**Regulatory Analysis**

**TITLE 326** Indiana Department of Environmental Management
**LSA Document** #26-150

## I. Description of Rule

**a. History and Background of the Rule –** Pursuant to Executive Order 26-10, signed by Indiana's Governor on April 13, 2026, IDEM is initiating this interim rule to suspend the state requirements for low Reid vapor pressure (LRVP) fuel in Clark and Floyd counties. On February 26, 2026, the United States Environmental Protection Agency (U.S. EPA) approved the petition submitted by the Commonwealth of Kentucky to opt out of the reformulated gasoline (RFG) program and remove the requirement to sell RFG in the Louisville Moderate nonattainment area. Removal of the Federal Reformulated Gasoline Program from the Kentucky Portion of the Louisville Area, 91 FR 10008 (Mar. 2, 2026). The RFG program required fuel with LRVP in the Louisville Moderate nonattainment area, which includes Clark and Floyd counties in Indiana, but the opt out granted under the petition submitted by the Commonwealth of Kentucky did not apply to Clark and Floyd counties.

In addition to granting the Commonwealth of Kentucky's petition, a federal waiver was issued by U.S. EPA regarding the requirements in 40 CFR § 1090.215 to allow the production and distribution of a single national gasoline pool with 9 to 15 percent ethanol content at a common Reid Vapor Pressure (RVP) standard of 10 pounds per square inch (psi). Letter, U.S. EPA, Re: National Fuel Waiver to Create Single National Gasoline Pool (March 25, 2026), available at https://www.epa.gov/system/files/documents/2026-03/national-fuel-waiver-governors-3-25-26.pdf. This action will enable the use of fuels containing up to 10 percent or 15 percent ethanol. The 10 psi waiver is effective starting May 1, 2026. The U.S. EPA asserted its intention to issue new waivers effectively extending (renewing) the waiver until such time as the extreme and unusual fuel supply circumstances described are no longer present.

U.S. EPA's waiver only applies to federal law. State rulemaking is necessary to suspend or eliminate the requirements for purposes of state law. Accordingly, IDEM will also initiate a regular rulemaking to repeal the unnecessary LRVP requirements under 326 IAC 13-3 for Clark and Floyd counties in the Louisville, KY-IN Metropolitan area and remove LRVP as a control measure from Indiana's State Implementation Plan (SIP). An interim rule suspending these requirements is necessary because the regular rule would not become effective before the end of the 2026 summer fuel season.

**b. Scope of the Rule –** This interim rule suspends 326 IAC 13-3 in anticipation of the regular rulemaking that will repeal the article. Removal of this article's LRVP requirements will bring Clark and Floyd counties in line with the rest of the Louisville, KY-IN Metropolitan area, which no longer is subject to stricter fuel standards. *See* 91 FR 10008 (Mar. 2, 2026).

**c. Statement of Need –** The Clean Air Act (CAA) requires that the U.S. EPA set primary and secondary National Ambient Air Quality Standards (NAAQS) for the six criteria air pollutants considered harmful to public health and the environment. These pollutants are carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Each county in Indiana is classified, or designated, as being in attainment if air quality monitoring or modeling indicates that the area is meeting the NAAQS.

IDEM's Office of Air Quality monitors air quality data for each county in Indiana as part of its SIP and tracks whether these areas are in attainment or nonattainment for each of the six NAAQS criteria air pollutants. Clark and Floyd counties in Indiana are currently classified as attainment in the SIP for all air quality standards. These counties are part of the Louisville, KY-IN Area under 42 U.S.C. § 7407(c) and 40 CFR 81.35. Clark and Floyd are the most populous Indiana Counties within the Louisville Metropolitan Statistical Area (MSA) as classified by the U.S. Census Bureau. They were classified as part of the Louisville Nonattainment Area by the U.S. EPA under the 1-hour ozone standard in 1990, under the 1997 8-Hour ozone standard in 2004, and under the 2015 ozone standard in 2018. In addition to being the most populated among the Indiana MSA counties, they are also the only Indiana counties within the MSA that monitored ozone concentrations above the standards prior to nonattainment classification.

The Indiana portion of the Louisville area was re-designated from nonattainment to attainment for the 2015 8-hour ozone standard on July 5, 2022. However, the Kentucky portion of the Louisville, KY-IN Area is currently classified as nonattainment under the 2015 8-hour ozone standard.

