

**§ 955.13 Optional small claims (expedited) and accelerated procedures.**

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(b) Elections to Utilize small claims (expedited) and accelerated Procedure.

(1) In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. \* \* \*

(2) In appeals where the amount in dispute is \$100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. \* \* \*

(c) The small claims (expedited) Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is \$50,000 or less as to which the appellant has elected the small claims (expedited) procedure.

(2) \* \* \* (ii) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. \* \* \*

\* \* \* \* \*

(4) \* \* \* Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion of reconsideration under § 955.30.

\* \* \* \* \*

(d) The accelerated Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is \$100,000 or less as to which the appellant has made the requisite election.

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(3) \* \* \* Alternatively, in cases where the amount in dispute is \$50,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. \* \* \*

(e) Motions for Reconsideration in Cases Arising Under § 955.13. Motions

for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

**§ 955.35 [Removed]**

Section 955.35 is removed.

**§ 955.37 [Redesignated as 955.35]**

6. Section 955.37 is redesignated as § 955.35.

7. New § 955.36 is added to read as follows:

**§ 955.36 Effective Dates and applicability.**

The provisions of §§ 955.9 and 955.13 took effect [date of publication of final rule in the **Federal Register**]. Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective date.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 69**

[AD-FRL-5291-2]

**Proposed Conditional Special Exemption From Requirements of the Clean Air Act for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam**

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

**ACTION:** Proposed actions.

**SUMMARY:** The Governors of the Territory of American Samoa (American Samoa), the Commonwealth of the Northern Mariana Islands (CNMI), and the Territory of Guam (Guam) each submitted a petition under section 325(a) of the Clean Air Act (the Act) for a waiver from title V of the Act. Title V requires that states, including the

petitioners, adopt and submit to EPA a title V operating permits program for major sources and certain other stationary sources. Title V also requires that sources located in areas that do not adopt a state title V permitting program obtain a federal permit from the US EPA. Section 325(a) allows American Samoa, CNMI, and Guam to petition for an exemption from certain Clean Air Act requirements.

The EPA received petitions requesting an exemption from title V of the CAA from American Samoa on November 18, 1994, from CNMI on July 14, 1994, and Guam on November 21, 1994. This document describes the petition submitted by each agency, EPA's analysis, and EPA's proposed action on each petition. The EPA is proposing to grant conditional waivers from the requirement that American Samoa and CNMI adopt and submit title V operating permit programs. The EPA proposes to require the implementation of alternative programs to protect local air quality as a condition of these waivers. The EPA is proposing to grant Guam a three-year extension of the deadlines in title V. The EPA is also proposing to exempt sources from the requirement to obtain a federal title V permit during the period of the waivers, except for certain major sources of hazardous air pollutants. While this proposal addresses all three petitions, EPA's action is based on a separate evaluation of each petition.

**DATES:** Comments on these proposed actions must be received in writing by October 13, 1995.

**ADDRESSES:** Comments should be addressed to Norm Lovelace at the address indicated. Copies of the petitions and other supporting information, including air quality modeling, used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Office of Pacific Islands and Native American Programs, US EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Norm Lovelace (telephone 415/744-1599, fax 415/744-1604), Chief, Office of Pacific Islands and Native American Programs, or Ed Pike (telephone 415/744-1248), Operating Permits Section, Air and Toxics Division, at US EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105. Comments should be addressed to Norm Lovelace, mailcode E-4.

## I. Background

Title V of the Act requires states to develop and submit operating permit programs by November 15, 1993. EPA has promulgated certain minimum requirements (57 FR 32250 (July 21, 1992)) that are codified at 40 Code of Federal Regulations (CFR) part 70. States must develop programs for issuing permits that contain monitoring and compliance terms and conditions that ensure sources comply with all applicable federal air regulations, and the permit issuance process must include public participation and EPA oversight. EPA is required to impose sanctions on any state, including the petitioners (see 40 CFR 70.2 definition of "state"), that has not submitted a complete title V permit program. For any state that does not have an approved program by November 15, 1995, the EPA must promulgate, administer, and enforce a federal air permit program.

