

address, telephone and fax number, and e-mail address to Darrell J. Schwalm (fax number above). If you need special accommodations due to a disability, please contact Darrell J. Schwalm (address above) at least 7 days in advance.

Interested persons should note that additional information regarding the workshop will be posted on FDA's web site "www.cfsan.fda.gov", as it becomes available. Accordingly, such persons are encouraged to visit that web site on a regular basis until the workshop convenes.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 8, 1998 (63 FR 37030), FDA published a final regulation that required a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present in such juices. The regulation provides that the warning statement requirement does not apply to a juice that has been processed in a manner that will result in, at a minimum, a reduction in the pertinent microorganism of at least a 5-log magnitude (i.e., 100,000 fold). In the preamble to the proposed rule (63 FR 20486, April 24, 1998), FDA recognized that pasteurization is a process that can produce the 5-log reduction. The agency also noted that manufacturers may be able to use other technologies and practices, individually or in combination, to achieve the 5-log reduction, provided that the manufacturer's process is validated to achieve the 5-log reduction in the target microorganism.

In the preamble to the final regulation, FDA indicated it would be willing to meet with manufacturers or groups of manufacturers to discuss and evaluate their proposed processes. FDA also stated that in order to help processors meet the pathogen reduction standard, the agency would make available, in accordance with part 20 (21 CFR part 20) of its regulations, information received by the agency regarding processes that have been validated to achieve a 5-log reduction.

The July 15 and 16, 1999, workshop will include a discussion of the control measures, that FDA is aware of, that can be used for apple cider production and of the methods for measuring and validating the effectiveness of measures in reducing pathogens. At the beginning of the workshop, a proceedings document will be provided to registered participants.

FDA believes that this workshop will also provide an opportunity for industry

representatives and other members of the public to discuss information regarding control measures that are believed to achieve the 5-log reduction. Participants are requested to bring to the workshop at least 50 copies of any written or published materials they wish to distribute. Agency experts will be available to answer technical food safety questions.

A video recording of the proceedings will be prepared; copies of the video may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15-working days after the meeting. The video recording of the meeting, submitted comments, and materials for distribution will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy Coordination.*

[FR Doc. 99-16188 Filed 6-22-99; 12:38 pm]

BILLING CODE 4160-01-F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 207-155; FRL 6366-3]

#### Partial Withdrawal of Direct Final Rule for Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

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

**ACTION:** Partial withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the addition of a paragraph that was included as part of a direct final rule for the approval of revisions to the California State Implementation Plan. EPA published the direct final rule on May 4, 1999 (64 FR 23774), approving revisions of rules from the South Coast Air Quality Management District (SCAQMD). As stated in that **Federal Register** document, if adverse or critical comments were received by June 3, 1999, the rule would be withdrawn and it would not take effect. EPA subsequently received one adverse comment on one provision of that direct final rule and is withdrawing that provision. EPA will address the

comment received in a subsequent final action in the near future. EPA will not institute a second comment period on this action.

**DATES:** The addition of 40 CFR 52.220(c)(254)(i)(D)(2) is withdrawn as of June 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1185.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule located in the final rules section of the May 4, 1999 **Federal Register**, and in the proposed rule published in the May 4, 1999 (64 FR 23813) **Federal Register**. EPA received an adverse comment only on the addition of § 52.220(c)(254)(i)(D)(2), and we are withdrawing only that provision of the direct final rule. The other actions in the May 4, 1999 **Federal Register** are not affected.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 19, 1999.

**David P. Howekamp,**

*Acting Regional Administrator, Region IX.*

Accordingly, the addition of § 52.220(c)(254)(i)(D)(2) is withdrawn as of June 25, 1999.

[FR Doc. 99-16094 Filed 6-24-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 69

[FRL-6367-1]

#### State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirements

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

**ACTION:** Final rule.

**SUMMARY:** In this action, the Environmental Protection Agency (EPA) is granting areas of Alaska served by the Federal Aid Highway System a temporary exemption from EPA's sulfur and dye requirements for highway diesel fuel until January 1, 2004. EPA is not making a final decision at this time

on Alaska's request for a permanent exemption. Additional time is needed to consider Alaska's request for a permanent exemption because of the need to coordinate the decision with an upcoming nationwide rule on diesel fuel quality, lead-time considerations, and fuel dyeing requirements of another federal agency.

