

38-2-20.1.e.1. Any rights or obligations of the director or by the permittee with respect to any inspection, notice of violation, or cessation order, whether prior to or subsequent to the compliance conference; or

38-2-20.1.e.2. The validity of any notice of violation or cessation order issued with any condition or practice reviewed at the compliance conference.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revision to the State's Code and regulations that were submitted on April 28, 1997, and amended on May 14, 1997. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

#### Written Comments

Written comments should be specific, pertain only to the issue proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on June 25, 1997. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

#### Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Charleston Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### IV. Procedural Determinations

#### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

#### Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year or any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1997.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97-15008 Filed 6-9-97; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 69

[FRL-5836-3]

### United States Virgin Islands Proposed Ruling on Petition Pursuant to Section 325(A)(1) of the Clean Air Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** On May 7, 1996, the Governor of the United States Virgin Islands sent to the Environmental Protection Agency ("EPA") a petition for an exemption ("petition") from certain requirements of the Clean Air Act (the "Act"). The

petition, submitted pursuant to section 325(a)(1) of the Act, requests that the Hess Oil Virgin Islands Corp. (HOVIC)) refinery be granted an exemption from the prohibition on basing emission limitations on intermittent control strategies (ICS) in section 123 of the Act. Based upon the EPA's review of the petition and supplemental information provided by HOVIC, the EPA is proposing to conditionally approve the petition. The conditions would require that HOVIC switch to a lower sulfur fuel when the wind direction blows from a defined sector or when ambient monitors measure an average SO<sub>2</sub> concentration above a specified level. Conditions governing when HOVIC can switch back to the higher sulfur fuel are also included in this proposed approval. Pursuant to section 307(d) of the Act, this proposed rule provides a description of the basis for the petition under section 325(a)(1), the petition and supporting documentation submitted by HOVIC, and the proposed decision by the EPA on the petition.

**DATES:** Comments on this proposed rule must be submitted on or before July 10, 1997. EPA has not scheduled a public hearing on this proposed rule. A hearing will be held in New York, N.Y. on this petition if one is requested on or before July 10, 1997.

**ADDRESSES:** Comments should be submitted in duplicate to: Steven C. Riva, Chief, Permitting Section, Air Programs Branch Division of Environmental Planning and Protection, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Parties who wish to request a hearing should contact Steven C. Riva at (212) 637-4074. If a hearing is scheduled, a notice will be published in the **Federal Register**. Parties wishing to testify should contact Steven C. Riva. Hearing testimony should be submitted to the EPA Air Docket in Washington, D.C. and the Region 2 address above.

**Docket:** Copies of information relevant to this petition are available for inspection in public docket A-97-08 at the Air Docket of the EPA, room M-1500, 401 M Street SW., Washington, D.C. (202) 260-7548, between the hours of 8:00 am to 5:00 pm Monday through Friday. A copy of the documents contained in the docket are available at USEPA, Region 2, Division of Environmental Planning and Protection, 25th Floor, 290 Broadway, New York, NY (212) 637-4074, and is available between the hours of 8:00 am to 4:00 pm Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Annamaria Colecchia, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, U.S. 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) of the Act, requests that the HOVIC refinery, located on the island of St. Croix, be granted an exemption from the prohibition on basing emission limitations on ICS in section 123 of the Act. HOVIC concurrently submitted a proposed modification to its existing Prevention of Significant Deterioration (PSD) permit to the EPA to: (1) increase the charge rate to the Fluid Catalytic Cracking Unit, (2) increase the production of sulfuric acid, and (3) redistribute and change the types of fuels processed in the refinery. The third change, which will substantially reduce emissions of sulfur dioxide (SO<sub>2</sub>) below the amount HOVIC is currently permitted to emit, could cause occasional exceedances of the 24-hr National Ambient Air Quality Standard (NAAQS) for this pollutant, north of the facility, during those days that the wind blows onshore for a persistent length of time. Meteorological data from the twelve months prior to the petition predicts that these wind conditions will occur only a few times a year.

The petition proposes 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.

Section 325(a) provides, in part, that upon petition of the Governor of the Virgin Islands, the Administrator of the EPA is authorized to exempt any persons or source or class of persons or sources in such territory from any

requirement under the Clean Air Act other than section 112 or any requirement under section 110 or Part D of Subchapter I necessary to attain or maintain a national ambient air quality standard.

