List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 15, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–11278 Filed 4–27–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69 and 80

[FRL–5999–6]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 14, 1994, EPA granted the State of Alaska a waiver from the requirements of EPA's low-sulfur diesel fuel program for motor vehicles, permanently exempting Alaska's remote areas and providing a temporary exemption for areas of Alaska served by the Federal Aid Highway System. The exemption applied to certain requirements in section 211(i) and (g) of the Clean Air Act, as implemented in EPA's regulations. On December 12, 1995, the Governor of Alaska petitioned EPA to permanently exempt the areas covered by the temporary exemption. In this document, EPA is proposing to grant Alaska's petition for a permanent exemption for areas of Alaska served by the Federal Aid Highway System.

This proposed rulemaking, if finalized, 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. However, if circumstances change such that the exemption is no longer appropriate under Section 325 based on consideration of the factors relevant under that section, EPA could withdraw this exemption in the future after public notice and comment.

DATES: EPA will conduct a public hearing on today's proposal May 21, 1998, if one is requested by May 12, 1998. If a hearing is held, comments on this proposal must be submitted on or before June 22, 1998. If no hearing is held, comments must be submitted on or before May 28, 1998. For additional information on the public hearing see Supplementary Information.

ADDRESSES: Comments should be submitted in duplicate to Mr. Richard Babst, Environmental Engineer, Fuels Implementation Group, Fuels and Energy Division (6406–J), 401 M Street S.W., Washington, D.C. 20460.

Public Hearing: A public hearing, if held, will be at the Anchorage Federal Building, room 135, in Anchorage, Alaska.

Docket: Copies of information relevant to this petition 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 S.W., 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 S.W., Washington, D.C. 20460, (202) 564–9473.

SUPPLEMENTARY INFORMATION:

Public Hearing Information

Anyone wishing to testify at the public hearing scheduled for May 21, 1998, should notify Richard Babst by telephone at (202) 564–9473, by fax at (202) 565–2085, or by Internet message at babst.richard@epa.gov. If the above contact person fails to receive any requests for testifying on this proposal by May 12, 1998, the hearing will be canceled without further notification. Persons interested in determining if the hearing has been canceled should contact the person named above after May 12, 1998.

The public hearing, if held, will begin at 9:00 a.m and continue until all interested parties have had an opportunity to testify. A sign-up sheet will be available at a registration table the morning of the hearing for scheduling testimony for those who have not previously notified the contact person listed above. Testimonies will be scheduled on a first come, first serve basis. EPA suggests that approximately 25 to 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review the material before the hearing. Such advance copies should be submitted to the contact person listed above.

The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the public docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The EPA Presiding Officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. EPA asks that persons who testify attempt to limit their testimony to ten minutes, if possible.

The Administrator will base her final decision with regard to Alaska's petition for exemption from the diesel fuel sulfur content requirement on the record of the public hearing, if held, and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Air Docket, Docket No. A–96–26 (see **ADDRESSES**). For more information on public participation, see **SUPPLEMENTARY INFORMATION:** VII. Public Participation.

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.
Federal Government	Federal facilities, including military bases which operate a refueling facility to refuel motor vehicles.

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 §§ 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 EPA Internet Web site. This service is free of charge, except for any cost you already incur for Internet connectivity. An electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

http://www.epa.gov/docs/fedrgstr/EPA-AIR/(either select desired date or use Search feature)

http://www.epa.gov/OMSWWW/(look in What's New or under the specific rulemaking topic)

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. 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. Subsection (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. Subsection (2) requires the Administrator to promulgate regulations to implement and enforce the requirements of subsection (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.

The petition was granted 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 exempt 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 exempt 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 for all areas of the state

[1] 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 citation used in section 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 for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

served by the Federal Aid Highway System, that is, those areas covered only by the temporary exemption. On August 19, 1996, EPA extended the temporary exemption until October 1, 1996 (61 FR 42812), to give ample time for the agency to consider comments to that petition that were subsequently submitted. Today's proposed decision addresses EPA's final action on the petition submitted on December 12, 1995. EPA proposes to grant the petition for a permanent exemption for all areas of the state served by the Federal Aid Highway System. This proposed permanent exemption, when combined with the previously granted permanent exemption for all areas of the state not served by the Federal Aid Highway System, would effectively provide the entire state of Alaska a permanent exemption. While this exemption would be permanent, EPA would reserve the right to withdraw it in the future after public notice and comment if circumstances change such that the exemption is no longer appropriate under section 325 based on consideration of the factors relevant under that section.

The following subsections summarize the state's support for the exemption as provided for in the petition and rationale for the agency's proposed rule to grant the exemption. Comments received by the agency, subsequent submittals by Alaska, and additional rationale for the agency's rule to grant the permanent exemption are provided in section V.

A. Geography and Location of the State of Alaska

Alaska is about one-fifth as large as the combined area of the lower 48-states. Because of its extreme northern location, rugged terrain and sparse population, Alaska relies on barges to deliver a large percentage of its petroleum products. No other state relies on this type of delivery system to the extent Alaska does.

Only 35 percent of Alaska's communities are served by the Federal Aid Highway System, which is a combination of road and marine highways. The remaining 65 percent of Alaska's communities are served by barge lines and are referred to as ''off-highway'' or ''remote'' communities. Although barge lines can directly access some off-highway communities, those communities that are not located on a navigable waterway are served by a two-stage delivery system: over water by barge line and then over land to reach the community.

Because of the State's high latitude, it experiences seasonal extremes in the amount of daily sunlight and temperature, which in turn affects the period of time during which construction can occur, and, ultimately, the cost of construction in Alaska.

According to the petition, Alaska's extreme northern location places it in a unique position to fuel transcontinental cargo flights between Europe, Asia, and North America. Roughly 75 percent of all air transit freight between Europe and Asia lands in Anchorage, as does that between Asia and the United States. The result is a large market for jet fuel (Jet-A kerosene) produced by local refiners, which decreases the relative importance of highway diesel fuel to these refiners. Based on State tax revenue receipts and estimates by Alaska's refiners, diesel fuel consumption for highway use represents roughly five percent of total Alaska distillate fuel consumption.[2]

B. Climate, Meteorology and Air Quality

Alaska's climate is colder than that of the other 49 states. The extremely low temperatures experienced in Alaska during the winter imposes a more severe fuel specification requirement for diesel fuel in Alaska than in the rest of the country. This specification, known as a ''cloud point'' specification[3] significantly affects vehicle start-up and other engine operations. Alaska has the most severe cloud point specification for diesel fuel in the U.S. at −56°F. Because Alaska experiences extremely low temperatures in comparison to the other 49 states, and the cloud point specifications for diesel fuel in the lower 49 states are not as severe, most diesel fuel used in Alaska is produced by refiners located in Alaska. Jet-A kerosene meets the same cloud point specification as No. 1 diesel fuel (which is marketed primarily during the winter in Alaska, as opposed to No. 2 diesel fuel which is marketed primarily in the summer) and is commonly mixed with or used as a substitute for No. 1 diesel fuel. However, because Jet-A kerosene can have a sulfur content as high as 0.3 percent, the motor vehicle diesel fuel sulfur requirement of 0.05 percent would generally prohibit using Jet-A kerosene from being used as a fuel for motor vehicles.

Ice formation on the navigable waters during the winter months restricts fuel delivery to off-highway areas served by barge lines. Therefore, fuel is generally only delivered to these areas between the months of May and October. This further restricts the ability of fuel distributors in Alaska to supply multiple grades of petroleum products to these communities.

The only violations of national ambient air quality standards in Alaska have been for carbon monoxide (CO) and particulate matter (PM_{10}). CO violations have only been recorded in the State's two largest communities: Anchorage and Fairbanks. PM_{10} violations have only been recorded in two rural communities, Mendenhall Valley of Juneau and Eagle River in Anchorage. The most recent PM_{10} inventories for these two communities show that these violations are largely the result of fugitive dust from paved and unpaved roads, and that diesel motor vehicles are responsible for less than one percent of the overall PM_{10} being emitted within the borders of each of these areas[4]. Moreover, Eagle River has not had a violation of the PM_{10} standard since 1986. Mendenhall Valley has initiated efforts for road paving to be implemented to control road dust. The sulfur content of diesel fuel is not expected to have a significant impact on ambient PM_{10} or CO levels in any of these areas because of the minimal contribution by diesel motor vehicles to PM_{10} in these areas and the insignificant

[2] EPA independently verified these statements and estimates based on statistics from the Federal Highway Administration and the Department of Energy. These statistics show that the proportion of jet fuel consumption compared to total distillate consumption is approximately 65 percent for Alaska, compared to approximately 26 percent for the United States. The per-capita consumption of jet fuel is approximately 26.6 barrels per year for Alaska, compared to approximately 2.1 barrels per year for the United States. The proportion of diesel fuel consumption for highway use compared to total distillate consumption is approximately three percent for Alaska, compared to approximately 29 percent for the United States. The per-capita consumption of diesel fuel for highway use is approximately 1.2 barrels per year for Alaska, compared to approximately 2.3 barrels per year for the United States.

