
TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #93-187(F)

DIGEST

Amends 326 IAC 1-1, 326 IAC 1-2, 326 IAC 1-6, 326 IAC 2-1, and 326 IAC 2-5 to add new provisions for the Title V Permit Program. Adds 326 IAC 2-7, 326 IAC 2-8, and 326 IAC 2-9 to add provisions for a new federally enforceable permit program. Adds 326 IAC 20, 326 IAC 21, and 326 IAC 22 to incorporate by reference additional programs mandated by the Clean Air Act. Effective 30 days after filing with the secretary of state.

326 IAC 1-1-2	326 IAC 2-1-3.2
326 IAC 1-1-3	326 IAC 2-1-3.3
326 IAC 1-2-2	326 IAC 2-1-4
326 IAC 1-2-4	326 IAC 2-1-7.1
326 IAC 1-2-12	326 IAC 2-1-10
326 IAC 1-2-33.1	326 IAC 2-5-2
326 IAC 1-2-33.2	326 IAC 2-7
326 IAC 1-2-33.5	326 IAC 2-8
326 IAC 1-6-1	326 IAC 2-9
326 IAC 2-1-1	326 IAC 20
326 IAC 2-1-2	326 IAC 21
326 IAC 2-1-3	326 IAC 22

SECTION 20. 326 IAC 2-8 IS ADDED TO READ AS
FOLLOWS:

**Rule 8. Federally Enforceable State Operating Permit
Program**

326 IAC 2-8-1 Definitions

Authority: IC 13-1-1-4; IC 13-7-10
 Affected: IC 13-1-1-2; IC 13-7-1

Sec. 1. In addition to the definitions provided in IC 13-7-1, IC 13-1-1-2, 326 IAC 1-2, and 326 IC 2-7, the following definitions apply throughout this rule:

- (1) "FESOP" means a federally enforceable state operating permit issued in accordance with this section.
- (2) "FESOP source" means a source that has been issued a permit by the commissioner under this rule.

(Air Pollution Control Board; 326 IAC 2-8-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2271)

326 IAC 2-8-2 Applicability

Authority: IC 13-1-1-4; IC 13-7-10
 Affected: IC 13-7

Sec. 2. A source required to have a Part 70 permit as described in 326 IAC 2-7-2(a) may apply to the commissioner for a FESOP. Until the commissioner has issued a FESOP for the source, the source is subject to all applicable requirements of 326 IAC 2-7. If the commissioner has not issued a source a final FESOP within one (1) year of the date that approval by the U.S. EPA of the Part 70 permit program becomes effective, the source must comply with all provisions of 326 IAC 2-7. (Air Pollution Control Board; 326 IAC 2-8-2; filed May 25, 1994, 11:00 a.m.: 17 IR 2271)

326 IAC 2-8-3 Permit application

Authority: IC 13-1-1-4; IC 13-7-10
 Affected: IC 13-7

Sec. 3. (a) The owner or operator of a source seeking a FESOP shall submit a complete application on such form or forms as the commissioner may establish. An application for a FESOP may be submitted at any time. Unless, within ninety (90) days of receipt of an application, the commissioner determines that an application is not complete, such application shall be deemed to be complete.

(b) In order for an application to be deemed complete, it must contain the following:

- (1) All information required under subsection (c), except that applications for a FESOP revision need to supply such information only if it is related to the proposed change. The information submitted under subsection (c) must be sufficient to evaluate the subject source and its application and to determine all applicable requirements.
- (2) Certification by a responsible official that the submitted information is consistent with subsection (d).

