significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. The final rule published on April 15, 1998 does not create mandates upon tribal governments. Because today's action interprets the requirements of the final rule, today's action does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, consideration of voluntary consensus standards is not relevant to this action.

I. Immediate Effective Date

The EPA is making today's action effective immediately. The EPA has determined that the rule changes being made in today's action are interpretive rules which are not subject to notice and comment requirements. In addition, the rule change is a type of technical correction, since it amends the rule to be consistent with EPA's intentions stated in the rule's preamble. Notice and opportunity for comment is not required for such technical corrections. The EPA has also determined that this rule may be made effective in less than 30 days because it is interpretive, and relieves restrictions. See 5 U.S.C. 553 (d)(1) and (2).

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 16, 1998. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

III. Legal Authority

These regulations are amended under the authority of sections 112, 114, and 301 of the Clean Air Act, as amended (42 U.S.C. sections 7412, 7414, and 7601).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Pulp mills, Cluster Rules.

Dated: September 6, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

2. Section 63.446 is amended by revising paragraph (g) to read as follows:

§ 263.446 Standards for kraft pulping process condensates.

* * * * *

(g) For each control device (e.g. steam stripper system or other equipment serving the same function) used to treat pulping process condensates to comply with the requirements specified in paragraphs (e)(3) through (e)(5) of this section, periods of excess emissions reported under § 63.455 shall not be a violation of paragraphs (d), (e)(3) through (e)(5), and (f) of this section provided that the time of excess emissions (including periods of startup, shutdown, or malfunction) divided by the total process operating time in a semi-annual reporting period does not exceed 10 percent. The 10 percent excess emissions allowance does not apply to treatment of pulping process condensates according to paragraph (e)(2) of this section (e.g. the biological wastewater treatment system used to treat multiple (primarily non-condensate) wastewater streams to comply with the Clean Water Act).

* * * * *

[FR Doc. 98–24837 Filed 9–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69 and 80

[FRL–6159–1]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 12, 1995, the Governor of Alaska petitioned EPA to permanently exempt the areas of Alaska served by the Federal Aid Highway System from the requirements of EPA's low-sulfur diesel fuel program for motor vehicles. On August 19, 1996, EPA extended the existing temporary exemption until October 1, 1998, and on April 28, 1998, EPA proposed to grant a permanent exemption (63 FR 23241). EPA has received significant public comments and new information concerning EPA's proposal and needs additional time to further evaluate the issues concerning a permanent exemption. Consequently, EPA is

granting a temporary exemption to Alaska for a period of nine months (i.e., until July 1, 1999) so that EPA and the State of Alaska have ample time to consider and evaluate the public comments and new information before EPA makes a final decision on the petition.

This decision is not expected to have a significant impact on the ability of Alaska's communities to attain the National Ambient Air Quality Standards for carbon monoxide and particulate matter, due to the limited contribution of emissions from diesel motor vehicles in those areas and the sulfur level currently found in motor vehicle diesel fuel used in Alaska.

DATES: This final rule is effective on October 1, 1998.

ADDRESSES: Copies of information relevant to this final rule are available for inspection in public docket A–96–26 at the Air Docket of the EPA, first floor, Waterside Mall, room M–1500, 401 M Street SW, Washington, DC 20460, (202) 260–7548, between the hours of 8 a.m. to 5:30 p.m. Monday through Friday. A duplicate public docket has been established at EPA Alaska Operations Office-Anchorage, Federal Building, Room 537, 222 W. Seventh Avenue, #19, Anchorage, AK 99513–7588, and is available from 8 a.m. to 5 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Babst, Environmental Engineer, Fuels Implementation Group, Fuels and Energy Division (6406–J), 401 M Street SW, Washington, DC 20460, Telephone (202) 564–9473, Telefax 202–565–2085, Internet address babst.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Regulated Entities