[3] The cloud point defines the temperature at which cloud or haze or wax crystals appears in the fuel. The purpose of the cloud point specification is to ensure a minimum temperature above which fuel lines and other engine parts are not plugged by solids that form in the fuel. This specification is designated by the American Society for Testing and Materials (ASTM) in its ''Standard Specification for D975–96 Diesel Fuel Oils'', and varies by area of the country and by month of the year based on historical temperature records. Alaska has the most stringent cloud point specification in the United States. For example in January, Alaska's cloud point specification is −56°F, −26°F, and −2°F for the northern (above 62° latitude), southern (below 62° latitude), and Aleutian Islands plus southeastern coast region, respectively. In contrast, the most stringent cloud point specification in January in the lower-48 states is −29°F for Minnesota. For the State of Washington, from which some imported distillate is imported into Alaska, the January cloud point specification is +19.4°F and 0°F for the western and eastern parts of the State, respectively.

[4] ''PM_{10} Emission Inventories for the Mendenhall Valley and Eagle River Areas,'' prepared for the U.S. Environmental Protection Agency, Region X, by Engineering-Science, February 1988.

effect of diesel fuel sulfur content on CO emissions.

Finally, EPA recognizes that the primary purpose of reducing the sulfur content of motor vehicle diesel fuel is to reduce vehicle particulate emissions. Additional benefits cited in the final rule (55 FR 34120, August 21, 1990) include a reduction in sulfur dioxide (SO_2) emissions and the ability to use exhaust after-treatment devices on diesel fueled vehicles, which would result in some reduction of HC and CO exhaust emissions. The use of high-sulfur diesel fuel may cause plugging or increased particulate sulfate emissions in diesel vehicles equipped with trap systems or oxidation catalysts, and could impair the ability of oxidation catalysts to reduce HC and CO exhaust emissions. However, any increase in sulfate particulate emissions would likely have an insignificant effect on ambient PM_{10} levels in Alaska since current diesel motor vehicle contributions to PM_{10} emissions are minimal. Also, the lower sulfur requirement for motor vehicle diesel fuel will have no impact on the attainment prospects of Fairbanks and Anchorage with respect to CO, since reducing sulfur content has no direct affect on CO emissions. Since Alaska is in attainment with the ozone and SO_2 national ambient air quality standards, there is currently no concern for reducing HC or SO_2 emissions.

The Agency recognizes that granting this exemption means Alaska will forego the potential benefits to its air quality resulting from the use of low-sulfur diesel fuel. However, EPA believes that the potential benefits to Alaska's air quality are minimal and are far outweighed by the increased costs resulting from factors unique to Alaska to communities served by the Federal Aid Highway System.

C. Economic Factors

In complying with the section 211(i) sulfur requirement, refiners have the option to invest in the process modifications necessary to produce low-sulfur diesel fuel for use in motor vehicles, or not invest in the process modifications and only supply diesel fuel for off-highway purposes (e.g., heating, generation of electricity, non-road vehicles). Most of Alaska's refiners indicated that local refineries would choose to exit the market for highway diesel fuel if an exemption from the low-sulfur requirement is not granted. This is because of limited refining capabilities, the small size of the market for highway diesel fuel in Alaska, and the costs that would be incurred to produce low-sulfur diesel fuel.

Demand for Jet-A kerosene, which is also sold as No. 1 diesel fuel because it meets Alaska's winter cloud point specification, accounts for about half of Alaska's distillate consumption and dominates refiner planning. A survey of the refiners in Alaska, conducted by the State, revealed that it would cost over $100,000,000 in construction and process modifications to refine Alaska North Slope (ANS) crude into diesel fuel that would meet the 0.05 percent sulfur requirement to meet the demand for highway diesel fuel. Among the reasons for the high cost include the construction costs in Alaska, which are 25 to 65 percent higher than costs in the lower 48 states, and the cost of modifying the fuel production process itself. The petition states that because there is such a small demand for highway diesel fuel in Alaska, the costs that would be incurred to comply with section 211(i)'s sulfur requirement are excessive in light of the expected benefits. Without an exemption from having to meet this requirement, most refiners would choose to exit the market for highway diesel fuel.

Whether low-sulfur diesel fuel is produced in Alaska or imported from the lower-48 states or Canada, there remains the problem of segregating the two fuels for transport to communities along the FAHS accessible only by navigable waterways and subsequent storage of the fuels in those communities. Fuel is delivered to these communities only between the months of May and October due to ice formation which blocks waterways leading to these communities for much of the remainder of the year. The fuel supplied to these communities during the summer months must last through the winter and spring months until resupply can occur. Additionally, the existing fuel storage facilities limit the number of fuel types that can be stored for use in these communities. The cost of constructing separate storage facilities and providing separate tanks for transport of low-sulfur diesel fuel for motor vehicles could be significant. This is largely due to the high cost of construction in Alaska relative to the lower 48 states, and the constraints inherent in distributing fuel in Alaska. One alternative to constructing separate storage facilities is to supply only low-sulfur diesel fuel to these communities. However, the result would require use of the higher cost, low-sulfur diesel fuel for all diesel fuel needs. This would greatly increase the already high cost of living in these communities, since a large percentage of distillate consumption in these communities is for off-highway uses, such as operating diesel powered electrical generators.

D. Environmental Factors

Information provided to EPA by the State of Alaska indicates that refiners supply and distribute standard diesel fuel in the summer which has a sulfur content of approximately 0.3 percent by weight, and supply and distribute Jet-A kerosene in the winter as an Arctic-grade diesel, which has a sulfur content between 0.065 and 0.11 percent by weight from Alaskan refiners, and 0.03 percent by weight from one refiner in the lower-48 states. Thus, the reported level of sulfur in motor vehicle diesel fuel used in Alaska is below the current ASTM sulfur specification which allows up to 0.5 percent by weight. Therefore, in general, the impact of not requiring the low-sulfur motor vehicle diesel fuel program in Alaska is not as significant as it would be if the current fuel approached the ASTM allowable sulfur content level.

Although the State's largest communities, Fairbanks and Anchorage, are CO nonattainment areas, granting this exemption is not expected to have any significant impact on ambient CO levels because the sulfur content in diesel fuel does not significantly affect CO emissions. Two rural communities are designated nonattainment areas with respect to particulate matter (PM_{10}); however, diesel motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of these two areas where fugitive dust is reported to be the most significant problem. Thus, EPA believes that granting a permanent exemption to communities served by the Federal Aid Highway System will not have a significant impact on the ability of any of these communities to meet the current national ambient air quality standards.

V. Comments Received and Other Issues

This section addresses issues and comments that EPA needed more time to consider at the time of the August 19, 1996 extension of the temporary exemption for areas served by the Federal Aid Highway System.

A. Availability of Arctic-Grade, Low-Sulfur Diesel Fuel From Out-of-State Refiners

In a letter to the Alaska Department of Environmental Conservation of July 20, 1995, the Clean Air Coalition suggested that importing low-sulfur diesel fuel is a low cost option to comply with the low-sulfur highway diesel fuel requirement, since highway diesel fuel

is such a small part of the diesel fuel market in Alaska. It also noted that Southeast Alaska already imports low-sulfur diesel fuel from Puget Sound.

Although the 1995 staff report from the Low-Sulfur Diesel Task Force agreed that some low-sulfur diesel fuel is being imported to Southeast Alaska, generally from the Puget Sound area, an October 13, 1997 letter to EPA from the Alaska Department of Environmental Conservation, indicated that much of this ''low-sulfur'' diesel fuel may not comply with the Federal sulfur requirements for motor vehicle diesel fuel. Much of the ''low-sulfur'' fuel being imported is, in fact, downgraded Jet-A kerosene. The letter explains that in Southeast Alaska, jet fuel is a significant portion of the distillate market, but tank storage is limited. Because of this storage limitation and the very specific requirements for jet fuel, two of the three major distributors surveyed by the Alaska Department of Environmental Conservation purchase only Jet-A kerosene to supply all their customers for aviation and other uses, including motor vehicles. But even if some diesel fuel being imported to Southeast Alaska is actually low-sulfur motor vehicle fuel rather than Jet-A kerosene, it would not be arctic grade. In Southeast Alaska, the climate is mild enough to use the same fuel that is refined for the Seattle area. Consequently, the fuel being imported into Southeast Alaska either does not meet the Federal sulfur requirements for motor vehicles, or is not arctic grade, or both.