RVP is a common measure of, and general overall term for, a gasoline's evaporation characteristics, or volatility. U.S. EPA regulates the RVP of gasoline sold during the summer ozone season in an effort to reduce evaporative emissions of volatile organic compounds (VOC) from the gasoline, which largely contribute to ground-level ozone, and to decrease the effects of ozone-related health problems. Section 211(h) of the CAA sets gasoline RVP limits that may not exceed 9.0 psi during the summer season.

Under Section 182 of the CAA, U.S. EPA required all ozone nonattainment areas to submit a reasonable further progress (RFP) plan to achieve a 15% reduction of 1990 year VOC emissions by 1996. Indiana's Clark and Floyd counties were classified as moderate nonattainment under the 1-hour ozone standard and were therefore subject to this requirement. In order to achieve 15% reduction of VOC emissions, the state could choose between different reasonable control measures. The best options for these reductions included either lowering the RVP of gasoline to 7.8 psi in Clark and Floyd counties or choosing an opt-in to the federal RFG program, pursuant to Section 211(k)(6) of the CAA. RFG is a type of gasoline that is blended to meet stricter performance standards for cleaner burning and is typically used in areas with higher levels of ozone pollution. Kentucky chose to address its 15% RFP plan requirements by opting into the federal RFG control measure for their 1-hour ozone standard SIP in 1995. 59 FR 38453 (July 28, 1994).

However, for Indiana, the RFG program could not be implemented into its SIP in time to qualify as a control measure that would help Clark and Floyd counties meet the 15% RFP plan requirements by 1996. Consequently, the state incorporated LRVP, which describes a reduction in summer fuel requirements as compared to a previously determined level, into its SIP as a control measure to address the 15% RFP plan for the 1-hour ozone standard in 1995. 61 FR 4895 (Feb. 9, 1996); 68 FR 42978 (Jul. 21, 2003). As part of Indiana's LRVP requirements, U.S. EPA determined that RFG is a compliant and suitable fuel to meet these standards because it achieves a slightly higher level of emission reductions than gasoline with a 7.8 psi RVP. Additionally, because the Kentucky portion of the Louisville, KY-IN Area accounts for most of the fuel consumption in the market, and Clark and Floyd counties in Indiana account for a smaller portion, refineries opt to deliver only RFG to the metro area, rather than supply two different fuel types to the same region. Therefore, RFG has historically been the only type of summer fuel distributed to the Louisville, KY-IN Area.

On February 28, 2025, the state of Kentucky petitioned U.S. EPA to opt out of the federal RFG program, with the stipulation of equivalent emissions reductions to be achieved by 2027. Kentucky also provided supplemental technical information with their petition that gave emission reduction estimates in support of their request. On February 26, 2026, U.S. EPA approved Kentucky's opt-out petition, with an effective date of May 27, 2026. 91 FR 10008 (Mar. 2, 2026). Before this approval, IDEM had initiated work to provide technical documentation in support of removing the LRVP control measure for Clark and Floyd counties from 326 IAC 13-3, as well as the state's SIP. U.S. EPA's approval of Kentucky's opt-out petition unexpectedly expedites Indiana's LRVP SIP removal schedule by one year, ahead of the 2027 summer fuel season.

Additionally, on March 25, 2026, U.S. EPA, in consultation with the U.S. Department of Energy and in accordance with the CAA, issued a waiver regarding the requirements in 40 C.F.R. § 1090.215 to allow the production and distribution of a single national gasoline pool with 9 to 15 percent ethanol content at a common RVP standard of 10 psi. Letter, U.S. EPA, Re: National Fuel Waiver to Create Single National Gasoline Pool (March 25, 2026), available at https://www.epa.gov/system/files/documents/2026-03/national-fuel-waiver-governors-3-25-26.pdf. This action will enable the use of fuels containing up to 10 percent or 15 percent ethanol. The 10 psi waiver is effective starting May 1, 2026.

Engine and fuel standards have changed multiple times since the LRVP fuel requirement was put in place. As a result, the emission reductions associated with LRVP have declined to the point that reductions are inconsequential today. The Kentucky opt-out petition for RFG demonstrated this issue for a more stringent fuel than LRVP gasoline, which had been used in more than 80% of the Louisville area. Additionally, photochemistry for ozone formation has changed significantly since the early 1990s. Following the serious nonattainment classification of the area in 1990, emission reductions were focused solely on VOCs, and as a result, significant reductions were made over the decade that followed. As Kentucky emphasized in its opt-out petition for RFG, recent photochemical modeling indicates that the Louisville area is now more responsive to reductions in oxides of nitrogen (NOx) as opposed to VOCs. Therefore, the LRVP program for Clark and Floyd counties is obsolete, and the removal of this requirement will not interfere with the area's ability to maintain compliance with the ozone standard and will not result in adverse air quality consequences.