Entities potentially regulated by this action are refiners, marketers, distributors, retailers and wholesale purchaser-consumers of diesel fuel for use in the state of Alaska. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum distributors, marketers, retailers (service station owners and operators), wholesale purchaser consumers (fleet managers who operate a refueling facility to refuel motor vehicles).
Individuals	Any owner or operator of a diesel motor vehicle.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the criteria contained in § 69.51, § 80.29, and § 80.30 of title 40 of the Code of Federal Regulations as modified by today's action. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Electronic Copies of Rulemaking Documents

The preamble and regulatory language are also available electronically from the Government Printing Office Web sites. This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version is made available on the day of publication on the Web site listed below.

http://www.access.gpo.gov/nara/cfr/ (either select desired date or use Search feature)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

III. Statutory Background

Section 211(i)(1) of the Act prohibits the manufacture, sale, supply, offering for sale or supply, dispensing, transport, or introduction into commerce of motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent by weight, or which fails to meet a cetane index minimum of 40 beginning October 1, 1993. Section 211(i)(2) requires the Administrator to promulgate regulations to implement and enforce the requirements of paragraph (1), and authorizes the Administrator to require that diesel fuel not intended for motor vehicles be dyed in order to segregate that fuel from motor vehicle diesel fuel. Section 211(i)(4) provides that the States of Alaska and Hawaii may seek an exemption from the requirements of subsection 211(i) in the same manner as provided in section 325 [1] of the Act, and requires the Administrator to take final action on any petition filed under this subsection, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source, or class of persons or sources, in such territory from any requirement of the Act, with some specific exceptions. 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.

IV. Petition for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, then Governor of the State of Alaska, submitted a petition to exempt motor vehicle diesel fuel in Alaska from subsections (1) and (2) of section 211(i), except the minimum cetane index requirement of 40. Paragraph (1) prohibits motor vehicle diesel fuel from having a sulfur concentration greater than 0.05 percent by weight, or failing to meet a minimum cetane index of 40. Paragraph (2) requires the Administrator to promulgate regulations to implement

[1] Section 211(i)(4) mistakenly refers to exemptions under § 324 of the Act (''Vapor Recovery for Small Business Marketers of Petroleum Products''). The proper reference is to § 325, and Congress clearly intended to refer to § 325, as shown by the language used in § 211(i)(4), and the United States Code citation used in § 806 of the Clean Air Act Amendments of 1990, Public Law No. 101–549. Section 806 of the Amendments, which added paragraph (i) to § 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation, the proper designation for § 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

and enforce the requirements of paragraph (1), and authorizes the Administrator to require that diesel fuel not intended for motor vehicles be dyed in order to segregate that diesel fuel from motor vehicle diesel fuel. The petition requested that the Environmental Protection Agency (EPA) temporarily exempt motor vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the Federal Aid Highway System from meeting the sulfur content requirement specified in section 211(i) until October 1, 1996. The petition also requested a permanent exemption from such requirements for those areas of Alaska not reachable by the Federal Aid Highway System. The petition was based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

EPA's decision on the petition was published on March 22, 1994 (59 FR 13610), and applied to all persons in Alaska subject to section 211(i) and related provisions in section 211(g) of the Act and EPA's low-sulfur requirement for motor vehicle diesel fuel in 40 CFR 80.29. Persons in communities served by the Federal Aid Highway System were exempted from compliance with the diesel fuel sulfur content requirement until October 1, 1996. Persons in communities that are not served by the Federal Aid Highway System were permanently exempted from compliance with the diesel fuel sulfur content requirement. Both the permanent and temporary exemptions apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in the State of Alaska, motor vehicle diesel fuel. Alaska's exemptions do not apply to the minimum cetane requirement for motor vehicle diesel fuel.

