failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to approve addition of ozone and fine particulate standards does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 5, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–20514 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R01–OAR–2005–CT–0003; A–1–FRL–7979–9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Redesignation of City of New Haven PM_{10} Nonattainment Area To Attainment and Approval of the Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes a Limited Maintenance Plan (LMP) for the New Haven PM_{10} nonattainment area (New Haven NAA) in the State of Connecticut and grants a request by the State to redesignate the New Haven NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). EPA is approving this redesignation and LMP because Connecticut has met the applicable requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 14, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0003 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Web site: http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: conroy.dave@epa.gov*

4. *Fax:* (617) 918–0661

5. *Mail:* ''RME ID Number R01–OAR–2005–CT–0003,'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. *Hand Delivery or Courier.* Deliver your comments to: David Conroy, Air Programs Branch Chief, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax number (617) 918–0684, e-mail *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving Connecticut's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: September 26, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–20417 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[OAR–2004–0229; FRL–7982–6]

RIN 2060–AJ72

Control of Air Pollution From Motor Vehicles and Nonroad Diesel Engines: Alternative Low-Sulfur Diesel Fuel Transition Program for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an implementation date of June 1, 2010 for the sulfur, cetane and aromatics requirements for highway, nonroad, locomotive and marine diesel fuel produced or imported for, distributed to, or used in the rural areas of Alaska. As of the implementation date, diesel fuel used in these applications would

have to meet a 15 ppm (maximum) sulfur content standard. This action would allow full implementation of the programs for highway and nonroad diesel fuels in Alaska while providing some limited additional leadtime for development of any necessary changes to the fuel distribution system in rural Alaska. This additional leadtime is appropriate given the circumstances of the rural areas, including the expected delay in time before use of new diesel engines requiring sulfur controlled diesel fuel. In 2010 highway and nonroad fuel in rural Alaska would be regulated according to the implementation schedule of fuel property standards applicable in the rest of the U.S., providing the full environmental benefits of these programs to rural Alaska as well. Locomotive and marine diesel fuel used in rural areas of Alaska would meet the 15ppm standard two years earlier than the rest of the U.S., so that all NRLM diesel fuel in rural areas of Alaska would meet the 15ppm standard in 2010. EPA is not proposing changes to or reopening the diesel fuel rules as they apply to the other areas of Alaska. We have not received any information that would warrant such action, and the State has not requested such action. This proposal is consistent with the State's request and comments on the NRLM rule.

DATES: Comments must be received on or before January 11, 2006. However, since we do not plan to hold a public hearing on this proposed rule, any requests for a public hearing must be received on or before November 14, 2005. Requests for a public hearing must be made to the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0229, by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Website: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2004–0229, Fax: 202–566–0805.

D. Mail: Attention Docket ID No. OAR–2004–0229, Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

E. Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OAR–2004–0229. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0229. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or *see* the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the HQ EPA Docket Center, Air Docket, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: David Korotney, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4507; fax number: (734) 214–4051; e-mail address: *korotney.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

You will be regulated by this action if you produce, import, distribute, or sell diesel fuel for use in the rural areas of Alaska. The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 80. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Examples of potentially regulated entities	NAICS codes [a]	SIC codes [b]
Petroleum Refiners	32411	2911
Petroleum Bulk Stations, Terminals,	42271	5171
Petroleum and Products Wholesalers	42272	5172
Diesel Fuel Trucking	48422	4212
	48423	4213
Diesel Service Stations	44711	5541
	44719	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is

claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

How Can I Get Copies of This Document and Other Related Information?

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2004–0229. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

Outline of This Preamble

I. Background

A. How Was Alaska Treated in the Highway Diesel Rule?

The nationwide implementation dates (including all of Alaska) for highway diesel fuel at 40 CFR 80.500 *et seq.* (66 FR 5002, January 18, 2001) are shown in Table I.A–1.

TABLE IA–1.—FEDERAL IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD

Date	Applicable parties
June 1, 2006	Refiners and importers.
July 15, 2006	Downstream facilities except retailers and wholesale- purchaser consumers.
September 1, 2006	Retailers and wholesale-purchaser consumers.