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 or particulate matter, due to the limited contribution of emissions from diesel highway vehicles in those areas and the sulfur level currently found in highway vehicle diesel fuel used in Alaska.

**DATES:** This final rule is effective on July 1, 1999.

**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, D.C. 20460, (202) 260-7548, between the hours of 8:00 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 8:00 a.m. to 5:00 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, D.C. 20460, Telephone (202) 564-9473, Telefax 202-565-2085, Internet address babst.richard@epa.gov.

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#### 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	NAICS codes	SIC codes	Examples of potentially regulated entities
Industry .....	32411 48691 42271 42272 48422 48423 44711 44719	2911 4613 5171 5172 4212 4213 5541	Petroleum distributors, marketers, retailers (service station owners and operators), wholesale purchaser consumers (fleet managers who operate a refueling facility to refuel highway vehicles).
Individuals .....	.....	.....	Any owner or operator of a diesel highway 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, company, business organization, etc., 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 the person 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 for Alaska Exemption

Section 211(i)(1) of the Clean Air Act prohibits the manufacture, sale, supply, offering for sale or supply, dispensing, transport, or introduction into commerce of motor (highway) 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 highway vehicles be dyed in order to segregate that fuel from highway 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<sup>1</sup> of the Act, and

<sup>1</sup> Section 211(i)(4) mistakenly refers to exemptions under Section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"). The proper reference is to section 325, and Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code

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 by Alaska for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, then Governor of the State of Alaska, submitted a petition to exempt highway vehicle diesel fuel in Alaska from paragraphs (1) and (2) of section 211(i), except the minimum cetane index requirement of 40. Paragraph (1) prohibits highway 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 and enforce the requirements of paragraph (1), and authorizes the Administrator to require that diesel fuel not intended for highway vehicles be dyed in order to segregate that diesel fuel from highway vehicle diesel fuel. The petition requested that the Environmental Protection Agency (EPA) temporarily exempt highway 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 highway 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, highway vehicle diesel fuel. Alaska's exemptions do not apply to the minimum cetane requirement for highway 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 EPA 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. On September 16, 1998 (63 FR 49459) EPA extended the temporary exemption for another nine months until July 1, 1999, to give ample time for EPA to consider and evaluate that new information and to promulgate a final decision.

#### V. Decision To Grant Alaska Temporary Exemption

##### A. Description of Temporary Exemption

In this action, the Agency is granting a temporary exemption until January 1, 2004 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 until

January 1, 2004 from those provisions of section 211(g)(2)<sup>2</sup> of the Act that prohibit the fueling of highway vehicles with high-sulfur diesel fuel. Sections 211(g) and 211(i) restrict the use of high-sulfur diesel fuel in highway vehicles.

Further, consistent with the March 22, 1994 Notice of Final Decision (59 FR 13610), and September 15, 1998 Notice of Final Decision (63 FR 49459), dyeing diesel fuel to be used in applications other than highway vehicles will be unnecessary in Alaska during the exemption period as long as that diesel fuel has a minimum cetane index of 40. The highway vehicle diesel fuel regulations, codified at 40 CFR 80.29, specifies that any diesel fuel that does not show visible evidence of the dye solvent red 164 is considered to be available for use in highway vehicles and subject to the sulfur and cetane index requirements. The Alaska Department of Environmental Conservation and refiners in Alaska have indicated to EPA that all diesel fuel produced for sale and marketed in Alaska meets the minimum cetane requirement for highway vehicle diesel fuel.

##### B. Justification for Temporary Exemption

Section 325 of the Clean Air Act provides that an exemption from the requirements of the Act may be granted upon petition of a governor of the territories if the Administrator determines 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." Section 211(i) of the Act extends this authority to Alaska for purposes of exemption from the low-sulfur diesel fuel requirements of that provision.