The Low-Sulfur Diesel Task Force also investigated the potential for importing low-sulfur motor vehicle diesel fuel from British Columbia, which has required low-sulfur diesel fuel as of April 15, 1995.[5] The task force concluded that Canada does not appear to be a significant source of low-sulfur highway diesel fuel to Alaska. In support of this contention, Alaska's December 12, 1995 Petition for Exemption stated that the British Columbia Ministry of Environment reported supplies of low-sulfur diesel in British Columbia ''will remain tight''. The Petition also stated that, based on discussions with Alaska refiners, ''Canadian fuel does not seem to be available for Alaska'', and one Alaska refiner reported that diesel fuel ''is sold from Alaska into the Yukon Territory and northern British Columbia.'' The petition concludes that ''sufficient Canadian fuel is not available to meet Alaska's diesel fuel needs for an arctic-grade low-sulfur diesel fuel.''

EPA believes, based on the information provided, that adequate supplies of arctic-grade low-sulfur diesel fuel are not likely to be available for import into Alaska. Even if U.S. refiners in the lower-48 states wanted to enter this market, they would have to confront the similar problem that would be encountered by the Alaskan refiners of changing or modifying the refineries to produce low-sulfur arctic-grade motor vehicle diesel fuel, or Jet-A kerosene that meets the Federal motor vehicle sulfur requirement. The Alaskan refiners, which produce significant amounts of Jet-A kerosene, apparently have already concluded that the small highway diesel market in Alaska is too small for such changes and modifications to be economical. Economic feasibility directly relates to availability, since EPA does not have authority to require refiners to enter or remain in the motor vehicle diesel fuel market in Alaska. Finally, Canada is not a likely source of imports, because its refiners apparently do not have the capacity to export low-sulfur diesel fuel to Alaska.

B. Cost of Importing Low-Sulfur Diesel Fuel

In letters to the Alaska Department of Environmental Conservation of July, 1995 and October 30, 1995, the Clean Air Coalition suggested that Alaskan refineries and fuel distributors have not documented that there will be any increase to the consumer in complying with the low-sulfur requirement, and that increasing imports is a viable alternative to fuel produced in-state. The Clean Air Coalition noted that it costs five cents a gallon to import the fuel, and companies already import a significant amount of fuel to sell alongside fuel produced in-state. It further noted that Southeast Alaska already imports low-sulfur diesel from Puget Sound with no additional costs to consumers.

The 1995 staff report of the Low-Sulfur Diesel Task Force indicated that diesel fuel being shipped to Southeast Alaska is not segregated in shipping barges, and the same fuel that is sold for non-road uses, such as heating oil, is also sold as motor vehicle diesel fuel. The distributors buy the fuel that has the lowest cost. The report noted that low-sulfur diesel fuel can vary from six cents more expensive to three cents less expensive per gallon than high sulfur fuel.[6]

Alaska's December 12, 1995 Petition for Exemption indicates the cost of transporting diesel fuel to Alaska depends on the destination. In Southeast Alaska the transportation costs would not increase by using low-sulfur diesel fuel because fuel is already imported to that area. However, the shipping costs would increase for other areas which currently obtain their fuel from in-state refineries. For example, the shipping cost for low-sulfur diesel fuel from the Puget Sound area to Anchorage would be approximately four cents per gallon, according to one distributor.

In its September 3, 1997 submittal of information to EPA, the Alaska Department of Environmental Conservation said it surveyed three major distributors in Southeast Alaska. Two of these distributors indicated they provide only low-sulfur diesel fuel (they downgrade Jet-A kerosene to sell as diesel fuel), but it does not meet the 0.05 percent low sulfur motor vehicle diesel fuel requirement. Excluding distillate sold as jet fuel, an estimated 23 percent of diesel fuel is sold for on-road uses.[7] These distributors indicated the price difference between the low-sulfur (Jet-A kerosene) and high-sulfur diesel fuels vary from one to four cents per gallon. Consequently, for these two distributors because of the lack of separate storage capacity, the estimated price increase for non-motor vehicle users in Juneau is $92,000 to $368,000 per year. In its October 13, 1997 letter to EPA, the Alaska Department of Environmental Conservation verified that the ''low-sulfur'' diesel fuel being imported into Southeast Alaska is Jet-A kerosene, which tends to be more expensive than low-sulfur motor vehicle diesel fuel but does not necessarily meet the Federal sulfur requirements.

In evaluating the cost of importing low-sulfur diesel fuel, EPA has

[5] British Columbia is the Canadian Province directly north of the State of Washington, and directly south and east of Southeast Alaska. Directly north of British Columbia and east of the interior of Alaska is the Canadian Province of Yukon, which does not require low-sulfur motor vehicle diesel fuel.

[6] For an independent ''snap-shot'' assessment of the price difference between low and high sulfur diesel fuel, EPA looked at one time-period, the weeks of August 1 through August 29, 1997. From summary statistics published in ''The Oil Daily'' for that time period, EPA calculated the difference between the average price of low-sulfur diesel fuel and the average price of high-sulfur diesel fuel. This calculated price difference was 0.79 and 1.16 cents per gallon for the Gulf Coast and New York areas, respectively. The Oil Daily also provides summary statistics for the Los Angeles area, but not for high-sulfur fuel, which apparently is not distributed in Los Angeles.

[7] EPA calculated that if jet fuel were included in the total distillate sales, the estimate for on-road uses in Southeast Alaska would be eight percent, which is consistent with earlier estimates by the Alaska Department of Environmental Conservation that motor vehicle use of total distillates is approximately five percent statewide.

considered two principle components of importation costs: (1) The cost of the fuel to be imported, and (2) the shipping costs. These components are discussed separately, as follows.

The cost of the fuel to be imported is difficult to assess because of the limited information. The 1995 Staff Report of the Low-Sulfur Diesel Task Force indicated that low-sulfur diesel fuel can vary from six cents more expensive to three cents less expensive per gallon than high-sulfur diesel fuel. Two major fuel distributors for Southeast Alaska recently estimated the difference in cost between low-sulfur diesel fuel and high-sulfur diesel fuel to be one to four cents per gallon. The actual costs could be even higher. As indicated by these two distributors, the low-sulfur diesel fuel they import is downgraded Jet-A kerosene, which is arctic grade but does not necessarily meet the low-sulfur motor vehicle requirements.

One would ordinarily presume that if the diesel fuel meeting the low-sulfur requirements cost less, it would be the fuel of choice for the importers. However, according to the October 13, 1997 letter from the Alaska Department of Environmental Conservation, the distributors import the more expensive Jet-A kerosene for all uses because limited storage prevents segregation among the intended uses. Thus, while importing low-sulfur motor vehicle diesel fuel could reduce the cost of the fuel, this cost reduction would apparently be more than offset by the increased cost associated with segregated storage. Further, that fuel which is currently refined and distributed as low-sulfur motor vehicle diesel fuel is not arctic grade.

Consequently, increased costs would be incurred if arctic grade low-sulfur motor vehicle diesel fuel were required. Further, this does not mean that refiners in the lower-48 states will produce the required low-sulfur fuel, or if they did produce it that they would necessarily sell it based on current market prices (see the previous Subsection A. Availability of arctic-grade, low sulfur diesel fuel from out-of-state refiners).

EPA understands that diesel fuel is currently shipped to Southeast Alaska, primarily from the Puget Sound area. Thus, any cost increase due to shipping low-sulfur diesel fuel to Southeast Alaska would be the cost associated with segregating the low-sulfur motor vehicle diesel fuel from the higher-sulfur diesel fuel designated for non-motor vehicle uses. This can be accomplished either by separate tanks on the shipping vessels, or by making separate trips for the low-sulfur diesel fuel designated for motor vehicle use. EPA believes that this cost would be either zero or minimal.

Increased shipping costs to other areas of Alaska may be more than minimal. For areas that already receive imported distillate, current shipping cost estimates are for shipments of non-segregated distillate, of which only about five percent is intended for highway use. Similarly as with Southeast Alaska, the low-sulfur requirement would require either segregated or separate shipments for motor vehicle diesel fuel, but EPA believes that this cost increase would be either zero or minimal. For areas that are now served by in-state refineries, low-sulfur diesel fuel for motor vehicles would have to be imported, thereby adding shipping costs. The Alaska Clean Air Coalition noted that it currently costs five cents a gallon to import fuel. One distributor estimated a cost of four cents per gallon for shipping imported fuel from Puget Sound to Anchorage. This analysis may be purely academic, however, in refiners in the lower-48 states decide to not produce the required low-sulfur arctic grade diesel fuel because of the small motor vehicle diesel market in Alaska.