Section 325(a) of the Act allows the petitioners to request that the Administrator of EPA waive requirements of the Clean Air Act other than section 112 (Hazardous Air Pollutant or HAPs) requirements or any requirement under section 110 or part D of subchapter 1 that would be necessary to attain or maintain a national primary ambient air quality standard. The petitioners request a waiver from title V and do not request a waiver from any requirements under section 112 of the Act, including requirements that are triggered by the approval of a title V permit program. In addition, the petitions for American Samoa and CNMI commit to implementing alternative programs to protect ambient air quality, including the national ambient air quality standards.

Section 325(a) also specifies the criteria for approving exemptions: "Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant." EPA's determinations are based on whether the petitions meet these criteria. Although EPA is publishing its proposed action on the petitions in a single rulemaking, each action is considered a separate decision and can be considered independently. If significant comments are received pertaining to a specific petition, EPA may take final action on each petition independently.

## II. Analysis and Proposed Action

### A. American Samoa

#### 1. Description of Petition and Supporting Documents

The Governor of American Samoa submitted the Government's petition on November 28, 1994. The petition consists of the following sections: 1) a description of the waiver request and geographical and political conditions; 2) a description of American Samoa's commitment to ensure attainment and maintenance of national ambient air quality standards; 3) a commitment to work with EPA to ensure that the hazardous air pollutant program under Section 112 of CAA is administered and enforced on American Samoa; 4) a description of the unique local economic burden that the title V operating permit program would create; and 5) other unique geographical, meteorological, and local factors that support the petition. The supporting information includes: 1) maps of American Samoa; 2) an emissions inventory for American Samoa; 3) screening analysis of ambient air quality impacts on American Samoa; 4) economic analysis of an operating permit program on American Samoa; and 5) newspaper articles illustrating the financial difficulties of the American Samoa Government (ASG).

#### 2. Analysis of the Petition

EPA believes that the unique local circumstances presented in the petition satisfy the criteria in section 325(a) for granting an exemption from title V of the CAA. EPA also believes that the petition's proposed mitigating air quality program is appropriate for American Samoa and would result in air quality benefits equivalent to a title V program.

The petition makes a convincing argument that a title V operating permit program would have a unique negative economic impact on American Samoa. Implementing this program would be economically unreasonable for the American Samoa Government (ASG) and the general public due to extremely limited local resources. Only five sources have potential emissions exceeding the major source level (40 CFR 70.2) and would be subject to the program. If ASG imposed fees based on emissions as required by part 70, the two power plants run by the American Samoa Power Authority (ASPA), a semi-autonomous government utility agency, would incur most of these costs. Projected costs to be incurred by ASPA would likely be passed to its electrical consumers, which include private

industry, the public and the American Samoa Government. Increased power bills to the latter two consumers would strain already limited resources. Per capita income is only \$3,039 (compared to \$14,420 for the mainland United States) and the population is only 49,000. The ASG has had major financial difficulties over the past years, and as the major consumer of power it has unpaid power bills of over \$2 million.

The petition estimates that the total regulatory and compliance costs of the program would be \$143,000. The relative economic impact of these fees would be high compared to the limited economic resources of American Samoa. Given the limited number of sources, the limitations of the ASEPA staff, the more pressing environmental priorities of American Samoa (such as safe drinking water and solid waste disposal), and the fact that the major costs will be borne by an area with limited economic resources, EPA believes that it is appropriate for ASG to focus its limited resources on an alternative permitting program, which could be expected to achieve equivalent environmental benefits. EPA believes that these economic resource constraints support American Samoa's position that the title V program is unreasonable in American Samoa and justify a more narrowly focused program.

#### 3. Alternative Air Quality Program Proposed by American Samoa

American Samoa proposes an air quality program to address potential exceedances of the National Ambient Air Quality Standards (NAAQS). This program more appropriately addresses unique meteorological circumstances and the protection of local air quality. While the title V program is expected to increase compliance with emission limits, other mechanisms (such as source-specific SIP limits or direct enforcement of federal standards) may be a practical and effective means of controlling air pollution on American Samoa. In addition, no major sources of air toxics are identified in the petition. Major source of air toxics may require case-by-case title V permitting review for implementation of a current or future section 112 standard.