These implementation dates begin the transition of the nation to ultra-low sulfur (15 ppm sulfur, maximum) highway diesel fuel from the current low sulfur (500 ppm sulfur, maximum) diesel fuel.[1] Until 2010, at least 80 percent of each refiner's production (or imports) must meet the 15 ppm sulfur standard, with the remaining 20 percent or less meeting the 500 ppm sulfur standard-that is, the 80/20 Temporary Compliance Option. Exceptions are made for EPA-approved small refiners, which may produce all their highway fuel to the 500 ppm sulfur standard until later years, and refiners and importers that obtain early use credits, which would allow them to produce or import more than 20 percent of their diesel fuel to the 500 ppm sulfur standard until 2010. However, because of the sensitivity of the 2007 and later model year highway engines and emission control systems to fuel with high sulfur content, those engines may not be fueled with diesel fuel having a sulfur content of greater than 15 ppm. This requires that all 500 ppm sulfur highway diesel fuel (*i.e.*, from the 80/20 Temporary Compliance Option, credit-trading, or by EPA-approved small refiners) be segregated from the 15 ppm sulfur highway diesel fuel and labeled for use, and dispensed, only in 2006 and earlier highway vehicles and engines.

Since the beginning of the 500 ppm highway diesel fuel program in 1993, we have granted Alaska exemptions from both the 500 ppm highway diesel fuel sulfur standard and the nonhighway dye provisions of 40 CFR 80.29 because of its unique geographical, meteorological, air quality, and economic factors.[2] We granted temporary exemptions for areas of the State served by the Federal Aid Highway System (the urban areas), and a permanent exemption for the remaining areas (the rural areas).

On December 12, 1995, Alaska submitted a petition for a permanent exemption for all areas of the State served by the Federal Aid Highway System, that is, those areas previously covered only by a temporary exemption. While considering that petition, we started work on a nationwide rule to consider more stringent highway diesel fuel requirements for sulfur content. In our subsequent highway diesel final rule (66 FR 5002, January 18, 2001) the highway engine emission standards were applied fully in Alaska, and the permanent exemption for rural Alaska from the 500 ppm sulfur standard of 40 CFR 80.29 terminates upon the implementation date of the new 15 ppm sulfur standard in 2006. However, based on factors unique to Alaska, we provided the State with: (1) an extension of the temporary exemption from the 500 ppm sulfur standard in the urban areas until the implementation date of the new 15 ppm sulfur standard for highway diesel fuel in 2006, (2) an opportunity to request an alternative implementation plan for the 15 ppm sulfur diesel fuel program, and (3) a permanent exemption from the diesel fuel dye provisions. In that rule, our goal was to establish a mechanism whereby modifications could be made, as appropriate, for transitioning Alaska to the ultra-low sulfur (15 ppm sulfur maximum) highway diesel fuel program in a manner that minimizes costs while still ensuring that model year 2007 and later highway vehicles and engines receive the 15 ppm sulfur diesel fuel they need.

B. How Was Alaska Treated in the NRLM Diesel Rule?

The nationwide implementation date for nonroad, locomotive, and marine (NRLM) diesel fuel at 40 CFR 80.500 *et seq.* (69 FR 38958, June 29, 2004) is June 1, 2007 for refiners and importers. This implementation date begins the first step of a two-step program of transitioning the nation to 15 ppm sulfur NRLM diesel fuel from uncontrolled non-highway diesel fuel. In this first step beginning in 2007, all NRLM diesel fuel produced or imported must meet the 500 ppm sulfur standard and applicable cetane or aromatic standard. Facilities downstream of the refiners and importers must meet the 500ppm standard on other dates depending on their location and type of facility, as shown below:

TABLE I.B–1.—FEDERAL IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 500 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2007	June 1, 2007	Refiners and importers.

[1] Alaska was granted an exemption from the 500 ppm standard until June 1, 2006.

[2] Under Section 211(i)(4) of the Clean Air Act, the States of Alaska and Hawaii may be exempted from the 500 ppm sulfur content standard (and cetane, automatics and dye requirements) of Section 211(i). Copies of information regarding Alaska's petition for exemption under Section 211(i)(4), subsequent requests by Alaska, public comments received, and actions by EPA are available in public docket A–96–26.

TABLE I.B–1.—FEDERAL IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 500 PPM STANDARD—Continued

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
August 1, 2007	August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2007	October 1, 2010	Retailers and wholesale- purchaser consumers.
December 1, 2007	December 1, 2010	All facilities including farm tanks and construction facility tanks.

