

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

RECEIVED
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JUL '22 2010

STATE OF ILLINOIS
Pollution Control Board

10-YR FEDERALLY ENFORCEABLE

STATE OPERATING PERMITS

("FESOP"): AMENDMENTS TO

35 ILL. ADM. CODE PART 201.162

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R10-21

(Rulemaking-Air)

REPORT OF PROCEEDINGS at the hearing of
the above-entitled cause, taken before GWENDOLYN
BEDFORD, a Certified Shorthand Reporter, within and for
the County of Cook and State of Illinois at the
Illinois Pollution Control Board, 100 West Randolph,
Suite 11-500, Chicago, Illinois 60601 commencing at the
hour of 12:00 p.m. on the 8th day of July, A.D., 2010.

1 APPEARANCES:

2 MR. CAREY ZALEWSKI

3 MR. GARY L. BLANKENSHIP

4 MS. KATHLEEN CROWLEY

5 ILLINOIS POLLUTION CONTROL BOARD

6 100 West Randolph

7 Suite 11-500

8 Chicago, Illinois 60601

9 Phone: 312-814-3461

10 appeared on behalf of the Board

11

12 MS. RACHEL DOCTORS

13 Assistant Counsel

14 Division of Legal Counsel

15 Illinois Environment Protection Agency

16 1021 N. Grand Avenue East

17 Springfield, Illinois 62702

18 Phone: 217-782-3397

19 appeared on behalf of the Agency

20

21 ALSO PRESENT:

22 MR. EDWIN C. BAKOWSKI

23 Manager, Permit Section

24 Division of Air Pollution Control

I N D E X

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WITNESS

PAGE

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ROBERT BENOTEIT

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Examination by Ms. Crowley

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E X H I B I T S

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DOCUMENTS

MARKED FOR ID.

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Exhibit 1

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MS. CROWLEY: Good afternoon. My name is

1 Kathleen Crowley. The Hearing Officer assigned to this
2 regulatory proceeding. This is the first of two
3 presently scheduled hearings being conducted by the
4 Illinois Pollution Control Board in the matter of
5 Tenured Federally Enforceable State Operating Permit,
6 known as Fesop, Amendments to 35 Illinois
7 Administrative Code Section 201.162. And that is the
8 Pollution Control Board Docket R10-21.

9 Today's Hearing Board will begin its
10 receipt of testimony on the merits and the economic
11 effects of the April 20, 2010 Regulatory Proposal
12 filed by the Illinois Environmental Protection Agency.
13 The Agency proposal would extend from five years to
14 ten years. The maximum term that the Agency could
15 issue is a FESOP. The sole position of the air rules
16 to be amended is Section 201.162.

17 We have present today only the Court
18 Reporter, Board Representatives and Agency
19 Representatives. So we'll shorten up some of the
20 usual opening remarks. All hearings before the Board
21 are transcribed by the Court Reporter you see with us
22 today. All witnesses will be sworn in by the Court
23 Reporter prior to giving testimony. Any person may
24 ask questions of any witness giving testimony. Any

1 questions that may come from me or representatives of
2 the Board are intended not to reflect any conclusion
3 on the merits, but simply to provide a complete record
4 for Board deliberation.

5 Seated to my immediate right is Board
6 Member, Carey Zalewski, the board member coordinating.
7 And seated to her right is Board Member, Gary
8 Blankenship. And at this point I'll ask you for your
9 appearance, Miss Doctors.

10 MS. DOCTORS: My name is Rachel Doctors
11 representing the Illinois Environmental Protection
12 Agency.

13 MS. CROWLEY: Before we begin with the
14 Agency's testimony, there is just a couple of items of
15 information that I need to answer into the record. The
16 Board accepted the Agency's proposal for hearing on
17 May 6, 2010. The Board on June 17, 2010 authorized
18 first notice publication of the Rule without comments
19 on the merits. This was published in the July 2, 2010
20 Illinois Register at 35 Illinois Register 8508. The
21 publication started a 45-day public comment under the
22 Administrative Procedure Act. First business day after
23 the 45th day is August 16, 2010, which is the current
24 close comment date.

1 The first notice publication includes
2 the dates of today's hearing and the next hearing
3 scheduled for July 21st in Springfield. And the
4 publication also referenced the June 9, 2010 Hearing
5 Officer order setting deadlines for the prefiling of
6 testimony and addressing other procedural points.

7 On June 4, 2010 the Board submitted a
8 written request to the Department of Commerce and
9 Economic Opportunity known as DCEL. The Board
10 requested that it perform an Economic Impact Study as
11 provided for in Section 27 of the Environmental
12 Protection Act. The Board requested that DCEL provide
13 any response to the request on or before June 30th.
14 No written request has been received and no study has
15 been filed.

16 Section 27(b) requires the Board to hold
17 a hearing on the economic impact of rules and any EcIS
18 submitted and on any explanation DCEL provides for not
19 conducting an EcIS.

20 Section 24(b) allows the Board to
21 dovetail the economic impact hearing with any other
22 hearing. The DCEL EcIS issue will be addressed at the
23 next hearing on July 21st, although participants here
24 today may address it as well if they care to.