(c) An application for a FESOP shall include, at minimum, the information specified in subdivisions (1) through (6) [this subsection]. The following information shall be included in the application for each emissions unit at a FESOP source:

- (1) Identifying information, including the following:
 - (A) Company name and address (or plant name and address if different from the company name).
 - (B) Owner's name and agent.
 - (C) Telephone numbers and names of plant site manager or site contact.
- (2) A description of the source's processes and products (by Standard Industrial Classification Code), including any associated with each alternate scenario identified by the source.
- (3) The following emissions related information:
 - (A) All emissions of regulated air pollutants. A FESOP application shall describe all emissions of regulated air pollutants emitted from any emissions unit. The applicant shall provide such additional information related to the emissions of air pollutants as is sufficient to verify which requirements are applicable to the source.
 - (B) Identification and description of all points of emissions described in clause (A) in sufficient detail to establish the applicability of requirements of this title.
 - (C) Emissions rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
 - (D) The following information to the extent it is needed to determine or regulate emissions:
 - (i) Fuels.
 - (ii) Fuel use.
 - (iii) Raw materials.
 - (iv) Production rates.
 - (v) Operating schedules.
 - (E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - (F) Limitations on source operation affecting emissions or any work practice standards, as requested by the applicant, for all regulated pollutants at a FESOP source.
 - (G) Other information required by any applicable requirement, including information related to stack height limitations developed under Section 123 of the CAA.
 - (H) Calculations on which the information in this subsection are based.
 - (I) Insignificant activities shall be listed, but the emissions related information described in clauses (A) through (H) [this subdivision] need not be provided unless the commissioner determines that such information is necessary to determine the applicability of 40 CFR 70*.
- (4) Other specific information that may be necessary to implement and enforce other applicable requirements of the CAA or of this rule or to determine the applicability

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of such requirements.

(5) An explanation of any proposed exemptions from otherwise applicable requirements.

(6) A preventive maintenance plan as described in 326 IAC 1-6-3.

(d) Any application form, report, or compliance certification submitted under this rule shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(e) In the case where a source has submitted information to the commissioner under a claim of confidentiality under 326 IAC 17, the commissioner may also require the source to submit a copy of such information directly to the U.S. EPA.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a FESOP application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft FESOP. In addition, the applicant shall provide additional information as requested by the commissioner to determine the compliance status of the source in accordance with section 5(a) of this rule.

(g) If, while processing an application, the commissioner determines that additional information is necessary to evaluate or take final action on that application, the commissioner may request such information in writing and set a reasonable deadline for a response.

(h) For purposes of a FESOP renewal, a timely application is one that is submitted at least nine (9) months prior to the date of expiration of the source's existing permit.

*Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 2-8-3; filed May 25, 1994, 11:00 a.m.: 17 IR 2271*)

326 IAC 2-8-5 Compliance requirements for FESOPs

Authority: IC 13-1-1-4; IC 13-7-10

Affected: IC 13-7

Sec. 5. (a) Each FESOP shall contain the following requirements:

(1) Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the FESOP. Any document (including reports) required by a FESOP shall contain a certification by a responsible official that meets the requirements of section 3(d) of this rule. Compliance certification requirements shall include the following:

(A) The frequency of submissions of compliance certifications.

(B) In accordance with section 4(3) of this rule, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices.

(C) A requirement that the compliance certification include the following:

(i) The identification of each term or condition of the FESOP that is the basis of the certification.

(ii) The compliance status.

(iii) Whether compliance was continuous or intermittent.

(iv) The methods used for determining the compliance status of the source, currently and over the reporting period.

(v) Such other facts as the commissioner may require to determine the compliance status of the source.

(D) Such additional requirements as may be specified under Sections 114(a)(3) and 504(b) of the CAA.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the commissioner, an authorized representative, or the U.S. EPA to perform the following:

(A) Enter upon the permittee's premises where a FESOP source is located or emissions related activity is conducted, or where records must be kept under the conditions of a FESOP.

(B) Have access to and copy, at reasonable times, any records that must be kept under the conditions of a FESOP.

(C) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under a FESOP.

(D) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with a FESOP or applicable requirements.

(3) A schedule for compliance with any requirement with which the source is not in compliance at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones leading to compliance with any requirements for which the source will be in noncompliance at the time of FESOP issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) Such other provisions as the commissioner may require.

