

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T13–002 to read as follows:

#### **§ 165.T13–002 Security Zone; Portland Rose Festival on Willamette River.**

(a) *Location.* The following area is a security zone: All waters of the Willamette River, from surface to bottom, between the Hawthorne and Steel bridges and underneath these bridges.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 (156.8 MHz) or VHF channel 22A (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section is effective from Wednesday, June 5, 2002, through Monday, June 10, 2002.

Dated: May 7, 2002.

**J.D. Spitzer,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland.*

[FR Doc. 02–12312 Filed 5–15–02; 8:45 am]

**BILLING CODE 4910–15–U**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 70**

[IN004a; FRL–7212–6]

#### **Clean Air Act Final Approval of Operating Permit Program Revisions; Indiana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the operating permit program of the State of Indiana. Indiana submitted its operating permit program in response to the directive in the 1990 Clean Air Act Amendments that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. EPA granted full approval to Indiana's operating permit program effective November 30, 2001. At that time, EPA also issued a notice of program deficiency (NOD) in which EPA identified problems with Indiana's program and a timeframe within which Indiana had to correct the problems. Indiana submitted revisions to its operating permit program on February 7, 2002. These program revisions include regulatory changes which resolve deficiencies that EPA identified in the NOD. This action also includes other changes to the state's title V regulations. One of the deficiencies EPA identified in the NOD is not included in this submittal because it is part of a separate State Implementation Plan (SIP) submittal. EPA will take action on that submittal in a separate **Federal Register** document.

**DATES:** This direct final rule is effective July 15, 2002, without further notice unless EPA receives adverse comments in writing by June 17, 2002. If adverse comment is received, EPA will publish a timely notice in the **Federal Register** and inform the public that the rule will not take effect. EPA will address the public comments in a subsequent final rule based on the proposed rule published in this **Federal Register**.

**ADDRESSES:** Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 886–3189, E-Mail Address: portanova.sam@epa.gov.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

- What is being addressed in this document?
- What are the program changes that EPA is approving?
- What is involved in this final action?

#### **What Is Being Addressed in This Document?**

As required under Subchapter V of the Clean Air Act ("the Act"), as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 CFR part 70. Pursuant to subchapter V, generally known as title V, states developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Indiana Department of Environmental Management (IDEM) submitted its title V operating permits program (title V program) for approval on August 10, 1994. EPA promulgated interim approval of the Indiana title V program on November 14, 1995 (60 FR 57188), and the program became effective on December 14, 1995. Subsequently, EPA promulgated full approval of the Indiana title V program effective November 30, 2001. EPA published this action in the **Federal Register** on December 4, 2001 (66 FR 62969).

Pursuant to its authority at 40 CFR 70.10(b), EPA published a NOD for Indiana's title V operating permit program on December 11, 2001 (66 FR 64039). The NOD was based upon EPA's finding that several state requirements do not meet the minimum federal requirements of 40 CFR part 70 and the Act for program approval. Indiana has adopted rule revisions to resolve all of the deficiencies identified in the December 11, 2001 NOD. These rule revisions became effective, as a matter of state law, on January 19, 2002. Indiana submitted some of these rule changes as a revision to its title V operating permit program on February 7, 2002. Indiana also included, in the February 7, 2002 submittal, other regulatory revisions that strengthen Indiana's program. EPA is approving the Indiana rule revisions included in the February 7, 2002 submittal in today's action. On March 5, 2002, Indiana submitted a rule revision addressing one of the deficiencies identified in the NOD for approval into the State Implementation Plan (SIP). EPA will take action on this rule revision in a separate **Federal Register** document. The public will have an opportunity to comment on this rule revision when EPA publishes the **Federal Register**

document taking action on the March 5, 2002 SIP submittal.

