

## PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

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AUTHORITY: 42 U.S.C. 7545(i) and (g), 7625-1.

SOURCE: 50 FR 25577, June 20, 1985, unless otherwise noted.

### Subpart A—Guam

#### § 69.11 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act ("CAA") and a petition submitted by the Governor of Guam ("Petition"), the Administrator of the Environmental Protection Agency ("EPA") conditionally exempts electric generating units on Guam from certain CAA requirements.

(1) A waiver of the requirement to obtain a prevention of significant deterioration ("PSD") permit prior to construction is granted for the electric generating units identified in the Petition as Cabras Diesel No. 1, the Tenjo project, and three 6-megawatt diesel generators to be constructed at Orote, with the following conditions:

(i) Each electric generating unit shall not be operated until a final PSD permit is issued for that unit;

(ii) Each electric generating unit shall not be operated until that unit complies with all requirements of its PSD permit, including, if necessary, retrofitting with the best available control technology ("BACT");

(iii) The PSD application for each electric generating unit shall be deemed complete without the submission of the required one year of on-site meteorological data, however, EPA will not issue a PSD permit to such a unit prior to submission of such data or data which the EPA finds to be an equivalent and acceptable substitute; and

(iv) If any electric generating unit covered by this paragraph is operated either prior to the issuance of a final PSD permit or without BACT equipment, that electric generating unit shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of that unit.

(2) A waiver of the three nonattainment area requirements (a construction ban, the use of lowest achievable emission rate control equipment, and emission offset requirements) currently applicable to the Cabras-Piti area is granted for electric generating units with the following conditions:

(i) A tower and meteorological station shall be constructed in the Cabras-Piti area by May 1, 1993;

(ii) Meteorological data shall be collected from the Cabras-Piti station which is sufficient to run air quality models both to demonstrate no current exceedences of the primary national ambient air quality standard for sulfur dioxide ("sulfur dioxide NAAQS"), as set forth at 40 CFR 50.4, and sufficient to submit a complete request for redesignation of the area to attainment;

(iii) Ambient sulfur dioxide monitors shall be installed and operated in accordance with the procedures set forth at 40 CFR part 58, the PSD air monitoring requirements, and any additional monitoring requested by EPA to verify the efficacy of the intermittent control strategy ("ICS") of fuel switching;

(iv) Within three years from the effective date of this waiver, the Governor of Guam shall submit to the EPA a complete request that the Cabras-Piti area be redesignated to attainment for the sulfur dioxide NAAQS;

(v) Electric generating units to be constructed in the Cabras-Piti area

must submit applications for PSD permits as though the area had been redesignated to attainment for the sulfur dioxide NAAQS;

(vi) The Cabras-Piti area electric generating units shall comply with the fuel switching ICS described in paragraph (a)(3)(i) of this section;

(vii) If the collected data and air quality analysis does not demonstrate to the EPA's satisfaction that there are no current or likely future exceedences of the sulfur dioxide NAAQS, the EPA will so notify the Governor of Guam;

(viii) Within six months of such notification, the Governor of Guam shall submit to the EPA an implementation plan which includes a schedule of emission reductions and/or control measures that will ensure achievement of the sulfur dioxide NAAQS within one year of submission of the implementation plan; and

(ix) If the Governor of Guam fails to submit an implementation plan in a timely fashion, or if EPA disapproves that implementation plan, all electric generating units subject to the fuel switching ICS described in paragraph (a)(3)(i) of this section shall be fueled exclusively with low sulfur fuel.

(3) A waiver of the prohibition on the use of the ICS of fuel switching is granted for electric generating units with the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be the one set forth in a separate EPA document entitled Cabras-Piti Area Intermittent Control Strategy; and

(ii) This protocol may be modified by the EPA to protect against exceedences of the sulfur dioxide NAAQS and to accommodate additional electric generating units.

(b) The waiver will be periodically reviewed (at intervals no longer than three years) and, as deemed appropriate by the Administrator, can be modified or terminated at any time through rulemaking procedures.