(b) The commissioner may issue a compliance order to any source upon discovery that an issued permit is in nonconformance with an applicable requirement. The order may require immediate compliance or contain a schedule for expeditious compliance with the applicable requirement.

(Air Pollution Control Board; 326 IAC 2-8-5; filed May 25, 1994, 11:00 a.m.: 17 IR 2274)

326 IAC 2-8-6 Federally enforceable requirements

Authority: IC 13-1-1-4; IC 13-7-10

Affected: IC 4-22-9-5; IC 13-7

Sec. 6. (a) The commissioner may not issue a FESOP that waives, or makes less stringent, any limitation or requirement contained in or issued under the state implementation plan (SIP) or requirements that are otherwise federally enforceable under the CAA. Permits that do not conform to the requirements of this rule and the requirements of U.S. EPA's underlying regulations may be deemed by the U.S. EPA not federally enforceable.

(b) All terms and conditions in a FESOP, including any provisions designed to limit a source's potential to emit, are enforceable by the U.S. EPA and citizens under the CAA.

(Air Pollution Control Board; 326 IAC 2-8-6; filed May 25, 1994, 11:00 a.m.: 17 IR 2274)

326 IAC 2-8-7 Permit issuance, renewal, and revisions

Authority: IC 13-1-1-4; IC 13-7-10

Affected: IC 13-7

Sec. 7. (a) A FESOP, FESOP modification, or renewal may be issued only if all of the following conditions have been met:

- (1) The commissioner has received a complete application for a FESOP, FESOP modification, or FESOP renewal.
- (2) The commissioner has complied with the requirements for public notice under section 13 of this rule.
- (3) The conditions of the FESOP provide for compliance with all applicable requirements and the requirements of this rule.
- (4) The U.S. EPA has received a copy of the draft FESOP and any notices required.

(b) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under 326 IAC 2-1 through 326 IAC 2-3. (*Air Pollution Control Board; 326 IAC 2-8-7; filed May 25, 1994, 11:00 a.m.: 17 IR 2274*)

326 IAC 2-8-8 Permit reopening

Authority: IC 13-1-1-4; IC 13-7-10
Affected: IC 13-7-10-5

Sec. 8. (a) A permit shall be reopened and revised under any of the circumstances listed in IC 13-7-10-5 or if the commissioner determines any of the following:

- (1) That a FESOP contains a material mistake.
- (2) That inaccurate statements were made in establishing the emissions standards or other terms or conditions of a FESOP.
- (3) That a FESOP must be revised or revoked to assure compliance with an applicable requirement.

(b) Proceedings by the commissioner to reopen and revise a FESOP shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening and revision shall be made as expeditiously as practicable.

(c) The reopening and revision of a FESOP under subsection (a) shall not be initiated before a notice of such intent is provided to a FESOP source by the commissioner at least thirty (30) days in advance of the date the permit is to be reopened, except that the commissioner may provide a shorter time period in the case of an emergency. (*Air Pollution Control Board; 326 IAC 2-8-8; filed May 25, 1994, 11:00 a.m.: 17 IR 2275*)

326 IAC 2-8-9 Permit expiration

Authority: IC 13-1-1-4; IC 13-7-10
Affected: IC 13-7

Sec. 9. FESOP expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with sections 3(h) and 7 of this rule. (*Air Pollution Control Board; 326 IAC 2-8-9; filed May 25, 1994, 11:00 a.m.: 17 IR 2275*)

326 IAC 2-8-10 Administrative permit amendments

Authority: IC 13-1-1-4; IC 13-7-10
Affected: IC 13-7

Sec. 10. (a) An administrative permit amendment is a FESOP revision that does any of the following:

- (1) Corrects typographical errors.
- (2) Identifies a change in the name, address, or telephone number of any person identified in the FESOP, or provides a similar minor administrative change at the source.
- (3) Requires more frequent monitoring or reporting by the permittee.
- (4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a FESOP is necessary, provided that a written agreement containing a specific date for transfer of a FESOP responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.
- (5) Incorporates into the FESOP the requirements from preconstruction permits issued under 326 IAC 2-1-3, 326 IAC 2-1-3.2, 326 IAC 2-1-3.3, 326 IAC 2-2, and 326 IAC 2-3 where the preconstruction permit provides for administrative amendment and copies of the draft and final permits were submitted to the U.S. EPA.