1 The only testimony prefiled was that by
2 IEPA's Bob Bernoteit. So we may as well begin with
3 Mr. Bernoteit then.

4 MS. DOCTORS: I would ask that his testimony
5 be entered as if read.

6 MS. CROWLEY: First, could we have
7 Mr. Bernoteit sworn as a witness.

8 (WITNESS SWORN)

9 ROBERT BERNOTEIT,
10 called as a witness herein, after having been first
11 duly sworn, was examined and testified as follows:

12 MS. CROWLEY: Is that acceptable to be as
13 read rather than delivered?

14 MR. BLANKENSHIP: Yes.

15 MS. ZALEWSKI: Yes.

16 MS. CROWLEY: We'll mark the testimony
17 submitted by Mr. Bernoteit on June 29, 2010 as Exhibit
18 Number 1 in this proceeding or 10-11.

19 (WHEREUPON Exhibit 1 was
20 marked for identification)

21 MS. DOCTORS: Would you like copies?

22 MS. CROWLEY: I think we all do.

23 MS. DOCTORS: I have one procedure thing that
24 I need to get on the record.

1 MS. CROWLEY: Sure.

2 MS. DOCTORS: I would like to indicate at the
3 time that at the completion of this rulemaking process
4 that the Agency would be submitting its rulemaking and
5 the package S&L to the UCPA as the state rules covering
6 permits for the -- that are federally enforceable.

7 MS. CROWLEY: Off the record for a second.

8 (DISCUSSION OFF THE RECORD)

9 MS. DOCTORS: The Agency, if the testimony
10 has been accepted and filed as Exhibit 1, then we're
11 open for any questions that the Board may have.

12 EXAMINATION

13 BY MS. CROWLEY:

14 Q Your testimony indicates, as does the
15 proposal, that the maximum term of the FESOP permit
16 would be extended from five years to ten years.
17 Permits that I have seen in my career with the state
18 have always included an expiration date. Would it be
19 correct to assume that these permits will also have an
20 expiration date listed on their face so that it knows
21 whether it has got a five-year permit or a ten-year
22 permit?

23 A They will continue to list the expiration
24 date. The only change is the expiration date would be

1 extended to ten years in the future rather than a
2 maximum of five years into the future.

3 Q Do you have any idea how -- well, strike
4 that.

5 Do you have any range of, oh, cost that
6 you have heard of that sources expend for engineering
7 and consulting and lawyer fees in applying for FESOP
8 renewal permits?

9 A The renewal process is a simple
10 straightforward process. If the source has not had any
11 changes or is not proposing any changes as part of the
12 renewal. So it is a simple two-page application form.
13 I would estimate that the cost to prepare such a form
14 would not typically extend more than \$200.

15 Q The type of form we have seen before where
16 there is a checkoff, has anything changed in the
17 signature and the appropriate name of company and
18 signing officer, et cetera?

19 A That's correct.

20 Q I see at the fourth page of your testimony
21 that you would expect that the workload of FESOP
22 renewals would increase by approximately ten percent
23 within five years of adoption of the proposal?

24 A We would decrease by five percent.

1 Q And that -- I misspoke. And that would in
2 decrease processing time and manpower, et cetera, et
3 cetera?

4 A That's correct.

5 Q As said in the testimony.

6 Members have any questions?

7 MS. ZALEWSKI: I have no other questions.

8 MR. BLANKENSHIP: No.

9 MS. CROWLEY: Thank you very much,
10 Mr. Bernoteit.

11 Did you have anything else that you
12 wanted to present, Miss Doctors?

13 MS. DOCTORS: That concludes the Agency's
14 comments. I would like to thank the Board members and
15 the Hearing Officer for their time.

16 MS. CROWLEY: The next hearing, as I said
17 earlier, is scheduled for July 21, 2010 in Springfield.
18 There doesn't seem to be a substantial interest in this
19 rulemaking. In the interest of travel and economy, the
20 second hearing may be held by the board Springfield
21 base Hearing Officer Carroll Webb. We have done that
22 in other small rulemakings of this type. That would
23 leave Member Zalewski to make the trip to Springfield
24 to see you.

1 MS. ZALEWSKI: It is lovely this time of
2 year.

3 MS. CROWLEY: Following the close of the
4 July 21st hearing, the Hearing Officer will set a date
5 for the close of public comment. As I said before, the
6 45-day first notice comment period required by the APA
7 began on July 2nd and ends August 16th. Section 102
8 108 (b) of the Board procedural rules also provides
9 that the Board will accept comments for 14 days after
10 the receipt of the hearing transcript or any other date
11 set by the Hearing Officer.

12 The Agency is requested to check
13 calendars and be ready to suggest dates for the close
14 of the public comment period on or after August 16th.
15 We have been trying to expedite this proceeding in the
16 interest of saving everyone money. And again whatever
17 is a reasonable close comment period given the fact
18 that we're on summer vacation season, et cetera.
19 We'll do what we can to accommodate you.

20 If there is nothing else from anyone,
21 seeing nothing then, thank you all for attending and
22 have a good trip back to Springfield. Thanks a lot.

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24 (WHEREUPON the hearing was

adjourned at 12:15 p.m.)