### What Are the Program Changes That EPA Is Approving?

#### A. Insignificant Activity Definition

##### (i) Emission Thresholds

Indiana has revised 326 IAC 2-7-1(21)(A) to establish insignificant activity emission thresholds for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC). Previously, the definition of insignificant activity in the Indiana rule did not include specific insignificant activity threshold levels for NO<sub>x</sub> and VOC. The rule referred to the limits in 326 IAC 2-1.1-3(d)(1) to establish the insignificant activity threshold levels for these two pollutants. The threshold levels in this provision was 10 tons per year for both NO<sub>x</sub> and VOC. EPA considers this an unacceptably high threshold for insignificant activities and, as a result, identified this issue as a deficiency in the December 11, 2001 NOD for the Indiana title V program. The revised 326 IAC 2-7-1(21)(A) language establishes a VOC insignificant activity threshold of 3 pounds per hour or 15 pounds per day and a NO<sub>x</sub> insignificant activity threshold of 5 pounds per hour or 25 pounds per day. These threshold levels are equivalent to the VOC and NO<sub>x</sub> thresholds that EPA originally approved as part of the November 14, 1995, interim approval of Indiana's title V program. In today's action, EPA is approving this rule language as a revision to the Indiana title V program. This revision satisfies Indiana's requirement to correct an identified program deficiency and resolves the issue published in the NOD.

##### (ii) Permit modification requirements

In order to remedy a problematic regulation that impacted Indiana's program but was not identified by EPA in the NOD, Indiana has revised 326 IAC 2-7-1(21)(K) to clarify the applicability of the permit modification process described in 326 IAC 2-7-12 which applies to a modification of an existing insignificant activity or the addition of an insignificant activity to a title V source. Under the previous version of this rule, all modifications that qualified as an insignificant activity were exempted from the 326 IAC 2-7-12 modification requirements. This revised provision allows insignificant activities to avoid the permit modification requirements only if the existing permit includes all requirements and associated monitoring applicable to the activity and if the activity is not a modification under any

provisions of title I of the Act. EPA considers this provision to be consistent with 40 CFR 70.5(c), which does not require insignificant activities to be included in permit applications unless information on the activity is necessary to determine applicability of, or to impose, any applicable requirement or to determine fees. In today's action, EPA is approving this revision to IAC 2-7-1(21)(K) as a revision to the Indiana title V program.

#### B. Trivial Activities

In order to remedy a problematic regulation that impacted Indiana's program but was not identified by EPA in the NOD, Indiana revised its definition of trivial activity in 326 IAC 2-7-1(40). This definition was established pursuant to the July 10, 1995, EPA memorandum titled "White Paper for Streamlined Development of Part 70 Permit Applications", which states that "there is flexibility inherent in § 70.5 to tailor the level of information required in the application to be commensurate with the need to determine applicable requirements. The EPA believes this inherent flexibility encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities with specific applicable requirements and with extremely small emissions) and can be omitted from the application."

Indiana's trivial activity definition includes an emission threshold of one pound per day of potential uncontrolled emissions of any criteria pollutant for an activity to be considered trivial. 326 IAC 2-7-1(40)(B) through (Q) lists activities which shall be considered trivial for title V permit application purposes. The July 10, 1995, white paper includes examples of activities which EPA believes should normally qualify as trivial. This list is intended only as a starting point for states and is not a comprehensive list of what EPA accepts as trivial activities. Many of the activities listed in 2-7-1(40) are listed in the July 10, 1995, white paper as examples of trivial activities. EPA agrees that the remaining 2-7-1(40) activities are inherently trivial. The exclusion of trivial activities from title V permit applications will allow sources and the state to direct their resources towards permitting activities that have significant environmental impacts.

Under the previous version of this rule, all activities listed in 326 IAC 2-7-1(40) qualified as trivial and were exempted from inclusion in the source's title V permit application without regard to information needed to document applicable requirements and compliance status. Indiana's revised

trivial activity definition states, in 326 IAC 2-7-1(40)(R), that trivial activities are excluded from the permit modification requirements of 326 IAC 2-7-12 only if the existing permit includes all requirements and associated monitoring applicable to the activity and if the activity is not a modification under any provisions of title I of the Act. In addition, the revision to 326 IAC 2-7-1(40) states that trivial activities need not be included in title V permit applications provided that the applicant documents applicable requirements and compliance status as required by the permit application provisions of the state title V rule. These provisions provide assurance that title V permits include all applicable requirements and associated monitoring for units and activities that may qualify as trivial under the 326 IAC 2-7-1(40) definition. In today's action, EPA is approving Indiana's definition of trivial activity in 326 IAC 2-7-1(40) as a revision to the Indiana title V program.