(b) An administrative permit amendment may be made by the commissioner consistent with the following:

- (1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request and may incorporate such changes without providing prior notice to the public or affected states provided that it designates any such permit revisions as having been made under this subsection.
- (2) The commissioner shall submit a copy of a revised FESOP to the U.S. EPA.
- (3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(*Air Pollution Control Board; 326 IAC 2-8-10; filed May 25, 1994, 11:00 a.m.: 17 IR 2275*)

326 IAC 2-8-11 Permit modification

Authority: IC 13-1-1-4; IC 13-7-10
Affected: IC 13-7

Sec. 11. (a) A permit modification is any revision to a FESOP that cannot be accomplished under the program's provisions for administrative permit amendments under section 10 of this rule.

(b) Minor permit modification procedures shall be as follows:

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(1) Minor permit modification procedures may be used only for those permit modifications that meet the following requirements:

- (A) Do not violate any applicable requirement.
- (B) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the FESOP.
- (C) Do not require or change a:
 - (i) case-by-case determination of an emission limit or other standard;
 - (ii) source specific determination for temporary sources of ambient impacts; or
 - (iii) visibility or increment analysis.
- (D) Do not seek to establish or change a FESOP term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include the following:
 - (i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA.
 - (ii) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the CAA.
- (E) Are not modifications under any provision of Title I of the CAA, except for those modifications whose only Title I requirement is to be registered under 326 IAC 2-1-2.
- (F) Are not changes that would subject the source to the requirements of the Part 70 permit program.

(2) Notwithstanding subdivision (1)(D)(i) and subsection (c)(1), minor FESOP modification procedures may be used for FESOP modifications involving the use of economic incentives, marketable FESOPs, emissions trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in the applicable implementation plan (SIP) or in applicable requirements promulgated by the U.S. EPA.

(3) An application requesting the use of minor FESOP modification procedures shall meet the requirements of section 3(c) of this rule and shall include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.
- (B) The source's suggested draft FESOP reflecting the requested change.
- (C) Certification by a responsible official, consistent with section 3(d) of this rule, that the proposed modification meets the criteria for use of minor FESOP modification procedures and a request that such procedures be used.
- (D) A copy of any previous approval issued by the commissioner under this article.

(4) Within five (5) working days of receipt of a complete FESOP modification application, the commissioner shall notify the U.S. EPA.

(5) Within ninety (90) days of the commissioner's receipt of an application under minor modification procedures, the commissioner shall do any of the following:

- (A) Issue the FESOP modification as proposed.
 - (B) Deny the FESOP modification application.
 - (C) Determine that the requested modification does not meet the minor FESOP modification criteria and should be reviewed under the significant modification procedures.
- (6) The source may make the change proposed in its minor permit modification application immediately after it files such application unless the change is subject to the construction permit requirements of 326 IAC 2-1, 326 IAC 2-2, or 326 IAC 2-3. After the source makes the change allowed by this subdivision, and until the commissioner takes any of the actions specified in subdivision (5), the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing FESOP terms and conditions it seeks to modify. If the source fails to comply with its proposed FESOP terms and conditions during this time period, the existing FESOP terms and conditions it seeks to modify may be enforced against it.

(c) Consistent with the following, the commissioner may modify the procedure outlined in subsection (b) to process groups of a source's applications for modifications eligible for minor permit modification processing:

(1) Group processing of modifications may be used only for those permit modifications that meet the following requirements:

- (A) The modifications meet the criteria for minor permit modification procedures under subsection (b).
 - (B) The modifications are exempt from preconstruction approval under 326 IAC 2-1-1(b)(3).
- (2) An application requesting the use of group processing procedures shall meet the requirements of section 3(c) of this rule and shall include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.
- (B) The source's suggested draft FESOP which reflects the requested change.
- (C) Certification by a responsible official, consistent with section 3(d) of this rule, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.
- (D) A list of the source's other pending applications

awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision (1)(B).