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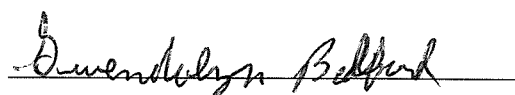
6 I, GWENDOLYN BEDFORD, Certified Shorthand
7 Reporter and Notary Public, in the City of Chicago,
8 County of Cook and State of Illinois, do hereby certify
9 that the above testimony was recorded stenographically
10 by me and was reduced to computer transcription under
11 my personal direction.

12 I hereunto set my hand on this 21st day of
13 July, 2010.

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GWENDOLYN BEDFORD, C.S.R.

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No. 084-003700

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* * * * * R2010-021 * * * * *

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

IN THE MATTER OF:

**10-YR FEDERALLY ENFORCEABLE
STATE OPERATING PERMITS
("FESOP"): AMENDMENTS TO
35 ILL. ADM. CODE PART 201.162**

R10-
(Rulemaking - Air)

NOTICE

TO:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Matthew Dunn, Chief
Attorney General's Office
James R. Thompson Center
100 West Randolph, 12th Floor
Chicago, Illinois 60601

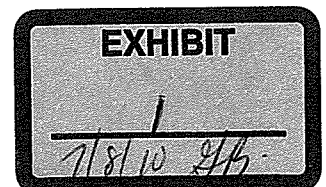
Virginia Yang
Deputy Legal Counsel
Illinois Dept. of Natural Resources
524 South Second Street
Springfield, Illinois 62701-1787

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the REGULATORY PROPOSAL FOR 10-YR FEDERALLY ENFORCEABLE STATE OPERATING PERMITS ("FESOP") of the Illinois Environmental Protection Agency a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____ /s/
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: April 20, 2010
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544



ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

10-YR FEDERALLY ENFORCEABLE)	
STATE OPERATING PERMITS)	
("FESOP"): AMENDMENTS TO)	R10-
35 ILL ADM. CODE PART 201.162)	(Rulemaking - Air)

TABLE OF CONTENTS OF REGULATORY SUBMITTAL

Following is a Table of Contents of all pleadings and documents included with the proposed regulatory action:

1. Notice of Proposal
2. Appearance of Rachel L. Doctors, Assistant Counsel, for the Illinois Environmental Protection Agency
3. Director Douglas Scott's Proposal of Amendments
4. Economic and Budgetary Analysis
6. Statement of Reasons
 - A. Attachment "A" - Sic Codes
 - B. Attachment "B" - Outreach
 - C. USEPA's "Approval and Promulgation of Air Quality Implementation Plans: Indiana; Extended Permit Terms for Renewal of Federally Enforceable State Operating Permits, 74 *Fed. Reg.* 20599, May 5, 2009.
7. First Notice
8. Proposed Amendments to 35 Ill. Adm. Code Section 201.162
9. Documents Relied On
 - *a. Illinois Environmental Protection Act (415 ILCS 5/et. seq.)
 - *b. USEPA's "Approval and Promulgation of Implementation Plans; Illinois," Final Rule, 57 *Fed. Reg.* 59928, December 17, 1992.
10. Certificate of Service

*Copies of documents with an asterisk beside the letter have not been provided.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

IN THE MATTER OF:)
)
10-YR FEDERALLY ENFORCEABLE) R10-
STATE OPERATING PERMITS) (Rulemaking - Air)
("FESOP"): AMENDMENTS TO)
35 ILL ADM. CODE PART 201.162)

APPEARANCE

The undersigned, as one of its attorneys, hereby enters an Appearance on behalf of the Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: April 20, 2010
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

ORIGINAL

**Agency Analysis of Economic and
Budgetary Effects of Proposed Rulemaking**

Agency: Illinois Pollution Control Board

Part/Title: Permits and General Provisions (35 Ill. Adm. Code Part 201)

Illinois Register Citation: _____

Please attempt to provide as dollar-specific responses as possible and feel free to add any relevant explanation.

1. Anticipated effect on State expenditures and revenues.

- (a) Current cost to the agency for this program/activity. \$ 480,000 per year (approximately, 4 FTE's @ \$120,000 salary plus benefits)
- (b) If this rulemaking will result in an increase or decrease in cost, specify the fiscal year in which this change will first occur and the dollar amount of the effect.

Decrease by approximately 25% (sources will still seek revisions to their FESOPs and Green House Gas regulation will increase the number of FESOP sources).
- (c) Indicate the funding source, including Fund and appropriation lines, for this program/activity.

Clean Air Act Permit Program (CAAPP) and the Permit and Inspection Fund.
- (d) If an increase or decrease in the costs of another State agency is anticipated, specify the fiscal year in which this change will first occur and the estimated dollar amount of the effect.

Department of Commerce and Economic Opportunity (DCEO). There will be negligible cost savings, if any.
- (e) Will this rulemaking have any effect on State revenues or expenditures not already indicated above? No.

2. Economic effect on persons affected by the rulemaking:

- (a) Indicate the economic effect and specify the persons affected:

Positive x Negative _____ No effect _____

Persons affected: Broad range of industrial sectors, mostly small and medium sized companies.

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* * * * * R2010-021 * * * * *

Dollar amount per person: \$200 (estimated cost to fill out FESOP renewal application form)

Total statewide cost: \$16,000 per year (800 FESOP sources x \$200 x 1 Permit Renewal/10 year)

- (b) If an economic effect is predicted, please briefly describe how the effect will occur.

