

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 69**

[FRL-5920-8]

**United States Virgin Islands Final Ruling on Petition Pursuant to Section 325(a)(1) of the Clean Air Act****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rulemaking.

**SUMMARY:** On June 10, 1997, the Environmental Protection Agency (EPA) proposed to approve a petition submitted by the Governor of the U.S. Virgin Islands which requested a waiver from certain Clean Air Act (the Act) restrictions to the Hess Oil Virgin Islands Corporation (HOVIC) in St. Croix. This exemption was proposed pursuant to section 325(a)(1) of the Act. Specifically, the waiver would allow HOVIC to implement an Intermittent Control Strategy (ICS) based on atmospheric conditions, which is prohibited by section 123 of the Clean Air Act. The ICS would alleviate potential exceedances of the National Ambient Air Quality Standards for sulfur dioxide. In this action, EPA is promulgating this waiver which allows the HOVIC refinery in St. Croix to implement an ICS under conditions which will be specified in a federally enforceable Prevention of Significant Deterioration of Air Quality (PSD) permit.

**EFFECTIVE DATE:** This rule will be effective December 15, 1997.**FOR FURTHER INFORMATION CONTACT:** Annamaria Colecchia, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, Telephone: (212) 637-4016.**SUPPLEMENTARY INFORMATION:****Background**

On May 7, 1996, the Governor of the United States Virgin Islands submitted a petition to the Administrator of the EPA for an exemption from certain requirements of the Act. The petition, submitted pursuant to Section 325(a)(1) of the Act, requests that the HOVIC refinery, located on the island of St. Croix, be granted an exemption from Section 123 of the Act which prohibits basing emission limitations using an ICS. HOVIC concurrently submitted a proposed modification to its existing Prevention of Significant Deterioration

(PSD) permit to the EPA. Air quality analyses submitted in support of the proposed PSD modification indicated that although emissions of sulfur dioxide (SO<sub>2</sub>) will be substantially reduced below the amount HOVIC is currently permitted to emit, occasional exceedances of the 24-hr National Ambient Air Quality Standard (NAAQS) for this pollutant could occur, to the north of the facility, during those days that the wind blows onshore for a persistent length of time.

The petition proposed to prevent these potential exceedances from occurring by reducing the sulfur content of the fuel processed during those time periods. Since this constitutes an ICS based on atmospheric conditions, reliance upon which in an implementation plan is specifically prohibited by the Act, the petition requested an exemption from this requirement through provisions available under Section 325 of the Act. Granting HOVIC's petition will make it possible for EPA to consider, in a separate action, HOVIC's request for a PSD permit modification. EPA is not entertaining HOVIC's PSD permit modification request in this action.

EPA proposed approval of the petition on June 10, 1997 (62 FR 31546) and this proposal contained the description of the petition, supporting documents and the minimum federally enforceable conditions under which the ICS shall be implemented. These conditions will also appear in a revised PSD permit. No comments were received on the proposed rulemaking. It should be noted, that for clarity EPA added some language into the CFR portion of this rulemaking which had previously been included in the preamble to this proposal (i.e., ICS must include a meteorological tower and ambient monitors).

**Conclusion**

Since HOVIC met the requirements in section 325 of the Act and EPA received no comments during the public comment period, EPA is promulgating this waiver to the HOVIC refinery in St. Croix under the conditions specified in the proposed approval.

**Administrative Requirements***Executive Order 12866*

This action has been classified as a Table 3 action by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2215), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of

Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

**Regulatory Flexibility**

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This is because the final rule applies only to the Hess Oil Virgin Islands refinery on St. Croix, Virgin Islands. This facility is not a small entity, and the action granting the petition will relieve the source from restrictions that would otherwise apply.

**Unfunded Mandates Reform Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any 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 in any one year. 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 today's rule does not contain a Federal mandate that may result in expenditures of \$100 million or more in any one year. This is because the rule is mainly deregulatory, relieving (subject to conditions) the sole regulated entity of limitations that would otherwise apply, and possibly resulting in resource savings to the Hess Oil Virgin Islands refinery that would not likely be obtained in the absence of today's rule. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, since it imposes no additional significant or unique burdens on the Virgin Islands to implement today's rule.

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

Environmental protection, Air pollution control.

Dated: November 6, 1997.

**Carol M. Browner,**  
Administrator.

For the reasons stated in the preamble, 40 CFR part 69 is amended as set forth below:

**PART 69—[AMENDED]**

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

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

2. Subpart D is added consisting of § 69.41 to read as follows:

**Subpart D—The U.S. Virgin Islands****§ 69.41 New exemptions.**

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

(b) The protocol to be followed for the ICS shall be set forth in a Prevention of Significant Deterioration of Air Quality (PSD) permit issued to HOVIC; and shall include as a minimum, the conditions listed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

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

from within the sector for that hour. Each "day" or "block period", for these purposes will start at midnight and end the following midnight.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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