(c) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on July 14, 1995 ("1995 Petition"), the Administrator of EPA conditionally exempts Guam

Power Authority ("GPA") from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 1995 Petition as Cabras Unit No. 4, with the following conditions:

(i) Cabras Unit No. 4 shall not operate until a final PSD permit is received by GPA for this unit;

(ii) Cabras Unit No. 4 shall not operate until it complies with all requirements of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Cabras Unit No. 4 operates either prior to the issuance of a final PSD permit or without BACT equipment, Cabras Unit No. 4 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) A waiver of the requirement to obtain a PSD permit prior to the operation of the unit identified in the 1995 Petition as Cabras Unit No. 3 is granted subject to the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be modified to require the use of fuel oil with a sulfur content of 2.00 percent or less during offshore wind conditions. This fuel shall be fired in Cabras Power Plant Units Nos. 1 through 3 and in Piti Power Plant Units Nos. 4 and 5.

(ii) Cabras Unit No. 3 shall operate in compliance with all applicable requirements in its permits to construct and to operate as issued by Guam Environmental Protection Agency.

(iii) The waiver provisions allowing Cabras Unit No. 3 to operate prior to issuance of a PSD permit shall expire on August 15, 1996, or upon the receipt by GPA of a PSD permit for Cabras Unit No. 3, whichever event occurs first.

(3) On or before October 15, 1995, GPA shall submit to EPA, Region IX, a report concerning the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. The report shall contain:

(i) A summary of GPA's conclusions from its wind tunnel study;

(ii) A description of the alternatives available to assure compliance with all air quality requirements, including

PSD requirements, during the operation of Cabras Units Nos. 3 and 4;

(iii) A description of the alternative GPA chooses to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4; and

(iv) A plan of implementation by GPA.

(d)(1) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on February 11, 1997 ("1997 Petition"), the Administrator of EPA conditionally exempts Piti Power Plant Units No. 8 and No. 9 from certain CAA requirements.

(2) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating units identified in the 1997 Petition as Piti Units No. 8 and No. 9 (two 45 megawatt baseload diesel electric generators and associated waste heat recovery boilers with a steam generator), with the following conditions:

(i) Piti Units No. 8 and No. 9 shall not operate until final PSD permits are received for these units;

(ii) Piti Units No. 8 and No. 9 shall not operate until they comply with all requirements of their PSD permits, including, if necessary, retrofitting with BACT;

(iii) If either Piti Units No. 8 or No. 9 operate either prior to the issuance of a final PSD permit or without BACT equipment, the Piti Unit(s) shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit(s).

[58 FR 43043, Aug. 12, 1993, as amended at 60 FR 48038, Sept. 18, 1995; 62 FR 44416, Aug. 21, 1997]

#### § 69.12 Continuing exemptions.

(a) Effective on the expiration date of the initial eighteen month exemption provided under section 325(b) of "the Act", the Administrator of the Environmental Protection Agency (EPA) exempts the Guam Power Authority's two sixty-six megawatt oil-fired steam units which comprise the Cabras Power Plant from sulfur dioxide requirements associated with New Source Performance Standards (NSPS) under section 111 of the Clean Air Act and from the related NSPS limitation on sulfur di-

oxide emissions contained in the Guam SIP.

(b) The exemption will be reviewed at intervals and upon occasions to be specified by EPA (not longer than 2 years), allowing EPA to determine whether the factual circumstances upon which it is based, including commitments made by GPA in the application for extension and the continuing attainment of the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide, have changed. The commitments include reporting requirements specified by the Guam Environmental Protection Agency (GEPA), including but not limited to strict implementation of both the monitoring (wind direction and ambient SO<sub>2</sub> concentration) and fuel switching portions of the control strategy, reporting to GEPA of all applications of the strategy, and reporting to GEPA of laboratory analyses of percent sulfur in all new fuel stocks acquired GPA. A finding by EPA that the source is not in compliance with the terms of the exemption will be grounds for enforcement of the terms of the exemption under section 113. A finding by EPA that factual circumstances have changed will be grounds for revocation of the exemption and enforcement of the underlying Clean Air Act requirements.