Parts of Alaska have operated under temporary exemptions from the low-sulfur diesel fuel requirements since 1993, and the current exemption expires on July 1, 1999. For the reasons described later in this section, EPA will not make a final decision on a

<sup>2</sup> This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any highway 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 highway vehicles. The final action of this document includes an exemption from this prohibition, but does not include an exemption from the prohibitions in Section 211(g)(2) relating to the minimum cetane index or alternative aromatic level.

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 section 211 of the Act, used 42 U.S.C. 7625-1 as the United States Code designation, the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

permanent exemption prior to the expiration of the current temporary exemption. EPA believes that it would be unreasonable to require compliance in Alaska with the low-sulfur diesel fuel requirements as of July 1, 1999. The prior history of temporary exemptions for Alaska, the need to coordinate the decision on Alaska's petition for a permanent exemption with an upcoming nationwide rule on diesel fuel quality, lead-time considerations, and fuel dyeing requirements are significant local factors that are the basis for granting Alaska this extension to the current temporary exemption.

#### Prior History of Temporary Exemptions

On February 12, 1993, the Governor of Alaska petitioned EPA under sections 211(i) and 325 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 a permanent 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.*

On December 12, 1995, the Governor petitioned EPA 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 the exemption 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.*

On April 28, 1998, EPA published a proposed decision to grant Alaska a permanent exemption. 63 FR 23241 (April 28, 1998.) On September 16, 1998, EPA granted another temporary extension until July 1, 1999 to provide EPA and the State of Alaska more time to evaluate the public comments

submitted in response to the proposal, specifically regarding the use of high-sulfur diesel fuel in engines manufactured to meet future more stringent emissions standards. 63 FR 49459 (September 16, 1998).

Subsequent to granting the last temporary exemption, EPA issued an Advance Notice of Proposed Rulemaking summarizing the issues and inviting comment on whether EPA should set new nationwide requirements for fuel used in diesel engines under section 211(c) of the Clean Air Act, in order to bring about large environmental benefits through the enabling of a new generation of diesel emission control technologies. 64 FR 26142, May 13, 1999. EPA expects that the section 211(c) rulemaking will also address the issue of the appropriate level of diesel sulfur in Alaska in the context of the proposed Tier 2 emission standards for light-duty vehicles and possible future more stringent emission standards for heavy-duty vehicles and non-road equipment.

#### Lead-Time Considerations

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 July 1, 1999 when the current temporary exemption expires, 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 as of July 1, 1999, as EPA has not made a decision on a permanent exemption. 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.

#### Need To Coordinate Decision With Upcoming Nationwide Rule

The need to coordinate a decision on a permanent exemption with the upcoming section 211(c) rulemaking presents a significant local factor. In effect, there are two rulemakings involving almost the same question of the appropriate level of diesel sulfur in Alaska. EPA believes that coordination between the final decision on the exemption and the section 211(c) rulemaking is important, and EPA plans to make a final decision on Alaska's petition for a permanent exemption in the section 211(c) rulemaking.

Failure to coordinate the petition for exemption from the section 211(i) requirements with the section 211(c) rulemaking could potentially cause significantly increased costs for regulated parties in Alaska. For example, if EPA were to deny Alaska's petition for a permanent exemption, fuel in Alaska would have to meet the 0.05 percent sulfur requirement. EPA would provide necessary lead-time as part of setting the termination date for an exemption, and regulated parties in Alaska would have to make investments to refine, distribute and sell the low-sulfur diesel fuel. If EPA were to promulgate even lower sulfur standards in the section 211(c) rulemaking, the regulated parties in Alaska would be subject to a two-tiered implementation. Because EPA has not determined what, if any, lower sulfur level would be required, parties in Alaska are not able to prepare in advance for a possible second tier. The costs associated with a two-tiered implementation could be substantially higher than the cost of a single implementation, based on a single coordinated decision in the section 211(c) rulemaking about the level of sulfur for diesel fuel in Alaska.

#### Fuel Dyeing Requirements

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 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 on July 1, 1999, 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 highway 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 implement such capacity by July 1, 1999 would be a significant and unreasonable burden for refiners, distributors and consumers of diesel fuel. 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.

