

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #21-258**

SULFUR DIOXIDE REDESIGNATION FOR DAVIESS AND PIKE COUNTIES IN INDIANA**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 1-4-15](#) and [326 IAC 1-4-64](#), concerning updates to the attainment designation status for Daviess and Pike counties under the primary and secondary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂). 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 1-4-15](#); [326 IAC 1-4-64](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9-8](#); [IC 13-17-3](#).

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

The Clean Air Act (CAA) requires that the United States Environmental Protection Agency (U.S. EPA) set NAAQS for pollutants that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health and welfare. U.S. EPA has set NAAQS for six criteria pollutants, which are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM), and SO₂. Each county in Indiana is classified, or designated, as being in attainment if air quality monitoring or modeling indicate that the area is meeting the NAAQS.

Areas are designated as nonattainment if the measured concentrations of one or more of these criteria pollutants exceed the NAAQS or contribute significant amounts of pollutants to an area that measures air quality that does not meet the NAAQS. An area can be redesignated from nonattainment to attainment if the area has demonstrated attainment of the standard, and if U.S. EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

Indiana's attainment status tables at [326 IAC 1-4](#) are periodically updated to reflect each county's attainment

status. On October 24, 2018, Indiana submitted a request for approval to U.S. EPA of the southwest Indiana nonattainment area's redesignation and maintenance plan and provided supplemental information to U.S. EPA on August 25, 2020. On March 2, 2021, U.S. EPA published the approved request for redesignation of the southwest Indiana SO₂ nonattainment area for Veale Township in Daviess County, and Washington Township in Pike County, to attainment for the 2010 1-hour primary SO₂ NAAQS (86 FR 12107). In this final action, U.S. EPA found that Indiana has demonstrated that this area is attaining the 2010 SO₂ NAAQS and that the improvement in air quality is due to permanent and enforceable reductions of SO₂ in the area. U.S. EPA also approved Indiana's maintenance plan, which is designed to ensure that the area will continue to maintain the SO₂ NAAQS in the future.

This rule amends [326 IAC 1-4-15](#) and [326 IAC 1-4-64](#) to update the attainment designation status for Veale Township in Daviess County and Washington Township in Pike County under the 2010 1-hour primary NAAQS for SO₂. This rule also amends [326 IAC 1-4-15](#) and [326 IAC 1-4-64](#) to update the designation status for the remaining portions of Daviess and Pike counties to unclassifiable or attainment under the 2010 1-hour primary SO₂ NAAQS as published by U.S. EPA on January 19, 2018 (83 FR 1098), and to clarify that these counties are designated as better than national secondary standards as published on March 3, 1978 (43 FR 8962). In addition to improving air quality in the area, the updates to the attainment designation status for Daviess and Pike counties will ease state and federal permitting burdens for the identified portions of these counties.

[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 will amend [326 IAC 1-4-15](#) and [326 IAC 1-4-64](#) to update the attainment designation status for Veale Township in Daviess County and Washington Township in Pike County, as well as the remaining portions of these counties, for SO₂ under the 2010 1-hour primary NAAQS, and clarify the county designation status under the national secondary standards. Because this update is a federal requirement to ensure that state rules are consistent with federal regulations, no impact beyond that already imposed by the federal law is imposed by 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 kwalsh@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:

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

emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on updates to the attainment designation status for Daviess and Pike counties under the primary and secondary NAAQS for SO₂ 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 to adopt the updates to the attainment designation status for Veale Township in Daviess County and Washington Township in Pike County, as well as the remaining portions of these counties, for SO₂ as established by the U.S. Environmental Protection Agency.
- (3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because it will update the attainment status designations for Veale Township in Daviess County and Washington Township in Pike County to attainment, and the remaining portions of these counties to unclassifiable or attainment, under the 2010 primary 1-hour NAAQS for SO₂. It also clarifies the county designation status as better than national secondary SO₂ standards and ensures 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 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.

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 #21-258, SO₂ Redesignation for Daviess and Pike Counties in Indiana

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 30, 2021.

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 1-4-15](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-15](#) Daviess County

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

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

Sec. 15. The following attainment status designations are applicable to Daviess County:

Pollutant	Designation
SO ₂	Nonattainment Attainment effective October 4, 2013 , April 30, 2021 , for the 2010 primary 1-hour SO ₂ standard for Veale Township. Unclassifiable or attainment effective April 9, 2018, for the remainder of the county. Better than national secondary standards for the remainder of the county. effective March 3, 1978.
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 1-4-15](#); 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](#))

SECTION 2. [326 IAC 1-4-64](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-64](#) Pike County

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

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

Sec. 64. The following attainment status designations are applicable to Pike County:

Pollutant	Designation
SO ₂	Nonattainment Attainment effective October 4, 2013 , April 30, 2021 , for the 2010 primary 1-hour SO ₂ standard for Washington Township. Unclassifiable or attainment effective April 9, 2018, for the remainder of the county. Better than national secondary standards for the remainder of the county. effective March 3, 1978.
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 1-4-64](#); filed Dec 26, 2007, 1:43 p.m.: [20080123-IR-326070308FRA](#); 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 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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