(c) It is a condition of this action that GPA provide to EPA a copy of any GPA application for rate changes or for commercial credit for construction or replacement of capital assets, simultaneously with submission of such application to the rate making authority or commercial credit institution. No later than the 90th day after a finding by EPA that the circumstances upon which the determination for continuing the exemption was originally made have changed, this exemption shall terminate unless within that time GPA submits information that it is taking all practicable steps to comply with NSPS and SIP requirements related to SO<sub>2</sub>. EPA shall review such information under the procedures it has established and shall, as appropriate, extend or terminate the exemption.

**§ 69.13 Title V conditional exemption.**

(a) *Conditional exemption.* In response to a petition submitted by the Governor of Guam and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) Guam is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that Guam meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in Guam subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for Guam by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (d)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by Guam in accordance with this § 69.13, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as de-

fined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* Guam shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, Guam shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual

compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, Guam cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program shall provide that Guam will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide Guam with the authority to enforce permits, including the authority to assess civil and criminal penalties up to \$10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempt-

ed from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow Guam or the EPA to reopen a permit for cause. The program shall provide that if EPA provides Guam with written notice that a permit must be reopened for cause, Guam shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and re-issue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, Guam shall, no later than January 13, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant to the exemption authorized in this § 69.13.

(d) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If Guam fails to submit an alternate operating permit program by January 13, 1999, the exemption shall automatically expire with no further rule-making and 40 CFR part 71 shall become effective for all subject sources in Guam on that date.

(2) In the event that EPA disapproves Guam's alternate operating permit program because the program does not

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meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by January 13, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. Guam will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if Guam does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and Guam fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and Guam does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(e) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that Guam implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date

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shall be the effective date of 40 CFR part 71, which is July 31, 1996.

[61 FR 58289, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996]

### Subpart B—American Samoa

#### § 69.21 New exemptions. [Reserved]

#### § 69.22 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of American Samoa (American Samoa) and pursuant to section 325(a) of the Clean Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) American Samoa is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that American Samoa meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in American Samoa subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for American Samoa by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements

of 40 CFR part 71 on that date, consistent with paragraph (e)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by American Samoa in accordance with this § 69.22, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* American Samoa shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, American Samoa shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compli-

ance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, American Samoa cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program will provide that American Samoa will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide American Samoa with the authority to enforce permits, including the authority

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to assess civil and criminal penalties up to \$10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined in 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow American Samoa or the EPA to reopen a permit for cause. The program shall provide that if EPA provides American Samoa with written notice that a permit must be reopened for cause, American Samoa shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if American Samoa fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *Ambient air quality program.* American Samoa shall implement the following program to address the National Ambient Air Quality Standards (NAAQS) as a condition of the waiver:

(1) American Samoa shall collect complete meteorological data and complete refined air quality modeling for the Pago Pago Harbor and submit such data and modeling results to EPA by January 13, 1999.

(2) American Samoa shall address any NAAQS exceedances demonstrated

through the modeling results with revisions to its SIP that shall be submitted by January 13, 2000. The plan shall ensure compliance with the NAAQS is achieved by January 14, 2002.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, American Samoa shall, no later than January 13, 1999, submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by American Samoa pursuant to the exemption authorized in this § 69.22.

(e) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If American Samoa fails to submit the required alternate operating permit program or modeling (and supporting data) by March 15, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in American Samoa on that date. The exemption will also expire with no further rulemaking in the event that American Samoa fails to submit a SIP revision by January 13, 2000, consistent with paragraph (c)(2) of this section.