(3) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under subdivision (1)(B), whichever is earlier, the commissioner promptly shall notify the U.S. EPA of the requested FESOP modifications.

(4) The provisions of subsection (b)(5) shall apply to modifications eligible for group processing, except that the commissioner shall take one (1) of the actions specified in subsection (b)(5) within one hundred eighty (180) days of receipt of the application.

(5) The provisions of subsection (b)(6) shall apply to modifications eligible for group processing.

(d) Significant modification procedures shall be as follows:

(1) Significant modification procedures shall be used for applications requesting FESOP modifications that do not qualify as minor permit modifications or as administrative amendments. Any significant change in existing monitoring FESOP terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall be considered significant. Nothing in this subdivision shall be construed to preclude the permittee from making changes consistent with this rule that would render existing FESOP compliance terms and conditions irrelevant.

(2) Significant FESOP modifications shall meet all requirements of this rule, including those for application, public participation, and review by the U.S. EPA, as they apply to FESOP issuance and FESOP renewal.

(Air Pollution Control Board; 326 IAC 2-8-11; filed May 25, 1994, 11:00 a.m.; 17 IR 2275)

326 IAC 2-8-12 Emergency provision

Authority: IC 13-1-1-4; IC 13-1-1-7
Affected: IC 13-7

Sec. 12. (a) An emergency as defined in 326 IAC 2-7-1(12) is not an affirmative defense for an action brought for noncompliance with a federal or state health-based emission limitation, except as otherwise provided in this section.

(b) An emergency as defined in 326 IAC 2-7-1(12) constitutes an affirmative defense to an action brought for noncompliance with a health-based or technology-based emission limitation if the affirmative defense of an emergency is demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that describe the following:

(1) An emergency occurred and the permittee can, to the

extent possible, identify the causes of the emergency.

(2) The permitted facility was at the time being properly operated.

(3) During the period of an emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in a FESOP.

(4) The permittee notified the commissioner within four (4) daytime business hours after the beginning of the emergency occurrence by telephone or facsimile.

(5) The permittee submitted notice either in writing or by facsimile of the emergency to the commissioner within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of section 4(3)(C)(ii) of this rule and must contain the following:

(A) A description of the emergency.

(B) Any steps taken to mitigate emissions.

(C) Corrective actions taken.

(6) The permittee immediately took all reasonable steps to correct the emergency.

(c) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(d) This emergency provision supersedes any emergency or upset provision contained in 326 IAC 1-6 for sources subject to this rule after the effective date of this rule. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(e) The commissioner may require that the preventive maintenance plan required under section 3(c)(6) of this rule be revised in response to an emergency.

(f) Failure to notify the commissioner by telephone or facsimile within four (4) daytime business hours after the beginning of the emergency shall constitute a violation of this rule and any other applicable rules.

(g) Operations may continue during an emergency if the following conditions are met:

(1) If the emergency situation causes a deviation from a technology-based limit, the source may continue to operate the affected emitting facilities during the emergency provided the source immediately takes all reasonable steps to correct the emergency and minimize emissions.

(2) If an emergency situation causes a deviation from a health-based limit, the source may not continue to operate the affected emissions facilities unless:

(A) the source immediately takes all reasonable steps to correct the emergency situation and to minimize emissions; and

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(B) continued operation of the facilities is necessary to prevent imminent injury to persons, severe damage to equipment, substantial loss of capital investment, or loss of product or raw material of substantial economic value.

Any operations shall continue no longer than the minimum time required to prevent the situations identified in clause (B) [this clause].