Less cost to business and fewer delays to obtain FESOPs and construction permits for sources with a FESOP.

- (c) Will the rulemaking have an indirect effect that may result in increased administrative costs? Will there be any change in requirements such as filing, documentation, reporting or completion of forms?

The rulemaking may result in a decrease in administrative costs.

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
10-YR FEDERALLY ENFORCEABLE) R10-
STATE OPERATING PERMITS) (Rulemaking - Air)
("FESOP"): AMENDMENTS TO)
35 ILL. ADM. CODE SECTION 201.162)

STATEMENT OF REASONS

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") hereby submits this Statement of Reasons to the Illinois Pollution Control Board ("Board") pursuant to Sections 10, 27, 28, and 39 of the Environmental Protection Act ("Act") (415 ILCS 5/10, 27, 28, and 39) and 35 Ill. Adm. Code 102.202(b)) in support of the attached proposed amendments. Included in this proposal are amendments to 35 Ill. Adm. Code Section 201.162. This proposal amends the most recent version of 35 Ill. Adm. Code Part 201, as found on the Board's website.

I. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL

a. Background – Federally Enforceable State Operating Permits

On December 17, 1992, the United States Environmental Protection Agency ("USEPA") approved the provisions of the Illinois EPA's Federally Enforceable State Operating Permit ("FESOP") program. USEPA stated that Illinois EPA's FESOP program met all five criteria for approving a state operating permit program as part of a State Implementation Plan ("SIP"). Specifically, the Illinois EPA must submit its permit program to USEPA for approval; terms of the permit and its renewal must be legally enforceable; the terms and conditions of the permit must be at least as stringent as any

other applicable limitation or requirement contained in the SIP or enforceable by the SIP or waive any requirements that are federally enforceable (e.g., standards established under section 111 or 112 of the Clean Air Act ("CAA")); the limitations, controls and requirements in the permit must be permanent, quantifiable and otherwise enforceable as a practical matter; and the permits must be issued pursuant to public participation. *Id.*

USEPA restated its approval of the Illinois EPA's FESOP program when it approved the Clean Air Act Permit Program ("CAAPP") pursuant to Section 39.5 of the Act. Subsection 3.3(c) of Section 39.5 of the Act, gives the Illinois EPA the authority to issue FESOPs for the purposes of limiting a sources potential to emit pursuant to the Illinois EPA's general authority to issue state permits under Section 39(a) of the Act.

The Board adopted regulations for implementation of issuing state air pollution control permits in 35 Ill. Adm. Code 201. Section 201.162 specifies the duration that permits can be issued as either subject to Section 201.169 (perpetual permits) or five years. This proposal seeks to extend the term of State operating permits from five to ten years. This proposal does not change the term of perpetual permits issued pursuant to Section 201.169 or CAAPP permits issued pursuant to Section 39.5 of the Act.

b. This Proposal

This proposal extends the maximum term that a FESOP may be issued from five to ten years. Currently, State operating permits, except for smaller source permits, may only be issued for five years or less. Under the proposal, the term that a FESOP could be issued would be extended from five to ten years at the discretion of the Illinois EPA. The Illinois EPA retains the discretion that it currently has under Section 201.162 to issue permits for a term that is shorter than the maximum. The term for CAAPP permits issued

pursuant to Section 39.5 of the Act, except for sources exempted from CAAPP pursuant to subsection 1.1 of Section 39.5 of the Act, would remain five years as required by statute. 415 ILCS 5/39.5(1.1). Owners or operators of sources not subject to CAAPP or requiring a FESOP would remain subject to the requirements of Section 201.169, which grants permits indefinitely. That Section requires that State permits only be renewed at the request of the Illinois EPA or if the circumstances underlying the permit change.

Two other states have adopted or are in the process of adopting rules extending the term of FESOPs from five to 10 years. The State of Indiana received final approval of their rule on October 6, 2009. 74 *Fed.Reg.* 51240. (Att. "A")

c. Implementation

The Illinois EPA has averaged 61 new FESOP applications each year since the year 2000 and 66 FESOP renewal applications each year over the last ten years. When these applications come in and are reviewed, at the discretion of the Illinois EPA, the permits will be granted for a term of 10 years. The Illinois EPA may choose to issue a FESOP for a term shorter than ten years. FESOPs that are issued for a term shorter than ten years include situations in which the source may have been out of compliance with the applicable requirements prior to issuance of the FESOP and need to perform additional performance testing to demonstrate or confirm compliance with the applicable requirements.

It is important to note that granting FESOPs for a longer term will not affect the implementation of air pollution control programs or enforcement of air quality standards in the State of Illinois. Sources must comply with all applicable requirements of the Board's rules or the Act, regardless of the length of a FESOP's term or the timing of its

issuance. FESOPs generally contain limits on the operations of the source, e.g., materials used and hours of operation, which effectively restrict the source's potential to emit. The Illinois EPA's program requires the permits to undergo public notice and be subject to public comments. A FESOP does not impact any previously or newly applicable substantive requirements of the Act, the Board's rules or the Clean Air Act ("CAA"), such as a new maximum achievable control technology standard under Section 112 of the CAA. Such requirements remain independently enforceable. Similarly, owners and operators of FESOPs will still need to meet all applicable requirements under the Act, including those related to new construction. Therefore, an extension of the term for an initial or a renewal of a FESOP from five to ten years does not delay an owner or operator's obligation to comply with all applicable requirements.

