

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #20-473**

MARION COUNTY SULFUR DIOXIDE REDESIGNATION AND CITY OF MUNCIE LEAD REDESIGNATION

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 1-4-19](#) and [326 IAC 1-4-50](#) concerning the attainment designation status for a portion of the city of Muncie under the 2008 annual primary and secondary National Ambient Air Quality Standards (NAAQS) for lead and the attainment designation status for portions of Marion County under the 2010 1-hour primary NAAQS for sulfur dioxide. 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 1-4-19](#); [326 IAC 1-4-50](#).

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

On October 15, 2008, the United States Environmental Protection Agency (U.S. EPA) lowered the 2008 annual primary and secondary NAAQS for lead to 0.15 micrometers per cubic meter (73 FR 66964). Lead NAAQS were established on September 29, 1978, at a level of 1.5 micrograms per cubic meter (43 FR 46246). Lead is one of the six criteria pollutants outlined in the Clean Air Act (CAA) as being particularly hazardous to human health and the environment. Lead emitted into the air can be inhaled or ingested once it settles. After lead enters the body, it is rapidly absorbed into the bloodstream and results in a broad range of negative health effects, including damage to red blood cells, weakened immune system, cardiovascular disease, and kidney damage. Lead can also impact the developing nervous system in children, causing learning disabilities, IQ loss, and delinquent behavior. These cognitive effects generally persist into adulthood as well.

On November 16, 2010, U.S. EPA established air quality designations for the 2008 NAAQS (75 FR 71033). These designations became effective on December 31, 2010. U.S. EPA designated a small portion of the city of

Muncie as nonattainment for lead. This area, located in Delaware County, was established in the immediate vicinity of Exide Technologies and encompasses an area bounded by West 26th Street/Hines Road to the north, Cowan Road to the east, West Fuson Road to the south, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue.

In response to this designation, the Indiana Air Pollution Control Board adopted limits for applicable sources to ensure timely attainment. These limits were in full effect by January 2014 and were submitted to U.S. EPA for State Implementation Plan approval on March 14, 2013. In 2015, the area achieved the 2008 lead standard and on April 14, 2016, IDEM submitted a Request for Redesignation and Maintenance Plan for Lead Attainment of the Muncie 2008 Annual Lead Nonattainment Area. Subsequently, on May 15, 2020, U.S. EPA published a final rule at 85 FR 29331 that granted IDEM's request and redesignated portions of the city of Muncie to attainment for the 2008 annual primary and secondary NAAQS for lead.

On June 2, 2010, U.S. EPA promulgated a new primary NAAQS for sulfur dioxide (75 FR 35520). This new standard replaced the two primary standards of 140 parts per billion (ppb) evaluated over 24-hours and 30 ppb evaluated over an entire year with a 1-hour standard of 75 ppb. Like lead, sulfur dioxide is one of the six criteria pollutants outlined in the CAA as being particularly hazardous to human health and the environment. It is primarily generated through the combustion of fossil fuels and it can have detrimental effects on the respiratory system. Sulfur dioxide is also one of the primary contributors to acid rain, which damages lakes, streams, trees, and soil.

On July 25, 2013, using monitored air quality data measured during 2009, 2010, and 2011, U.S. EPA designated Center, Perry and Wayne townships in Marion County as nonattainment for the 2010 sulfur dioxide NAAQS (78 FR 47191). This designation became effective on October 4, 2013. In response, controls and operational changes were made at six identified facilities in Marion County that were deemed to have caused or contributed to the nonattainment area. These facilities include Belmont Advanced Wastewater Treatment Plant, Citizens Thermal, Indianapolis Power and Light – Harding Street Generating Station, Quemetco, Rolls Royce Corporation, and Vertellus Agriculture and Nutrition Specialties. The controls and operational changes implemented at the facilities resulted in attainment of the sulfur dioxide NAAQS by the end of 2016.