(Air Pollution Control Board; 326 IAC 2-8-12; filed May 25, 1994, 11:00 a.m.: 17 IR 2277; errata filed May 25, 1994, 11:10 a.m.: 17 IR 2358)

326 IAC 2-8-13 Public notice

Authority: IC 13-1-1-4; IC 13-7-7-1

Affected: IC 13-7-10-2.5

Sec. 13. (a) Any person applying for a FESOP upon land which is either undeveloped or for which a valid existing permit has not been issued shall, not more than ten (10) working days after submitting the FESOP application, make a reasonable effort to provide notice to all owners or occupants of land adjoining the land which is the subject of the application. Each applicant shall pay the cost of compliance with this requirement. The notice shall be in writing and include the date on which the application was submitted and a brief description of the subject of the application.

(b) Each applicant for a FESOP shall place a copy of the permit application or permit modification application for public review at a library in the county where the construction is proposed. Each applicant shall provide the commissioner with the location of the library where the copy can be found.

(c) Prior to issuing a FESOP, the draft permit shall be available for review in the following manner:

(1) The commissioner shall notify the public of the draft FESOP by publishing, in a minimum of one (1) newspaper of general circulation in the county where the source is located, a notice which includes the following:

- (A) Notification of receipt of the permit application.
- (B) The commissioner's draft approval of the permit application.
- (C) Notification to the public of at least a thirty (30) day period for submitting written comments to the commissioner.
- (D) Notification to the public of the opportunity for a public hearing for consideration of the permit application or notice of such a hearing if one has been scheduled.
- (E) Notification to the public that a copy of the application and commissioner's analysis thereof are available for inspection in a convenient public office building in the area where the source is located.

(2) A copy of the notice provided under subdivision (1)

shall also be provided to the appropriate federal, state, or local agency.

(3) All comments received during the public comment period shall be considered by the commissioner before the commissioner finally approves or disapproves the permit.

(4) There shall be an opportunity for a public hearing if deemed necessary by the commissioner.

(5) Notification in writing of the final determination shall be given according to IC 13-7-10-2.5(b), and such notification shall be made available for public inspection in the same public office buildings to be notified under subdivision (1)(E).

(6) A permit may be denied by the commissioner on the basis of adverse comment if the comment demonstrates the following:

(A) The ambient air quality standards under 326 IAC 1-3 cannot be attained or maintained if a permit is issued.

(B) The prevention of significant deterioration requirements under 326 IAC 2-2 will not be met.

(C) The offset requirements under 326 IAC 2-3 will not be satisfied.

(D) For any other reason such as, but not limited to, interference with attainment and maintenance of the standards under 326 IAC 12.

(7) The commissioner may impose such conditions on the permit as necessary to ensure that the source or facility will comply with all applicable rules; and that the ambient air quality standards established under 326 IAC 1-3, the prevention of significant deterioration standards established under 326 IAC 2-2, and the offset requirements established under 326 IAC 2-3, will be attained and maintained and that the public health will be protected.

(Air Pollution Control Board; 326 IAC 2-8-13; filed May 25, 1994, 11:00 a.m.: 17 IR 2278; errata filed May 25, 1994, 11:10 a.m.: 17 IR 2358)

326 IAC 2-8-14 Review by U.S. EPA

Authority: IC 13-1-1-4; IC 13-7-10

Affected: IC 13-7

Sec. 14. The commissioner shall provide to the U.S. EPA a copy of each draft and final FESOP. (Air Pollution Control Board; 326 IAC 2-8-14; filed May 25, 1994, 11:00 a.m.: 17 IR 2278)

326 IAC 2-8-15 Operational flexibility

Authority: IC 13-1-1-4; IC 13-7-10

Affected: IC 13-7

Sec. 15. (a) An owner or operator of a FESOP source may make any change or changes at the source that are described in subsection (b), (c), or (d), without a prior

permit revision, if each of the following conditions is met:

- (1) The changes are not modifications under any provisions of Title I of the CAA.
- (2) The changes do not result in emissions which exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).
- (3) The owner or operator of the FESOP source notifies the commissioner and U.S. EPA in advance of the change, with the information described in subsections (b) through (d), by written notification given at least ten (10) days in advance of the proposed change.
- (4) The commissioner and the owner or operator of a FESOP source each shall attach every such notice to their copy of the relevant permit.
- (5) The owner or operator of the source maintains records on-site which document, on a rolling five (5) year basis, all such changes and emissions trading that are subject to subsections (b) through (d) and makes such records available, upon reasonable request, for public review. Such records shall consist of all information required to be submitted to the commissioner in the notices specified in subsections (b)(1), (c)(1), and (d).

