

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 69**

[AD-FRL-5645-1]

Final 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:** Direct final rule.

SUMMARY: The EPA is promulgating a direct final rule conditionally exempting the Territory of American Samoa (American Samoa), the Commonwealth of the Northern Mariana Islands (CNMI), and the Territory of Guam (Guam), as well as certain owners and operators of sources in American Samoa, CNMI and Guam from the requirements of title V of the Clean Air Act (Act). EPA is revising its September 13, 1995 proposed rule with respect to Guam. In the proposed action, EPA granted American Samoa and CNMI, as well as owners and operators of certain sources within those territories, a conditional exemption from title V requirements. In the proposal, EPA also granted Guam an extension of time in which to adopt a title V permit program and owners or operators of certain sources an extension of time in which to obtain title V permits. EPA has revised the proposal and today is promulgating a direct final rule that maintains the conditional exemptions granted to American Samoa and CNMI and also conditionally exempts Guam from title V of the Clean Air Act. EPA is granting these conditional exemptions under the authority of section 325 of the Act.

DATES: The direct final rule for American Samoa, CNMI, and Guam is effective on January 13, 1997 unless adverse or critical comments are received by December 13, 1996. If the effective date is delayed, EPA will publish a timely notice in the Federal Register.

ADDRESSES: Copies of the petitions, the response to comments document, and other supporting information used in developing the final special exemption 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 Sara Bartholomew (telephone 415/744-1250, fax 415/744-1076), Operating Permits Section, Air and Toxics Division, at the EPA-Region IX address listed above.

I. Background

Section 325(a) of the Act authorizes the Administrator of EPA, upon petition by the Governor, to exempt any person or source or class of persons in Guam, American Samoa, and CNMI from any requirement of the Act except for requirements of Section 110 and Part D of subchapter I of the Act (where necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS), and Section 112. 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.

The Governors of American Samoa, CNMI, and Guam each submitted a petition pursuant to section 325(a) of the Act for an exemption from title V of the Act. Title V requires states, including American Samoa, CNMI, and Guam, to adopt and submit to EPA a title V operating permit program for major sources and certain other stationary sources. If any state does not adopt an operating permit program, title V requires EPA to apply certain sanctions within that area and to promulgate, administer, and enforce a federal operating permit program for such area. EPA proposed regulations to implement a federal operating permit program on April 27, 1995 (60 FR 20804) and promulgated the final rule on July 1, 1996, at 40 CFR part 71 (61 FR 34202) (part 71). Title V also requires that sources located in states that do not adopt a title V permitting program obtain a federal operating permit from the EPA.

On September 13, 1995, EPA issued a proposed rule (60 FR 47515) (the proposal) in response to petitions from the Governors of American Samoa, Guam and CNMI. In the proposal, EPA granted the government of Guam a three-year extension of the deadlines for submitting a title V program and also proposed granting certain sources on Guam a similar three-year extension of time in which to obtain title V permits. After the proposal, Guam submitted comments requesting an exemption and committed to achieving several of the

goals of title V by developing an alternate operating permit program. EPA is now granting the government of Guam an exemption from the requirement to adopt a title V program on the condition that Guam adopt and implement a local alternate operating permit program.

In the proposal, EPA also proposed granting American Samoa and CNMI exemptions from the requirement to implement a title V permit program and proposed granting owners or operators of certain sources subject to title V a similar exemption from the requirement to apply for a title V permit. Today's direct final rule exempts both American Samoa and CNMI from the requirement to adopt a title V program on the condition that American Samoa and CNMI adopt and implement programs to permit stationary sources and programs to protect the NAAQS. The programs to protect the NAAQS are described in the proposal and the petitions.