#### Conclusion That EPA Should Grant Temporary Exemption Until 2004

Based on all of these significant local factors, it is unreasonable to mandate that low-sulfur highway 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 July 1, 1999. Instead, EPA is extending the temporary exemption until January 1, 2004.

The section 211(c) rulemaking discussed above will make a coordinated and final decision on the level of motor vehicle diesel sulfur that will be required in Alaska. EPA therefore does not expect that there would be any further extensions of the temporary exemption. EPA expects final action in the upcoming section 211(c) rulemaking to be in 2000.

The January 1, 2004 date in today's final rule would provide Alaska approximately four years lead time, and approximately three years lead time from the section 211(c) rulemaking. If appropriate, EPA will re-evaluate the January 1, 2004 date for expiration of the exemption during the section 211(c) rulemaking, for example when considering in detail the impacts of any two-tiered implementation for Alaska. EPA will also evaluate whether it is appropriate to shorten the timeframe of the exemption, as part of the process of coordinating a final decision on these matters in that rulemaking.

#### C. Guidance Regarding Compliance Under Temporary Exemption

Since today's rule exempts diesel fuel in Alaska from the sulfur requirement until January 1, 2004, dyeing diesel fuel under EPA's regulations to be used in applications other than highway vehicles will be unnecessary in Alaska until January 1, 2004. 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 highway vehicle diesel fuel and is not to be used as a highway 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 highway vehicle diesel fuel.

EPA will assume that all undyed 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 appropriate 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.

#### D. Impact of Exemption on 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,<sup>3</sup> Guam decision,<sup>4</sup> and initial Alaska decision.<sup>5</sup> 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.

#### Impact of Exemption on Recall Liability

If EPA determines that a substantial number of any class or category of heavy-duty engines do not comply with the federal emission requirements, although properly used and maintained, the engine manufacturer is responsible for recalling and repairing the engines. EPA typically determines whether engines comply with applicable federal emission standards by testing in-use

<sup>3</sup> The Agency granted American Samoa's petition for a permanent exemption from the diesel sulfur requirements on July 20, 1992, 57 FR 32010.

<sup>4</sup> The Agency granted Guam's petition for a permanent exemption from the diesel sulfur requirements on September 21, 1993, 58 FR 48968.

<sup>5</sup> 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.

engines which have been properly maintained and used. If an engine fueled with exempted diesel fuel (such as the high-sulfur fuel supplied in Alaska) was included in such testing, and the testing showed exceedance of the applicable emission standards, EPA will determine, on a case-by-case basis, if the exceedance is the result of the use of exempted fuel. If EPA determines that the use of exempted diesel fuel is the sole cause why a substantial number of the class or category of heavy-duty engines fails to meet the applicable emission standards, EPA would not seek a recall of the class or category of engines based on these data.

For Alaska, as in the Guam and American Samoa decisions, EPA does not intend to use test results (emissions levels) from engines used and operated in Alaska that utilize high-sulfur diesel fuel (over 0.05 percent 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 the use of exempted 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.

#### Impact of Exemption on the Manufacturers' Emission Warranty and on the Durability of New Technology Engines

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 of the Act is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) 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 exempted 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 exempted diesel fuel should continue to receive full emissions warranty coverage.

EPA anticipates that many on-highway, heavy-duty diesel engines will utilize some form of cooled EGR technology in order to meet the 2004 emission standards. Further, the Agency recognizes that under the recent Consent Decrees entered into by the majority of diesel engine manufacturers, diesel engines will have to meet the 2004 emission standards beginning in October of 2002. Finally, the Agency recognizes that the use of cooled EGR systems with high-sulfur fuel may contribute to engine durability problems, requiring owners to overhaul their engines more frequently than the intervals for which they were designed. EPA believes, however, that within the time frame of this temporary exemption, engine durability problems will not likely be a significant problem for heavy-duty engine owners.