#### C. Proposed Exemptions From Applicable Requirements

In order to remedy a problematic regulation that impacted Indiana's program but was not identified by EPA in the NOD, Indiana has revised 326 IAC 2-7-4(c) to remove rule language which allowed sources to include in their permit application an explanation of any proposed exemptions from otherwise applicable requirements. Since title V does not provide for exemptions from applicable requirements, this language was not consistent with the requirements of title V and 40 CFR part 70. In today's action, EPA is approving the removal of this rule language as a revision to the Indiana title V program.

#### D. Compliance Certification

Indiana revised 326 IAC 2-7-4(c)(10) and (11) to remove rule language that allows sources to certify compliance with alternative or streamlined requirements instead of the underlying applicable requirements. This issue is identified and discussed in more detail in the December 11, 2001 NOD for the Indiana title V program. In addition, Indiana revised 326 IAC 2-7-5(3) to remove rule language that refers to alternative or streamlined requirements with respect to monitoring, recordkeeping, and reporting. In today's action, EPA is approving the removal of this language as a revision to the Indiana title V program. This revision satisfies Indiana's requirement to correct an identified program deficiency and resolves the issue published in the NOD.

#### *E. Operating Parameter Exceedances*

Indiana revised 326 IAC 2-7-5(1) to remove rule language stating that an exceedance of a permit limit and the corresponding operating parameter shall constitute a single violation. This rule provision restricted the state's enforcement authority to restrain or enjoin and to assess a civil penalty for the violation of any permit condition as required by 40 CFR 70.11. EPA identified this provision as a title V deficiency in the December 11, 2001 NOD for the Indiana title V program. In today's action, EPA is approving the removal of this language as a revision to the Indiana title V program. This revision satisfies Indiana's requirement to correct an identified program deficiency and resolves the issue published in the NOD.

#### *F. Startup, Shutdown, and Malfunction Exceedances*

Indiana revised 326 IAC 2-7-5(1) to remove rule language which allowed exceedances of emission limits during startups, shutdowns, and malfunctions on a case-by-case basis. This would have allowed the permitting authority to establish, through the title V permitting process, limits which exceeded applicable requirements. EPA identified this provision as a title V deficiency in the December 11, 2001 NOD for the Indiana title V program. In today's action, EPA is approving this rule revision as a revision to the Indiana title V program. This revision satisfies Indiana's requirement to correct an identified program deficiency and resolves the issue published in the NOD.

#### *G. Administrative Permit Amendments*

In order to remedy a problematic regulation that impacted Indiana's program but was not identified by EPA in the NOD, Indiana has revised 326 IAC 2-7-11(a)(7) to remove language that allowed changes to monitoring, maintenance, or recordkeeping requirements to be processed as an administrative permit amendment if the changes were "not environmentally significant" and not required by an applicable requirement. This rule revision will prevent relaxations in monitoring, maintenance, or recordkeeping requirements from being processed as an administrative permit amendment. In today's action, EPA is approving the removal of this language as a revision to the Indiana title V program.

#### *H. Minor Permit Modification Procedures*

Indiana has added new rule language in 326 IAC 2-7-12(b)(4) which requires minor modifications to be subject to the public notice provisions of 326 IAC 2-7-17. This revision restores the minor permit modification requirements that were in effect when EPA granted interim approval to the Indiana title V program and is necessary because minor permit modifications qualify for a permit shield under the Indiana regulations. During EPA's original review of Indiana's title V program, which resulted in granting interim approval on November 14, 1995, the Indiana regulations required minor modifications to be subject to public review equivalent to that required by 40 CFR 70.6, 70.7 and 70.8, and allowed such modifications to qualify for a permit shield. In reviewing that original regulation, EPA determined that the permit shield was acceptable in this situation because of the availability of public review. Subsequent to the November 14, 1995, interim approval, Indiana modified its regulations to remove the public notice requirement from the minor modification provision. However, the state did not remove the permit shield provision. Therefore, EPA identified this provision as a title V deficiency in the December 11, 2001 NOD for the Indiana title V program. In today's action, EPA is approving Indiana's new rule language in 326 IAC 2-7-12(b)(4) as a revision to the Indiana title V program. This revision satisfies Indiana's requirement to correct an identified program deficiency and resolves the issue published in the NOD.