EPA is also granting owners or operators of certain sources on American Samoa, CNMI, and Guam a conditional exemption from the requirement to apply for a federal title V operating permit under part 71. This rulemaking does not waive part 71 permitting requirements for owners or operators of solid waste incinerators required to obtain a title V operating permit under section 129(e) of the Act or of major sources under Section 112 of the Act required to obtain title V permits. This rulemaking also does not waive or exempt the governments of Guam, American Samoa, or CNMI, or owners or operators of sources located in these territories, from complying with all other applicable Clean Air Act provisions.

EPA is promulgating this action as a direct final rule because the Agency views this as a noncontroversial action and anticipates no adverse comments. In fact, the public comments received to date support granting an exemption from title V requirements. In the Proposed Rules Section of this Federal Register, however, EPA has also published a proposal that allows the public 30 days to comment on the direct final rule for American Samoa, CNMI, and Guam. If adverse comments are received during the comment period, EPA will publish a subsequent document in the Federal Register before the effective date of the exemption and will withdraw the direct final rule for any territory for which adverse comments are received. All public comments received will then be addressed by the Agency in a subsequent final rule based on this action serving as a proposed rule. The

EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 13, 1997.

II. Final Action and Implications

A. Conditional Approval of Guam's Exemption Request

1. Guam's Commitment Letter

The Administrator of the Guam Environmental Protection Agency (GEPA) sent a letter to EPA on December 18, 1995. The GEPA Administrator committed to develop and implement an alternate air operating permit program that addresses many of the elements of a title V program in exchange for an exemption from title V. GEPA's commitment letter states that Guam would develop an alternate operating permit program that would: (1) permit all major sources; (2) incorporate all applicable federal requirements in permit conditions; (3) incorporate monitoring, recordkeeping and reporting requirements in permit conditions; (4) allow for public review and comment; (5) enhance enforcement authorities, including civil and criminal penalties; (6) identify the resources necessary to maintain an alternate program; (7) permit existing major sources within three years; (8) conduct regular inspections of permitted sources; and (9) coordinate the local program with EPA air programs.

EPA continues to believe that implementation of title V would enhance air quality by ensuring that a comprehensive and effective permitting program is implemented. However, in light of GEPA's new commitment to develop an alternate operating permit program that encourages compliance and allows public participation, EPA is allowing Guam the opportunity to demonstrate that the proposed alternative operating permit program can meet title V's goals. EPA is promulgating an exemption for Guam from the requirement to develop a title V permitting program on the condition that Guam adopt and implement the alternate operating permit program.

2. Additional Comments

EPA received similar comments from four other commenters supporting the Governor's petition for an exemption for Guam. Two commenters objected to EPA's proposed requirement that Guam implement title V within three years and requested that EPA grant an exemption from the requirement to develop a title V permit program

instead. They commented that the costs of the title V program would be an economic burden and would require that GEPA develop additional technical resources. They also stated that thirty local businesses would be required to pay \$10,000 per year for the program.

EPA believes that the alternate program addresses concerns over the program's costs by allowing Guam flexibility to develop a less expensive program based on local priorities. The alternate air operating permit program requires that Guam improve its air program and obtain additional technical resources, but allows Guam flexibility to reduce costs and address local needs. In addition, most of the local businesses cited in the comments, including several with no emissions, would not have been required to obtain a title V permit because they are not major sources.

Two of the commenters also stated that air quality is pristine because Guam is an isolated island and that title V will not improve air quality. Guam has a significant number of major sources of criteria pollutants and hazardous air pollutants. While Guam is unlikely to suffer from or contribute to regional air pollution problems due to its isolation, these major sources can contribute to localized air pollution problems. EPA believes that a comprehensive permitting program, such as title V, will help ensure that local air quality is not degraded by improving compliance with applicable Clean Air Act requirements. However, EPA is granting Guam flexibility to demonstrate that a local alternate operating permit program would adequately protect air quality under Guam's unique local circumstances.

Two of the commenters also stated that the title V permit program is excessively intrusive to Guam's government because it requires that Guam Power Authority, which is operated by Guam's government, obtain title V permits and pay title V fees. EPA notes, however, that the Clean Air Act requires that sources controlled by governments meet the same air quality standards as other sources. Therefore, sources controlled by Guam's government or the U.S. government must obtain an operating permit under the alternate operating permit program.