C. Costs of Storing and Distributing Low-Sulfur Diesel Fuel

The Alaska Center for the Environment, in a letter of June 19, 1996 to the EPA, commented that Canada experienced no increase in distribution costs after requiring low-sulfur diesel fuel. This information was reportedly obtained from a January 11, 1995 meeting with the Alaska Department of Environmental Conservation. The implication of this comment is that distribution costs projected for low-sulfur diesel fuel in Alaska may be overstated.

The 1995 staff report of the Low-Sulfur Diesel Task Force indicated that the increase in distribution costs for low-sulfur diesel fuel can vary widely. For Southeast Alaska the increase in distribution cost would likely be zero. For other areas of the state, three distributors that provided data indicated a five, seven and twenty cents-per-gallon increase in distribution costs for low-sulfur diesel fuel.

Similarly, the December 12, 1995 Petition for Exemption indicated the cost increase would vary depending on the location. It indicated that fuel segregation is the major contributor to distribution costs because the highway diesel market is less than five percent of the distillate market. Distributors ''cannot be expected'' to import and supply low-sulfur distillate for the other 95 percent of the market. According to the petition, distribution costs are likely to be higher in Kodiak and other lower volume distribution locations, which would have to recover the increased cost of tank and piping additions or modifications over a small volume of fuel. One distributor in Kodiak stated that its cost increase might be as high as 20 cents-per-gallon. In contrast, one distributor in Anchorage indicated it would not have to build a new tank for low-sulfur diesel, and reported it would have no increase in distribution cost.

In its August 5, 1997 submittal to EPA, the Alaska Department of Environmental Conservation estimated that if low-sulfur diesel fuel were required for highway vehicles, even if only during the summer, the distribution cost increases would range from five to twenty cents per gallon. In its September 3, 1997 submittal of information to EPA, the Alaska Department of Environmental Conservation said it surveyed three major distributors in Southeast Alaska. One of these distributors indicated it imports both high and low sulfur (downgraded Jet-A kerosene) diesel fuel into Southeast Alaska, but it mixes the two together because it does not have separate storage facilities. The other two distributors indicated they provide only low-sulfur diesel (downgraded Jet-A kerosene), but it does not meet the 0.05 percent low sulfur diesel fuel requirement. Thus, if low-sulfur diesel fuel were required for motor vehicles, these distributors would have to either provide for separate storage, or purchase complying diesel fuel for all uses.

In a January 27, 1998 telephone conversation, the Alaska Department of Environmental Conservation indicated that cost is not the only factor in considering expansion of fuel storage capacity. It cited an example of the difficulties Mapco has had in expanding its storage capacity at an Anchorage tank farm. Mapco has been trying unsuccessfully for four years to get the necessary permits, but has not been able to overcome the Alaska Department of Conservation requirements, the coastal zone management requirements, and objections by the adjacent residential neighborhood.

In its October 13, 1997 letter to EPA, the Alaska Department of Environmental Conservation indicated that it is not ''completely reasonable [to compare] British Columbia's experience with implementation of low sulfur diesel, because British Columbia is less remote and does not have the same climate as Alaska.'' The interior of Alaska borders Yukon, and considering geography and climate, it would be more appropriate to compare to Yukon's

experience. But Yukon does not require low-sulfur motor vehicle diesel fuel.

Considering the available information, EPA believes that storage and distribution costs would likely increase, and the extent would depend on the area and the distributor. Those costs could likely range from zero or minimal to very high (e.g., in Kodiak).

D. Alternative Fuel or Fuel Standard

In a letter of July 20, 1995 to the Alaska Department of Environmental Conservation, the Clean Air Coalition proposed three alternatives to a permanent statewide exemption to the low sulfur diesel fuel requirement. The first suggested alternative is to exclude Southeast Alaska from any exemption. This area already imports low-sulfur diesel for transportation, power generation and home use from Puget Sound with no additional cost to consumers. The second suggested alternative is to require Alaska to import low-sulfur diesel in the summer months only, and ''allow'' Alaska to use ''winter diesel'' in the colder months. The third suggested alternative is to require Alaska to use ''winter diesel'' year-round, even though the ''winter diesel'' does not ''fully meet Clean Air Act standards.'' It notes that Chevron produces a ''winter diesel fuel'' with 0.03 percent sulfur content, and other companies sell it with a sulfur content from 0.65 to 0.10 percent. EPA presumes that this ''winter diesel'' is Jet-A kerosene, which meets the stringent Alaskan winter diesel fuel cloud point specification of −56° F, and consequently is commonly mixed with, or used as a substitute for, No. 1 diesel fuel in Alaska.

In a letter of April 23, 1996 to the EPA, the Alaska Center for the Environment proposed the same three alternatives to a permanent statewide exemption of the low-sulfur diesel fuel requirement. The letter also references the staff report of the Low-Sulfur Diesel Task Force in noting that the sulfur content of Alaskan Jet-A kerosene contains from 0.03 to 0.09 percent sulfur, and that requiring Jet-A kerosene year-round would simply result in the importation of Jet-A kerosene increasing from the current 13 percent to 21 percent.

Alternative 1: Exclude Southeast Alaska

In support of the alternative that Southeast Alaska be excluded from any exemption, the Clean Air Coalition stated that Southeast Alaska already imports low-sulfur diesel for transportation, power generation and home use from Puget Sound with no additional cost to consumers. In its August 5, 1997 submittal to EPA, the Alaska Department of Environmental Conservation stated that diesel fuel for all uses is imported to Southeast Alaska from the lower 48 states by barge, and on-road and non-road diesel is not segregated. Currently, market price determines whether high or low-sulfur diesel is distributed. If low-sulfur diesel were required for highway use, either separate storage may be needed to segregate the highway fuel, or citizens using diesel for home heating would have to bear any associated price increases for all the diesel fuel to meet the low-sulfur requirement. In the latter case, the Alaska Department of Environmental Conservation estimated that if a five cent per gallon increase occurs, home heating costs could increase $430,000 per year.

In its September 3, 1997 submittal of information to EPA, the Alaska Department of Environmental Conservation indicated it surveyed three major distributors in Southeast Alaska. One of these distributors indicated it imports both high and low sulfur (downgraded Jet-A kerosene) diesel fuel into Southeast Alaska, but it mixes the two together because it does not have separate storage facilities. The other two distributors indicated they provide only low-sulfur diesel (downgraded Jet-A kerosene) to sell as diesel fuel. These distributors indicated the price difference between the low and high-sulfur diesel fuels vary from one to four cents per gallon. In its October 13, 1997 letter to EPA, the Alaska Department of Environmental Conservation clarified that these two distributors import only Jet-A kerosene because jet fuel is a large portion of their market and they are unable to segregate that fuel because of lack of storage facilities. Thus, they purchase the generally more expensive Jet-A kerosene to supply all users of distillate.

The Alaska Department of Environmental Conservation also raised an equity issue. Southeast Alaska residents would be required to bear the cost of any increases due to the low-sulfur requirements, while residents in other areas of the state would be exempted. Finally, the Department of Environmental Conservation stated that Southeast Alaska does not have a major highway system—transport of goods and freight between towns occurs by water or air.

After considering the issues raised, EPA concluded the expected air quality benefits associated with excluding Southeast Alaska from the exemption would be negligible or minimal, and EPA is concerned about the potential for cost increases, not only for motor vehicle uses, but also for other uses, as discussed below.

First EPA considered the impact of an exemption from the motor vehicle diesel fuel sulfur requirements on air quality benefits in Southeast Alaska. All parties generally agree that Southeast Alaska already imports a low-sulfur fuel for some of its market. Also, the portion of fuel that is used for motor vehicles is relatively small. To the extent Southeast Alaska is currently importing low-sulfur diesel fuel that already meets the Federal requirements for motor vehicles, no additional air quality benefits would result from requiring low-sulfur diesel for motor vehicle use. To the extent Southeast Alaska is currently importing low-sulfur non-complying diesel fuel (e.g., Jet-A kerosene with sulfur content above 0.05 percent by weight), minimal air quality benefits would result from requiring that fuel to meet the 0.05 percent sulfur requirement. To the extent Southeast Alaska is currently importing high-sulfur diesel fuel, requiring the use of low-sulfur highway diesel fuel would likely result in a certain amount of reduced per-vehicle emissions.