Screening model results submitted with the petition indicate that sulfur dioxide (SO<sub>2</sub>) NAAQS exceedances may occur in the Pago Pago Harbor area. In the petition, American Samoa commits to ensuring that primary ambient air quality standards in the Pago Pago Harbor area are met. American Samoa will collect meteorological data and undertake additional refined air

modeling of the Pago Pago Harbor area. American Samoa will also require sources impacting the Pago Pago Harbor area to implement physical and operational changes if necessary to assure compliance with the NAAQS. EPA agrees with American Samoa that possible emission control strategies for correcting any sulfur dioxide NAAQS exceedances include, but are not limited to, a reduction in the sulfur content of the fuel burned, the addition of scrubbers or other control devices, a reduction in the hours of operation for some units, or a combination thereof. EPA also believes that amendments to American Samoa's State Implementation Plan (SIP) are the most practical method of imposing any controls and compliance methods that are necessary.

EPA believes that American Samoa's proposed mitigating air quality program, which is tailored to prevent and remedy potential air quality violations, will achieve equivalent benefits for air quality and is more appropriate than the title V program due to the geographic isolation, economic circumstances, and the limited number of sources in American Samoa. Furthermore, because the few sources in American Samoa do not appear to compete with mainland sources, the exempted sources will not gain a competitive advantage over sources subject to title V.

#### 4. Conditional Waiver

EPA is proposing to exempt American Samoa from the requirement to develop a part 70 permitting program and sources on American Samoa from the requirement to apply for a part 71 permit (except when specifically required by EPA), provided that the following conditions are met. EPA is proposing that American Samoa collect complete meteorological data and complete a refined air quality modeling analysis within two years of the effective date of this rulemaking. EPA is also proposing that American Samoa require affected sources to implement changes necessary to ensure NAAQS achievement in a timely manner if the modeling demonstrates a violation of the NAAQS. EPA believes that a period of five years, which is three years from the completion of modeling by American Samoa, will allow sufficient time to implement strategies to meet the NAAQS if exceedances have occurred.

EPA is also proposing that American Samoa implement an alternative local operating permit program. The permitting program will ensure that the emission limits used to verify compliance with the NAAQS are met. At a minimum, the program should

meet the guidelines established in the June 29, 1989 **Federal Register** for federally enforceable operating permit programs. These guidelines are more flexible than the title V guidelines but ensure that permits are federally enforceable on a practical and legal basis. The permits should include applicable Clean Air Act requirements, adequate compliance measures, and allow for public participation. In addition, this alternative program can be used to implement other air quality requirements.

EPA proposes to reopen the waiver if these conditions are not met or if EPA determines that implementation of a title V permitting program is necessary to ensure compliance with applicable Clean Air Act requirements and protect air quality.

#### B. CNMI

##### 1. Description of Petition and Supporting Documents

The Governor of CNMI submitted the petition to EPA on July 14, 1994. The petition consists of a 15-page narrative and supporting information. The narrative portion of the petition is organized into sections which describe:

(1) the purpose of the petition; (2) unique local geographical, meteorological, and economic factors; (3) major air emission sources and sources of hazardous air pollutants emissions in CNMI; and (4) information on the existing CNMI permitting regulations, which CNMI suggests as an alternative mitigating program. CNMI also submitted copies of local statutes and regulations, maps of CNMI, emissions information, and cost estimates for the title V program as supporting information.

##### 2. Analysis of the Petition

EPA believes that the unique local circumstances presented in the petition satisfy the criteria in section 325(a) for granting an exemption from title V of the CAA. CNMI's petition states that title V is overly burdensome due to local circumstances and proposes a mitigating local permit program. The petition describes unique local factors that make the economic burden of implementing the title V permitting program greater for CNMI than for most state air agencies. CNMI's population (43,345) is far smaller than mainland state agencies. In addition, per capita income (\$7,200) in CNMI is only half that of the United States. Therefore, the economic resources available to address air quality problems are much more limited than the resources available in areas under

the jurisdiction of mainland state air quality agencies.