II. GEOGRAPHIC REGIONS AND SOURCES AFFECTED

The entire State of Illinois will be affected, as no single region contains all FESOP sources. The proposed regulations will affect all of the approximately 800 sources in Illinois that have either applied for or have obtained a FESOP. The industrial sectors in which these sources are categorized are on Att. "B."

III. PURPOSE AND EFFECT OF THE PROPOSAL

The purpose of this proposal is to extend the maximum term that a FESOP may be issued from five to ten years. Currently, State operating permits, except for smaller source permits, may only be issued for five years or less. Under the proposal, the permit term would be extended up to ten years at the discretion of the Illinois EPA. The term for CAAPP permits issued pursuant to Section 39.5 of the Act, except for sources exempted from CAAPP pursuant to subsection 1.1 of Section 39.5 of the Act would remain 5 years

as required by statute. 415 ILCS 5/39.5(1.1).

This proposal will have a positive economic impact on affected sources by reducing time spent on permit renewal applications. This proposal will also reduce the costs to the Illinois EPA associated with the time and effort required for processing these permit renewal applications. While sources with FESOP permits represent only a small amount of emissions in Illinois, they require a large proportion of the Illinois EPA's permitting resources. The reduced frequency of these renewals will provide a significant time savings for the Illinois EPA. Within five years of adoption of this proposal, it would be anticipated that the workload of FESOP renewals would decrease by approximately ten percent.

IV. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

As discussed above, the proposal imposes no new regulatory requirements on affected sources. The amendments to Section 201.162 merely extend the duration of FESOPs. The amendments are expected to reduce administrative costs of the permitting process for both the affected sources and the Illinois EPA. As this proposal imposes no new requirements or costs on affected sources, the proposal is both technically and economically feasible.

V. COMMUNICATION WITH INTERESTED PARTIES

These amendments are being proposed after representatives of industry and environmental groups have had an opportunity to review the proposed changes and provide comments to the Illinois EPA. The Illinois EPA sent electronic mails to the affected owners and operators on January 22, 2010, as well as posting a notice on its website. The Illinois EPA received three oral comments. (Att. "C") Two comments

were in favor and one comment had a concern. Therefore, it is the Illinois EPA's understanding that there are no specific issues identified by interested parties and that this rulemaking is not highly controversial.

VI. SYNOPSIS OF TESTIMONY

Currently, the Illinois EPA plans to call Robert Bernoteit, Unit Manager of the FESOP Unit of the Permit Section of the Bureau of Air. Mr. Bernoteit will testify about the amendments to the rules and will assist in answering questions. Written testimony will be submitted prior to hearing in accordance with the Board's procedural rules.

VII. PUBLISHED STUDY OR RESEARCH REPORT

No published study or research report was used in developing the proposed amendments to 35 Ill. Adm. Code Section 201.162.

VIII. THE ILLINOIS EPA'S PROPOSAL

Section 201.162 Duration

Illinois EPA is proposing to is to extend the maximum term that a FESOP may be issued from five to ten years.

IX. CONCLUSION

For the reasons stated above, the Illinois EPA hereby submits this regulatory proposal and respectfully requests that the Board expeditiously adopts these rules for the State of Illinois.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____/s/_____

Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: April 20, 2010

1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

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***** R2010-021 *****

Attachment "B":

Major SIC Group	Description	Number of Sources
01	Agricultural Production Crops	3
07	Agricultural Services	5
10	Metal Mining	1
12	Coal Mining	1
13	Oil And Gas Extraction	1
14	Mining And Quarrying Of Nonmetallic Minerals, Except Fuels	6
16	Heavy Construction Other Than Building Construction Contractors	1
17	Construction Special Trade Contractors	2
20	Food And Kindred Products	34
21	Tobacco Products	1
22	Textile Mill Products	1
23	Apparel And Other Finished Products Made From Fabrics And Similar Materials	5
24	Lumber And Wood Products, Except Furniture	15
25	Furniture and Fixtures	9
26	Paper and Allied Products	43
27	Printing, Publishing, And Allied Industries	53
28	Chemicals And Allied Products	78
29	Petroleum Refining And Related Industries	99
30	Rubber And Miscellaneous Plastics Products	37
32	Stone, Clay, Glass, And Concrete Products	20
33	Primary Metal Industries	29
34	Fabricated Metal Products, Except Machinery And Transportation Equipment	65
35	Industrial And Commercial Machinery And Computer Equipment	30
36	Electronic And Other Electrical Equipment And Components, Except Computer Equipment	13
37	Transportation Equipment	14
38	Measuring, Analyzing, And Controlling Instruments; Photographic, Medical And Optical Goods; Watches And Clocks	6
39	Miscellaneous Manufacturing Industries	11
40	Railroad Transportation	2
42	Motor Freight Transportation And Warehousing	7
44	Water Transportation	3