The only national ambient air quality standards nonattainment area in Southeast Alaska is the Mendenhall Valley in Juneau for PM_{10}, where diesel truck exhaust, brake wear and tire wear combined contribute less than one percent to the PM_{10} inventory.[8] By contrast, the largest sources of PM_{10} in Mendenhall Valley are fugitive and windblown dust which account for 89 percent of the annual inventory. This means that the maximum reduction in PM_{10} that can be achieved by totally eliminating all motor vehicle diesel emissions is only one percent. Low-sulfur motor vehicle diesel fuel meeting the Federal sulfur content requirement would eliminate only a portion of that one percent. Consequently, EPA believes that the air quality benefits of reducing motor vehicle diesel exhaust by requiring low-sulfur diesel fuel for motor vehicles would be negligible. (For discussion on localized environmental impacts see Subsection E: Local environmental effects. Also, EPA is not addressing future requirements, including for the new national ambient air quality standard for $PM_{2.5}$, in this proposed rule—see Subsection H: New National Ambient Air Quality Standards).

The Clean Air Coalition raised the issue that secondary air quality benefits

[8] ''PM_{10} Emission Inventories for the Mendenhall Valley and Eagle River Areas,'' prepared for the U.S. Environmental Protection Agency, Region X, by Engineering-Science, February 1988.

of low-sulfur highway diesel fuel could be significant. Because distillate fuel shipments in Southeast Alaska are generally not segregated by end-use, a requirement for low-sulfur highway diesel fuel might spill over into the distillates transported for non-highway uses, such as for heating and electrical generation.

EPA agrees that there could be secondary air quality benefits to requiring low-sulfur diesel fuel in Southeast Alaska, however, EPA does not know the extent of that potential impact. If suppliers and distributors in Southeast Alaska elect in-full or in-part to not segregate diesel fuel by end-use in response to the motor vehicle low-sulfur diesel fuel requirement, except possibly for Jet-A kerosene, they would have to supply the more restrictive low-sulfur motor vehicle diesel fuel for the non-motor vehicle uses. The air quality benefits—primarily reduced particulate emissions—would depend on the change in proportion of the non-motor vehicle diesel fuel that would meet the motor vehicle low-sulfur diesel fuel requirement, the change in sulfur content between the diesel fuel that is currently distributed and that which would be distributed under a motor vehicle low-sulfur diesel fuel requirement, and the change in emissions between the current and the motor vehicle low-sulfur diesel fuel for the various non-motor vehicle diesel combustion sources. Such diesel sources include, but are not limited to, utility diesel electrical power generators, small diesel electrical power generators (e.g., for construction and remote sites, backup generators for businesses, hospitals and homes, etc.), construction and farm vehicles (e.g., road graders, bull-dozers, farm tractors, etc.), construction and farm equipment (e.g., air compressors, harvesters, etc.) and heaters (e.g., industrial boilers, home furnaces, kerosene heaters, etc.).

Since fugitive and windblown dust account for 89 percent of the annual PM_{10} inventory, the maximum that total emissions from all petroleum products (including diesel fuel, bunker fuel, fuel oil, kerosene, gasoline, etc.) can contribute is only 11 percent of the annual inventory. Assuming a best case scenario in which all petroleum fuels (not just the motor vehicle diesel fuels) were to meet the Federal sulfur content requirement for motor vehicle diesel fuel, only a portion of the 11 percent of the annual inventory of PM_{10} would be eliminated.

Considering the cost impact of requiring low-sulfur highway diesel fuel, market price and storage facilities determines whether high or low-sulfur diesel is distributed to Southeast Alaska. To the extent Southeast Alaska is currently importing low-sulfur diesel that meets the Federal sulfur content requirement for motor vehicle diesel fuel, no additional costs would result from requiring low-sulfur diesel for motor vehicle use. To the extent Southeast Alaska is currently importing diesel fuel that does not meet the Federal sulfur content requirement, EPA assumes that the current market results in the lowest overall fuel cost and that higher overall fuel costs would result from requiring low-sulfur diesel for motor vehicle use. Even though low-sulfur motor vehicle diesel fuel (non-arctic grade) would normally be priced less than Jet-A kerosene in the typical market, apparently this lower cost would not offset the anticipated cost of modifying or expanding the available storage facilities in Southeast Alaska to provide for segregated storage. Consequently, the low-sulfur requirement for motor vehicle diesel fuel is likely to result in higher fuel costs.

These higher fuel costs would likely be passed on to consumers. If segregated storage is provided only for Jet-A kerosene and not for motor vehicle fuel, citizens using the unsegregated low-sulfur motor vehicle fuel for home heating, electricity and other non-road uses would also have to bear the associated price increase. Because non-road applications of diesel fuel use significantly higher quantities of the fuel,[9] this overall cost to homeowners and businesses could be significant.

Because of the lack of significant air quality and cost benefits of excluding Southeast Alaska from the exemption, EPA has rejected this alternative. However, EPA may revisit this alternative in the future if the exemption that is promulgated subsequent to this proposal is no longer appropriate under § 325 based on consideration of the factors relevant under that section.

Alternative 2: Exclude the Summer Seasons From the Exemption

This alternative is designed to achieve some benefits for Alaska by requiring the use of low-sulfur diesel fuel for at least part of the year, but to avoid the unique requirements and constraints associated with Alaska's arctic climate during the winter. In its August 5, 1997 submittal to EPA, the Alaska Department of Environmental Conservation stated that importing low-sulfur diesel fuel only during the summer months is problematic. Alaskan refiners cannot produce low-sulfur diesel fuel and thus would be cut out of the market, and distributors would need additional storage to segregate the low-sulfur diesel fuel, even though segregation might only be necessary for part of the year.

EPA previously concluded in this proposed rule that requiring low-sulfur highway diesel fuel in Alaska is not expected to have a significant impact on ambient PM_{10} or CO levels in Alaska, or Alaska's prospects for attainment with the national ambient air quality standards (see Subsection IV.B: Climate, Meteorology and Air Quality). Consequently, requiring low-sulfur highway diesel fuel in Alaska for only part of the year would also not be expected to have a significant impact on ambient PM_{10} or CO levels in Alaska, or Alaska's prospects for attainment with the national ambient air quality standards. (For discussion on localized environmental impacts—see Subsection E: Local environmental effects. EPA is not addressing future requirements in this proposed rule, including for the new national ambient air quality standard for $PM_{2.5}$—see Subsection H: New National Ambient Air Quality Standards.)

However, costs would arise from either segregated shipping, storage and distribution for the diesel fuel intended for highway use during the summer season, or refining costs associated with producing unsegregated low-sulfur distillate for all distillate uses, except possibly for jet fuel, in Alaska during the summer season. This cost is not well defined, but based on the limited available information, seems to range from zero to significant depending on the specific location within Alaska. (See Section IV.C: Economic Factors and Section V.C: Costs of Storing and Distributing Low-Sulfur Diesel Fuel.) Also, there are non-economic barriers to expanding storage capacity (see Subsection V.C: Costs of Storing and Distributing Low-Sulfur Diesel Fuel).

The cost of expanded storage capacity would have to be borne not only by distributors and wholesalers, but also retailers, individual businesses that store distillate fuels for their own use, and individuals that store distillate fuels for their own use. Alaska's unique climate and geographical conditions cause supply disruptions, especially during the winter season. To account for the supply disruptions, communities, businesses, and individuals in Alaska, perhaps except in Southeast Alaska,

[9] According to its September 3, 1997 submittal to EPA, the Alaska Department of Environmental Conservation stated that the two major distributors in Southeast Alaska that they surveyed and that import only Jet-A kerosene indicated on-road uses of diesel fuel account for only 23 percent of their diesel fuel sales, excluding that which is intended for use by jets. Thus, excluding use by jets, non-road uses of diesel fuel account for more than three times the volume of diesel fuel that is used on-road.

need to stock winter supplies during the summer and transition season. Consequently, they are taking delivery of summer and winter supplies at the same time during part of the year. Additional storage would be needed to segregate the regulated low-sulfur fuel used in the summer season from the unregulated higher-sulfur fuel needed for the winter season. As noted earlier in this proposed rule, low-sulfur diesel fuel as currently produced does not meet the ''cloud point'' specification required for Alaska's cold temperatures, and if used during the winter season, would significantly affect engine start-up and operation.

Other existing seasonally driven fuels programs (particularly in the lower 48 states) such as oxygenated gasoline for control of carbon monoxide (CO) during winter seasons and low-volatility gasoline for control of volatile organic compounds (VOCs) during summer seasons, rely on refineries and distribution systems that are oriented primarily, or in large part, to supplying gasoline for motor vehicles. This distribution system has adequate storage for transitioning between seasons, and since supply disruptions generally do not occur in the lower 48 states, there is no need to supply and stock fuel for the winter season.