For most of the U.S. until June 1, 2010, NRLM diesel fuel with uncontrolled sulfur content (and uncontrolled aromatics content and cetane index) can be produced by EPA-approved small refiners/importers and refiners/importers using early use credits. Until 2010 there is no restriction in the use of this NRLM diesel fuel having uncontrolled sulfur levels in NRLM engines. However, under the regulations applying to the nation as a whole, other diesel fuel with uncontrolled sulfur levels (*i.e.*, all fuel meeting the definition of heating oil) must be segregated from the NRLM diesel fuel, dyed with a yellow marker and red dye, and is prohibited from being used in NRLM engines and equipment.

The NRLM rule requires that heating oil be segregated and marked with a yellow marker and red dye to distinguish it from small refiner or credit-using high sulfur NRLM diesel fuel (40 CFR 80.510). However, the NRLM rule determined that a dye requirement would impose a significant challenge to Alaska's unique distribution system. That State's distribution system cannot easily handle another fuel type that must be segregated, and the same transfer and storage facilities must accommodate jet fuel that must not be contaminated by dye. Therefore the rule exempted Alaska from the dye and marker requirements, but in exchange precluded the use of credits and constrained the flexibility granted to small refiners.[3]

Step two of the nationwide NRLM diesel fuel program implements the 15 ppm sulfur standard for nonroad diesel fuel beginning on June 1, 2010 for refiners and importers. Locomotive and marine diesel fuel produced or imported continues to be subject to the 500 ppm sulfur standard until June 1, 2012. The downstream implementation dates for this second step are shown in Tables I.B–2 and I.B–3.

TABLE I.B–2.—FEDERAL IMPLEMENTATION DATES FOR NR DIESEL FUEL 15 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2010	June 1, 2010	Refiners and importers.
August 1, 2010	August 1, 2014	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	October 1, 2014	Retailers and wholesale-purchaser consumers.
December 1, 2010	December 1, 2014	All facilities including farm tanks and construction facility tanks.

TABLE I.B–3.—FEDERAL IMPLEMENTATION DATES FOR LM DIESEL FUEL 15 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2012	June 1, 2012	Refiners and importers.
August 1, 2012	n/a	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2012	n/a	Retailers and wholesale- purchaser consumers.
December 1, 2012	n/a	All facilities including farm tanks and construction facility tanks.

EPA-approved small refiners/importers and refiners/importers using early use credits may produce or import nonroad diesel fuel that meets the 500 ppm sulfur standard until June 1, 2014. However, the early-use credit provisions do not apply to Alaska. In addition, because of the sensitivity to fuel sulfur content of the 2011 and later model year nonroad engines and emission control systems that will be certified to the Tier 4 emission standards, those engines are prohibited from being fueled with diesel fuel having a sulfur content greater than 15 ppm.

Alaska submitted its suggested modification to the Agency for highway diesel fuel in rural Alaska on June 12, 2003, after publication of our NRLM proposal but before we had completed development of the final NRLM rule. This Alaska submission covered only highway diesel used in rural areas. Urban areas of Alaska were addressed in a previous submission[4] for highway fuel and in Alaska's comments on the NRLM proposed rule, and in both cases the State of Alaska requested that urban areas adhere to the federal fuel sulfur standards and implementation schedule. The provisions for NRLM diesel fuel in urban Alaska were finalized in the NRLM final rule, and they require that NRLM in urban areas meet the same requirements as the contiguous 48 states.

The NRLM final rule stated that our original proposal to permanently exempt all NRLM diesel fuel in rural Alaska from the sulfur content standards was inconsistent with the

[3] For the small refiner flexibilities to be used in Alaska a refiner must first obtain approval from the Administrator for a compliance plan (40 CFR 80.554(a)(4)).

[4] Letter from Michele Brown, Commissioner, Alaska Department of Environmental Conservation, to Jeffrey R. Holmstead, Assistant Administrator of the EPA's Office of Air and Radiation, April 1, 2002.

action requested by the state. Under normal circumstances this would have meant that the NRLM final rule would have included imposition of the sulfur content standards on all NRLM diesel fuel in rural Alaska, along with all the associated labeling, recordkeeping, and reporting requirements. However, we deferred this action until now to coordinate the NRLM and highway sulfur standards. Thus, the NRLM final rule indicated that we would issue a supplemental proposal (*i.e.*, today's proposal) to address the comments submitted by the State for NRLM diesel fuel in the rural areas, as well as the State's suggestion of an alternative implementation plan for highway diesel fuel in the rural areas. However, the NRLM final rule did require that 2011 model year and later nonroad engines in rural areas, which will be manufactured to operate on 15 ppm sulfur diesel fuel, must be fueled with 15 ppm diesel fuel (40 CFR 69.51(f)).