(b) An owner or operator of a FESOP source may make Section 502(b)(10) of the CAA changes without a permit revision, subject to the constraints of subsection (a). For each such change, the required written notification shall include a brief description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or conditions that is no longer applicable as a result of the change.

(c) An owner or operator of a FESOP source may trade increases and decreases in emissions in the FESOP source, where the applicable SIP provides for such emission trades without requiring a permit revision, subject to the constraints of subsection (a) and the further conditions of this subsection. Such changes may be made without a permit revision regardless of whether the permit fails to provide expressly for such emissions trading under the following conditions:

- (1) For each such change, the required written notification shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including, at a minimum, the following:
 - (A) When the proposed change will occur.
 - (B) A description of each such change.
 - (C) Any change in emissions.
 - (D) The permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan.
 - (E) The pollutants emitted subject to the emissions trade.

The notice shall also refer to the provisions in the applicable implementation plan with which the source will comply and that provide for the emissions trade.

(2) Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to the requirements of the applicable implementation plan authorizing the emissions trade.

(d) An owner or operator of a FESOP source may make changes at the source within the range of alternative operating scenarios that are described in the terms and conditions of the FESOP for the source in accordance with section 4(7) of this rule, without a prior permit revision, subject to compliance with such permit terms and conditions. To procure alternative operating scenarios for its FESOP, the owner or operator of a FESOP source must request such alternative scenarios in its application for the permit. (*Air Pollution Control Board; 326 IAC 2-8-15; filed May 25, 1994, 11:00 a.m.: 17 IR 2278*)

326 IAC 2-8-16 Fees

Authority: IC 13-1-1-4; IC 13-1-1-26
Affected: IC 13-7

Sec. 16. (a) An application for a FESOP must be accompanied by a fee of three thousand dollars (\$3,000). Any fee paid by the source in accordance with 326 IAC 2-1-7.1 after January 1, 1994, and before the date an application is submitted or December 31, 1995, whichever is earlier, shall be credited toward the application fee. For sources that submit a FESOP application prior to December 31, 1995, the department shall not assess a fee under 326 IAC 2-1-7.1 while the FESOP application is pending.

(b) A source that has been issued a FESOP under this rule shall pay an annual operating fee of one thousand five hundred dollars (\$1,500) upon billing by the department. For sources that submit an application for a FESOP after December 31, 1995, a source that has been issued a FESOP shall not be assessed an annual operating fee in the billing cycle immediately following issuance of the FESOP, but shall be assessed the annual operating fee in subsequent billing cycles.

(c) The commissioner shall adjust the fees subsection (b) each year by the Consumer Price Index (CPI). The revision of the CPI which is most consistent with the CPI for the calendar year 1995 shall be used.

(d) A source that notifies the department during the calendar year 1994 or 1995 of its intent to file a FESOP application is not subject to the fee schedule contained in 326 IAC 2-7-19. The source must continue to pay fees under 326 IAC 2-1-7.1 until an application for a FESOP is made by the applicant or until a permit application is required to

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be submitted under 326 IAC 2-7. If a FESOP is not approved by the commissioner prior to the requirement that a Part 70 operating permit application be submitted, the source may be billed for the applicable fee under 326 IAC 2-7-19 for the calendar years 1994 and 1995 and subsequent years until a FESOP is issued. A source that applies for a FESOP at least nine (9) months in advance of the requirement to apply for a Part 70 permit is not subject to the 326 IAC 2-7-19 fee schedule until the commissioner makes a final determination on the FESOP application or a final Part 70 permit is issued for the source.