#### *I. Emergency Provision*

In order to remedy a problematic regulation that impacted Indiana's program but was not identified by EPA in the NOD, Indiana has revised 326 IAC 2-7-16 to remove language which states that an emergency constitutes an affirmative defense to an action brought for noncompliance with a health-based emission limitation. This rule revision is consistent with the requirements in 40 CFR 70.6(g), which restricts the emergency provision to noncompliance with technology-based emission limitations. In today's action, EPA is approving the removal of this language as a revision to the Indiana title V program.

#### *J. Streamlined Requirements*

326 IAC 2-7-24 of Indiana's title V rule allows for the establishment of streamlined requirements for units

subject to multiple requirements. This section of the state rule was established subsequent to the November 14, 1995 EPA action granting interim approval to the Indiana title V program. EPA has not previously approved this section of the rule as a revision to the Indiana title V program. The March 5, 1996, EPA memorandum titled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" explains how permitting authorities may streamline multiple, overlapping requirements into one permit condition that will assure compliance with all requirements. Indiana's rule requires streamlined limits to be at least as stringent as all subsumed requirements and to be enforceable as a practical matter. Permits issued with streamlined limits must include citations to all subsumed requirements and must include any additional terms and conditions necessary to assure compliance with the streamlined limit and all subsumed requirements. Permits containing streamlined limits must be issued pursuant to the permit issuance, renewal, or significant modification requirements of Indiana's title V rule. EPA finds this rule provision to be consistent with 40 CFR part 70 and, in today's action, is approving 326 IAC 2-7-24 as a revision to the Indiana title V program.

#### *K. Other NOD Issues*

Indiana had two additional NOD issues listed in the December 11, 2001, **Federal Register** notice. Resolution of these two issues required revisions to portions of the Indiana rules that are not part of the state's title V regulations. Indiana has adopted these required revisions to their state rules and the revisions became effective, as a matter of state law, on January 19, 2002. Since these rule revisions are not part of the state's title V regulations, they were not included in the February 7, 2002, submittal and they will not be included in this action as revisions to the Indiana title V program. As explained in further detail below, the revision addressing one of these NOD issues will require no further action by EPA. Indiana has submitted, as a SIP revision, the other NOD issue and EPA will address that submittal in a separate **Federal Register** document.

(i) Sulfur Dioxide, Nitrogen Oxides, Carbon Monoxide, Volatile Organic Compounds, and Lead Exemption Levels

Indiana rule 326 IAC 2-1.1-3(d) allowed the state to exempt from the title V minor or significant modification

requirements sulfur dioxide, NO<sub>x</sub>, and VOC emission increases of up to 10 tons per year and carbon monoxide emission increases of up to 25 tons per year. In addition, 326 IAC 2-1.1-3(g) allows the state to exempt from the title V minor or significant modification requirements lead emissions increases of up to 5 tons per year. Because 40 CFR 70.6(e) does not allow the permitting authority to create exemptions from the permit modification requirements, Indiana's program did not meet the program approval requirements of title V and 40 CFR part 70. Indiana has corrected this deficiency by removing language from 326 IAC 2-1.1-3(d) and 326 IAC 2-1.1-3(g) which apply these provisions to title V sources and title V modifications. This rule revision became effective on January 19, 2002.

This rule provision is intended for minor sources and is not part of Indiana's title V regulations. Therefore, it will not be included as a change to the Indiana title V program. Since this rule provision was never approved into the Indiana State Implementation Plan (SIP), no SIP revision is required to accommodate this correction. EPA considers this program deficiency, which was identified in the NOD, to be resolved.

#### (ii) Supersession

Indiana's construction permits expire upon issuance of a valid title V permit; therefore, the construction permit conditions do not exist independently of title V permits. Applicable requirements must exist independently of title V permits. Allowing the underlying applicable requirements to expire could cause Indiana to lose the authority to include such conditions in renewed title V permits. Because Indiana's rules did not assure that construction permit conditions exist independently of title V permits, this issue was identified in the December 11, 2001 NOD as not meeting the program approval requirements of title V and 40 CFR part 70.

