

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #22-218**

OZONE REDESIGNATION AND EMISSIONS REPORTING UPDATES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 1-4-46](#) and [326 IAC 1-4-65](#) concerning updates to the attainment designation status for Lake and Porter counties for the 2008 8-hour ozone standard, and amendments to [326 IAC 2-6-1](#) to update the emissions reporting requirement for the northern portions of Lake and Porter counties. 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 1-4-46](#); [326 IAC 1-4-65](#); [326 IAC 2-6-1](#).

AUTHORITY: [IC 13-14-9-8](#); [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 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 May 20, 2022, the United States Environmental Protection Agency (U.S. EPA) published a final rule in the Federal Register (FR) designating Lake and Porter counties in Indiana as attainment for the 2008 8-hour ozone standard (87 FR 30821). This determination was based on quality-assured and certified monitoring data for the 2019 through 2021 ozone season and meets the redesignation requirements under section 107(d)(3) of the Clean Air Act (CAA).

This rule amends [326 IAC 1-4-46](#) and [326 IAC 1-4-65](#) to update the attainment designation status of Lake and Porter counties to attainment for the 2008 8-hour ozone standard based on the federal rule. Additionally, this rule amends [326 IAC 2-6-1](#) to apply only to sources in Calumet, Hobart, North, Ross, and St. John townships in Lake County, and Center, Jackson, Liberty, Pine, Portage, Union, Washington, and Westchester in Porter County that emit either volatile organic compounds (VOCs) or oxides of nitrogen (NO_x) into the ambient air at levels equal to or greater than twenty-five tons per year (TPY) to annually report their actual emission levels to the state.

These northern portions of Lake and Porter counties remain designated nonattainment for the 2015 8-hour ozone standard as a portion of the Chicago, IL-IN-WI area under section 107(d)(1)(B) of the CAA (83 FR 25776 and 86 FR 31438), and therefore are still subject to [326 IAC 2-6-1](#).

[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

This rulemaking amends [326 IAC 1-4-46](#) and [326 IAC 1-4-65](#) to update the attainment designation status for the 2008 8-hour ozone standard for Lake and Porter counties, and amends [326 IAC 2-6-1](#) to update the emissions reporting requirement for the northern townships of Lake and Porter counties, to ensure that state rules are consistent with federal regulations. Because this rule is an adoption of federal regulations, no impact beyond that already imposed by federal law is imposed by this rulemaking. Therefore, there will be no fiscal impact from the implementation 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 Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at kwash@idem.in.gov, (317) 232-8229 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:

Emily Totten
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 402-3062
etotten@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\(9\)](#), and 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 rulemaking on amendments to [326 IAC 1-4-46](#), [326 IAC 1-4-65](#), and [326 IAC 2-6-1](#) concerning the attainment designation status and emissions reporting requirements for 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) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule because it amends [326 IAC 1-4-46](#) and [326 IAC 1-4-65](#) to update Lake and Porter counties to attainment for the 2008 8-hour ozone standard, and amends [326 IAC 2-6-1](#) to indicate that only sources located in the northern portions of Lake and Porter counties that emit VOCs or NO_x into the ambient air at levels that are equal to or greater than twenty-five TPY, must annually report their actual emission levels to the state. This will ensure that state rules are consistent with federal regulations.
- (3) 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\(a\)\(1\)](#).
- (4) 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 #22-218 Ozone Redesignation and Emissions Reporting Updates
Keelyn Walsh
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 kwalsh@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 July 28, 2022.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, at kwalsh@idem.in.gov, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-4-46](#), PROPOSED TO BE AMENDED AT [20211222-IR-326210515FDA](#), SECTION 44, 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](#)

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

Pollutant	Designation
SO ₂	Unclassifiable or attainment effective April 9, 2018, for the 2010 primary 1-hour SO ₂ standard.
SO ₂	Better than the national standard for the 1971 secondary 3-hour SO ₂ standard effective October

	26, 2005.
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 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 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 2. [326 IAC 1-4-65](#), PROPOSED TO BE AMENDED AT [20211222-IR-326210515FDA](#), SECTION 62, 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	Unclassifiable or attainment effective April 30, 2021, for the 2010 primary 1-hour SO ₂ standard.
SO ₂	Cannot be classified for the 1971 secondary 3-hour SO ₂ standard effective October 5, 1978, 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. Better than the secondary 3-hour SO ₂ standard for the remainder of the county effective October 5, 1978.
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	Marginal nonattainment effective July 14, 2021, 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 3. [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](#)

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An [html](#) version of this document.