The CNMI petition states that Clean Air Act programs, particularly title V, are not necessary because ambient air quality is not impacted by emissions from stationary sources on CNMI, and that an alternative local program is sufficient to protect air quality. EPA air quality modeling conducted to evaluate this claim predicted violations of the National Ambient Air Quality Standards (NAAQS). However, EPA's analysis also shows that the alternative permitting program described by CNMI would address exceedances of the NAAQS as effectively as a title V program. CNMI's emission inventory shows that emissions result almost exclusively from internal combustion engines, and EPA believes that options other than case-by-case title V permitting of these sources (such as a SIP rule with specific control and compliance measures) would be appropriate for controlling these sources due to their similarity. In addition, none of the sources identified in the petition are identified as a major air toxics source that may require case-by-case permitting review for implementation of a current or future section 112 standard.

##### 3. Air Quality Modeling

EPA performed screening level modeling on the main Commonwealth Utilities Company (CUC) power plant on Saipan, the main island in the CNMI and the island with the largest emission sources, to assess potential air quality problems on Saipan. EPA's SCREEN2 model predicts significant violations of the sulfur dioxide (SO<sub>2</sub>) three-hour and 24-hour NAAQS due to low stack heights, high sulfur fuel, and the lack of control equipment. The model also indicates that violations of the eight-hour carbon monoxide (CO) and the annual nitrogen oxide (NO<sub>x</sub>) NAAQS may occur. United States Air Force meteorological data indicate that a significant percent of the predicted violations will impact onshore areas of the island.

The SCREEN2 model does not use detailed site specific meteorological data. CNMI could choose to perform additional modeling using site specific meteorological data. EPA does not believe that the concentrations of air pollutants predicted under the SCREEN2 model would change enough using refined modeling to show compliance with the NAAQS. However, EPA believes that additional modeling may help verify the extent of the predicted SO<sub>x</sub> NAAQS exceedances and the effectiveness of different strategies for achieving compliance with the

NAAQS. CNMI may choose to use the existing SCREEN2 modeling results or conduct additional refined modeling.

#### 4. Alternative Permitting Program Proposed by CNMI

The CNMI proposed an alternative program to address sources of air pollution based on its current regulations and several proposed changes. CNMI updated the petition on October 20, 1994, by submitting the currently effective CNMI Air Pollution Control Regulations (CNMI Regulations). The CNMI Regulations (part V.A) require the registration of certain new and existing sources. The Director of the Division of Environmental Quality may allow the construction or modification of a major new source if the source will not endanger the attainment or maintenance of NAAQS or violate the allowable air quality increments in 40 CFR 52.21 (c) and (d) (CNMI Regulations part V.E). EPA interprets these rules to prohibit the air quality violations predicted by the screening model. EPA is conditioning the waiver to require that CNMI fully implement and enforce these currently effective regulations, including provisions that require sources built after the effective date of the regulations to apply physical and operational controls to assure that NAAQS and PSD increments are not exceeded.

The CNMI petition also proposed revisions to the CNMI program that would provide elements of an operating permit program similar to the title V permitting program. On February 17, 1995, CNMI committed to obtain additional authority to enforce permits and provide public process if required by EPA. The petition also stated that CNMI could modify the program to include all applicable Clean Air Act requirements in the program and require monitoring and/or recordkeeping requirements to ensure that sources comply with their emission limits. Therefore, EPA is proposing that the CNMI adopt these elements in the alternative operating permit program and submit the adopted regulations as a revision to CNMI's SIP as a condition to granting the waiver. The CNMI petition stated that CNMI could collect fees to fund the permitting program, but did not commit to collecting these resources. EPA believes that CNMI should have the flexibility to determine appropriate funding mechanisms, but that sufficient resources must be available to fund an alternate program.

#### 5. Conditional Waiver

EPA is proposing to exempt CNMI from the requirement to develop a part 70 permitting program and sources on CNMI from the requirement to apply for a part 71 permit (unless specifically required by EPA) on the condition that CNMI implement the alternative permitting program. This would require that CNMI implement existing air quality regulations addressing potential existing violations of air quality standards.

EPA is proposing that CNMI may conduct any additional modeling it believes is necessary to yield more site-specific ambient emission estimates. EPA is proposing a 1-year deadline for the completion of any such modeling. CNMI's petition does not address what meteorological data is available, but EPA will consider any new information or comments that address whether additional time would be necessary to collect meteorological data or whether existing sources of meteorological data are acceptable in the final rulemaking.