**Description of Petition and Supporting Documents**

The petition consists of a seventeen page narrative and eighteen supporting exhibits. The narrative portion of the petition is organized into sections that describe: (1) The unique meteorological conditions of the Virgin Islands, and in particular, HOVIC's location on St. Croix, (2) the planned permit modification and control options available at the HOVIC facility, (3) the fuel-switching control strategy proposed by HOVIC, and (4) the regulatory and statutory basis for granting the exemption. The supporting exhibits in the petition include, among other things, existing meteorological monitoring audits, modeling methodology, NAAQS compliance demonstration and legal references. Under separate cover, HOVIC submitted an air quality analysis as part of the complete permit modification request. Other documentation later submitted by HOVIC in support of this petition included: (1) Incremental cost analysis; (2) liquid fuel usage; (3) SO<sub>2</sub> emissions by unit; (4) analysis of PSD increment consumption; and (5) additional information on the air quality modeling.

**Criteria for Approval**

As amended, section 325(a) provides the criteria for approving a request for an exemption from requirements of the Act and states, in part, that:

Upon petition by the governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this Act other than Section 112 or any requirement under Section 110 or Part D necessary to attain or maintain a national primary ambient air quality standard. Such exemptions 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.

HOVIC's proposed modification involves only SO<sub>2</sub> emissions and approvals governed by section 110 of the Act and involves no requirements under section 112. On the basis of the language cited above, the first prerequisite to granting an exemption in this case under section 325(a)(1) is that

such an exemption may not be granted from any section 110 requirement necessary to attain or maintain a national primary ambient air quality standard. The second prerequisite to granting such a petition is that the Administrator must find the exempted requirement to be not feasible or unreasonable due to unique geographical, meteorological, or economic factors or such other local factors as the Administrator deems significant.

#### EPA Evaluation and Proposed Action

The EPA believes that the petition meets the first prerequisite. That is, as a statutory matter, the prohibition against SIPs relying upon ICS, contained in section 123, is not a requirement under section 110 necessary to attain or maintain the NAAQS. Moreover, the modeling analysis presented demonstrates that the proposal will not adversely affect either attaining or maintaining a NAAQS. However, more complex issues arise in determining whether the proposal meets the second test. The petition does not claim that adherence to the prohibition in section 123 is not feasible. Rather, EPA has been asked to determine whether, given the local conditions, compliance with the prohibition is unreasonable.

The petition bases its argument on the unreasonableness of compliance with the prohibition against SIP reliance upon the use of ICS given the unique meteorology and geography of the United States Virgin Islands. A principle reason for Congress' enactment of section 123 was to prevent export of air pollution from one population area to another. HOVIC argues that the prohibition against ICS was based on the experience of sources operating on the United States mainland, which given the Virgin Islands' unique wind patterns and isolation, are not relevant to HOVIC's circumstances. HOVIC claims that given these circumstances, it is "unreasonable" to require it to undertake a more expensive control option, the use of a lower sulfur fuel on a continual basis, in order to comply with the prohibition.

HOVIC's interpretation of unreasonable—that without the use of an ICS, HOVIC would accrue higher production costs it could otherwise avoid—is not consistent with the rationale given for previous exemption decisions made by the Agency under section 325. In previous decisions, petitioners were able to demonstrate significant adverse impacts to both the source, in terms of significant additional emission controls, and to the

community, which would bear the burden of those costs and/or a potentially severe energy emergency. These decisions pointed to the severe impact to the affected community that would result from not granting the exemption. There is no overriding public welfare concern presented in this petition. The cost of compliance with the ICS prohibition would fall entirely to HOVIC, and no argument has been presented that this cost would entail a severe burden to HOVIC. The decision to incur these costs is also entirely within the discretion of HOVIC. Thus, this argument does not itself show that compliance with the prohibition is unreasonable or infeasible. Given that sources located in geographic areas not subject to section 325 cannot avail themselves of this exemption, HOVIC should not be entitled to an exemption merely on the basis that it is located in the Virgin Islands and desires to save on costs. Rather, the statute requires a showing of infeasibility or unreasonableness due to unique factors.