C. Alaska's Highway Submission and Comments to NRLM Proposal

On June 12, 2003, Alaska submitted its suggested modifications to implementation of the highway diesel fuel sulfur standards in Alaska. In its plan, the State indicated that the rural areas do not need the 15 ppm sulfur diesel fuel in the early stage of the highway diesel program. (The rural areas are those areas not served by the Federal Aid Highway System—which includes the marine highway system—as defined by the State of Alaska.) The rural areas could use more time to plan the switch to 15 ppm sulfur diesel fuel, and would be less impacted if we implemented a one-step transition to 15 ppm sulfur rather than a two-step transition which would have required a minimum of 80% of each refinery's highway diesel to meet the 15 ppm standard in 2006, with the remainder meeting the 500 ppm standard. The State requested that the rural areas be exempt from the nationwide program from 2006 to 2010, and join the nationwide program in 2010 when all highway diesel fuel must meet the 15 ppm standard. Thus, the rural areas would switch from uncontrolled to 15 ppm sulfur for all highway diesel fuel in 2010 along with the rest of the nation. However, since all 2007 and later model year highway diesel vehicles will need 15 ppm sulfur diesel fuel, fuel meeting this standard would have to be made available in rural communities that obtain one or more 2007 or later model year highway vehicle prior to 2010. This approach would provide rural Alaska more time to transition to the low sulfur fuel program in a manner that minimizes costs while still ensuring that the 2007 and later model year highway vehicles receive the low sulfur diesel fuel they need.

On September 15, 2003, Alaska submitted its comments to the May 23, 2003 NRLM proposal. In those comments, Alaska asked us to bring the NRLM diesel fuel requirements for Alaska in line with the State's recommendations for highway diesel fuel, as described above. The State indicated the importance of avoiding segregation of rural Alaska's fuel stream. Since the State previously requested June 2010 to be the deadline for conversion of highway diesel fuel in the rural areas, it requested June 2010 to also be the deadline for conversion of all NRLM diesel fuel in the rural areas. This request included an acceleration of the 15 ppm standard applicable to locomotive and marine diesel fuel produced in or imported to rural Alaska from the June 2012 date in the final NRLM rule to June 2010.

Although it is outside the scope of today's proposal, Alaska also commented that in the NRLM final rule we should capture marine engines, locomotive engines, and more engine sizes under the 15 ppm sulfur standard, and that we should allow the State to continue to use dye-free diesel fuel. Alaska also requested our financial and technical assistance to perform a health study of diesel exhaust exposure in rural Alaska because of concern about exposure to diesel exhaust from village electric power generators.[5]

II. What Is EPA Proposing?

A. Highway Diesel Fuel

We are proposing today to delay the implementation dates for the requirements of 40 CFR 80.500 *et seq.* for highway diesel fuel produced or imported for, distributed to, or used in the rural areas of Alaska. We are proposing that the rural areas of Alaska would join the rest of Alaska and the nation in implementing the 15 ppm sulfur content standard for highway diesel fuel upon the implementation dates of the nationwide program in 2010.[6] The proposed implementation dates for our highway diesel fuel requirements in the rural areas of Alaska are shown in table II.A–1.

TABLE II.A–1.—PROPOSED IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD IN RURAL ALASKA

Date	Applicable parties
June 1, 2010	Refiners and importers.
August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2010	All facilities including farm tanks and construction facility tanks.

The dates shown in Table II.A–1 are slightly different than the downstream dates that mark the end of the Temporary Compliance Option applicable to the nation as a whole. We are proposing the above dates for highway diesel fuel because they would be more consistent with the downstream implementation dates associated with NRLM, as described in Section II.B below.

Prior to the dates shown in Table II.A–1, rural areas of Alaska would continue to be exempt from the sulfur standards. However, because of the sensitivity of the 2007 and later model year highway engines and emission control systems to fuel sulfur content, we would still require that diesel fuel used in those vehicles and engines meet the 15 ppm sulfur content standard. This is the same refueling requirement that applies in the 2006–2010 timeframe

[5] In the June 29, 2004 NRLM final rule, we applied the 15 ppm sulfur content standard to locomotive and marine diesel fuel, but not until June 1, 2012, and we exempted Alaska from the dye and marker requirements.