Please see the response to comments document in the docket for more details on the comments that were submitted and EPA's responses.

B. Final Conditions for the Alternate Operating Permit Programs for American Samoa, CNMI, and Guam

The final requirements for each alternate operating permit program address deficiencies in existing programs and generally reflect commitments made by the petitioners. The conditions for Guam's operating permit program are similar to the conditions set forth in the proposal for the alternate operating permit programs for American Samoa and CNMI. American Samoa and CNMI will also implement programs to monitor compliance with the NAAQS and reduce emissions as necessary. Guam is not required to implement new programs to protect ambient air quality standards if granted a title V exemption, because a previous waiver for Guam (see 40 CFR 69.11) imposed similar requirements. The final conditions also include express terms clarifying that the alternate program must require compliance certifications, include a system of regular inspections, and provide that fees collected under the program are not used for other purposes. The provisions clarify that the permits must be renewed periodically. In addition, the final rule explicitly sets forth EPA's opportunity to review permits, which was previously included in the proposed conditions by reference to EPA's general June 28, 1989 permit program guidelines. In order to address EPA's concern that all owner or operators of sources subject to title V permitting requirements eventually obtain an operating permit, the exemptions for each territory provide instances in which the exemption will expire by a certain date. First, the exemption will expire two (2) years after the effective date of this rule if a territory has not submitted an alternate operating permit program to EPA by that time. Second, the exemption for owners or operators of sources subject to title V requirements will expire six (6) years after the effective date of this rule for any source subject to title V permitting requirements that has not obtained a permit under an EPA approved alternate permit program. If the exemption expires, the requirements of part 71 apply. The exemptions for each territory also include conditions when EPA will revoke the exemption in its entirety or on a source specific basis. The exemptions for American Samoa and CNMI have been revised to include these clarifications and additions. Without these "checks" to ensure that sources will eventually be permitted through an adequate air operating permit program, EPA does not believe

that it could allow the exemption from the title V requirements that it is granting today.

1. Inspections

Guam's conditional exemption requires that Guam implement a system of regular inspections of permitted sources and a system to identify any unpermitted major sources. 40 CFR Part 70 requires that states adequately inspect and monitor sources (70.10(c)(iii)), and EPA believes that the inspections required under title V are also essential for the success of the alternate operating permit programs. Guam does not currently have a program for routinely inspecting air pollution sources, but GEPA committed to implement a system of regular inspections as part of the alternate operating permit program in its December 18, 1995 letter. EPA understands this commitment to mean that Guam will provide adequate inspector staff and training and develop appropriate internal procedures to inspect all permitted sources. EPA also expects that Guam will develop appropriate guidelines for responding to violations that are discovered. EPA will assist Guam by providing guidance and manuals for inspecting permitted sources.

EPA is modifying the conditions set forth in the proposal for American Samoa and CNMI to explicitly require that these territories also implement a system of regular inspections. EPA believes that inspections will be equally important for these air quality programs, and the proposal for American Samoa and CNMI implicitly required inspections and appropriate responses to violations to ensure compliance with all applicable requirements. After considering Guam's comments and the need for inspections on Guam, EPA has decided to include this requirement as an explicit provision of each waiver.

2. Compliance Certifications

EPA is requiring that Guam's alternate operating permit program require sources to submit compliance certifications and compliance plans to address noncompliance. The program shall also require that sources submit, as part of the compliance plan, a schedule to expeditiously remedy any noncompliance or achieve compliance with promulgated regulations that have a future compliance date. The Governor of Guam and R.W. Beck stated that the compliance benefits of title V will be achieved without implementing the compliance requirements of title V. They cited an environmental audit conducted by the Guam Power

Authority (GPA) after an EPA enforcement action and claimed that "[t]here is no environmental benefit to be gained from a repeat of the same exercise."