However, there are several factors which support granting the exemption sought in the petition. These factors provide a strong basis for approving the exemption request in a manner that is consistent with prior Agency interpretations of the term "unreasonable" in section 325. First, since the modeling done in support of this request demonstrates an exceedance of the 24 hour SO<sub>2</sub> NAAQS in the northern impact area under the proposed 1% sulfur in fuel scenario, it is possible that the exceedances may already occur under HOVIC's present permit conditions of 1.5%. EPA believes that the proposed ICS would provide a remedy to this potential existing air quality concern, and that more stringent continuous controls may not be a necessary remedy in this case. Second, the EPA believes that the proposed ICS provides safeguards to ensure that exceedances will not occur in the future. The proposed ICS requires the incorporation of several provisions, including the installation of ambient monitors in the northern impact zone. These ambient monitors provide not only additional air quality monitoring but they serve as a mechanism for triggering the sulfur reduction strategy. This mechanism is in addition to the condition requiring a reduction in sulfur in fuel based upon a shift in wind direction. EPA believes that these two mechanisms will ensure that the NAAQS standard will be protected. Third, the use of ICS is compatible with the relief that section 325 was designed to provide. The legislative history of

section 325 explicitly addresses the problem of sources having to adhere to all control requirements of the Act in areas where this does not result in an air quality benefit. See, e.g., 129 Cong. Rec. S16486–88 (daily ed. Nov. 17, 1983) (statements of Sen. Stafford and Sen. Matsunaga); 129 Cong. Rec. 26926 (daily ed. Oct. 3, 1983) (statement of Rep. Lagomarsino). EPA believes that approving the use of ICS would be an appropriate exemption under section 325 in certain circumstances. Indeed, the EPA has already approved such an exemption, in March 1993, for the Island of Guam. See 58 FR 13570 (Mar. 12, 1993), 58 FR 43042 (Aug. 12, 1993).

For these reasons, the EPA is proposing to exempt HOVIC from the prohibition against the use of ICS for its modification, subject to the following conditions. These conditions must be included as basic requirements in any PSD permit modification entertained by EPA. In addition, the exemption proposed today by EPA is also based upon the premise that HOVIC must comply with any other PSD permit conditions deemed necessary by EPA to ensure that these basic requirements are met. It should be noted that today's action does not represent a proposed or final PSD permit. Any proposed determination on PSD will undergo a separate notice and comment procedure. The basic requirements are as follows:

The protocol to be followed for the ICS shall be set forth in the revised Prevention of Significant Deterioration Permit anticipated to be issued to HOVIC; and will include as a minimum, the following conditions. HOVIC will comply with the details of these requirements as contained in the specific conditions of the anticipated PSD permit:<sup>1</sup>

(1) The switch to a lower sulfur fuel (0.5%) will take place when:

(a) 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

<sup>1</sup> The conditions will be specified in detail in the permit. However, for clarity, the following specifications are assumed for purposes of this proposal:

—The wind direction will be monitored by a meteorological tower on HOVIC property, approved by EPA, and will be 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.

—The SO<sub>2</sub> concentrations will be measured by ambient monitors installed for the purposes of this ICS by instruments near HOVIC property approved by EPA. The data will be collected according to EPA approved "SLAMS" procedures, but will, for these purposes, be averaged by the hour, starting on the hour.

non-consecutive hours during a 24-hour block period. Or:

(b) 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).

(2) The switch back to the higher sulfur fuel (1.0%) may occur under one of the following three conditions:

(a) If the ICS was triggered by (1)(a) above, the switch back may occur when the winds blow outside the sector listed in (1)(a) for at least 3 consecutive hours following the period during which the winds were blowing inside the sector. Or:

(b) If the ICS was triggered by (1)(b) above, 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. Or:

(c) If the ICS was triggered by both (1)(a) and (b) above, the switch back may occur when both of the conditions in (2) (a) and (b) are met.

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

(4) 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.

Other conditions of this exemption under section 325 of the Act are set forth as follows:

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

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

(7) 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.

## Administrative Requirements

### Regulatory Flexibility

The Regulatory Flexibility Act, (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial matter of small entities. Small entities include small businesses,

small not-for-profit enterprises and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the proposed rulemaking will apply only to the Hess Oil Virgin Islands refinery on St. Croix, U.S. 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. Therefore, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Under section 204 of the UMRA, EPA generally must develop a process to permit elected officials of State, local and Tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. These consultation requirements build upon those of Executive Order 12875 ("Enhancing the Intergovernmental Partnership"). Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal

intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. This is because this proposed rule is essentially "deregulatory" in nature, relieving, subject to conditions, the sole regulated entity of restrictions that would otherwise apply. This proposed rule should result in resource savings to the Hess Oil Virgin Islands refinery that would not likely be obtained in the absence of today's proposed rule. Thus, today's proposed rule is not subject to the requirements of sections 202, 204 and 205 of the UMRA. With respect to section 203 of the UMRA, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As previously stated, EPA believes the rule will reduce the regulatory burden on the regulated community, without imposing additional significant or unique burdens on the Virgin Islands to implement today's proposed rule.