Another confounding factor in Alaska is only less than five percent of Alaska's refining and distribution systems are oriented to supplying highway diesel fuel, and Alaska's highway diesel fuel is not segregated from distillates intended for other uses, such as heating and power generation. Assuming that distributors would supply low-sulfur diesel only for motor vehicle use under this alternative, the distribution and storage costs would be spread out among only one to two percent of the distillate flowing through the system.[10] Assuming that distributors would supply low-sulfur diesel for all distillate uses in the summer season under this alternative, except possibly jet fuel, the higher cost of the low-sulfur diesel fuel would be forced on the non-highway users of the distillate, as well as the additional cost of segregating that fuel from the winter supplies.

Another consideration is the administrative and enforcement burden of such a seasonal program. The need to stock winter fuel during the summer and transition seasons might conflict with a regulatory requirement that only low-sulfur diesel be sold for highway use during the summer season. Any regulatory accommodation to allow for stocking of fuel for the winter would complicate enforcement of the summer-time requirement. For an enforcement agency to determine whether a violation has occurred and to subsequently prosecute the violator, the agency would have to determine and subsequently prove that a summer-time sale or distribution of non-complying distillate is intended for highway use rather than for other uses such as heating or power generation, and that it is intended for use during the summer season.

For all of the above reasons, EPA rejects the alternative of requiring low-sulfur highway diesel fuel only in the summer. However, EPA may revisit this alternative in the future if the exemption that is promulgated subsequent to this proposal is no longer appropriate under § 325 based on consideration of the factors relevant under that section.

Alternative 3: Require ''Winter Diesel'' Year-Round

This alternative is intended to take advantage of the generally lower sulfur content of Jet-A kerosene and its ability to serve as an arctic-grade motor vehicle diesel fuel during the winter season. The staff report of the Low-Sulfur Diesel Task Force states that Jet-A kerosene has a sulfur content specification of 0.3 percent. It tends to have lower sulfur content than standard diesel fuel, but generally does not meet the regulatory requirement for low-sulfur highway diesel of 0.05 percent maximum. For example from the high-sulfur North Slope crude, Mapco produces Jet-A kerosene with 0.09 percent sulfur. As the North Slope crude supplies dwindle over time, the sulfur content of that crude is expected to increase. Chevron imports Jet-A kerosene with 0.03 percent sulfur.

EPA previously concluded in Section IV.B. of this proposed rule that requiring low-sulfur highway diesel fuel in Alaska is not expected to have a significant impact on ambient PM_{10} or CO levels in Alaska, or Alaska's prospects for attainment with the national ambient air quality standards. Since Jet-A kerosene has a sulfur content requirement that is less stringent than that of motor vehicle diesel fuel, requiring Jet-A kerosene in Alaska would also have little or no impact on Alaska meeting the national ambient air quality standards.

Another disadvantage to this alternative is the potential for higher costs of fuel for heating and power generation in areas not served by jet traffic. EPA believes that jet fuel generally costs more than regular diesel fuel.[11] Except when used during the winter for general distillate fuel uses, Jet-A kerosene may be segregated from regular diesel fuel in some areas served by jet traffic because of the unique requirements for jet fuel and its higher cost.

However, in areas not served by jet traffic, EPA assumes that the higher cost Jet-A kerosene is not typically used, except possibly during the winter season as an arctic-grade distillate. This alternative of requiring Jet-A kerosene for motor vehicles would result in either the higher cost of segregated shipping, storage and distribution, which would be passed on to the consumers of the Jet-A kerosene for use in motor vehicles, or the higher cost of the Jet-A kerosene for unsegregated shipping and storage, which would be passed on to consumers of the fuel for all distillate uses, including heating and power generation. As previously addressed, the increased cost of segregated shipping, storage and distribution varies widely depending on the specific location within the state. Based on some estimates by the Alaska Department of Environmental Conservation, the costs of segregated shipping, storage and distribution for non-road use could be significant.

For all of the above reasons, EPA rejects the alternative of requiring Jet-A kerosene year-round.

E. Local Environmental Effects

In a letter to the Alaska Department of Environmental Conservation of July 20, 1995, the Alaska Clean Air Coalition stated that Anchorage has a significant problem with a wintertime ''brown cloud'' when snow covers the ground, although it indicated that it hadn't yet studied the components of that ''brown cloud.'' It also pointed out that the proportion of total particulates that are caused by diesel engines are expected to rise over the next 20 years as other sources of pollution decline, and that diesel particulate emissions from motor vehicle engines increase to twice the federal standard for motor vehicle engines if high-sulfur fuel is used with engines that are equipped with catalytic converters.

The Alaska Clean Air Coalition indicates it is concerned not only with the local health impacts of PM_{10}, but also that of $PM_{2.5}$, at levels below the national air quality standards. It

[10] The summer season in Alaska is approximately three to four months duration. Since motor vehicle use of distillate is less than five percent, only one to two percent of the distillate would then be used for motor vehicles during the summer season.

[11] EPA looked at the weeks of August 1 thru August 29, 1997 of ''The Oil Daily'' and calculated the difference between the average price of low-sulfur diesel fuel and the average price of Jet fuel. For this time period, jet fuel cost more than low-sulfur diesel fuel by 2.55, 2.78, and 2.00 cents per gallon for the Gulf Coast, New York, and Los Angeles areas, respectively.

submitted a copy of a 1996 study [12] showing correlation between respiratory health effects in Anchorage and CO and PM_{10} at ambient levels below the national ambient air quality standards. This study showed that winter concentrations of CO were significantly associated with bronchitis and upper respiratory illness, and with automobile exhaust emissions. In a March 11, 1997 letter to EPA, the Alaska Clean Air Coalition references the above study and indicated that ''local officials'' have found a highly significant correlation between CO and $PM_{2.5}$, but no significant relationship between PM_{10} and $PM_{2.5}$. Besides the health problems associated with PM_{10}, which in Anchorage typically comes from reentrained road materials, ''healthy'' Anchorage workers and their families have more bronchitis and upper respiratory infection during carbon monoxide ''episodes'', which are linked to vehicle exhaust during the winter.

In a June 19, 1996 letter to the EPA, the Alaska Clean Air Coalition stated that it believes some neighborhoods have much higher diesel exposure than the existing emissions inventory indicates. Attached to this letter were April 25, 1994 and August 11, 1995 letters to the Alaska Department of Environmental Conservation, and a written version of an oral testimony at the Anchorage School District Budget Hearing Meeting of January 19, 1995, in which the University Area Community Council of Anchorage stated that it had received complaints about diesel fumes. Residents near a transportation facility, at which diesel buses are started early in the mornings and warmed up for lengthy periods of time, complained of diesel fumes entering their homes prior to 6:00 am during clear, cold temperature inversion days.

EPA has concluded that low-sulfur diesel fuel would not significantly mitigate localized impacts in Alaska, and therefore, has determined that the issue of localized impacts does not form a basis for denying Alaska's Petition for exemption. Considering localized impacts on the scale of a town or city, EPA already concluded in Section IV.B. of this Proposed rule that the sulfur content of diesel fuel is not expected to have a significant impact on ambient PM_{10} or CO levels in Alaska, or Alaska's prospects for attainment with the national ambient air quality standards for PM_{10} or CO. This is because of the minimal contribution by motor vehicles, and likely insignificant contribution of petroleum fuel combustion by non-motor vehicle sources, to PM_{10} in areas with PM_{10} attainment problems, and the insignificant effect of diesel fuel sulfur content on CO emissions.

Considering localized impacts on the micro-scale level of one intersection or several blocks, EPA believes there could be some impacts, such as the example presented by the Alaska Clean Air Coalition. While EPA believes that such impacts might range from minimal to significant in these micro scale areas, EPA also believes that requiring low-sulfur diesel will not effectively mitigate the exposure risk to the elevated ambient levels of diesel exhaust in these areas.

Even if EPA decided to require low-sulfur diesel fuel for motor vehicles (that is, to deny Alaska's Petition for Exemption), any existing micro-scale hot spot and its associated total health impact would substantially be unaffected. While the localized ambient PM_{10} and $PM_{2.5}$ levels might be mitigated to some extent by the use of low-sulfur diesel fuel, the remaining levels of localized ambient PM_{10} and $PM_{2.5}$ would still be a health concern. Further, the localized ambient levels of CO and other toxics would not be mitigated by the use of low-sulfur diesel fuel. Alternatively, reducing the amount of total diesel exhaust in these micro-scale areas would significantly reduce the total health impact.