EPA believes that a one-time confidential audit cannot achieve the same compliance benefits as a comprehensive and ongoing permitting program like title V. Title V improves air quality by requiring that sources identify their emissions, all applicable requirements, and their compliance status with each such requirement. Furthermore, permit holders agree to remedy any noncompliance through a compliance schedule, continue to meet applicable Clean Air Act obligations in the future, and inform the public of their compliance status. (40 CFR 70.5(c)(8) and (9), 70.5(d), and 70.6(c)). State implementation of title V programs has already created numerous examples of the program's value in identifying ongoing compliance problems and prompting action to resolve these problems. EPA is clarifying that the alternate local programs must require that sources submit initial compliance certifications and plans with permit applications and regular compliance certifications at least annually thereafter to provide air quality benefits and protect the public's right to know of any Clean Air Act violations.

EPA is modifying the conditions set forth in the proposal for American Samoa and CNMI to explicitly require compliance certifications, plans, and schedules for the same reasons. The proposal required that permits be enforceable and that they provide for monitoring, recordkeeping, and reporting that would assure compliance with applicable requirements. EPA believes that the conditions set forth in the proposal would require that sources report and correct violations to assure compliance with applicable requirements. However, Guam's comment shows that explicit guidance is necessary to clarify this requirement and ensure that compliance certifications, plans, and schedules are submitted and that violations are corrected. EPA will provide examples of approved compliance certifications so that the petitioners may use them as models for the alternate operating permit programs.

3. Resources

EPA is requiring that the petitioners develop appropriate mechanisms to provide adequate funding for the local alternate air permit programs. Most states have created a special fund to ensure that title V operating permit

programs are adequately funded and that permit program funding is used solely for the permit program. While the alternate programs will impose lower costs than title V programs, adequate funding will still be necessary to develop and implement the alternate programs. The alternate operating permit programs and the NAAQS programs for American Samoa and CNMI must also ensure that sufficient ongoing funding will be provided and not diverted from the program. These safeguards are necessary to ensure that funds committed to the permit program and used as the basis for EPA approval will be used to support the air program.

4. EPA Review and Objection

EPA is replacing the review requirements that were included in the proposal by reference to June 28, 1989 guidance (see 54 FR 27282) with explicit provisions that allow EPA the opportunity to comment on and object to permits that do not conform to the alternate operating permit program requirements. EPA will object to draft permits that are not consistent with the approved alternate operating permit program and the 40 CFR part 69 exemption conditions, including permits that do not contain the correct applicable requirements and emission limits or are not issued through the correct procedures. If EPA objects to a permit, the permit must be revised to address EPA's concerns prior to issuance or it will not be considered a valid federally enforceable permit that complies with the conditions of the exemption and an alternate operating permit program approved by EPA. In such a situation, the source must obtain a permit that resolves EPA's objections or the source and the permitting authority (Guam, CNMI or American Samoa) will no longer meet the conditions of the exemption with respect to that permit. If EPA objects to a permit, EPA will notify the permitting authority of its objections and send a copy to the permit applicant. The permitting authority will have 180 days to work with EPA to issue a revised permit that resolves EPA's objections. If the territory does not issue a permit that resolves EPA's objections within 180 days, the exemption will be revoked for that source and the source will be subject to the federal operating permit requirements of part 71.

EPA believes that this oversight role will lead to the issuance of permits that both EPA and the permitting authority agree comply with the exemption, the approved alternate operating permit program and all applicable requirements. The petitioners all stated

that they currently lack the technical resources to issue comprehensive operating permits, and EPA oversight will help them implement the alternate operating permit program. In addition, federal review will help prevent any perception of bias when government power plants are permitted by essentially the same organization that operates them. Therefore, EPA oversight will assist the implementation of the alternate permitting programs. Finally, EPA believes that oversight during the permit process will reduce subsequent disputes between EPA, sources, and each territory over permit terms and conditions. Therefore, EPA is including a condition in the exemption that EPA will have a review period in which to object to permits that EPA believes do not comply with the alternate program.