### 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 2214-2225), 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 E.O. 12866 review.

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

Environmental protection, Air pollution control.

Dated: May 30, 1997.

**Carol M. Browner,**  
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 69 as set forth below:

### PART 69—[AMENDED]

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

**Authority:** Sec. 325(b), 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, the Administrator conditionally exempts certain units from certain CAA requirements.

(b) An exemption of the prohibition, under section 123 of the Clean Air Act, on reliance upon the use of ICS of fuel switching in an implementation plan is granted for the Hess Oil Virgin Islands (HOVIC) refinery on St. Croix with the following conditions:

(1) The switch to a lower sulfur fuel (0.5%) will take place when:

(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, or:

(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).

(2) The switch back to the higher sulfur fuel (1.0%) may occur under one of the following three conditions:

(i) If the ICS was triggered by paragraph (b)(1)(i) of this section, the switch back may occur when the winds blow outside the sector listed in paragraph (b)(1)(i) of this section for at least 3 consecutive hours following the period during which the winds were blowing inside the sector, or

(ii) If the ICS was triggered by paragraph (b)(1)(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, or

(iii) If the ICS was triggered by both paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section, the switch back may occur when both of the conditions in paragraph (b)(2)(i) of this section and paragraph (b)(2)(ii) of this section.

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

(4) 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.

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

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

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

[FR Doc. 97-15091 Filed 6-9-97; 8:45 am]

BILLING CODE 6560-50-M

---

**GENERAL SERVICES  
ADMINISTRATION**
**41 CFR Part 101-6****RIN 3090-AG49****Federal Advisory Committee  
Management**

**AGENCY:** General Services Administration.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The General Services Administration (GSA) is beginning the process of revising its regulations which implement its responsibilities under the Federal Advisory Committee Act ("FACA", or "the Act"), as amended (Pub. L. 92-463, 5 U.S.C., App.), and Executive Order 12024, December 1, 1977. These regulations have not been revised since 1989 and have become outdated as a result of significant decisions issued by the Supreme Court and other Federal Courts. In addition, the revised issuance is expected to provide more comprehensive and effective guidance for agency personnel in their attempts to involve the public in Federal decisionmaking consistent with the principles contained in the Act.

**DATES:** Written comments must be received on or before July 10, 1997.

**ADDRESSES:** Comments should be submitted to the Committee Management Secretariat at the following address: General Services Administration, Office of Governmentwide Policy, Room 5228—MC, 1800 F St., NW., Washington, DC 20405. Attention: FACA Regulations.

Comments may also be provided by facsimile on (202) 273-3559, or via the Internet to [vincent.vukelich@gsa.gov](mailto:vincent.vukelich@gsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Vincent Vukelich, Committee Management Secretariat at (202) 273-3558.

**SUPPLEMENTARY INFORMATION:** GSA anticipates the new regulatory guidance will consist of two parts:

(1) The first section will address FACA's statutory requirements and policy provisions, and will likely resemble the current regulation.

(2) The second section will be in the nature of guidance which will address issues and situations that elaborate on the Act's policy provisions and illustrate how the scope and applicability of FACA apply in different situations. Where necessary, this section will relate FACA's requirements to other statutes and policy documents.

**Background**

FACA governs the use of covered advisory committees within the Executive Branch and establishes basic procedures to control the number and costs of these committees. At the same time, the Act provides mechanisms which assure public access to advisory committee meetings and documents. The basic policy objective contained in the Act is one that favors open decisionmaking by the Federal government when using advisory committees.

The openness provisions of FACA are evident, but the definition of what constitutes a "Federal advisory committee" is fairly broad. The United States Supreme Court noted that "read unqualifiedly," FACA's requirements would "extend to any group of two or more persons, or at least any formal organization, from which the President or an Executive agency seeks advice." *Public Citizen v. Department of Justice*, 491 U.S. 440, 452 (1989). The Supreme Court rejected such an unqualified interpretation. GSA's objective in revising the regulations is to provide appropriate guidance for agencies in establishing and operating advisory committees under the Act, while substantially clarifying which interactions with persons who are not "full-time officers or employees" of the Federal government are or are not subject to the requirements of the Act.

Many of the difficult questions under the Act arise when a Federal agency seeks to involve the public in the decisionmaking process pursuant to laws which require or encourage public involvement but does not intend to establish a committee covered by the Act. In many cases, there is no clear answer to when a public involvement strategy or situation may "trigger" the formal requirements regarding advisory committees under the Act. This uncertainty can lead to inconsistent approaches by different agencies, or by different segments of the same agency,