EPA is also proposing that CNMI submit a State Implementation Plan (SIP) to address any confirmed violations within two years of the effective date of the waiver, and ensure compliance with the NAAQS within four years of the effective date of this waiver. In addition, EPA is proposing that CNMI fully adopt enhancements to its existing operating permit program and implement the alternative operating permit program within two years of the effective date of the waiver and submit these requirements as revisions to its SIP rules.

EPA will reopen the waiver if these conditions are not met or if EPA determines that implementation of a title V permitting program is necessary to ensure compliance with applicable Clean Air Act requirements and protect air quality. If EPA determines that any area will not meet the NAAQS, as determined under CAA section 110, within four years of the effective date of the waiver, EPA will redesignate that area non-attainment and require the appropriate attainment plans.

#### C. Guam

##### 1. Description of Petition and Supporting Documents

The Governor of Guam submitted a petition to EPA on November 18, 1994. The petition consists of a 12-page narrative and 5 supporting exhibits. The narrative portion of the petition is organized into sections which describe: 1) the petition, the type of waiver requested, and the basis for the petition; 2) compliance with primary ambient air

quality standards; 3) compliance with Section 112 of the CAA; 4) the local economic effect of a title V operating permit program; and, 5) additional unique geographical, meteorological, and local factors. The supporting information includes: 1) a map of Guam; 2) an emissions inventory; 3) source profiles and estimates of their actual and potential emissions; and, 4) an economic analysis of an operating permit program on Guam.

##### 2. Analysis of Guam's Petition

EPA believes that the unique local circumstances presented in the petition justify an extension of the deadlines in title V but do not warrant a permanent exemption from title V of the Act. Guam's petition requests a waiver based on several factors. The petition states that implementing title V would be a burden for Guam and that Guam currently lacks the technical resources to implement the program. In addition, the petition states that title V is not necessary to ensure compliance with air quality standards.

EPA agrees that Guam needs additional technical resources to implement a title V permitting program and believes a three-year extension in the deadline to adopt a title V program would allow the Guam Environmental Protection Agency (GEPA) to secure additional training and technical resources. In addition, an extension would allow Guam the option of saving resources by adopting the federal operating permit rule (currently proposed at 60 FR 20804; to be codified at 40 CFR part 71) by reference or by using a state or local rule as a guideline rather than developing their own permitting rule. EPA believes that three years will allow GEPA sufficient time to acquire the technical resources to develop and implement a title V permitting program.

While the petition states that imposing a title V permit program would impose an economic burden, the data does not support this assertion. Although businesses on Guam are unlikely to relocate due to these fees, title V fees could have an impact on small businesses. However, EPA believes that part 70 gives Guam flexibility to assess different fees to different sources based on the expected economic burden. The petition also states that per capita income in Guam is less than per capita income on the mainland United States (\$9,928 versus \$14,420 in 1990 dollars). EPA does not believe that the title V permitting program would have a noticeable economic impact on citizens. For instance, Guam's petition estimates that

title V costs to residential and local government electric users is \$183,000 (assuming the local utility increase rates to cover 100% of its permit fees and other permit costs) for a population of 133,000. For these reasons, EPA does not believe that implementation of a title V permitting program on Guam is economically infeasible.

In addition, many significant sources of air pollution are located on Guam. The petition identified 14 title V sources with actual emissions in excess of 100 tons per year and 55 sources with actual emissions of up to 85 tons per year, some of which may be subject to title V because they have a potential to emit exceeding the major source levels (see 40 CFR part 70.2). Guam has more title V sources than the other two petitioners and more title V sources than most State and local agencies in EPA Region IX. Air emissions on Guam result mainly from equipment needed to generate electric power, including boilers, fuel-oil storage tanks, diesel engines and combustion turbines. According to Guam's petition, the major pollutant emitted in 1993 was SO<sub>x</sub>, with 12,500 tons from the largest source and 5,570 from the second largest source. The total emissions inventory of 30,490 tons per year was larger than the other areas requesting a waiver and larger than 32 of the 40 State and local agencies in EPA Region IX that have completed emissions inventories for their title V sources. EPA believes that the large point sources on Guam, including major air toxics sources, that would be subject to a title V program have a greater impact on local air quality than sources on American Samoa and CNMI.