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***** R2010-021 *****

45	Transportation By Air	3
46	Pipelines, Except Natural Gas	5
47	Transportation Services	4
48	Communications	17
49	Electric, Gas, And Sanitary Services	36
50	Wholesale Trade-durable Goods	12
51	Wholesale Trade-non-durable Goods	25
59	Miscellaneous Retail	1
60	Depository Institutions	1
63	Insurance Carriers	1
65	Real Estate	1
67	Holding And Other Investment Offices	1
72	Personal Services	6
73	Business Services	9
76	Miscellaneous Repair Services	4
80	Health Services	28
82	Educational Services	8
84	Museums, Art Galleries, And Botanical And Zoological Gardens	1
87	Engineering, Accounting, Research, Management, And Related Services	2
91	Executive, Legislative, And General Government, Except Finance	9
92	Justice, Public Order, And Safety	2
95	Administration Of Environmental Quality And Housing Programs	1
96	Administration Of Economic Programs	1
97	National Security And International Affairs	1
	Unclassified	23

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS)

COUNTY OF SANGAMON)

SS

10/20
ORIGINAL

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached REGULATORY PROPOSAL FOR 10-YR FEDERALLY ENFORCEABLE STATE OPERATING PERMITS ("FESOP") of the Illinois Environmental Protection Agency upon the following persons:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Matthew Dunn, Chief
Attorney General's Office
James R. Thompson Center
100 West Randolph, 12th Floor
Chicago, Illinois 60601

Virginia Yang
Deputy Legal Counsel
Illinois Dept. of Natural Resources
524 South Second Street
Springfield, Illinois 62701-1787

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

/s/

Rachel L. Doctors
Assistant Counsel
Air Regulatory Unit
Division of Legal Counsel

Dated: April 20, 2010

1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544
217.782.9143 (TDD)

ORIGINAL

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Permits and General Provisions
 - 2) Code Citation: Amendments to 35 Ill. Adm. Code Part 201.162
 - 3) Section Numbers: Proposed Action:
201.162 Amend
 - 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27].
 - 5) A Complete Description of the Subjects and Issues Involved: This proposal will amend the Board's regulations that affect the permitting of synthetic minor sources and non-major sources. The proposal extends the duration of federally enforceable state operating permits (FESOPs) from 5 to 10 years unless the source is required to obtain a Clean Air Act Permit Program permit pursuant to Section 39.5 of the Illinois Environmental Protection Act ("Act") and not exempt pursuant to subsection 1.1 of Section 39.5 of the Act. 415 ILCS 5/39.5(1.1).
 - 6) Will this proposed amendment replace an emergency rule currently in effect? No
 - 7) Does this rulemaking contain an automatic repeal date? No
 - 8) Does this proposed amendment contain incorporations by reference? No
 - 9) Are there any other proposed amendments pending on this Part? No
- | <u>Section Numbers</u> | <u>Proposed Action</u> | <u>Illinois Register Citation</u> |
|------------------------|---|-----------------------------------|
| 10) | <u>Statement of Statewide Policy Objectives:</u> These proposed amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3]. | |
| 11) | <u>Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:</u> The Board will accept written public comments on this proposal for a period of forty-five (45) days after the date of publication in the Illinois Register. Comments should reference Docket R10- and be addressed to: | |

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Chicago, IL 60601

and

Rachel L. Doctors
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217-782-5544

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small businesses, small municipalities, or not-for-profit corporations that are required or decide to obtain a FESOP or synthetic minor operating permit could be affected by the proposed amendments.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None
- 13) This rulemaking was included on the most recent regulatory agenda: 34 *Ill. Reg.* 358, January 4, 2010.
- 14) Does this amendment require the review of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? [30 ILCS 500/5-25] No

The full text of the Proposed Amendment(s) begins on the next page:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE B: AIR POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 201

PERMITS AND GENERAL PROVISIONS

SUBPART A: DEFINITIONS

Section	
201.101	Other Definitions
201.102	Definitions
201.103	Abbreviations and Units
201.104	Incorporations by Reference

SUBPART B: GENERAL PROVISIONS

Section	
201.121	Existence of Permit No Defense
201.122	Proof of Emissions
201.123	Burden of Persuasion Regarding Exceptions
201.124	Annual Report
201.125	Severability
201.126	Repealer

SUBPART C: PROHIBITIONS

Section	
201.141	Prohibition of Air Pollution
201.142	Construction Permit Required
201.143	Operating Permits for New Sources
201.144	Operating Permits for Existing Sources
201.146	Exemptions from State Permit Requirements
201.147	Former Permits
201.148	Operation Without Compliance Program and Project Completion Schedule
201.149	Operation During Malfunction, Breakdown or Startups
201.150	Circumvention
201.151	Design of Effluent Exhaust Systems

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section	
201.152	Contents of Application for Construction Permit
201.153	Incomplete Applications (Repealed)
201.154	Signatures (Repealed)
201.155	Standards for Issuance (Repealed)
201.156	Conditions
201.157	Contents of Application for Operating Permit
201.158	Incomplete Applications
201.159	Signatures
201.160	Standards for Issuance
201.161	Conditions
201.162	Duration
201.163	Joint Construction and Operating Permits
201.164	Design Criteria
201.165	Hearings
201.166	Revocation
201.167	Revisions to Permits
201.168	Appeals from Conditions
201.169	Special Provisions for Certain Operating Permits
201.170	Portable Emission Units