5. Renewals and Reopening for Cause

EPA is requiring each territory to include a provision in the alternate operating permit program for permit renewal within five years of issuance. Regular renewals will be necessary to incorporate any new or revised requirements, add or remove compliance schedules, and keep permits current. The petitioners may choose to issue permits for any fixed duration that does not exceed five years.

EPA is also requiring that each alternate program allows each petitioner to reopen permits for cause. For instance, an application may contain incorrect information or a permit may contain an incorrect applicability determination or other material mistake. In addition, a new or revised applicable requirement may be substantially inconsistent with a permit that would not otherwise be updated for up to five years. Petitioners should reopen permits to incorporate new requirements in such situations if, in their estimation, there is a substantial amount of time remaining in the permit term. Therefore, EPA is requiring that each territory and EPA have authority to reopen permits that are not consistent with the Act. The program must provide for notice to the permittee and the public when a permit is reopened in this manner. Consistent with the requirements for EPA objection discussed above, if EPA determines that cause exists for reopening a permit issued to a source (i.e. the permit is inconsistent with the applicable requirements and the terms of this exemption), and the permitting agency does not issue a new permit that corrects the deficiency within 180 days of receiving EPA's notice, EPA will revoke the exemption and issue a permit under part 71. EPA is basing the 180 day deadline on the longest period allowed

under section 40 CFR 70.7, which it finds is a reasonable deadline for issuing corrected permits under the alternate operating permit programs.

6. Revocation, Expiration or Modification of Exemption

This rulemaking establishes the conditions for which the exemption for Guam, American Samoa, or CNMI will expire or will be revoked or modified, and explains the appropriate administrative mechanism. First, the exemption for any territory will expire two years after the effective date of this rule without further rulemaking unless the territory submits an alternate operating permit program by the date specified in the rule. The program should substantively address each requirement of the exemption. If a program is not submitted by the deadlines set forth in this rule, part 71 will become effective for the territory on that date. As set forth in Section E, below, American Samoa and CNMI are required by this rule to conduct modeling and to submit any State Implementation Plan (SIP) revision necessary to address compliance with the NAAQS. For American Samoa, the exemption will also expire if American Samoa fails to submit air quality modeling and supporting data within two years of the effective date of this rule. For CNMI the exemption will expire if CNMI fails to submit a SIP to assure compliance with the NAAQS for SO₂, unless CNMI demonstrates within one year through additional modeling and site specific meteorological data that the NAAQS for SO₂ is protected.

If an alternate program is submitted by the deadline, the exemption will continue while EPA reviews the program to determine if it qualifies for approval. EPA will approve the program and provide notice of the approval in the Federal Register if the program meets the conditions of the exemption and will disapprove the program and revoke the exemption by rulemaking if it does not. In addition, EPA may revoke or modify the conditional exemption through rulemaking if the permitting authority does not adequately implement and enforce the alternate program.

EPA is including additional procedures for expiration or revocation of the exemption in this rulemaking to assure that all sources will eventually obtain a valid federally enforceable operating permit under either an approved alternate operating permit program or part 71. First, if the local agency fails to issue an operating permit under an approved alternate program to a source within six years of the effective

date of this rulemaking, the exemption will expire for any source without a permit and that source will become subject to the part 71 federal operating permit requirements. The six year date is based on similar deadlines set forth in Title V of the Clean Air Act for submittal and approval of the operating permit program and issuance of permits to all sources. These expiration and revocation provisions will not apply to any source that has obtained an operating permit through an alternate operating permit program approved by EPA within the six year deadline. This requirement provides a backstop for assuring that all subject sources will have a means for applying for an operating permit no later than six years from today.