On December 12, 1995, the Honorable Governor Tony Knowles, Governor of the State of Alaska, petitioned the Administrator for a permanent exemption (Petition) for all areas of the state served by the Federal Aid Highway System, that is, those areas covered only by the temporary exemption. On August 19, 1996, EPA published an extension to the temporary exemption until October 1, 1998 (61 FR 42812), to give ample time for the agency to consider comments to that petition that were subsequently submitted. On April 28, 1998 (63 FR 23241) EPA published a proposal to grant the petition for a permanent exemption for all areas of the state served by the Federal Aid Highway System. Substantial public comments and substantive new information was submitted in response to the proposal.

V. Decision for Temporary Exemption

In this document, the Agency is granting a temporary exemption for nine months (until July 1, 1999) from the diesel fuel sulfur content requirement of 0.05 percent by weight to those areas in Alaska served by the Federal Aid Highway System. For the same reasons, the Agency also is granting a temporary exemption for nine months from those provisions of section 211(g)(2)[2] of the Act that prohibit the fueling of motor vehicles with high-sulfur diesel fuel. Sections 211(g) and 211(i) both restrict the use of high-sulfur motor vehicle diesel fuel.

Further, consistent with the March 22, 1994 Notice of Final Decision (59 FR 13610), dyeing diesel fuel to be used in nonroad applications will be unnecessary in Alaska during the temporary exemption as long as the diesel fuel has a minimum cetane index of 40. The motor vehicle diesel fuel regulations, codified at 40 CFR 80.29, provide that any diesel fuel which does not show visible evidence of the dye solvent red 164 shall be considered to be available for use in motor vehicles and subject to the sulfur and cetane index requirements. The Alaska Department of Environmental Conservation and various refiners in Alaska have indicated to EPA that all diesel fuel manufactured for sale and marketed in Alaska for use in both motor vehicle and nonroad applications meets the minimum cetane requirement for motor vehicle diesel fuel.

Justification for Temporary Exemption

Section 325 of the Clean Air Act Amendments of 1990 provide that an exemption may be granted due to ''such other local factors as the Administrator deems significant.'' Alaska has operated under temporary exemptions for the past several years. EPA has indicated to Alaska that EPA would make a final decision on whether to grant a permanent exemption from the low sulfur diesel fuel requirements. EPA will not have made a final decision on a permanent exemption prior to the expiration of the current temporary exemption. EPA believes that requiring compliance in Alaska with diesel fuel sulfur requirements during the nine months before such a final decision is published is unreasonable, given the unique circumstances associated with this prior history of exemptions, and EPA's need for additional time to make a final decision on Alaska's request for a permanent exemption. These significant local factors are the basis for granting Alaska this extension to the current temporary exemption.

In response to the February 12, 1993 petition for a temporary exemption from diesel fuel sulfur requirements for areas served by the FAHS, EPA granted Alaska the temporary exemption until October 1, 1996. Because the state of Alaska planned to establish a Task Force (in which an EPA representative participated) to evaluate the need for an exemption, EPA provided Alaska with ''adequate time to prepare and submit another exemption request'' (59 FR 13613, March 22, 1994). ''If a new exemption request is submitted, EPA will publish another notice in the **Federal Register** and re-examine the issue of an exemption.'' *Id.*

In response to the December 12, 1995, petition for a permanent exemption from the diesel sulfur requirements for the areas served by the FAHS, EPA ''reserv[ed] the decision on the state's request for a permanent exemption, so the agency may consider possible alternatives for a longer period'' than the two years granted (61 FR 42814, August 19, 1996). EPA extended for another period of 24 months ''or until such time as a decision is made on the permanent exemption, whichever is shorter'' (61 FR 42816, August 19, 1996). EPA also stated that ''areas in Alaska served by the Federal Aid Highway System are also exempt from the related 211(g)(2) provisions until such time as a decision has been made on the state's petition for a permanent exemption.'' *Id.* The Agency stated it would propose a decision on Alaska's request for a permanent waiver. *Id.*

EPA did not intend that Alaska would be required to comply with the low-sulfur diesel requirements before reaching a final decision. Unfortunately, a decision will not be reached before the current temporary exemption expires. EPA proposed to permanently exempt Alaska (63 FR 23241, April 28, 1998), and received significant comments on several issues and new information during this notice and comment period critical to the question of whether Alaska should be granted an exemption to the low-sulfur diesel fuel requirements.