SUBPART E: SPECIAL PROVISIONS FOR OPERATING PERMITS FOR CERTAIN
SMALLER SOURCES

Section	
201.180	Applicability (Repealed)
201.181	Expiration and Renewal (Repealed)
201.187	Requirement for a Revised Permit (Repealed)

SUBPART F: CAAPP PERMITS

Section	
201.207	Applicability
201.208	Supplemental Information
201.209	Emissions of Hazardous Air Pollutants
201.210	Categories of Insignificant Activities or Emission Levels
201.211	Application for Classification as an Insignificant Activity
201.212	Revisions to Lists of Insignificant Activities or Emission Levels

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART G: EXPERIMENTAL PERMITS
(Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

Section	
201.241	Contents of Compliance Program
201.242	Contents of Project Completion Schedule
201.243	Standards for Approval
201.244	Revisions
201.245	Effects of Approval
201.246	Records and Reports
201.247	Submission and Approval Dates

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

Section	
201.261	Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup
201.262	Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup
201.263	Records and Reports
201.264	Continued Operation or Startup Prior to Granting of Operating Permit
201.265	Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup

SUBPART J: MONITORING AND TESTING

Section	
201.281	Permit Monitoring Equipment Requirements
201.282	Testing
201.283	Records and Reports

SUBPART K: RECORDS AND REPORTS

Section	
201.301	Records
201.302	Reports

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART L: CONTINUOUS MONITORING

Section	
201.401	Continuous Monitoring Requirements
201.402	Alternative Monitoring
201.403	Exempt Sources
201.404	Monitoring System Malfunction
201.405	Excess Emission Reporting
201.406	Data Reduction
201.407	Retention of Information
201.408	Compliance Schedules

201.APPENDIX A	Rule into Section Table
201.APPENDIX B	Section into Rule Table
201.APPENDIX C	Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 27, 39, and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-13 at 22 Ill. Reg. 11451, effective June 23, 1998; amended in R98-28 at 22 Ill. Reg. 11823, effective July 31, 1998; amended in R02-10 at 27 Ill. Reg. 5820, effective March 21, 2003; amended in R05-19 and R05-20 at 30 Ill. Reg. 4901, effective March 3, 2006; amended in R07-19 at 33 Ill. Reg. 11965, effective August 6, 2009; amended in R10-__ at __ Ill. Reg. ____, effective ____.

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

Section 201.162 Duration

- a) No operating permit shall be valid longer than ten ~~five~~ years or such shorter

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

period as the Agency may specify in the operating permit as necessary to accomplish the purposes of the Act and this Chapter, unless the source is subject to:

- 1) Section 201.169 of this Subpart; or
 - 2) Section 39.5 of the Act, except for sources exempt pursuant to subsection 1.1 of Section 39.5.
- b) Applications for renewal of an operating permit shall be submitted to the Agency at least 90 days prior to the expiration of the prior permit, and shall conform to Sections 201.157, 201.158 and 201.159. The standards for issuance of renewal of operating permits shall be as set forth in Section 201.160.

(Source: Amended at ____ Ill. Reg. ____, effective _____)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

10-YR FEDERALLY ENFORCEABLE
STATE OPERATING PERMITS
("FESOP"): AMENDMENTS TO
35 ILL ADM. CODE PART 201.162

R10-
(Rulemaking - Air)

ORIGINAL

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
PROPOSAL OF REGULATIONS

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Douglas P. Scott
Douglas P. Scott
Director

DATED: April 6, 2010

Electronic Filing - Received, Clerk's Office, April 20, 2010

* * * * * R2010-021 * * * * *

Doctors, Rachel

From: Kaleel, Rob
Sent: Friday, January 22, 2010 11:42 AM
To: 'jaap@hansoninfosys.com'; 'jeffa@gfai.org'; 'Brian Urbaszewski'; 'Kathy Andria'; 'IERG Staff'; 'DK Hirner'; 'Mark Biel'; Fulgenzi, Annette; Owen, Verena
Subject: Draft Revisions to Part 201 to Extend Permit Terms for FESOPs

The Illinois Environmental Protection Agency (IEPA) will be proposing rule revisions to 35 Administrative Code Part 201 to extend the FESOP permit renewal term from five years to ten years. The IEPA has determined that extending the term to ten years will provide significant time and cost savings to the IEPA and affected sources by reducing the frequency of permit application submittals and processing. A draft of this proposal is now available on IEPA's web site. The IEPA is accepting comments regarding the rule revisions prior to their filing with the Illinois Pollution Control Board. Please submit your comments to epa.fesopcomments@illinois.gov.

ORIGINAL

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant adverse effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that 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. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) is not required.

VII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

2. Revise § 601.8 to read as follows:

§ 601.8 Publication of revocation.

The Commissioner, following revocation of a biologics license under 21 CFR 601.5(b), will publish a notice in the **Federal Register** with a statement of the specific grounds for the revocation.

Dated: March 25, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–10243 Filed 5–4–09; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R05–OAR–2008–0031; FRL–8899–4]

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: Proposed rule.

SUMMARY: EPA is proposing to approve 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 to devote more resources to major source Title V permitting actions and permit modifications for both Title V and FESOP sources.