### 3. Alternative Air Quality Program

Title V is intended to implement Clear Air Act programs that are designed to protect air quality. Guam's petition does not commit to or propose an alternative operating permit or compliance program that would ensure that air quality protections, such as air toxics controls and emission limits for criteria pollutants, are achieved. Therefore, it is not clear from the petition what procedures Guam would institute to ensure that Clean Air Act objectives are achieved.

### 4. Conditional Extension

EPA is proposing to grant Guam an extension of the deadline for developing and submitting a title V permitting program for three years from the effective date of this rulemaking action, but not later than November 15, 1998, which is five years beyond the statutory deadline for submitting a complete title V permitting program. The Clean Air

Act originally gave state and local agencies three years to develop and submit operating permit programs, and EPA believes that this time period is sufficient for Guam to acquire sufficient technical resources and to utilize EPA's part 71 regulation or develop its own program using an approved state or local program as a model.

EPA is also granting title V sources on Guam a waiver from the effective date of the part 71 permit program until five years from the effective date of this rulemaking action, but not later than November 15, 2000, providing that Guam submits a timely and complete permitting program. This two year difference between the deadline for submitting a timely and complete title V program and the effective date of the part 71 program will allow EPA time to review Guam's program and allow Guam an opportunity to correct any incomplete areas of their program or any approval issues in their program. If a timely and complete program is not submitted by Guam, the part 71 program will be effective three years after the effective date of this rulemaking, or November 15, 1998, whichever is earlier. As proposed, the part 71 regulation requires that sources submit permit applications within one year of the effective date unless EPA establishes an earlier submittal date. For more information, see the part 71 proposal at 60 FR 20804 (April 27, 1995).

#### *D. Hazardous Air Pollutant Requirements for American Samoa, CNMI, and Guam*

##### 1. Effective Date of Requirements Triggered by Title V

The Act prohibits section 325 waivers from section 112 requirements, and the petitioners do not request a waiver from section 112 requirements. This notice does not waive any requirements under section 112 of the Act, including case-by-case Maximum Achievable Control Technology (MACT) determinations under sections 112(g) and 112(j) of the Act. New and modified major HAP sources must apply MACT under section 112(g) if EPA has not promulgated an applicable National Emission Standard for Hazardous Air Pollutants (NESHAP; NESHAPs promulgated after the 1990 Amendments to the Act are also commonly referred to as MACT standards) for the source category. Existing major HAP sources must apply for a title V permit containing MACT under section 112(j) if EPA misses a NESHAP deadline for their source category by 18 months (59 FR 26429). These two requirements are, in the

absence of a section 325 waiver, triggered by the effective date of a title V program.

EPA is proposing to grant the waivers on the condition that these section 112 requirements will be implemented from the effective date of the waiver. Therefore, EPA is proposing that the effective date of this waiver constitute the effective date of a title V program for American Samoa, CNMI and Guam for the purposes of triggering section 112(g) and 112(j) requirements. While no sources subject to the requirements of the 112(g) and 112(j) have yet been identified, this condition will ensure that sources built or identified in the future will be subject to these hazardous air pollutant reductions.

##### 2. Implementation of Section 112 requirements

EPA will issue part 71 permits to any source subject to the 112(g) and 112(j) programs in American Samoa, CNMI, and Guam under today's proposal. Sources that are required to apply for a 112(g) or 112(j) determination would be required to submit a complete part 71 application to EPA and EPA would issue a permit that includes 112(g) and 112(j) requirements under the part 71 regulations. While the final part 71 rule has not yet been promulgated, EPA is not aware of any sources that would be subject to this provision in the near future and anticipates that the part 71 rule (see 60 FR 20804 for proposal) will be finalized before any sources become subject. For instance, EPA expects that the 112(j) provisions will not be effective before 1997. In addition, EPA has stated in its February 14, 1995 interpretive notice (60 FR 8333) that the requirements of 112(g) are not effective until EPA promulgates a final 112(g) rule. EPA anticipates that the part 71 rule will be promulgated before any case-by-case determinations in American Samoa, CNMI or Guam are necessary. EPA will consider any comments received on the appropriate mechanism for implementing case-by-case MACT determinations, and is specifically soliciting comments on the appropriate mechanism for implementing case-by-case MACT if promulgation of the part 71 rulemaking is delayed. EPA requests information on any source that may be subject to section 112(g) in the next two years in case the part 71 promulgation date is delayed past the effective date of this waiver and the promulgation of the 112(g) rule.