(2) In the event that EPA disapproves American Samoa's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by March 14, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. American Samoa will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if American Samoa does not adequately



administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and American Samoa fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and American Samoa does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(f) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that American Samoa implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

[61 FR 58291, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996]

### Subpart C—Commonwealth of the Northern Mariana Islands

#### § 69.31 New exemptions. [Reserved]

#### § 69.32 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of The Commonwealth of the Northern Mariana Islands (CNMI) and pursuant to section 325(a) of the Clean

Air Act (Act), the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) CNMI is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that CNMI meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in CNMI subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (f) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for CNMI by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (e)(3) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by CNMI in accordance with this § 69.32, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major

sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* CNMI shall develop and submit an alternate operating permit program (the program) to EPA for approval. Upon approval by EPA, CNMI shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and

schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, CNMI cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program will provide that CNMI will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

(6) The program shall provide CNMI with the authority to enforce permits, including the authority to assess civil and criminal penalties up to \$10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow CNMI or the EPA to reopen a permit for cause. The program shall provide that if EPA provides CNMI with written notice that a permit must be reopened for cause, CNMI shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if CNMI fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *Ambient air quality program.* CNMI shall implement the following program to protect attainment of National Ambient Air Quality Standards (NAAQS) as a condition of the waiver:

(1) CNMI shall enforce its January 19, 1987 Air Pollution Control (APC) regulations, including the requirement that all new or modified sources comply with the NAAQS and Prevention of Significant Deterioration (PSD) increments.

(2) CNMI may conduct air emissions modeling, using EPA guidelines, for power plants located on Saipan to assess EPA's preliminary determination of non-compliance with the NAAQS for sulfur dioxide (SO<sub>2</sub>). CNMI shall complete and submit any additional modeling to EPA by January 13, 1998 to determine whether existing power plants cause or contribute to violation of the NAAQS and PSD increments in the APC regulations and 40 CFR 52.21.

(3) If CNMI's additional modeling, based on EPA guidelines, predicts exceedances of the NAAQS for SO<sub>2</sub>, or if CNMI elects to accept EPA's preliminary determination that the NAAQS for SO<sub>2</sub> have been exceeded, CNMI shall submit a revised SIP that ensures compliance with the NAAQS for SO<sub>2</sub>. CNMI shall submit the proposed revision to the SIP by January 13, 1998 or, if CNMI

elects to conduct additional modeling, by January 13, 1999. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with the NAAQS for SO<sub>2</sub> by January 15, 2001.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, CNMI shall, no later than January 13, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by CNMI pursuant to the exemption authorized in this § 69.32.

(e) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If CNMI fails to submit the required alternate operating permit program or any required SIP revision by January 13, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in CNMI on that date, consistent with paragraph (c)(3) of this section.

(2) In the event that EPA disapproves CNMI's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by January 13, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. CNMI will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (e).

(4) EPA shall revoke the exemption in its entirety through rulemaking if CNMI does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and CNMI

fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and CNMI does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(f) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that CNMI implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

[61 FR 58292, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996]

## Subpart D—The U.S. Virgin Islands

### § 69.41 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act and a petition submitted by the Governor of the Virgin Islands, an exemption to section 123 of the Clean Air Act is granted to the Hess Oil Virgin Islands Corporation (HOVIC) at the St. Croix refinery. Specifically, the exemption waives the prohibition on the implementation of an Intermittent Control Strategy (ICS) based upon atmospheric conditions in order to set emission limitations. The emission limitations shall depend upon the sulfur content in the residual oil burned at the refinery.

(b) The protocol to be followed for the ICS shall be set forth in a Preven-

tion of Significant Deterioration of Air Quality (PSD) permit issued to HOVIC; and shall include as a minimum, the conditions listed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

(1) HOVIC shall maintain a meteorological tower on its property for the purpose of the ICS which meets the required EPA QA/QC operating specifications. At a minimum, the wind direction data will be monitored, collected and reported as 1-hour averages, starting on the hour. If the average wind direction for a given hour is from within the designated sector, the wind will be deemed to have flowed from within the sector for that hour. Each "day" or "block period", for these purposes will start at midnight and end the following midnight.

(2) HOVIC shall maintain SO<sub>2</sub> ambient monitors and collect ambient SO<sub>2</sub> concentration data for the purpose of implementing the ICS at nearby locations approved by EPA and specified in the PSD permit. The ambient monitors must follow the required EPA QA/QC operating specifications. At a minimum, the data will be collected according to EPA approved State and Local Ambient Monitoring Stations procedures found at 40 CFR 58.20, but will, for these purposes, be averaged by the hour, starting on the hour.