Localized hot spots typically result from high rates of emissions concentrated in a small area, such as emissions from a large number of vehicles in one intersection or parking area, over a time frame that is short enough to not allow for effective dispersal of those emissions under the prevailing meteorological conditions. This underlying problem can be most effectively addressed by reducing the number of vehicles (or number of vehicles running) in the localized area, or by reducing the amount of time the vehicles spend (or the time the vehicles spend running) in the localized area. Such mitigation measures might include traffic control measures to limit, or bans to eliminate, vehicle traffic in those areas, or restrictions on engine idling while parked.

Such measures are most effectively addressed at the local level by the communities, businesses and local and state governments. In the example provided by the Alaska Clean Air Coalition, the October 13, 1997 letter to EPA from the Alaska Department of Environmental Conservation indicates that the Municipality of Anchorage is working on addressing this issue.

It has located monitors in the vicinity and it is working with local agencies to explore options to help alleviate or resolve the problem. In addition, some changes were made to the ventilation system of the building that had the greatest number of complaints.

F. Year 2004 and Later Engines

On October 21, 1997 (62 FR 54693), EPA promulgated new combined emission standards for HC and NO_X for 2004 and later heavy-duty diesel motor vehicle engines. These standards are more stringent than the 1998 to 2003 individual emissions standards for HC and NO_X, and are expected to achieve a 50 percent reduction in NO_X emissions. A secondary effect of these standards may be a decrease in particulate emission levels. As with engines currently marketed, the engine manufacturers are expected to design their future engines and emission control systems considering the diesel fuel sulfur content requirement that became effective in 1993 (no greater than 0.05 percent sulfur by weight). However, EPA subsequently permanently exempted that requirement in Alaska for areas not served by the Federal Aid Highway System (FAHS), and temporarily exempted that requirement for areas served by the FAHS until October 1, 1998; thus, old and current technology engines have been, and are now, operating in Alaska using higher sulfur diesel fuel. New technology (low NO_X) engines will be operated using higher sulfur diesel fuel in the areas not served by the FAHS, because of the existing permanent exemption. If EPA now grants Alaska a permanent exemption from the diesel fuel low-sulfur requirement in the areas served by the FAHS, the new technology (low NO_X) engines in Alaska would be operated on diesel fuel with a higher sulfur content throughout the state. One engine manufacturer cited three concerns if this situation were to occur.

The first concern of operating the new technology (low NO_X) engines using high-sulfur fuel is the same concern as operating current technology engines on high-sulfur fuel: condensation of sulfuric acids on the cylinder walls of the engine, thereby causing increased piston ring and cylinder liner wear. This increased wear would require more frequent replacement of the piston rings and cylinder liners, and more frequent oil change intervals. If the piston rings and cylinder liners are not replaced often enough, the sulfuric acids could migrate past the piston rings into the crankcase. This would cause increased wear of other critical engine

[12] ''Particulate Air Pollution and Respiratory Disease in Anchorage, Alaska'', Gordian, Ozkaynak, Sue, Morris, and Spengler, Environmental Health Perspectives, vol. 104, number 3, March 1996.

components, such as the main bearings. This situation would require more frequent major engine overhauls.

The second concern of operating new technology (low NO_X) engines using high-sulfur diesel fuel is its impact on exhaust gas recirculation (EGR) systems. EGR systems are likely to be extensively used on the engines designed to meet the 2004 and later NO_X requirement. Without EGR, sulfur in the exhaust is not a significant problem because the temperature of the exhaust system is typically high enough to prevent condensation of the sulfuric acids. However, if some of the exhaust is directed back into the engine intake, which is the strategy of EGR systems, condensation of the sulfuric acids could occur on the walls of the EGR components and the air intake system. It may be possible to prevent sulfuric acid damage to the EGR system through the use of exotic materials in the EGR components, which can withstand the sulfuric acids. Alternatively, increased maintenance could mitigate the impact of the sulfuric acids by periodically replacing the components of the EGR and air intake system most susceptible to acid damage.

The third concern of operating new (low NO_X) technology engines using high-sulfur fuel is its impact on exhaust after-treatment emission control devices, such as catalytic converters. Sulfur in fuel can render the catalyst ineffective, allowing exhaust pollutants to pass through the catalyst.

Catalytic converters may be used for NO_X control on some engines designed to meet the 2004 and later emission standards, although such catalysts have not yet been perfected for use on heavy-duty diesel engines. If they are perfected and used, and if EPA grants Alaska an exemption to the low-sulfur diesel fuel requirement, they would likely be rendered ineffective on those engines operated in Alaska using high-sulfur diesel fuel. This would impact the NO_X and particulate emission levels produced by those engines in Alaska, but would not likely affect the operation or durability of those engines. Increased NO_X emissions are not an issue in Alaska, since Alaska has no areas in non-attainment with the NAAQS for ozone. While Alaska does have two designated non-attainment areas for PM_{10}, diesel-fueled motor vehicles contribute less than one percent to the PM_{10} emissions in those areas.

In conclusion, while using higher-sulfur diesel fuel in new technology (low-NO_X) diesel engines may increase certain maintenance costs for owners and operators of those engines, depending on the engine-specific technology and materials used, EPA believes that those potential costs would be mitigated to some extent by the lower cost of the higher-sulfur diesel fuel and would be much less than the total potential costs of requiring low-sulfur diesel fuel in Alaska. Further, EPA believes that the potential air quality benefits that would be forgone by allowing the use of higher-sulfur diesel fuel in new technology (low NO_X) engines are insignificant in Alaska. Therefore, based on the concerns about operating new technology (low NO_X) engines on higher sulfur diesel fuel, EPA concludes that granting Alaska's petition is appropriate under section 325.

G. Manufacturers Emissions Warranty and Recall Liability

The Engine Manufacturers Association (EMA) submitted comments on April 10, 1996, to the docket for previous **Federal Register** Notices related to Alaska's Petition for Exemption (this Proposed rule uses that same docket), and to EPA concerning warranty and recall liability. The EMA stated that 1994 and later heavy-duty diesel engines that are designed to meet the 1994 emissions standards with the use of low-sulfur diesel fuel, and which are operated on high sulfur diesel fuel, will not comply with those 1994 emission standards. Consequently, if EPA grants Alaska an exemption from meeting the sulfur requirement for highway diesel fuel, EPA should also include a corresponding exemption for heavy-duty diesel engine manufacturers and the users of the vehicles in which these engines are placed. The heavy-duty diesel engine manufacturers should be exempted from any liability for ensuring that their 1994 and later model year product lines meet the 1994 and later model year emission standards for engines sold and used in Alaska. They should also be exempted from the warranty requirements of secton 207 of the Clean Air Act, and from liability (including fines and recalls) for any engine affected by the fuel exemption. Users of vehicles in which 1994 and later model year heavy-duty engines are placed should be exempted from tampering liability in the exempted territory. Finally, the exemption should allow either the continued use of 1991 type heavy-duty diesel engine technology or the use of 1994 type heavy-duty diesel engines with the after-treatment device removed.

In support of its position, the EMA offered the following explanation. In promulgating the 1994 and later heavy duty engine emission standards, EPA recognized that, for several reasons, a reduction in diesel fuel sulfur content was required by the engine manufacturers in order to enable their engines to meet the 1994 0.10 g/bhp-hr particulate emission standard. First, fuel sulfur contributes to diesel engine emissions. Approximately two percent of the sulfur in the fuel is directly emitted as sulfate particulates, which cannot be controlled by engine modifications since the combustion process does not remove any sulfur or change its form into a non-particulate substance. Second, catalyzed after-treatment devices are much more effective in the removal of the soluble organic fraction of particulates than non-catalyzed devices. However, some catalysts react with the SO_2 in the exhaust and form additional sulfates, such that total particulates have been found to be higher with an oxidation catalyst or a catalyzed trap than without such after-treatment device when high-sulfur diesel fuel is used. Third, prolonged use of high-sulfur diesel fuel in vehicles equipped with oxidation catalysts will render the catalytic device inoperative, and thus impair the emissions control equipment. There is also a concern that using a high sulfur content fuel over a long period of time may have a tendency to cause plugging of ceramic monolith-type filters, which could lead to more serious engine malfunction and warranty claims.

On October 9, 1996, EPA received a similar comment on behalf of the EMA. In this comment, the EMA concerns are reiterated, and EPA is urged to provide a corresponding exemption to the Alaska exemption for catalyzed engines that would allow the owners to remove the catalysts, allow the manufacturers to sell the engines without the catalyst installed, and limit the manufacturer's obligation to warrant the emissions performance of such engines. The comment states that vehicle owners are already experiencing engine failures directly resulting from catalyst plugging, and this problem will be worse in cold weather. The comment also argues that in areas where high sulfur diesel fuel is permitted, the owners of catalyzed engines are not achieving the particulate matter reductions for which their engines are designed, and it makes no sense for EPA to require the costly emission technology that actually has an adverse environmental impact.