Because the new engine technology is not expected to be marketed until late 2002, and because of the slow turnover rate of new heavy-duty diesel vehicles in Alaska, EPA estimates that during the temporary exemption less than five percent of the total Alaska diesel fleet will incorporate the new engine technology, and only during the last 15 months of the exemption. Additionally, the State of Alaska expects that during the temporary exemption adequate low-sulfur fuel will be supplied to the Alaska market to meet the market demands created by operators of the new technology diesel engines. EPA and the State of Alaska have been informed that diesel fuel with sulfur levels near or below the low sulfur limit of 500 ppm currently is being produced at one refinery in Alaska. Further, the State of Alaska has committed to work with the petroleum industry in Alaska to make low sulfur fuel available to truck owners with new technology heavy-duty diesel engines.

EPA will address the durability issue when making the final decision on

Alaska's section 211(i) petition for permanent exemption as part of the upcoming nationwide rule on diesel fuel quality. However, if subsequent to today's document, the Administrator determines that supplies of low sulfur diesel fuel are inadequate to meet the requirements of new technology diesel engines and that significant environmental harm is resulting from adverse impacts of high sulfur diesel fuel on these vehicles, this exemption may be reconsidered.

#### Impact of Exemption on 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 of Today's Decision

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

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 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 highway vehicle engine standards in 2004 necessitated further consideration before the Agency made a decision on

Alaska's request for a permanent exemption.

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 January 1, 2004 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 as of July 1, 1999, based on the significant local factors supporting this decision are described herein.

### VIII. Statutory Authority For Today's Decision

Authority for the action in this final 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.

The effective date of this rule is July 1, 1999. If the effective date of this rule were any later, there would be some period of time when Alaska would lose its current exemption from low-sulfur diesel fuel and dye requirements because the current exemption expires on July 1, 1999. "EPA did not intend that parties in Alaska would be required to comply with low sulfur diesel fuel or dye requirements prior to the effective date of this final rule. EPA therefore finds that there is good cause under 5 U.S.C. 553(d) to make this rule effective on July 1, 1999."

### IX. Administrative Requirements for Today's Decision

#### A. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866<sup>6</sup>, 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.<sup>7</sup>

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 continue the current temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska for four and a half more years, 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 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. 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 July 1, 1999.

#### 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 the Intergovernmental Partnership

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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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 develop an effective process permitting

<sup>6</sup> 58 FR 51736 (October 4, 1993).

<sup>7</sup> *Id.* at section 3(f)(1)-(4).



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. It only extends an existing temporary exemption of the low-sulfur diesel fuel requirements in the State of Alaska. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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*

"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 State of Alaska Petition from Exemption from Diesel Fuel Sulfur Requirements rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because in the circumstances present in this rulemaking, the analysis required under section 5-501 of the Order would not have the potential to influence the regulation. The decision to extend the exemption in this rulemaking is based primarily on factors other than health and safety, because those factors will be addressed separately in a related national rulemaking that will address the appropriate level of sulfur in diesel fuel. EPA has issued an Advanced Notice of Proposed Rulemaking (64 FR 26142, May 13, 1999) involving the appropriate level of diesel sulfur nationwide. This national rulemaking will include any analysis that is required under Executive Order 13045.

#### *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. No. 104-113, section 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 in 40 CFR Part 69**

Environmental protection, Air pollution control, Alaska.

Dated: June 18, 1999.

**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—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT**

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

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

#### **Subpart E—[Amended]**

2. Section 69.51 is amended by revising paragraph (c) to read as follows:

#### **§ 69.51 Exemptions.**

\* \* \* \* \*

(c) Beginning January 1, 2004, 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.

[FR Doc. 99-16228 Filed 6-24-99; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 272**

[FRL-6364-2]

#### **Idaho: Incorporation by Reference of Approved State Hazardous Waste Management Program**

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

**ACTION:** Immediate final rule.

**SUMMARY:** Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the EPA may grant States Final Authorization to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. The purpose of this action is to codify Idaho's authorized hazardous waste program in 40 CFR part 272. This rule incorporates by reference provisions of Idaho's hazardous waste statutes and regulations and clarifies which of these provisions are authorized and federally enforceable. Unless adverse written comments are received, the EPA's