(3) The switch to a lower sulfur fuel (0.5%) will take place when paragraphs (b)(3)(i) or (b)(3)(ii) of this section are met.

(i) The winds blow from a 45 degree sector defined as 143 to 187 degrees inclusive, where zero degrees is due north, for at least 6 consecutive hours during a 24-hour block period or any 12 non-consecutive hours during a 24 hour block period.

(ii) One of HOVIC's ICS monitors measures an average ambient SO<sub>2</sub> concentration that is 75% of the 24-hour NAAQS during any rolling 24-hour average. (75% of the 24-hour NAAQS = 274 ug/m<sup>3</sup> or 0.105 ppm).

(4) The switch back to the higher sulfur fuel (1.0%) may occur if the conditions in paragraphs (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) of this section are met.

(i) If the ICS was triggered by paragraph (b)(3)(i) of this section, the switch back may occur when the winds

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blow outside the sector listed in paragraph (b)(3)(i) of this section for at least 3 consecutive hours following the period during which the winds were blowing inside the sector.

(ii) If the ICS was triggered by paragraph (b)(3)(ii) of this section, the switch back may occur after all of HOVIC's ICS ambient monitors measure a 24-hour average concentration which is less than 75% of the NAAQS for at least one 24-hour block period following any occurrence when the monitor measured the concentration which was 75% of the NAAQS.

(iii) If the ICS was triggered by both paragraphs (b)(3)(i) and (b)(3)(ii) of this section, the switch back may occur when both of the conditions in paragraphs (b)(4)(i) and (b)(4)(ii) of this section are met.

(c) The protocol may be modified by EPA to protect against exceedances of the sulfur dioxide NAAQS.

(d) In the event that there is an exceedance of the NAAQS, HOVIC will report the exceedance to EPA and recommend corrective action as well as amendments to the protocol to ensure the protection of the NAAQS.

(e) HOVIC must comply with all fuel switching requirements, contained in HOVIC's PSD permit.

(f) This exemption shall take effect only in the event that a final PSD permit modification becomes effective.

(g) The Administrator may terminate the exemption through rulemaking procedures upon determining that HOVIC's use of the ICS is causing or contributing to an exceedance of the NAAQS.

[62 FR 61205, Nov. 14, 1997]

### Subpart E—Alaska

#### § 69.51 Exemptions.

(a) Persons in the state of Alaska, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers may manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply, or transport diesel fuel, which fails to meet the sulfur concentration or dye requirements of 40 CFR 80.29, in the

state of Alaska if the fuel is used only in the state of Alaska.

(b) Persons outside the state of Alaska, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers may manufacture, introduce into commerce, sell, offer for sale, supply, offer for supply, or transport diesel fuel, which fails to meet the sulfur concentration or dye requirements of § 80.29, outside the state of Alaska if the fuel is:

(1) Used only in the state of Alaska; and

(2) Accompanied by supporting documentation that clearly substantiates the fuel is for use only in the state of Alaska and does not comply with the Federal sulfur standard applicable to motor vehicle diesel fuel.

(c) Beginning January 1, 2004, the exemptions provided in paragraphs (a) and (b) of this section are applicable only to fuel used in those areas of Alaska that are not served by the Federal Aid Highway System.

[63 FR 49465, Sept. 16, 1998, as amended at 64 FR 34133, June 25, 1999]

### PART 70—STATE OPERATING PERMIT PROGRAMS

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APPENDIX A TO PART 70—APPROVAL STATUS OF STATE AND LOCAL OPERATING PERMITS PROGRAMS

AUTHORITY: 42 U.S.C. 7401, *et seq.*

SOURCE: 57 FR 32295, July 21, 1992, unless otherwise noted.

#### § 70.1 Program overview.

(a) The regulations in this part provide for the establishment of comprehensive State air quality permitting