Indiana subsequently revised the state regulations in 326 IAC 2-1.1-9.5 to say that "any condition established in a permit issued pursuant to a permitting program approved into the state implementation plan shall remain in effect until: (1) The condition is modified in a subsequent permit action; or (2) the emission unit to which the condition pertains permanently ceases operation." "Subsequent permit action" in this rule refers to a permit action taken pursuant to Indiana's construction permit authority. Since title V authority cannot modify existing applicable requirements, including construction

permit conditions, "subsequent permit action" does not include permit actions taken pursuant to Indiana's title V program. This rule provision is not part of Indiana's title V regulations and, therefore, will not be included as a change to the Indiana title V program. Indiana submitted this rule provision for approval into the Indiana SIP on March 5, 2002, and EPA will take action on this submittal in a separate **Federal Register** document. The public will have an opportunity to comment on this provision when EPA publishes a **Federal Register** notice taking action on the March 5, 2002, SIP submittal.

#### What Is Involved in This Final Action?

The EPA is granting approval to the Indiana title V operating permits program revisions submitted by IDEM on February 7, 2002. These revisions meet the minimum program requirements of 40 CFR part 70, resolve issues raised in EPA's December 11, 2001 NOD of the Indiana title V program, and strengthen Indiana's program.

#### Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as

specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval is also not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

#### List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 3, 2002.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

40 CFR part 70 is amended as follows:

#### PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. sections 7401 *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (c) in the entry for Indiana to read as follows:

#### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

\* \* \* \* \*

#### Indiana

(a) \* \* \*

(b) \* \* \*

(c) The Indiana Department of Environmental Management: program revisions submitted on February 7, 2002. These revisions are hereby granted final approval effective June 17, 2002.

\* \* \* \* \*

[FR Doc. 02-12281 Filed 5-15-02; 8:45 am]

**BILLING CODE 6560-50-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1 and 90

[WT Docket No. 99-87; FCC 02-82]

#### Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission addresses petitions for reconsideration and related pleadings regarding certain decisions in this proceeding. It affirms its earlier decisions, and revises certain rules concerning its statutory auction authority and the licensing of private land mobile channels in the 800 MHz band for use in commercial systems. This action by the Commission implements the Communication Act of 1934 as amended by Congress.

**DATES:** Effective July 15, 2002.

**FOR FURTHER INFORMATION:** Karen Franklin of the Public Safety and Private Wireless Division at (202) 418-0680, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Memorandum Opinion and Order, FCC 02-82, adopted on March 14, 2002, and released on April 18, 2002. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

1. In the *Report and Order and Further Notice of Proposed Rule Making* ("R&O" and "FNPRM"), 66 FR 86,

January 2, 2001, in this proceeding, the Commission adopted rules and policies to implement Sections 309(j) and 337 of the Communications Act of 1934, as amended by the Balanced Budget Act of 1997. This *Memorandum Opinion and Order* ("MO&O") addresses petitions for reconsideration and related pleadings regarding certain of our decisions in the *R&O*.

2. The major decisions in this *MO&O* are as follows:

- The Commission affirms that the Balanced Budget Act amendments to Section 309(j) do not preclude the Commission from using licensing mechanisms for private services that permit the filing of mutually exclusive license applications if the Commission determines that it is in the public interest to do so.

- Commission reiterates that the public safety radio services exemption in Section 309(j) applies to services, rather than specific users. Moreover, we affirm the dominant use test set forth in the *R&O* as the means to determine whether the particular service qualifies for the public safety radio services exemption. We also retain and clarify the definition for "private internal radio service" set forth in the *R&O*.

- The Commission retains the five-year holding period as a requirement for modification of an 800 MHz PLMRS authorization to permit commercial use.

- The Commission affirms the decision in the *R&O* that an applicant must demonstrate that there is no public safety spectrum available to satisfy the public safety service use before it can be granted a waiver pursuant to Section 337.

- The Commission reiterates whether a Section 337 application is in the public interest will be determined on a case-by-case examination of various factors, including the stage of the competitive bidding process with respect to the requested frequencies.

3. The *MO&O* also updates § 1.227 of the Commission's Rules, regarding mutually exclusive applications, to reflect that the Commission no longer utilizes random selection processes to resolve such conflicts, and has indicated that it will rely on existing regulatory tools to resolve rare instances of mutually exclusive applications in services that are not subject to competitive bidding. Finally, it revises § 90.621 permitting modification, assignment or transfer of private land mobile radio licenses for commercial use, to require such applications to be filed in accordance with the rules and procedures for commercial stations, and to clarify that a licensee that has modified its authorization for use in a