[6] Canada also requires 15 ppm sulfur highway diesel fuel beginning June 1, 2006, and in October 2004 proposed that its NRLM diesel fuel meet a 500 ppm limit beginning June 1, 2007, its nonroad diesel fuel meet the 15 ppm sulfur limit beginning June 1, 2010, and that its locomotive and marine diesel fuel meet the 15 ppm sulfur limit beginning June 1, 2012. If finalized as proposed, the sulfur requirements for highway and NRLM diesel fuel in Canada would be harmonized with those of the U.S., and today's proposal would have rural Alaska catch up to the requirements in both the U.S. and Canada on June 1, 2010.

for urban areas of Alaska and in all areas of the rest of the nation.

To fully implement this transition program for rural Alaska, we are proposing to extend the current exemption from the 500 ppm sulfur standard of 40 CFR 80.29 until the proposed implementation dates in 2010. In the absence of this proposed extension, highway diesel fuel in the rural areas of Alaska would be required to meet the 500 ppm sulfur standard of 40 CFR 80.29 beginning in 2006, when the current exemption expires, regardless of the proposed exclusion under 40 CFR 80.500 *et al.* Under today's proposal, highway diesel fuel in rural Alaska could remain at uncontrolled sulfur levels until the proposed implementation dates in 2010.

We are not proposing changes to the implementation schedule of the highway diesel fuel requirements as they apply to the urban areas of Alaska, and are not reopening the provisions of the highway requirements previously adopted for urban areas. We have not received any information that would warrant such reopening, and the State did not request such a change and indicated the urban areas should be subject to the national implementation schedule for highway diesel fuel. We agree with the State's reasoning that urban areas of Alaska may not only have a large number of 2007+ model year highway vehicles in the 2006–2010 timeframe, but also that urban areas have the means for distributing, storing, and segregating highway diesel fuel meeting with 15 ppm sulfur standard.

B. Nonroad, Locomotive and Marine Diesel Fuel

In the nonroad, locomotive and marine (NRLM) diesel final rule, we covered urban Alaska along with the rest of the nation, but held off on finalizing any provisions for rural Alaska so they could be aligned with the provisions for the highway diesel program in rural Alaska. We are proposing today that NRLM diesel fuel produced or imported for, distributed to, or used in the rural areas of Alaska be subject to the requirements of 40 CFR 80.500 *et seq.*, but not until 2010. Thus, during the first step of the nationwide program from June 1, 2007 until June 1, 2010, NRLM diesel fuel in rural Alaska could remain at uncontrolled sulfur levels. Beginning June 1, 2010, nonroad diesel fuel in rural Alaska would join the rest of Alaska and the nation in implementing the nonroad diesel fuel requirements of 40 CFR 80.500 *et seq.* However, due to the unique circumstances in rural Alaska which limit the number of grades of diesel fuel that can be stored and distributed, we propose that the 15 ppm standard applicable to locomotive and marine fuel (LM) be moved forward to 2010 to be consistent with the implementation schedule for nonroad (NR) diesel fuel. In this way, there will only be a single grade of NRLM diesel fuel in rural areas in 2010 and 2011 instead of the two separate grades (*i.e.* 15 ppm and 500 ppm) that will exist elsewhere in the U.S. The proposed initial implementation dates for NRLM diesel fuel sulfur standards are shown in Table II.B–1. We request comment on the delay of the NR requirements until 2010, and also the acceleration of the LM 15 ppm sulfur standard to 2010 instead of 2012.

TABLE II.B–1.—PROPOSED IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 15 PPM STANDARD IN RURAL ALASKA

Date	Applicable parties
June 1, 2010	Refiners and importers.
August 1, 2010	Downstream facilities except retailers and wholesale- purchaser consumers.
October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2010	All facilities including farm tanks and construction facility tanks.

Since the urban areas of Alaska would follow the nationwide schedule for sulfur standards, some LM fuel meeting only the 500 ppm standard would be available in these areas in the 2010–2012 timeframe when nonroad engines requiring 15 ppm fuel will be available. Due to the potential for misfueling, 2011+ nonroad engines are prohibited from using LM fuel meeting only the 500 ppm sulfur standard. Also, heating oil will remain uncontrolled for sulfur content in all areas of Alaska, and would not be permitted to be used in any 2007 or later model year highway vehicles or engines, or in any 2011 model year nonroad engines or equipment. Finally, in order to coordinate with engine and fuel requirements being proposed for stationary internal combustion engines, 2011+ stationary engines will also be prohibited from using fuel above the 15 ppm sulfur standard. All diesel fuel used in engines covered by the stationary internal combustion engine standards will also be subject to the requirements of 40 CFR 80.500 *et seq.* following the implementation schedule applicable to NRLM fuel.

