

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

#### § 955.36 Effective dates and applicability.

These revised rules govern proceedings in all cases docketed by the Board on or after June 1, 2009.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9-10336 Filed 5-1-09; 11:15 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2008-0031; FRL-8899-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Extended Permit Terms for Renewal of Federally Enforceable State Operating Permits

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving Indiana's rule revision to extend permit terms for the renewal of Federally Enforceable

State Operating Permits (FESOPs) from five years to ten years. Indiana submitted this rule revision for approval on December 19, 2007. FESOPs apply to non-major sources that obtain enforceable limits to avoid being subject to certain Clean Air Act (Act) requirements, including the Title V operating permit program. Neither the Act nor its implementing regulations specify a permit-term requirement for FESOPs. This rule revision will provide relief to Indiana's resource burden of processing permit renewals. It will also allow the Indiana Department of Environmental Management (IDEM) to devote more resources to major source Title V permitting actions and permit modifications for both Title V and FESOP sources.

**DATES:** This direct final rule will be effective July 6, 2009, unless EPA receives adverse comments by June 4, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0031, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).

3. *Fax:* (312) 692-2450.

4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2008-0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Sam Portanova, Environmental Engineer, at (312) 886-3189 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3189, [Portanova.sam@epa.gov](mailto:Portanova.sam@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is Being Addressed in This Document?
- II. What Are the Changes That EPA Is Approving?
- III. What Action Is EPA Taking?
- IV. Statutory and Executive Order Reviews

## I. What Is Being Addressed in This Document?

We are approving revisions to the State of Indiana's FESOP regulations. EPA approved the Indiana FESOP program into the state implementation plan (SIP) on August 18, 1995 (60 FR 43008). On December 19, 2007, IDEM submitted revisions to the FESOP regulations requesting EPA approval as a revision to the SIP. This submittal includes revisions to 326 IAC 2-1.1-9.5 and 326 IAC 2-8-4 to extend FESOP permit renewal terms for up to ten years. We have determined that this submittal is approvable.

## II. What Are the Changes That EPA Is Approving?

326 IAC 2-1.1-9.5 is a general provision in the Indiana permitting rules that cites the term of a permit. This section has been modified to add a provision (326 IAC 2-1.1-9.5(b)) stating that a FESOP permit renewal is effective for a permit term not to exceed ten years. The rule modification also states that a minor source operating permit (MSOP) renewal is effective for a permit term not to exceed ten years. However, MSOPs are not part of the Indiana SIP and MSOP rules are specifically excluded from Indiana's December 19, 2007, request.

Indiana has modified 326 IAC 2-8-4(2)(B) to increase the permit term for FESOP renewals from five years to ten years. In addition, Indiana has made some minor grammatical changes to 326 IAC 2-8-4. The change in permit term only applies to FESOP renewals and not to a source's first-time FESOP permit, which will continue to have a permit term of five years pursuant to 326 IAC 2-8-4(2)(A). This provision does not apply to Title V permits issued by IDEM under 326 IAC 2-7.

EPA's requirements for FESOPs are contained in a June 28, 1989, rule addressing federal enforceability (54 FR 27274). In its August 18, 1995, approval of FESOP rule 326 IAC 2-8, EPA determined that Indiana's regulation was consistent with those requirements. EPA's June 28, 1989, rule does not require a specific permit term for FESOPs. As such, EPA finds the modifications to 326 IAC 2-1.1-9.5 and 326 IAC 2-8-4 acceptable.

## III. What Action Is EPA Taking?

EPA is approving the revisions to 326 IAC 2-1.1-9.5 and 326 IAC 2-8-4 regarding the permit terms for FESOP renewals. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective July 6, 2009 without further notice unless we receive relevant adverse written comments by June 4, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 6, 2009.

## IV. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. EPA will submit a report containing this action 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the

proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 20, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart P—Indiana

■ 2. Section 52.770 is amended by adding and reserving paragraph (c)(189) and adding paragraph (c)(190) to read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(189) [Reserved]

(190) On December 19, 2007, Indiana submitted modifications to its Federally Enforceable State Operating Permits rules as a revision to the state implementation plan. The revision extends the maximum permit term for renewals of Federally Enforceable State Operating Permits from five years to ten years. EPA has determined that this revision is approvable under the Clean Air Act.

(i) *Incorporation by reference.*

(A) Indiana Administrative Code Title 326, Article 2: Permit Review Rules, sections 2–1.1–9.5, “General provisions; term of permit”, and 2–8–4, “Permit content”, are incorporated by reference. Filed with the Publisher of the Indiana Register on November 16, 2007, and became effective on December 16, 2007. Published in the Indiana Register on December 13, 2007 (20071212–IR–326060487FRA).

[FR Doc. E9–10335 Filed 5–4–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2007–1186–200821(w); FRL–8900–4]

#### Approval and Promulgation of Implementation Plans; Kentucky; Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone Standard for the Huntington-Ashland Area, Lexington Area and Edmonson County; Withdrawal of Direct Final Rule

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule, published March 25, 2009, approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision was provided in accordance with Kentucky’s obligations to meet the statutory and regulatory requirements related to the 1997 8-hour ozone standard and section 110(a)(1) of the Clean Air Act for the Huntington-Ashland Area, Lexington Area and Edmonson County. As stated in the direct final rule, if EPA received an adverse comment by April 24, 2009, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment on April 17, 2009. EPA will address the comment in a subsequent final action based upon the proposed action also published on March 25, 2009. EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published March 25, 2009, at 74 FR 12567, is withdrawn effective May 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

Accordingly, the amendments to 40 CFR 52.920 (which were published in the *Federal Register* on March 25, 2009, at 74 FR 12567) are withdrawn effective May 5, 2009.

[FR Doc. E9–10333 Filed 5–4–09; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09–834; MB Docket No. 08–217; RM–11434]

#### Radio Broadcasting Services; Kihei, Hawaii.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The staff grants a rulemaking petition filed by Shirk-Mays, LLC to allot Channel 264C2 to Kihei, Hawaii, as a third local aural service. The reference coordinates for Channel 264C2 at Kihei, Hawaii, are 20–39–36 NL and 156–21–50 WL.

**DATES:** Effective June 1, 2009.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 08–217, adopted April 15, 2009, and released April 17, 2009. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>.

The *Notice of Proposed Rule Making* in this proceeding proposed the allotment of Channel 264C2 at Kihei, Hawaii. See 73 FR 67828 (November 17, 2008). The *Report and Order* does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not