Therefore, pursuant to Executive Order 26-10 signed by Governor Braun on April 13, 2026, IDEM is initiating this interim rule to align with the federal waiver by suspending the unnecessary LRVP requirements under 326 IAC 13-3 for Clark and Floyd counties. IDEM will also initiate a regular rulemaking to address this matter and remove LRVP fuel requirements as a control measure from Indiana's SIP. An interim rule is necessary because the regular rule would not become effective before the end of the 2026 summer fuel season.

**d. Statutory Authority for the Proposed Rule –** IC 4-22-2-37.2; IC 13-17-3

**e. Fees, Fines, and Civil Penalties –** This rule does not increase or add any fees, fines, or civil penalties.

## II. Fiscal Impact Analysis

**a. Anticipated Effective Date of the Rule –** The interim rule will be effective on or about June 15, 2026, the estimated date the publisher will accept it for filing.

**b. Estimated Fiscal Impact on State and Local Government –** There is no impact to state or local government as a result of this interim rulemaking.

**c. Sources of Expenditures or Revenues Affected by the Rule –** There are no expenditure or revenue sources affected by this rule.

## III. Impacted Parties

This interim rule directly impacts the lone supplier of LRVP fuel, Marathon Petroleum Corporation, which no longer will need to produce or supply special fuel for Clark and Floyd counties. Relatedly, numerous other gas stations and convenience stores in the counties (e.g., BP, Thorntons, Countrymark, Meijer, Costco, etc.) will have more options for acquiring fuel because they no longer will be required to obtain boutique fuel. Any of the roughly 200,000 residents of Clark and Floyd counties who purchase gasoline also will be impacted by this rule, which will lower the cost of fuel during the summer fuel season.

## IV. Changes in Proposed Rule

The following changes are being proposed in the interim rulemaking:

"The following are suspended: 326 IAC 13-3-1; 326 IAC 13-3-2; 326 IAC 13-3-3; 326 IAC 13-3-4; 326 IAC 13-3-5; 326 IAC 13-3-6; 326 IAC 13-3-7."

## V. Benefit Analysis

**a. Estimate of Primary and Direct Benefits of the Rule –** The primary and direct benefit of this rulemaking is to align Clark and Floyd counties with non-Indiana counties in the Louisville, KY-IN Area, as well as the federal waiver issued by the U.S. EPA. Letter, U.S. EPA, Re: National Fuel Waiver to Create Single National Gasoline Pool (March 25, 2026), available at https://www.epa.gov/system/files/documents/2026-03/national-fuel-waiver-governors-3-25-26.pdf, and to comply with Executive Order 26-10 issued by the Indiana Governor on April 13, 2026. The interim rule will allow time for IDEM to finalize the subsequent regular rulemaking repealing the unnecessary LRVP requirements under 326 IAC 13-3 for Clark and Floyd counties and remove LRVP fuel requirements as a control measure from Indiana's SIP. An interim rule is necessary because the regular rule would not become effective before the end of the 2026 summer fuel season.

**b. Estimate of Secondary or Indirect Benefits of the Rule –** Alleviation of the LRVP fuel requirements under the regular rulemaking will enable the distribution of E15 to Clark and Floyd counties, thereby making it available nearly statewide. E15 is a fuel blend of 15% ethanol and 85% gasoline, also referred to as "Unleaded 88". It was developed for vehicles made in 2001 or later and is generally less expensive and burns cleaner than standard E10 fuel.

**c. Estimate of Any Cost Savings to Regulated Industries –** This interim rule, in conjunction with Executive Order 26-10, will temporarily reduce the price of gasoline in Clark and Floyd counties for the Louisville, KY-IN Area, resulting in significant cost savings for consumers during the summer fuel season. The subsequent regular rulemaking action will make these reductions permanent. The gasoline cost decrease of between \$0.10 to \$0.20 per gallon associated with avoiding the use of LRVP fuel is detailed below.