(e) Beginning in 1996, the commissioner shall review the monies in the Title V operating permit trust fund prior to billing Part 70 sources and FESOP sources. If the balance of the fund, once obligated expenditures are subtracted from the balance, exceeds three million dollars (\$3,000,000) as of July 1 of the billing year, the department shall adjust the annual fee schedule for Part 70 and FESOP sources to bill an aggregate less than the total fee schedule amount equivalent to the amount in excess of three million dollars (\$3,000,000). Adjustments to individual bills shall be proportional to the applicable fee divided by the total amount required by all the applicable fees.

(f) A fee established under this section may be billed in whole or in part by a local air pollution control agency under terms of an enforceable written agreement or contract between the local air agency and the commissioner. Any FESOP fee paid to a local air agency shall be considered as revenue to the Title V operating permit trust fund and after the effective date of approval by the U.S. EPA of the Part 70 permit program may only be expended for purposes consistent with IC 13-1-1-26. A local air agency billing to a FESOP source shall specify the amount being assessed under this section and shall distinguish any other amount billed as not pursuant to the purposes of IC 13-1-1-26 under an enforceable agreement with the commissioner. The commissioner or local air agency may direct the source to make payment of fees established under this rule in part to both the department and local air agency such that the total FESOP fee does not exceed the amount in this rule. During 1994, the department may defer to billing of a local air agency if the total billings for all FESOP sources exceed the total amount due under this rule if specified in an enforceable agreement between the local air agency and the department. The department may assess a fee not to exceed twenty-five percent (25%) of the local fee in order to recover costs associated with development and preparation of a complete statewide Title V operating permit program for activities that will not be duplicated by the local air agency if it is determined that the local air agency fees collected from Part 70 and FESOP permittees do not provide adequate revenues for the local agency to develop and prepare for the Title V operating permit program at a

pace comparable to state development and preparation. (*Air Pollution Control Board; 326 IAC 2-8-16; filed May 25, 1994, 11:00 a.m.: 17 IR 2279*)

326 IAC 2-8-17 Local agencies

Authority: IC 13-1-1-4; IC 13-7-7-1

Affected: IC 13-7

Sec. 17. Pursuant to the CAA, and if specified in a written agreement with the commissioner, a local air pollution control agency may perform some or all of the functions of the FESOP program. The commissioner and such a local air agency shall enter into an enforceable written agreement documenting the local air agency's and the department's relative FESOP program roles and responsibilities. (*Air Pollution Control Board; 326 IAC 2-8-17; filed May 25, 1994, 11:00 a.m.: 17 IR 2280*)

LSA Document #93-187(F)

Proposed Rule Published: December 1, 1993; 17 IR 435

Hearing Held: February 24, 1994

Approved by Attorney General: May 11, 1994

Approved by Governor: May 23, 1994

Filed with Secretary of State: May 25, 1994, 11:00 a.m.

Incorporated Documents Filed with Secretary of State: 29 CFR 1910.134 (Subpart I (Personal Protective Equipment)); 29 CFR 1926.58 (Occupational Health and Safety-Asbestos); 40 CFR 50 and Appendices; 40 CFR 51.100(a); 40 CFR 51, Subpart 1; 40 CFR 51.262(a); 40 CFR 51, Appendix S, Section IV; 40 CFR 52; 40 CFR 58, Appendix B; 40 CFR 60 and Appendices; 40 CFR 61 and Appendices; 40 CFR 63 and 58 FR 57898 (coke oven); 40 CFR 68 and 59 FR 4478; 40 CFR 72 and 75—78 (58 FR 3590, January 11, 1993); 40 CFR 76 as proposed in 57 FR 55632 (November 25, 1992); 40 CFR 81.315; 40 CFR 82; 40 CFR 85, Subsection W; 40 CFR 763, Subsections F and G;

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*Public Law 101—549 (S 1630) November 15, 1990; and 42
U.S.C. 7401 et seq.*
