORN COUNTY INCLUDING LAWRENCEBURG TOWNSHIP TO ATTAINMENT FOR THE ANNUAL PM_{2.5} STANDARD

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 1-4-16](#) concerning the redesignation of part of Dearborn County, including Lawrenceburg Township (Indiana portion of the Cincinnati-Hamilton area), to attainment for the annual fine particulate matter (PM_{2.5}) standard. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Air Pollution Control Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-4-16](#).

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

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 proposed 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

The first air quality standards for PM_{2.5} were promulgated on July 18, 1997 (62 FR 38652). The United States Environmental Protection Agency (U.S. EPA) promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), based on a three-year average of annual mean PM_{2.5} concentrations. In the same rulemaking, U.S. EPA promulgated a 24-hour standard of 65 $\mu\text{g}/\text{m}^3$, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, U.S. EPA retained the annual average standard of 15 $\mu\text{g}/\text{m}^3$, but revised the 24-hour standard to 35 $\mu\text{g}/\text{m}^3$, based again on the three-year average of the 98th percentile of 24-hour concentrations (71 FR 61144).

On January 5, 2005, U.S. EPA designated the Indiana portion of the Cincinnati-Hamilton area as nonattainment for the 1997 PM_{2.5} air quality standards (70 FR 944). In that action, U.S. EPA defined the Indiana portion of the Cincinnati-Hamilton nonattainment area to include part of Dearborn County, including Lawrenceburg

Township.

On January 25, 2011, IDEM submitted a request to U.S. EPA for approval of the redesignation of the Indiana portion of the Cincinnati-Hamilton area to attainment of the annual PM_{2.5} standard. U.S. EPA published approval of Indiana's request to redesignate the Indiana portion of the Cincinnati-Hamilton area to attainment for the annual PM_{2.5} standard on December 23, 2011 (76 FR 80253). U.S. EPA's actions were based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Section 107(d)(3)(E) of the Clean Air Act (CAA).

U.S. EPA concluded that the following criteria have been met with respect to the annual PM_{2.5} standard in the Indiana portion of the Cincinnati-Hamilton area:

1. The areas have attained the applicable air quality standards.
2. The areas have fully approved State Implementation Plans (SIPs) under Section 110(k) of the CAA.
3. U.S. EPA has determined that the improvement in air quality in these areas is due to permanent and enforceable emission reductions.
4. U.S. EPA has determined that the maintenance plans for these areas have met all of the requirements of Section 175A of the CAA.
5. The state has met all requirements applicable to these areas under Section 110 and Part D of the CAA.

With this notice, IDEM is proposing to make changes to [326 IAC 1-4-16](#), to incorporate the final federal approval of the redesignation of the Indiana portion of the Cincinnati-Hamilton area to attainment for the annual PM_{2.5} standard. This rulemaking will also allow affected sources to be permitted under the prevention of significant deterioration (PSD) program under [326 IAC 2-2](#), instead of the emission offset programs under [326 IAC 2-3](#).

[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.

Potential Fiscal Impact

Because this is an incorporation of existing federal law, no impact beyond that already imposed by the federal law is imposed by this rulemaking. Therefore, there will be no fiscal impact from the implementation of this rulemaking.

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 Ryan Knapick, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 232-8229 or (800) 451-6027 (in Indiana).

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:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
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

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation of federal regulations that amend [326 IAC 1-4-16](#) concerning the redesignation of the Indiana portion of the Cincinnati-Hamilton area to attainment for the annual PM_{2.5} standard as required by federal rule. 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 federal law to adopt attainment status requirements as established by the United States Environmental Protection Agency.
- (3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule because it will ensure that state rules are consistent with federal regulations.
- (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 proposed rule from the first or second public 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.

Thomas W. Easterly
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 #12-44 Dearborn County PM_{2.5} Redesignation
Ryan Knapick 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
- (2) By facsimile to (317) 233-5967. Please confirm the timely receipt of your faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.
- (3) By electronic mail to rknapick@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when you send 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 email address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

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 on which you are commenting.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than February 24, 2012. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Ryan Knapick, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-4-16](#) IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-16 Dearborn County

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

Affected: [IC 13-15](#)

Sec. 16. The following attainment status designations are applicable to Dearborn County:

Pollutant	Designation
SO ₂	Cannot be classified.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Attainment effective May 11, 2010, for the 8-hour ozone standard. ¹
PM_{2.5}	Attainment effective December 23, 2011, for the annual PM_{2.5} standard for Lawrenceburg Township.
PM ₁₀	Unclassifiable effective November 15, 1990.
NO ₂	Cannot be classified or better than national standards.
Pb	Not designated.
¹ Unclassifiable or attainment effective October 18, 2000, for the 1-hour ozone standard, which was revoked effective June 15, 2005.	

(Air Pollution Control Board; [326 IAC 1-4-16](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed Oct 15, 2010, 1:51 p.m.: [20101110-IR-326100342FRA](#))

[Notice of Public Hearing](#)

Posted: 01/25/2012 by Legislative Services Agency
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