Fuel refiners and distributors have represented to IDEM that all cost savings or increases related to the use of LRVP fuel are passed from the producers to the consumers. The Louisville, KY-IN Area's lone LRVP fuel supplier will experience cost savings by being able to forgo the production of boutique fuel for Clark and Floyd counties. In turn, all gasoline companies that serve the market will experience cost savings in that they no longer will be limited to acquiring boutique fuel from a limited number of suppliers. Instead, they can rely on their own fuel or normal distributor. For example, Costco typically contracts with Exxon/Mobile for gasoline; instead of acquiring boutique fuel for its stores located in Clark and Floyd counties, Costco can rely on its normal provider.

These cost savings result in cheaper gas at the pump. The summer fuel season runs from May 1 through September 15, or about 37.5% of the year. During this time, fuel usage increases by 12.5% over winter fuel use. The 2024 population of individuals 18 years of age or older in Clark and Floyd counties is 163,825, and the average fuel consumption per year, per capita, is 375 gallons. Currently, the average fuel surplus cost ranges between 10 to 20 cents per gallon. Given this information, the following calculations regarding cost savings were made:

- 163,825 (population) x 375 (gal) = 61,434,375 gallons of fuel consumption per year per capita
- Summer fuel season (37.5% of year):
    - 61,434,375 (total gallons consumed) x 1.125 (cost increase) x 0.375 (portion of year) x $0.10 (surplus cost) = $2,591,763 in potential cost savings
    - 61,434,375 (total gallons consumed) x 1.125 (cost increase) x 0.375 (portion of year) x $0.20 (surplus cost) = $5,183,525 in potential cost savings

Because this interim rule will not become effective before the beginning of the summer fuel season, these cost savings are not entirely attributable to this rulemaking action. However, this interim rule works in conjunction with Executive Order 26-10, which waives the inspection and enforcement requirements of 326 IAC 13-3, to suspend the LRVP requirements for the 2026 summer fuel season. If this interim rule remains in effect through the 2027 summer fuel season, all related cost savings would be solely attributed to this rule.

In short, suspension of the LRVP requirements could yield fuel cost savings between roughly $2.5 and $5.1 million in a single summer fuel season.

## VI. Cost Analysis

**a. Estimate of Compliance Costs for Regulated Entities –** There are no compliance costs for regulated entities associated with this interim rulemaking. The gasoline cost decrease of between $0.10 to $0.20 per gallon associated with avoiding the use of LRVP fuel is detailed in Section V(c).

**b. Estimate of Administrative Expenses Imposed by the Rules –** This interim rule will not impose any administrative expenses on regulated entities.

**c. The fees, fines, and civil penalties analysis required by IC 4-22-2-19.6 –** There are no fees, fines, and civil penalties associated with the interim rulemaking.

**d. If the implementation costs of the proposed rule are expected to exceed the threshold set in IC 4-22-2-22.7(c)(6) –** No, there are no implementation costs associated with the interim rule.

## VII. Sources of Information

**a. Independent Verifications or Studies –** There were no independent verifications or studies used in determining the costs and benefits for this interim rulemaking, beyond the federal waiver issued by U.S. EPA. Letter, U.S. EPA, Re: National Fuel Waiver to Create

Single National Gasoline Pool (March 25, 2026), available at https://www.epa.gov/system/files/documents/2026-03/national-fuel-waiver-governors-3-25-26.pdf and the Removal of the Federal Reformulated Gasoline Program from the Kentucky Portion of the Louisville Area, 91 FR 10008 (Mar. 2, 2026).

**b. Sources Relied Upon in Determining and Calculating Costs and Benefits –** IDEM relied on the historical knowledge and information provided by the Office of Air Quality's program staff, who conducted internet research to determine the median gasoline consumption per capita and the cost difference between LRVP fuel and conventional fuel. Additional sources include Executive Order 26-10, signed by Governor Braun on April 13, 2026, and the federal waiver issued by U.S. EPA.

## VIII. Regulatory Analysis

As demonstrated in Section V(c), the benefits of suspending the LRVP requirements in Clark and Floyd counties substantially outweigh any potential costs. Suspension of these requirements could result in fuel cost savings of approximately $2.5 to $5.1 million in a single summer fuel season. Because this interim rule does not add or increase any costs, its estimated fiscal impact is a $2.5 to $5.1 million benefit to affected parties.

## IX. Contact Information of Staff to Answer Substantive Questions

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