These new termination/revocation provisions are necessary to fill gaps that existed in the proposal. With these procedures EPA will ensure that all owners or operators of subject sources that would have been required to obtain a Title V permit will eventually be permitted under an approved program. These provisions will also ensure that all owners and operators of subject sources will apply for an operating permit by a date certain so that no source goes unpermitted.

EPA may determine in the future that the implementation of a title V permitting program or the modification of the exemption is necessary to ensure compliance with applicable Clean Air Act requirements and to protect air quality. If EPA determines that revocation or modification of the exemption is necessary due to changed circumstances or other causes, EPA will conduct a rulemaking to revoke or modify the exemption. In this case the exemption and its conditions will remain effective until EPA has completed its rulemaking.

7. Federal Enforceability

In order for EPA to authorize an exemption for each territory as set forth in this rule, EPA must ensure that permits issued under the alternate programs required by this rule are federally enforceable. This is consistent with the title V permit program and is an important component to assure that each territory attains and/or maintains compliance with the NAAQS. Therefore, EPA is requiring, as a condition of the exemptions authorized in this rule, that each territory submit a revision to its SIP to make permits issued under an approved alternate program federally enforceable. The SIP revision should provide that a person shall not violate any permit condition or term in a permit that has been issued

under an alternate operating permit program approved by EPA.

C. Implementation of Title V for Hazardous Air Pollutant Sources and Solid Waste Incineration Units

This action does not waive any title V permitting requirement that applies to major sources of hazardous air pollutants (HAPs) in American Samoa, CNMI, or Guam and is conditioned to address special concerns presented by the local impact of HAPs. Any source that would be subject to title V because it is a major source under Section 112 of the Clean Air Act or a solid waste incinerator regulated under section 129 of the Clean Air Act must obtain a title V permit under part 71.

Any nonmajor source of hazardous air pollutants that is subject to a standard or other requirement under Section 112 may be subject to the requirement to obtain a title V permit. Currently, the requirement to obtain a title V permit has been deferred for such sources, as noted in each applicable standard¹. If at any time in the future EPA requires these nonmajor sources of HAPs to obtain a title V permit, it is EPA's intent that these nonmajor sources be permitted under the local alternate permitting program authorized by today's rule. Sources subject to Section 112 standards under 40 CFR part 63 should refer to the applicable subpart of part 63 for the dates required for submission of permit applications.

¹ On June 3, 1996, EPA published in the Federal Register (61 FR 27785) an amendment to certain hazardous air pollutant standards for Chromium Electroplating and Chromium Anodizing Tanks (subpart N); Ethylene Oxide Commercial Sterilization and Fumigation Operations (subpart O); Perchloroethylene Dry Cleaning Facilities (subpart M); and Secondary Lead Smelting (subpart X). In that action, EPA amended the requirement in each of these rules that required nonmajor sources (emitting or having the potential to emit less than 10 tons per year of any hazardous air pollutant or less than 25 tons per year of any combination of hazardous air pollutants) to obtain Title V permits. For certain of these nonmajor sources, the rules have been amended to allow the permitting authority the option of deferring the requirement to obtain a title V permit for 5 years. Certain nonmajor sources subject to subpart N of part 63 (Chromium Anodizing Tanks) that are not located at major sources are permanently exempted from the requirement to obtain a title V permit consistent with 40 CFR § 63.340(e)(1) (61 FR 27787, June 3, 1996). Any nonmajor batch cold solvent cleaning machines subject to subpart T of part 63 (Halogenated Solvent Cleaners) that are not located at major sources are permanently exempted from the requirement to obtain a title V permit consistent with 40 CFR § 63.468(j) (59 FR 61801, December 2, 1994). For any other nonmajor solvent cleaning machines subject to subpart T of part 63 (Halogenated Solvent Cleaners) that are not located at major sources, the rules have been amended to allow the permitting authority the option of deferring the requirement to obtain a title V permit for 5 years (59 FR 61801, December 2, 1994).