EPA is currently considering whether major sources of air toxics subject to EPA MACT standards should also be subject to permitting under part 71 in

the absence of an approved local title V program. Future MACT standards may utilize title V permits (i.e. a part 70 or part 71 permit) to establish specific compliance requirements or to allow operators flexible options for meeting emission limits. EPA is also considering whether title V permits are necessary to implement section 129(e) municipal waste incinerator standards (see proposals at 59 FR 48198–48228 (NSPS) and 48228–48258 (state programs for existing sources)), which cover both criteria pollutants and hazardous air pollutants. The proposal does not currently require these sources to obtain title V permits. EPA will consider any comments on this issue and determine in the final rulemaking whether proper implementation of the section 112 and section 129(e) standards require the permitting of subject sources under title V.

Other section 112 requirements, such as 112(d) MACT standards, automatically apply to all subject sources in American Samoa, CNMI, and Guam and are enforceable by EPA. EPA will develop appropriate mechanisms with the petitioners to identify subject sources and ensure that sources comply with the standards. The petitioners have demonstrated that they currently lack the technical resources to develop a title V program, and EPA believes that greater technical resources will be necessary to determine case-by-case MACT limits for HAPs. If the petitioners develop the necessary technical resources and meet other specified criteria, they may apply for delegation of the section 112(g) and 112(j) programs by developing a title V program or applying under section 112(l) of the Act (58 FR 62262 (November 16, 1993)).

### III. Administrative Requirements

#### A. Request for Public Comments

The EPA is requesting comments on all aspects of these proposed waivers. Copies of the petitions, modeling data, and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

- (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and
- (2) to serve as the record in case of judicial review. The EPA will consider

any comments received by October 13, 1995.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

#### C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the waiver proposed today does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves waivers requested by the petitioners to reduce the cost of implementing the Clean Air Act. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### List of Subjects in 40 CFR Part 69

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 25, 1995.

**Felicia Marcus,**

*Regional Administrator.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

**Authority:** Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

#### Subpart A—Guam

2. Subpart A is amended by adding § 69.13 to read as follows:

##### § 69.13 Title V extension.

(a) The Administrator of the EPA grants the Territory of Guam an extension until three years from [the effective date of the final rule], but no later than November 15, 1998, from the requirement to develop a title V permit program by November 15, 1993. The Administrator of the EPA grants all title V sources located in Guam a waiver, except as described in paragraph (b) of this section, from the requirement to apply for and obtain a part 71 permit. The part 71 waiver shall expire on the earlier of three years from the earlier of [the effective date of the final rule], or November 15, 1998. If Guam does not submit a complete permit program, as defined in 40 CFR part 70, by the expiration date of the waiver, then 40 CFR part 71 shall become effective for all subject sources in Guam on that date. 40 CFR part 71 shall become effective for all sources on Guam two years from the expiration of the waiver if Guam submits a timely and complete program but does not have an approved program on that date.

(b) All section 112 requirements shall be implemented during the period of the waiver. Sections 112 (g) and (j) of the Act shall apply to all sources on Guam during the term of this waiver, and any subject source shall submit a timely part 71 permit application to EPA requesting a case-by-case 112(g) or 112(j) MACT determination. In addition, Guam will develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

#### Subpart B—American Samoa

3. Subpart B is amended by adding § 69.22 to read as follows:

##### § 69.22 Title V waiver.

(a) The Administrator of the EPA grants the Territory of American Samoa an exemption from the requirement to

develop, implement, and submit for approval a title V operating permit program and grants title V sources located in American Samoa an exemption from the requirement to apply for and obtain a part 71 permit except as described in paragraph (a)(3) of this section. This waiver is subject to the following conditions:

(1) American Samoa shall implement the following program to protect attainment of National Ambient Air Quality Standards as a condition of the waiver:

(i) 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 within two years of [effective date of the final rule].