One issue that will require additional time for EPA to evaluate involves the

[2] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05 percent by weight, when such fuel is permitted to be sold or dispensed for use in motor vehicles. The proposed exemptions would include exemptions from this prohibition, but not include the prohibitions in § 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

use of high-sulfur diesel fuel in engines manufactured to meet future more stringent emissions standards. In their comments to the proposal, the Engine Manufacturers Association (EMA) asserted in part, that the use of high-sulfur diesel fuel in advanced technology engines, especially those engines that will be in the marketplace to meet 2004 emission standards, will result in excessive engine wear, poor durability, substantially increased maintenance costs, substandard performance, and in some cases, engine failure. EMA indicated that these advanced technologies are expected to be introduced before 2004, and are only feasible if operated on low-sulfur fuel. EPA believes some manufacturers may implement these advanced technologies as early as 2002.

The technology of most concern is the cooled exhaust gas recirculation (EGR) system. In an EGR system, exhaust gas is recirculated back into the cylinders to reduce the amount of fresh charge air or oxygen that is available for combustion during certain operating conditions. Combustion temperatures, and thus nitrogen oxides (NO_X) formation, are reduced. In order to maximize the effectiveness of the EGR system, the exhaust gas is cooled before it enters the fresh air stream. According to the EMA, when the engine is operated on high-sulfur diesel fuel, sulfur in the exhaust gas stream is condensed by the EGR cooler and forms sulfuric acid deposits in the cooler and any surfaces through which the cooled exhaust gas passes. Thus, the combination of high-sulfur and cooled EGR systems will promote corrosion in the EGR cooler and control valve, power cylinder and induction system, will cause wear and tear on the power cylinder, and will result in the formation of deposits on the EGR cooler and induction system. The EMA indicates that while more frequent replacement of the EGR and air intake components may reduce the sulfuric acid damage to the EGR system, it is not possible to eliminate the damage.

EPA has determined that an additional nine months is necessary to evaluate the information to determine whether Alaska should be granted a permanent exemption to the low-sulfur diesel fuel requirements. EPA believes that requiring Alaska to incur the cost and burden associated with compliance until EPA reaches a final decision is unreasonable, given the expectation that EPA will make a final decision in the next several months, and the possibility that EPA may then decide to grant the exemption. In addition, EPA believes that in this situation lead-time considerations are also a significant local factor as provided under section 325. Requiring Alaska to comply with low-sulfur diesel fuel requirements as of October 1998 is unreasonable due to lead-time considerations. Because of the temporary status of the previous and current exemptions, EPA did not intend that Alaska would be required to comply prior to a final decision on a permanent exemption. Therefore, the affected parties in Alaska are not in a position to reasonably comply prior to such a final decision. Alaska has recently indicated to EPA that at least three years would be needed to implement any new requirements once a final decision has been reached by EPA. Requiring compliance by refiners and distributors and consumers of diesel fuel by October 1998 would not be reasonable under these circumstances.

Further, any expiration of the low-sulfur exemption has implications under the Internal Revenue Code. Section 4081 of the Internal Revenue Code (26 U.S.C. 4081) imposes a tax on the removal of diesel fuel from a terminal at the terminal rack. However, a tax is not imposed if, among other conditions, the diesel fuel is indelibly dyed in accordance with Treasury regulations. Dyed diesel fuel can be used legally (for tax purposes) in nontaxable uses such as for heating oil, fuel in stationary engines, or fuel in non-highway vehicles. A substantial penalty applies if dyed diesel fuel is used for taxable purposes such as in registered highway vehicles.