1. Title V Permits

As noted earlier, title V requires that EPA implement a federal operating permitting program in any area that does not have an approved title V program (Section 502(e) of the Act, 42 U.S.C. 7661(e)). The part 71 program at 40 CFR part 71 (61 FR 34202) became effective on July 31, 1996. EPA's proposal of September 13, 1995 required that the existing major sources of HAPs, and owners and operators of any new source on Guam subject to title V because it is a major source under section 112, or a solid waste incinerator subject to section 129, obtain title V permits under part 71. In the proposal EPA requested comments on whether any existing municipal waste incinerators or major HAP sources on American Samoa and CNMI should be required to obtain title V permits under part 71. No comments were received. EPA has decided that the exemptions for Guam, American Samoa, and CNMI authorized in today's action do not apply to these solid waste incinerators and major HAP sources and that owners or operators of these sources must obtain part 71 permits. This final rule will ensure that section 112 standards that apply to major sources of HAPs are appropriately implemented through the title V operating permit program. Section 112 of the Clean Air Act recognizes that HAP sources can have a significant impact on human health regardless of geographic location, and section 325 of the Act explicitly prohibits waivers from section 112 requirements. Because sections 112 and 129 generally rely on an effective title V permitting program to ensure that the standards are implemented correctly and HAP reductions are achieved, EPA believes that sources subject to section 129 and major sources of HAPs must have title V permits. Several sources on Guam currently subject to Section 112 standards did not meet the deadline for submitting initial applicability notifications to EPA. EPA believes that expeditious compliance with title V will resolve any potential applicability questions or compliance problems for title V sources and that waiving title V for these sources could result in confusion and greater emissions of HAPs. EPA believes that regulating these sources under title V will not impose an undue burden, because, as noted above, EPA has deferred nonmajor HAP sources from the requirement to obtain a title V permit.

EPA will be the permitting authority and will issue title V permits to these sources under part 71, as each of the petitioners has demonstrated that it

currently lacks the technical resources to issue a title V permit. EPA published a Federal Register Notice on July 31, 1996 (61 FR 39877, July 31, 1996), listing the state and local jurisdictions where a Federal Operating Permits Program became effective on that day. This notice included Guam, American Samoa and CNMI. Applications for major sources of HAPs and solid waste incinerators under part 71 are due to be submitted to the permitting authority by July 31, 1997, except for those major perchloroethylene dry cleaning facilities, which are due by April 1, 1997.

2. Case-By-Case Maximum Achievable Control Technology (MACT) Determinations

Section 112 MACT requirements for case-by-case MACT determinations apply to major sources in certain situations where EPA has not promulgated an applicable MACT standard. Section 112 (j) requires that where EPA has missed a deadline for promulgating a section 112(d) standard then any major source of HAPs in the applicable source category must submit an application for a case-by-case MACT determination within 18 months of the missed deadline. Section 112(g) sets forth certain case-by-case MACT requirements for newly constructed or reconstructed sources. These requirements apply to all major sources of HAPs in American Samoa, CNMI, and Guam after the effective date of part 71.

The regulations implementing 112(j) at 40 CFR part 63, subpart B, apply as of the effective date of part 71 (July 31, 1996), but the petitioners' source inventories indicate that there are no major sources that are subject to 112(j) at this time. Should any source be subject to this requirement, EPA will use part 71 permit applications as the compliance mechanism for implementing these case-by-case MACT approvals, as the petitioners have demonstrated that they lack the technical resources to conduct such a determination.

EPA recently reopened the comment period and published a notice of availability of a draft rule implementing Section 112(g) (61 FR 13125, March 26, 1996). After the 112(g) regulation becomes effective, any newly constructed or reconstructed major source of HAPs in each territory must comply with a MACT level of control. This will be determined on a case-by-case basis when no applicable standard has been promulgated by EPA. Any new source subject to section 112(g) must apply for case-by-case MACT approval after the effective date of the regulation.