(ii) American Samoa shall address any NAAQS exceedances discovered through the modeling results with a State Implementation Plan (SIP) that ensure compliance with the NAAQS within the earlier of three years from the date such results are submitted to EPA and five years from [the effective date of the final rule]. This plan shall be submitted by three years from [the effective date of the final rule].

(2) American Samoa shall develop, implement, and submit to EPA for approval an alternative permit program that meets the requirements specified in EPA's June 28, 1989 guidelines.<sup>1</sup> The program must be submitted within two years of [effective date of the final rule] and include the following elements:

(i) Permit content:

(A) Permits must contain and ensure compliance with all applicable federal requirements, as defined under section 40 CFR 70.2; and

(B) Contain monitoring, recordkeeping and reporting requirements sufficient to assure compliance with applicable federal requirements;

(ii) 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;

(iii) Public notice and a 30-day public comment on each major source permit, including an opportunity for EPA review;

(iv) Civil and criminal penalties up to \$10,000 per day per violation; and

(v) A schedule for issuing permits to all major sources, as defined under 40 CFR 70.2, within three years of EPA approval of the alternate operating program.

(3) All section 112 requirements shall be implemented during the period of the

waiver. Sections 112(g) and (j) of the Act shall apply to all sources on American Samoa during the term of this waiver, and any subject source shall submit a timely part 71 permit application to EPA requesting a case-by-case 112(g) or 112(j) MACT determination. American Samoa shall develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

(b) EPA may modify or revoke this waiver for cause, and shall reopen the waiver if the conditions under paragraph (a) of this section are not met.

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

4. Subpart C is amended by adding § 69.32 to read as follows:

##### § 69.32 Title V exemption.

(a) The Administrator of the EPA grants the Commonwealth of the Northern Mariana Islands an exemption from the requirement to develop, implement, and submit for approval a title V operating permit program and grants title V sources located in CNMI an exemption from the requirement to apply for and obtain a part 71 permit except as described in paragraph (a)(3) of this section. This waiver is subject to the following conditions:

(1) CNMI shall implement the following program to protect attainment of National Ambient Air Quality Standards as a condition of the waiver:

(i) 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.

(ii) 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 SOx NAAQS. CNMI shall complete and submit any additional modeling to EPA within one year from [the effective date of the final rule] to determine whether existing power plants cause or contribute to violation of the NAAQS and PSD increments in the APC and 40 CFR 52.21.

(iii) If CNMI's additional modeling demonstrates non-attainment with NAAQS based on EPA guidelines, or if CNMI elects to accept EPA's preliminary determination that the NAAQS have been exceeded, CNMI shall submit a revised State Implementation Plan that ensures compliance with the NAAQS. The Plan shall be submitted within one year from

[the effective date of the final rule] or, if CNMI elects to conduct additional modeling, within two years of [the effective date of the final rule]. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with applicable NAAQS within four years from [the effective date of the final rule].

(2) CNMI shall develop, implement, and submit to EPA for approval into CNMI's SIP an alternative permit program that meets the requirements specified in EPA's June 28, 1989 guidelines. The program shall be submitted within two years of [the effective date of the final rule] and include the following elements:

(i) Permit content requirements:

(A) Permits must contain and ensure compliance with all applicable federal requirements, as defined under section 40 CFR 70.2; and

(B) Contain monitoring, recordkeeping and reporting requirements sufficient to assure compliance with applicable federal requirements;

(ii) 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;

(iii) Public notice and a 30-day public comment on each major source permit, including an opportunity for EPA review;

(iv) Civil and criminal penalties up to \$10,000 per day per violation; and

(v) A schedule for issuing permits to all major sources, as defined under 40 CFR 70.2, within three years of EPA approval of the alternate operating program.

(3) All section 112 requirements shall be implemented during the period of the waiver. Sections 112 (g) and (j) of the Act shall apply to all sources on CNMI during the term of this waiver and all subject sources shall submit a timely application for a part 71 permit. CNMI shall develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

(b) EPA may modify or revoke this waiver for cause, and shall reopen the waiver if the conditions under paragraph (a) are not met. This exemption from requirements of title V of the Act shall continue until modified or terminated through rulemaking procedures.

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<sup>1</sup> These guidelines were published in the **Federal Register** on June 28, 1989 at 54 FR 27282.