In 1996, Congress enacted an exception to the dyeing requirement so that undyed diesel fuel could be removed from a terminal tax free if, among other requirements, the fuel is removed for ultimate sale or use in an area of Alaska during the period the area is exempt from EPA's sulfur content and fuel dyeing requirements under section 211(i)(4) of the Clean Air Act. Treasury regulations (26 CFR 46.4082–5) generally establish a system for collecting the federal diesel fuel tax at the wholesale level in Alaska. This system is similar to the system used by the state of Alaska for state fuel tax. The person liable for the federal tax generally is the person who is licensed by Alaska as a qualified dealer or a retailer that has been registered by the Internal Revenue Service (IRS).

If EPA's temporary exemption for the FAHS areas of Alaska were to expire, then under Treasury regulations, the federal fuel tax would be imposed on all undyed diesel fuel that is removed from any terminal in the FAHS areas, regardless of the use that is later made of the fuel. Removals from these terminals would be exempt from the tax only if the fuel contains a dye of a prescribed color and composition. Consequently, Alaska would be required by the Treasury regulations to either dye the non-road tax-exempt fuel or pay the on-road tax at the current rate of 24.4 cents per gallon.

According to an attachment to the comments submitted by the Trustees for Alaska, Alaska used approximately 600 million gallons of distillate each year (excluding fuel used for aviation) for the fiscal years ending June 30, 1996 and June 30, 1997. If none of that fuel were dyed and the sulfur exemption were to expire, the tax liability for Alaska (at 24.4 cents per gallon) would be approximately $146.4 million per year, compared to only $19.4 million per year if only that fuel used for highway purposes were taxed. The taxed parties could later file for refunds for the fuel they could show was not used in motor vehicles. Alternatively, Alaska could comply with the Treasury regulations by dyeing the approximately 86 percent of that fuel intended for non-highway use. However, to do so would be a significant and unreasonable burden for refiners, distributors and consumers of diesel fuel, especially if the lapse in the EPA exemption were only for a few months. Comments received in response to the proposal indicated that each additional storage tank needed to segregate the dyed and undyed fuels with supporting infrastructure may cost $600,000, and there are over 80 tank farms in Alaska that would require additional tankage. Similarly each additional tanker truck required to avoid cross-contamination of dyed and undyed fuels costs approximately $250,000. Finally, those comments indicated that significant lead-time would be needed.

Based on these significant local factors, it is unreasonable to mandate that low-sulfur motor vehicle diesel fuel be available for use in Alaska for areas served by the Federal Aid Highway System after the current temporary exemption expires on October 1, while EPA considers a final decision on the Petition.

Clarification of Exemption

Since today's rule exempts diesel fuel in Alaska from the sulfur requirement for nine months (i.e., until July 1, 1999), dyeing diesel fuel to be used in nonroad applications will be unnecessary in Alaska for those nine months. However, in the event high-sulfur diesel fuel is shipped from Alaska to the lower-48 states, it would be necessary for the producer or shipping facility to add dye to the noncomplying fuel before it is

introduced into commerce in the lower-48 states. In addition, supporting documentation (e.g., product transfer documents) must clearly indicate the fuel may not comply with the sulfur standard for motor vehicle diesel fuel and is not to be used as a motor vehicle fuel. Conversely, EPA will not require high-sulfur diesel fuel to be dyed if it is being shipped from the lower-48 states to Alaska, but supporting documentation must substantiate that the fuel is only for shipment to Alaska and that it may not comply with the sulfur standard for motor vehicle diesel fuel.

EPA will assume that all diesel fuel found in any state, except in the state of Alaska, is intended for sale in any state and subject to the diesel fuel standards, unless the supporting documentation clearly specifies the fuel is to be shipped only to Alaska. The documentation should further clearly state that the fuel may not comply with the Federal diesel fuel standards. If such product enters the market of any state, other than Alaska, (e.g., is on route to or at a dispensing facility in a state other than Alaska) and is found to exceed the applicable sulfur content standard, all parties will be presumed liable, as set forth in the regulations. However, EPA will consider the evidence in determining whether a party caused the violation.