DATES: Comments must be received on or before June 4, 2009.

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.

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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

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.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving Indiana's state implementation plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 20, 2009.
 Walter W. Kovalick, Jr.,
Acting Regional Administrator, Region 5.
 [FR Doc. E9-10334 Filed 5-4-09; 8:45 am]
 BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2008-015; Docket 2009-0015;
Sequence 1]

RIN: 9000-AL26

Federal Acquisition Regulation; FAR Case 2008-015, Payments Under Fixed-Price Architecture and Engineering Contracts

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Proposed rule with request for
comments.

SUMMARY: The Civilian Agency
Acquisition Council (CAAC) and the
Defense Acquisition Regulations
Council (DARC) propose to amend the
Federal Acquisition Regulation (FAR) to
revise the withholding-of-payment
requirements under FAR clause 52.232-
10, Payments Under Fixed-Price
Architect-Engineer Contracts.

DATES: Interested parties should submit
written comments to the Regulatory
Secretariat on or before July 6, 2009 to
be considered in the formulation of a
final rule.

ADDRESSES: Submit comments
identified by FAR case 2008-015 by any
of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal
eRulemaking portal by inputting "FAR
Case 2008-015" under the heading
"Comment or Submission". Select the
link "Send a Comment or Submission"
that corresponds with FAR Case 2008-
015. Follow the instructions provided to
complete the "Public Comment and
Submission Form". Please include your
name, company name (if any), and
"FAR Case 2008-015" on your attached
document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat
(VPR), 1800 F Street NW, Room 4041,

Washington, DC 20405, ATTN: Hada
Flowers.

Instructions: Please submit comments
only and cite FAR case 2008-015 in all
correspondence related to this case. All
comments received will be posted
without change to <http://www.regulations.gov>, including any
personal and/or business confidential
information provided.

FOR FURTHER INFORMATION CONTACT Ms.
Meredith Murphy, Procurement
Analyst, at (202) 208-6925 for
clarification of content. For information
pertaining to status or publication
schedules, contact the Regulatory
Secretariat at (202) 501-4755. Please
cite FAR case 2008-015.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation
(FAR) 52.232-10, Payments under
Fixed-Price Architecture-Engineer
Contracts, currently requires the
contracting officer to withhold 10% of
the amounts due on each voucher;
however, payment may be made in full
during any month in which the
contracting officer determines the
performance to be satisfactory. The
Government retains the withhold
amount until the contracting officer
determines that the work has been
satisfactorily completed. The
contracting officer may release excess
withhold amounts to the contractor
when it is determined that work is
substantially complete and when the
contracting officer determines that the
amount retained is in excess of the
amount adequate for the protection of
the Governments interests.

This rule proposes to revise FAR
52.232-10 to permit contracting officers
to use their judgment regarding the
amount of payment withhold to apply
under fixed-price architecture-engineer
contracts (based on an assessment of the
contractor's performance under the
contract) so that the withhold amount
will be applied at the level necessary to
protect the Government's interests. This
is in contrast to the current requirement
that contracting officers withhold 10
percent on all payments. Thus, the rule
proposes to revise paragraphs (b) and (c)
of the contract clause at FAR 52.232-10
to state that the contracting officer may
(rather than shall) withhold up to 10
percent of the payment amount due and
that the amount of withhold shall be
determined based upon the contractor's
performance record. The rule also
makes several related editorial changes
including one that clarifies that the
contractor will be paid any unpaid
balance due to include withhold

amounts at the successful completion of
the design work.

This case originated from a
recommendation in the Small Business
Administration's Regulatory Review and
Reform (r3) initiative. The current
withholding provisions negatively
impact the cash flow of architect-
engineer contractors and may, in some
instances, result in the withholding of
amounts that exceed reasonable
amounts to protect the Government's
interests.

This is not a significant regulatory
action and, therefore, is not subject to
review under Section 6(b) of Executive
Order 12866, Regulatory Planning and
Review, dated September 30, 1993. This
rule is not a major rule under 5 U.S.C.
804.

B. Regulatory Flexibility Act

The Councils do not expect this
proposed rule to have a significant
economic impact on a substantial
number of small entities within the
meaning of the Regulatory Flexibility
Act, at 5 U.S.C. 601, *et seq.*, because the
rule does not impose any additional
requirements on small businesses. There
are approximately 230,000 architect-
engineer firms, many of which are small
businesses. This rule actually eases the
impact on such firms. Therefore, an
Initial Regulatory Flexibility Analysis
has not been performed. We invite
comments from small businesses and
other interested parties. The Councils
will consider comments from small
entities concerning the affected FAR
Part 52 in accordance with 5 U.S.C. 610.
Interested parties must submit such
comments separately and should cite 5
U.S.C. 601, *et seq.* (FAR Case 2008-015)
in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does
not apply because the proposed changes
to the FAR do not impose information
collection requirements that require the
approval of the Office of Management
and Budget under 44 U.S.C. 3501, *et
seq.*

List of Subjects in 48 CFR Part 52

Government Procurement.

Dated: April 28, 2009.

Al Matera

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA
propose to amend 48 CFR part 52 as set
forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR
part 52 is revised to read as follows: