
TITLE 326 AIR POLLUTION CONTROL DIVISION

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #22-240****CLARK AND FLOYD COUNTY OZONE REDESIGNATION****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 1-4-11](#) and [326 IAC 1-4-23](#) concerning the attainment designation status for Clark and Floyd counties under the 2015 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. 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](#).

AUTHORITY: [IC 13-14-8-1](#); [IC 13-15](#); [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 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 particularly hazardous to human health and the environment. Specifically, ground level ozone is known to exacerbate respiratory illness and damage crops and forests. Ground level ozone is unique among the criteria pollutants in that it is not directly emitted into the air, rather it is created by chemical reactions with nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight. Therefore, control of ozone relies on the reduction of NO_x and VOCs, also known as "precursor emissions". NO_x is primarily generated through the combustion of fossil fuels. VOCs are also generated from fossil fuels; however, they are often the result of fossil fuels that have incompletely combusted or evaporated. Solvents used in paints and inks, as well as compressed aerosols, such as butane and propane, also contain VOCs.

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. On June 4, 2018, U.S. EPA designated the Louisville, KY-IN area, which includes Clark and Floyd counties in Indiana, as "marginal nonattainment" for ozone under the 2015 8-hour ozone NAAQS (83 FR 25776). U.S. EPA made this determination based on the design value of monitors during the three-year period of 2016 through 2018, which showed a violation level of 73 ppb.

Clark and Floyd counties were previously in nonattainment of the 1997 8-hour NAAQS for ozone (69 FR 23857). However, the counties were determined to be in attainment effective July 19, 2007 (72 FR 39571). IDEM has instituted several local control measures in response to these nonattainment designations. These measures include VOC reduction requirements, regulations on solid waste landfills, volatile organic liquid storage vessels, automobile refinishing, wood furniture coatings, and shipbuilding and ship repair operations, in addition to motor vehicle emission and fuel standards and a ban on residential burning. These measures are in addition to statewide controls, which include regulations on new facilities, surface coating emission limitations, organic solvent degreasing operations, petroleum sources, architectural and industrial maintenance coatings, and general standards for consumer and commercial products. These measures can be found at [326 IAC 4](#), [326 IAC 8](#), and [326 IAC 13](#).

Due to these control measures, the design value for ground level ozone in Clark and Floyd counties between 2019 and 2021 fell to a high of 64 ppb, well below the 2015 8-hour NAAQS for ozone. Accordingly, on February 22, 2022, IDEM submitted a formal request for redesignation, along with the requisite maintenance plan for the area. In response, U.S. EPA finalized rules on July 5, 2022, that redesignate Clark and Floyd counties to attainment for the 2015 8-hour NAAQS for ozone (87 FR 39750).

This rulemaking seeks to change the designation status tables for Clark and Floyd counties, which can be found at [326 IAC 1-4-11](#) and [326 IAC 1-4-23](#). The changes are required by [IC 13-17-3-14](#) and will reflect U.S. EPA's new attainment designation. This designation will allow for less stringent requirements for permitting relevant sources in Clark and Floyd counties. Specifically, with the new designation, permits for sources located in Clark and Floyd counties should be issued under Prevention of Significant Deterioration under [326 IAC 2-2](#), which have less stringent requirements than current permits, which are issued under Emission Offset 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. 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

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 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:

Jennifer Collins

IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison

IGCN 1316

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-9730 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\(9\)](#), 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 and Floyd counties under the 2015 8-hour NAAQS for ozone as revised 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 [IC 13-17-3-14](#) to adopt the appropriate designation of Clark and Floyd counties for the 2015 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 less restrictive 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 #22-240 Clark and Floyd County Ozone 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 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 September 9, 2022.

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](#), PROPOSED TO BE AMENDED AT [20211222-IR-326210515FDA](#), SECTION 10, 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	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 March 3, 1978.
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](#), PROPOSED TO BE AMENDED AT [20211222-IR-326210515FDA](#), SECTION 21, 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	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 March 3, 1978.
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](#))

[Notice of Public Hearing](#)

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