With regard to the storage of diesel fuel in any state other than Alaska, a refiner or transporter will not be held liable for diesel fuel that does not comply with the applicable sulfur content standard and dye requirement if it can show that the diesel fuel is truly being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. However, once diesel fuel leaves a refinery or transporter facility, a party can no longer escape liability by claiming that the diesel fuel was simply in storage. Although diesel fuel may temporarily come to rest at some point after leaving a refinery or transporter facility, the intent of the regulations is to cover all diesel fuel being distributed in the marketplace. Once diesel fuel leaves a refinery or shipping facility it is in the marketplace and as such is in the process of being sold, supplied, offered for sale or supply, or transported.

Engine Warranty, Recall and Tampering

EPA previously addressed the impact of an exemption from the low-sulfur diesel fuel requirements on engine recall liability, warranty and tampering issues in the American Samoa decision [3], Guam decision [4], and Alaska decision.[5] For this final rule, EPA is addressing the recall liability and warranty issues in a manner consistent with those earlier decisions. The tampering issue is treated in a somewhat different manner.

Recall Liability. If EPA determines that a substantial number of heavy-duty engines do not comply with the federal emission requirements, the engine manufacturer is responsible for recalling and repairing the engines. EPA typically determines whether engines comply with applicable federal emission standards when properly used and maintained based on testing of in-use engines. If an engine fueled with noncomplying diesel fuel were included in such testing, EPA will determine, on a case-by-case basis, if the noncompliance is the result of the use of noncomplying fuel. If it is determined that the noncomplying diesel fuel is the cause of the engine's failure to meet the applicable emission standards, EPA would take that into consideration before seeking a recall of the class.

For Alaska, as in the Guam and American Samoa decisions, the Agency does not intend to use test results (emissions levels) from engines that utilize high-sulfur diesel fuel (over 0.05% by weight) to show noncompliance by those engines for the purpose of recalling an engine class. However, in cases in which it is determined that the overall class is subject to recall for reasons other than noncomplying fuel in Alaska, individual engines will not be excluded from repair on the basis of the fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or improper maintenance.

Manufacturers Emission Warranty. The Agency acknowledges that engines that were certified to meet the federal emission standards using low-sulfur diesel fuel may in some cases be unable to meet those federal emissions standards if they use high-sulfur diesel fuel. However, EPA believes an exemption from the general warranty provisions of section 207 is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects that cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emissions and emissions-related engine components.

It has been consistent EPA policy that misuse or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emissions and emissions-related engine components affected by the misuse. In Alaska, while use of fuel exempted from the sulfur content limitation cannot be considered ''misfueling,'' it will have the same adverse effect on emissions control components. Thus, EPA believes that where the use of noncomplying diesel fuel in fact has an adverse impact on the emissions durability of specific engine parts or systems, such as a catalyst, the manufacturer has a reasonable basis for denying warranty coverage on that part or other related parts. As has consistently been EPA's policy, those components not adversely affected by the use of noncomplying diesel fuel should continue to receive full emissions warranty coverage.

Tampering Liability. Subsequent to the 1995 petition for a permanent exemption from the diesel fuel sulfur requirements, the Engine Manufacturers Association (EMA) requested enforcement discretion regarding the removal of catalytic converters because of an indicated plugging problem caused by the high-sulfur diesel fuel in Alaska. However, information subsequently collected by EPA from several heavy-duty engine manufacturers demonstrates that catalyst plugging is mainly a cold weather problem and not a high-sulfur fuel issue. EPA is also aware that the majority of the plugged catalysts have been eliminated. In a letter to EPA of September 19, 1997, the EMA indicated that the immediate problems that led to EMA's earlier request have been resolved. Accordingly, EPA sees no need for an exemption that allows the removal of catalysts in the field, or that permits manufacturers to introduce into commerce catalyzed-engines without catalysts.