Other section 112 requirements, such as 112(d) MACT standards, automatically apply to all HAP sources in American Samoa, CNMI, and Guam. This exemption does not waive any Section 112 requirements applicable to any sources; this rule only exempts the nonmajor sources from the requirement to obtain a part 71 permit.

EPA's proposal required that American Samoa and CNMI develop an implementation agreement with EPA regarding hazardous air pollutant sources, but EPA believes that the EPA's implementation of part 71 (which includes section 129(e) solid waste incinerators and major HAP sources) renders this agreement unnecessary as a waiver condition.

D. Effective Date of Title V Approval for Other Programs

In addition to sections 112(g) and 112(j), the implementation of other regulations may depend on the approval date of a title V permitting program. For instance, EPA has considered implementing 40 CFR part 64 compliance assurance monitoring through title V permitting programs, and other future regulations may also be implemented or triggered by the effective date of an approved title V program. In this case, for sources that are not required to obtain a part 71 permit under today's rule, the local alternate operating permit programs, after approval by EPA, will implement all applicable requirements, including any part 64 monitoring rule. This rule grants a conditional exemption to owners and operators only from the requirement to obtain a title V permit and to each territory from the requirement to adopt a title V program. All sources on American Samoa, CNMI, and Guam must comply with all other applicable Clean Air Act provisions. For any requirement other than the case-by-case MACT requirement addressed above that is implemented or triggered by an approved title V program, the implementation or trigger date is July 31, 1996, the date individual sources became subject to part 71.

E. Air Quality Modeling and SIP Submittals

In the proposal, EPA discussed potential problems with air quality on American Samoa and CNMI and required these territories to conduct modeling and make any SIP revision necessary to ensure compliance with the NAAQS. EPA is retaining the requirements for American Samoa and CNMI set forth in the proposal for air quality modeling and SIP submittals.

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

This action under section 325 of the Act does not impose new requirements, but allows local agencies flexibility to reduce the impacts of title V on small entities. Because this action does not impose any new requirements, and merely approves requests for additional flexibility to meet existing requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, 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 this exemption 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 exemptions requested to reduce the cost of implementing the Clean Air Act. Accordingly, this action will reduce costs to state governments and the private sector.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: 42 U.S.C. 7401-7671q.

List of Subjects in 40 CFR Part 69

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

Dated: October 28, 1996.

Carol M. Browner,

Administrator.

40 CFR part 69 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 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 March 14, 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 March 14, 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 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.* 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 March 15, 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 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 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 reissue 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 March 15, 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 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 Guam on that date.

(2) In the event that EPA disapproves Guam'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. 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 shall be the effective date of 40 CFR part 71, which is July 31, 1996.

3. Subpart B is amended by revising the subpart heading and adding § 69.22 to read as follows:

Subpart B—American Samoa

§ 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 March 14, 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 March 14, 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 March

15, 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, 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 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 March 15, 1999.

(2) American Samoa shall address any NAAQS exceedances demonstrated through the modeling results with revisions to its SIP that shall be submitted by March 14, 2000. The plan

shall ensure compliance with the NAAQS is achieved by March 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 March 15, 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 March 14, 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.

4. Subpart C is amended by revising the subpart heading and adding § 69.32 to read as follows:

Subpart C—Commonwealth of the Northern Mariana Islands

§ 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 March 14, 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 March 14, 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 March 15, 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 (SO₂). CNMI shall complete and submit any additional modeling to EPA by March 16, 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 SO₂, or if CNMI elects to accept EPA's preliminary determination that the NAAQS for SO₂ have been exceeded,

CNMI shall submit a revised SIP that ensures compliance with the NAAQS for SO₂. CNMI shall submit the proposed revision to the SIP by March 16, 1998 or, if CNMI elects to conduct additional modeling, by March 15, 1999. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with the NAAQS for SO₂ by March 14, 2001.

(d) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, CNMI shall, no later than March 15, 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 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 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 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. 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.

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