Subsequently, on July 10, 2017, IDEM submitted a Request for Redesignation and Maintenance Plan for Sulfur Dioxide Attainment of the Indianapolis, Indiana partial Marion County 2010 Primary 1-Hour Sulfur Dioxide Nonattainment Area. On May 21, 2020, U.S. EPA published a final rule at 85 FR 30844 that granted IDEM's request and redesignated Center, Perry, and Wayne townships in Marion County to attainment for the 2010 1-hour primary NAAQS for sulfur dioxide.

In response to the final rules promulgated by U.S. EPA that resulted in the redesignation of the Muncie, Indiana 2008 Annual Lead Nonattainment Area and the Indianapolis, Indiana partial Marion County 2010 Primary 1-Hour Sulfur Dioxide Nonattainment Area, this rulemaking updates the two designation tables found at [326 IAC 1-4-19](#) and [326 IAC 1-4-50](#) so that the Indiana Administrative Code reflects the federal designations for the aforementioned areas.

Relevant air permits are issued pursuant to the designations found at [326 IAC 1-4](#). Therefore, reflecting the accurate designations is necessary for proper permitting. As a result of U.S. EPA's recent attainment designations, IDEM will apply Prevention of Significant Deterioration under [326 IAC 2-2](#) for permitting any new sources or major modifications to sources in the specified areas. Currently, such permitting is conducted under Emission Offset pursuant to [326 IAC 2-3](#). This type of permitting is more restrictive. IDEM intends to continue to enforce all rules related to the emissions of sulfur dioxide emissions in the former Indianapolis, Indiana partial Marion County Nonattainment Area and all rules related to the emissions of lead in the former City of Muncie Nonattainment Area.

[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 a positive fiscal impact on sources that are seeking to build new facilities or conduct major modifications to existing facilities as permitting in the specified areas will be less restrictive as a result of this rulemaking.

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 (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:

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:

Joseph Fagan
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 586-3807
jfagan@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
emoorhou@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the designation status of portions of the city of Muncie for the 2008 NAAQS for lead and Perry, Center, and Wayne townships in Marion County for the 2010 NAAQS for sulfur dioxide 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 state law to adopt redesignation of portions of the city of Muncie for the 2008 lead NAAQS as established by the U.S. EPA.
- (3) Indiana is required by state law to adopt redesignation of Center, Perry, and Wayne townships in Marion County for the 2010 sulfur dioxide NAAQS as established by the U.S. EPA.
- (4) 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 less restrictive permits in the specified areas for new sources or sources conducting major modifications.
- (5) 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\(a\)\(1\)](#).
- (6) 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 #20-473 Marion County Sulfur Dioxide Redesignation and City of Muncie Lead Redesignation
 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 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 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.**

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 October 23, 2020.

Additional information regarding this action may be obtained from Seth Engdahl, Rules Development Branch, Office of Legal Counsel, (317) 232 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-4-19](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-19](#) Delaware County

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

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

Sec. 19. The following attainment status designations are applicable to Delaware County:

Pollutant	Designation
SO ₂	Better than national standards.
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	Nonattainment Attainment effective December 31, 2010 , May 15, 2020 , for a portion of the city of Muncie, Indiana bounded to the north by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue. Unclassifiable or attainment effective December 31, 2011, for the remainder of the county.

(Air Pollution Control Division; [326 IAC 1-4-19](#); 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](#); errata filed Nov 27, 2019, 11:23 a.m.: [20191225-IR-326190644ACA](#))

SECTION 2. [326 IAC 1-4-50](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-50](#) Marion County

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

Sec. 50. The following attainment status designations are applicable to Marion County:

Pollutant	Designation
SO ₂	Nonattainment Attainment effective October 4, 2013 , May 21, 2020 , for the 2010 SO ₂ standard for Center, Perry, and Wayne townships. Better than national standards for the remainder of the county.
CO	Attainment effective February 18, 2000, for the part of the city of Indianapolis bounded by 11th Street on the north; Capitol Avenue on the west; Georgia Street on the south; and Delaware Street on the east. Unclassifiable or attainment effective November 15, 1990, for the remainder of Indianapolis and Marion County.
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 1-4-50](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); filed May 14, 2008, 2:36 p.m.: [20080611-IR-326070840FRA](#); 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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