VI. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of local or regional applicability. Accordingly, judicial

[3] The Agency granted American Samoa's petition for an exemption from the diesel sulfur requirements on July 20, 1992, 57 FR 32010.

[4] The Agency granted Guam's petition for an exemption from the diesel sulfur requirements on September 21, 1993, 58 FR 48968.

[5] The Agency granted the State of Alaska's petition for a temporary exemption from the diesel sulfur requirements on March 22, 1994, 59 FR 13610.

review of this action is available only in the United States Court of Appeals for the circuit applicable to Alaska within 60 days of publication.

VII. Public Participation

The Agency received Alaska's request for a permanent exemption for the Federal Aid Highway System areas in December of 1995. Soon afterwards, the Agency has received comments on the petition from the Alaska Center for the Environment, the Alaska Clean Air Coalition, and the Engine Manufacturers of America. EPA believed the issues raised by those comments and possible tightening of heavy-duty motor vehicle engine standards in 2004 necessitated further consideration before the Agency made a decision on Alaska's request for a permanent waiver.

The Agency published a proposed rule for a permanent exemption to allow interested parties an additional opportunity to request a hearing or to submit comments. EPA subsequently received a request for a public hearing, but that request was soon withdrawn. EPA extended the comment period until June 12, 1998, and received comments before and after that date.

EPA's decision to extend the exemption until July 1, 1999 is not a decision based on the merits of those comments. Instead, EPA's decision is based on the unreasonableness of imposing the low-sulfur diesel fuel requirement during the time period needed by EPA to make a final decision on the merits of the comments submitted. The significant local factors supporting this decision are described herein.

VIII. Statutory Authority

Authority for the action in this proposed rule is in sections 211 (42 U.S.C. 7545) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

IX. Administrative Requirements

A. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866,[6] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[7]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

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 number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because today's action to extend the temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska, will not result in any additional economic burden on any of the affected parties, including small entities involved in the oil industry, the automotive industry and the automotive service industry. EPA is not imposing any new requirements on regulated entities, but instead is continuing an exemption from a requirement, which makes it less restrictive and less burdensome. Therefore, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 544 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 1, 1998.

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate with estimated costs to the private sector of $100 million or more, or to state, local, or tribal governments of $100 million or more in the aggregate. 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 final rule imposes no new federal requirements and does not include any federal mandate with costs to the private sector or to state, local, or tribal governments. Therefore, the Administrator certifies that this rule does not require a budgetary impact statement.

F. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

[6] 58 FR 51736 (October 4, 1993).

[7] *Id.* at section 3(f)(1)–(4).

develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate if unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA has determined that this final rule imposes no new federal requirements, but rather extends an existing temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Order 13045: Children's Health Protection

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 69

Environmental protection, Air pollution control, Alaska.

40 CFR Part 80

Environmental protection, Air pollution control, Diesel fuel, Motor vehicle pollution.

Dated: September 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 69—[AMENDED]

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

Authority: 42 U.S.C. 7545(1) and (g), 7625–1.

2. Subpart E consisting of § 69.51 is added to read as follows:

Subpart E—Alaska

§ 69.51 Exemptions.

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

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

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

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

(c) Beginning July 1, 1999, the exemptions provided in paragraphs (a) and (b) of this section are applicable only to fuel used in those areas of Alaska that are not served by the Federal Aid Highway System.

PART 80—[AMENDED]

3. The authority citation for part 80 continues to read as follows:

Authority: Sec. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

4. Section 80.29 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) Prohibited activities. (1) Beginning October 1, 1993, no person, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers, shall manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply or transport any diesel fuel for use in motor vehicles, except as provided in 40 CFR 69.51, unless the diesel fuel:

* * * * *

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