In its August 5, 1997 submittal to EPA, the Alaska Department of Environmental Conservation noted that it had recent discussions with industry. Those discussions indicated that some vehicles have been experiencing problems at extreme cold temperatures on the North Slope, but industry

attributes these problems to temperature and not the sulfur content of the fuel.

Information collected by EPA from several heavy-duty engine manufacturers demonstrates that catalyst plugging is mainly a cold temperature problem and not a high-sulfur fuel issue. For example, Cummins Engine Company attests that plugging is more a function of cold temperature operation than it is of fuel sulfur levels. Additionally, data from other heavy-duty engine manufacturers further supports this statement. The EPA is also aware that the majority of the plugged catalyst problems have been eliminated. A letter to EPA of September 19, 1997, on behalf of the EMA, indicated that the immediate problems that led to EMA's request for possible enforcement discretion regarding the removal of catalytic converters because of the plugging problem have been resolved. However, EMA and its members continue to ''have concerns regarding the use of high-sulfur fuel.''

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, or that limits a manufacturer's obligation to warrant the emissions performance of an engine.

H. New National Ambient Air Quality Standards

EPA has recently promulgated more stringent national ambient air quality standards (NAAQS) for ozone and particulate matter. However, EPA has not yet published guidance for implementation of those standards, and EPA does not have the air quality monitoring data for Alaska by which to base its likely attainment status, especially for $PM_{2.5}$. Consequently, it is not possible for EPA to address the impact of today's proposed rule on the ability of Alaska to attain the new NAAQS. EPA is therefore setting aside the issue of attainment with the new NAAQS in today's rule. EPA reserves the right to revisit this issue in the future, after public notice and comment, if the exemption is no longer appropriate under section 325 based on consideration of the factors relevant under that section.

I. Status of Certain Marine Highway Communities

In granting both a permanent and a temporary exemption in its March 22, 1994 Notice, EPA distinguished between those areas served by the Federal Aid Highway System and those not served by the Federal Aid Highway System. Areas not served by the Federal Aid Highway System were deemed to be remote areas and qualified for the permanent exemption. Areas served by the Federal Aid Highway System, including the Marine Highway System, were qualified only for the temporary exemption. In letters of February 9, 1995 and April 12, 1995, the Alaska Department of Environmental Conservation requested that EPA consider certain communities served by the Marine Highway System, and one served only by a barge line, on the Alaska Peninsula, Kodiak Island and the Aleutian Islands to be remote communities and subject to the permanent exemption. It indicated that these communities have few vehicles (all but three have an average daily traffic of 499 vehicles or less) and highway diesel fuel sales amount to only a small fraction of total diesel fuel sales (e.g., only about one percent or less). EPA decided to not address this issue in today's proposed rule because today's proposed rule to effectively grant a statewide permanent exemption makes this issue moot. However, if EPA reconsiders or withdraws its decision to grant a permanent exemption for areas served by the Federal Aid Highway System, this issue may need to be addressed at that time.

VI. Decision for Permanent Exemption

In this notice, the Agency is proposing to grant a permanent exemption 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 proposing to grant a permanent exemption from those provisions of section 211(g)(2)[13] 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 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.

Today's proposed rule would exempt diesel fuel in Alaska from the sulfur requirement. Therefore, as long as the diesel fuel in Alaska has a minimum cetane index of 40, dyeing diesel fuel to be used in nonroad applications will be unnecessary in Alaska. However, in the event high-sulfur diesel fuel is shipped from Alaska to the lower-48 states, it would be necessary for the 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 substantiates 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 this 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

[13] 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 section 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

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.

The basis for today's proposed rule is that compliance with the motor vehicle sulfur requirement in Alaska for areas served by the Federal Aid Highway System is unreasonable because it would create an economic burden for refiners, distributors and consumers of diesel fuel. This economic burden is created by unique meteorological conditions in Alaska and a set of unique distillate product demands in the state. As a result of these conditions, it is reasonable to not mandate that low-sulfur motor vehicle diesel fuel be available for use in Alaska for areas served by the Federal Aid Highway System.

In the August 19, 1996 Notice of Final Decision (61 FR 42812), the EPA believed that a 24-month continuation of the temporary exemption for areas served by the Federal Aid Highway System from the diesel fuel sulfur content requirement was reasonable and appropriate so that the Agency could consider recent comments on the state's petition. A permanent exemption was not appropriate at that time because EPA had not yet verified all relevant information and comments submitted by other interested parties.

Alaska's December 12, 1995 petition included a compilation of information provided by a Task Force (in which an EPA representative participated) that was established after the February 12, 1993 petition to further evaluate the conditions as described in that earlier petition. These conditions included: the availability of arctic-grade low-sulfur diesel fuel from out-of-state refiners, the costs associated with importing the fuel, and the costs of storing and distributing the fuel to areas on the highway system. The conditions and factors that were identified in the initial petition were expanded upon in the task force review. At that time the Agency believed there were several issues that merited further consideration prior to making a final decision to act on the state's request for a permanent exemption. These issues included consideration of an alternative fuel standard or fuel, local environmental effects, manufacturers emissions warranty and recall liability, and the impact of EPA possibly tightening motor vehicle emission standards for model year 2004 and later heavy-duty engines (which EPA subsequently promulgated in 1997).

The comments and other issues that are summarized in this notice were subsequently considered by the Agency, prior to issuing this proposed rule on the State's request for a permanent exemption.

VII. Public Participation

Following the August 27, 1993 publication of EPA's proposed decision to grant the first exemption from the low-sulfur diesel fuel requirements requested by Alaska, there was a thirty day comment period, during which interested parties could request a hearing or submit comments on the proposal. The Agency received no request for a hearing. Comments were received both in support of the proposal to grant the exemption and expressing concerns over the impact of granting the exemption. These comments were considered in the Agency's decision to grant the initial temporary exemption. The Agency received Alaska's request for a permanent exemption for the Federal Aid Highway System areas in December of 1995. Since that time, 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 the comments that were submitted 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 is publishing this action as a proposed rule to allow interested parties an additional opportunity to request a hearing or to submit comments. The comment period will close May 28, 1998, unless the Agency receives a request to testify at a public hearing by May 12, 1998. If EPA receives a request to testify at a public hearing, the comment period will be extended until 30 days after the public hearing. Any adverse comments received by the close of the comment period will be addressed in a subsequent final rule that will be published in the **Federal Register**.

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 Designation and Regulatory Analysis

Under Executive Order 12866[14], 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.[15]

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

X. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Today's proposed action to make permanent 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

[14] 58 FR 51736 (October 4, 1993)

[15] *Id.* at section 3(f)(1)-(4).

entities, but instead is continuing an exemption from a requirement, which makes it less restrictive and less burdensome.

Therefore, the Administrator certifies that this proposed rule will not have a significant impact on a substantial number of small entities, and that a regulatory flexibility analysis is not necessary in connection with this proposed rule.

XI. 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.

XII. 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 proposed 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 proposed rule does not require a budgetary impact statement.

List of Subjects

40 CFR Part 69

Air pollution control, Alaska.

40 CFR Part 80

Environmental protection, Diesel fuel, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

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

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

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

Sec.
69.51 Exemptions.

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.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. 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)).

2. 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:

* * * * *

[FR Doc. 98–10710 Filed 4–27–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6005–1]

Operating Permits Program; Notice of Availability of Draft Rules; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for notice of availability of draft rules.

SUMMARY: On March 25, 1998, EPA published a notice in the **Federal Register** announcing opportunity for public review and comment on portions of the draft preamble and all but two sections of draft revisions to the operating permits regulations in 40 CFR part 70. (The remaining portions of the preamble and regulations will be made available at a later date.) The public review period for that notice ends April 24, 1998. This action extends the public review period for that notice until May 26, 1998.

DATES: Comments on the draft preamble and regulatory revisions must be received by May 26, 1998.

ADDRESSES: The draft preamble and regulatory revisions are available in EPA's Air Docket number A–93–50 as items VI–A–5 and VI–A–4, respectively. This docket is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket (6102), Attention: Docket Number A–93–50, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC, 20460. Requests for material may be made by telephone at 202–260–7548.

The drafts may also be downloaded from the Internet at: http://www.epa.gov/ttn/oarpg/t5pgm.html.

Comments on the materials referenced in today's notice must be mailed (in duplicate if possible) to: EPA Air Docket (6102), Attention: Docket No. A–93–50, at the above address. Please identify comments as concerning today's notice of availability of items VI–A–4 and VI–A–5.