

TITLE 326 AIR POLLUTION CONTROL DIVISION

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #20-10**

VIGO COUNTY SO₂ REDESIGNATION, LAKE AND PORTER COUNTIES 2008 8-HOUR OZONE RECLASSIFICATION, AND CLARK, FLOYD, LAKE, AND PORTER COUNTIES PM_{2.5} UPDATES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to: [326 IAC 1-4-11](#) and [326 IAC 1-4-23](#) to correct effective dates for Clark and Floyd counties for the 2012 annual particulate matter with a diameter of 2.5 microns or less (PM_{2.5}) National Ambient Air Quality Standard (NAAQS); [326 IAC 1-4-46](#) and [326 IAC 1-4-65](#) to reclassify Lake and Porter counties from "moderate" to "serious" nonattainment for the 2008 8-hour ozone NAAQS and to correct effective dates for the 2012 PM_{2.5} NAAQS; and [326 IAC 1-4-85](#) to update the designation status for Vigo County from "nonattainment" to "attainment" for the 2010 primary 1-hour sulfur dioxide (SO₂) NAAQS. 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 1-4-85](#).

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

This rulemaking addresses the designation tables in [326 IAC 1-4](#) for three different pollutants and five counties. This rulemaking will update the state rule for consistency with the current federal designations for these counties in the Code of Federal Regulations (CFR) at 40 CFR 81.315.

On July 8, 2019, the United States Environmental Protection Agency (U.S. EPA) published the redesignation of Fayette and Harrison townships in Vigo County for the 2010 SO₂ NAAQS from nonattainment to attainment in the Federal Register (84 FR 32317). State air permits must be issued in accordance with either the designations in [326 IAC 1-4](#) or an effective emergency rule that supersedes the existing state rule. Because certain permitting

requirements are different for attainment and nonattainment areas, it is critical that the state rules reflect the correct attainment status for each county in the state.

On July 11, 2019, U.S. EPA published a correction in the Federal Register (84 FR 33008) to amend the effective dates of the redesignation of certain areas in Indiana for the 2012 PM_{2.5} NAAQS, including Clark, Floyd, Lake, and Porter counties. This rulemaking will update the effective dates as well as update the designation status from unclassifiable to unclassifiable or attainment for consistency with the federal language in 40 CFR 81.315.

On August 23, 2019, U.S. EPA finalized its determination that the Chicago nonattainment area, which includes Lake and Porter counties in Indiana that are currently classified as moderate nonattainment, failed to attain the 2008 8-hour ozone NAAQS using 2015 through 2017 monitoring data by the attainment date of July 20, 2018 (84 FR 44238). As required by Section 181(b)(2)(A) of the Clean Air Act, the area has been reclassified to serious nonattainment by U.S. EPA for the 2008 8-hour ozone NAAQS.

This rulemaking will allow the regulated entities to be properly permitted and update the county designation tables to be consistent with federal 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 contain no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

There is no fiscal impact from the implementation of this rule beyond that already imposed by federal law.

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 Krystal Hackney, Rules Development Branch, Office of Legal Counsel at (317) 232-3158 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:

Angela Taylor
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:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@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:

Erin Moorhous
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
emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding this rulemaking to update the designation status for the 2010 SO₂ standard for a portion of Vigo County, Indiana; reclassify Lake and Porter counties for the 2008 8-hour ozone NAAQS; and update the 2012 PM_{2.5} effective dates for Clark, Floyd, Lake, and Porter counties 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 and state law to adopt the redesignation of certain townships in Vigo County for the 2010 SO₂ NAAQS as established by U.S. EPA.
- (3) Indiana is required by federal and state law to adopt the updates and corrections for the 2012 PM_{2.5} NAAQS for Clark, Floyd, Lake, and Porter counties.
- (4) Indiana is required by federal and state law to adopt the reclassification for the 2008 8-hour ozone NAAQS for Lake and Porter counties.
- (5) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because it will allow sources of certain air pollutants to be properly permitted in relation to the 2010 SO₂ standards and the 2008 8-hour ozone standards.
- (6) 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\(a\)\(1\)](#).
- (7) The draft rule is hereby incorporated into these findings.

Bruno L. Pigott
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 #20-10 SO₂ Redesignations, 2008 8-Hour Ozone Reclassifications, and PM_{2.5} Updates
Krystal Hackney
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 facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.
- (3) By electronic mail to khackney1@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.**
- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, 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, faxed, or time stamped not later than February 28, 2020. 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 Krystal Hackney, Rules Development Branch, Office of Legal Counsel, (317) 232-3158 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 effective August 3, 2018, for the 2015 8-hour ozone standard.
PM _{2.5}	Unclassifiable or attainment effective April 15, 2015, 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](#))

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 effective August 3, 2018, for the 2015 8-hour ozone standard.
PM _{2.5}	Unclassifiable or attainment effective April 15, 2015, 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](#))

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](#)

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	Moderate Serious nonattainment effective June 3, 2016 , September 23, 2019 , for the 2008 8-hour ozone standard.
O ₃	Marginal nonattainment effective August 3, 2018, for the 2015 8-hour ozone standard for Calumet Township, Hobart Township, North Township, Ross Township, and St. John Township. 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 April 15, 2015 , 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](#))

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](#)

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	Moderate Serious nonattainment effective June 3, 2016 , September 23, 2019 , for the 2008 8-hour ozone standard.
O ₃	Unclassifiable or attainment effective August 3, 2018, for the 2015 8-hour ozone standard.
PM _{2.5}	Unclassifiable or attainment effective April 15, 2015 , 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](#))

SECTION 5. [326 IAC 1-4-85](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-85](#) Vigo County

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

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

Sec. 85. The following attainment status designations are applicable to Vigo County:

Pollutant	Designation
SO ₂	Nonattainment Attainment effective October 4, 2013 , July 8, 2019 , for the 2010 SO ₂ standard for Fayette and Harrison townships. Better than national standards Unclassifiable or attainment effective April 9, 2018 , for the remainder of the county.
CO	Unclassifiable or attainment effective November 15, 1990.
O ₃	Unclassifiable or attainment effective January 16, 2018, for the 2015 8-hour ozone standard.
PM _{2.5}	Unclassifiable or attainment effective April 15, 2015, 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 1-4-85](#); 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 May 14, 2014, 10:59 a.m.: [20140611-IR-326130502FRA](#); filed Jul 16, 2018, 1:17 p.m.: [20180815-IR-326180001FRA](#); filed Oct 1, 2019, 9:40 a.m.: [20191030-IR-326190083FRA](#))

[Notice of Public Hearing](#)

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