We are not proposing changes to the implementation schedule of the NRLM diesel fuel requirements as they apply to the urban areas of Alaska, and are not reopening the provisions of the NRLM requirements previously adopted for urban areas. We have not received any information that would warrant such reopening, and the State did not request such a change and indicated the urban areas should be subject to the national diesel fuel implementation schedule. We agree with the State that urban areas have the means for distributing, storing, and segregating NRLM diesel fuel meeting the 500 ppm standard in 2006 and the 15 ppm standard in 2010.

C. Summary of Proposed Sulfur Standards for Alaska

Table II.C–1 shows all of the existing federal and proposed Alaskan sulfur standards for highway and NRLM diesel fuel. Note that Alaska must still ensure that 2007 and later highway engines and 2011 and later nonroad engines are only fueled with fuel meeting the 15 ppm standard.

TABLE II.C–1.—SUMMARY OF EXISTING FEDERAL AND PROPOSED ALASKAN SULFUR STANDARDS FOR DIESEL PRODUCTION AND IMPORTS (PARTS PER MILLION)

Area	Fuel	Before 2006	2006	2007–2009	2010–2011	2012+
Federal	HW ..	500	15‡	15‡	15	15
Urban Alaska	HW ..	none	15‡	15‡	15	15

TABLE II.C–1.—SUMMARY OF EXISTING FEDERAL AND PROPOSED ALASKAN SULFUR STANDARDS FOR DIESEL PRODUCTION AND IMPORTS (PARTS PER MILLION)—Continued

Area	Fuel	Before 2006	2006	2007–2009	2010–2011	2012+
Rural Alaska	HW ..	none	none	none	15†	15
Federal	NR ..	none	none	500†	15†	15
Urban Alaska	NR ..	none	none	500†	15†	15
Rural Alaska	NR ..	none	none	none	15†	15
Federal	LM ...	none	none	500†	500	15†
Urban Alaska	LM ...	none	none	500†	500	15†
Rural Alaska	LM ...	none	none	none	15†	15

† Refinery gate standard begins on June 1 of the first applicable year
‡ Temporary Compliance Option in effect: Up to 20% of a refinery's production may exceed the 15 ppm standard so long as it meets the 500ppm standard, is segregated from 15ppm, and is not used in MY2007+ engines.

III. Why Are We Proposing a June 1, 2010 Effective Date for Rural Areas of Alaska?

Rural Alaska represents a rather unique situation. The majority of distillate fuel used in rural Alaska is for stationary sources such as power generation and home heating. The State estimates that highway vehicles consume only about one percent of the distillate fuel in the rural areas. ''Heating oil'' consumes approximately 95 percent (about 50 percent for heating and 45 percent for electricity generation) and marine engines consume the remaining four percent. There is no significant consumption of other nonroad or locomotive diesel fuel in rural Alaska. Thus, in rural Alaska, only a very small proportion of the distillate fuel used is currently regulated for sulfur content (and aromatics content and/or cetane index).[7] A single grade of fuel is generally distributed to rural Alaska. In order to ensure the fuel can be used in the arctic conditions, the fuel is usually Jet A (which has a pour point of −50 degrees) that has been downgraded. If the nationwide requirements were followed, either multiple grades of arctic grade fuel would need to be transported and stored, or a single grade of fuel meeting the 15 ppm standard would need to be used. For multiple fuel grades, the limited transportation and storage capabilities in rural Alaska would force communities to build additional infrastructure to handle the additional grades. For a single grade meeting the 15 ppm standard, these small communities would be forced to pay a premium for fuel that is only required for a very small number of engines in the 2006–2010 timeframe. Both approaches represent significant economic hardship for the many rural communities consisting primarily of subsistence economies.

Our goal is to allow Alaska to transition to the low sulfur fuel programs in a manner that minimizes costs while still ensuring that the small number of model year 2007 and later highway vehicles and engines, and the small number of model year 2011 and later nonroad engines and equipment certified to the Tier 4 nonroad standards beginning with the 2011 model year, receive the 15 ppm sulfur diesel fuel they need. By coordinating the transition of both highway and NRLM fuels to 15 ppm in 2010, rural communities can make individual decisions about retaining only one grade of diesel fuel (*e.g.,* ultra low) or build additional storage tanks to handle two grades of fuel that retains space heating and power generation production with high sulfur diesel fuel. In addition, requiring rural areas to provide 15 ppm diesel fuel for all NRLM applications beginning in 2010, rather than exempting them permanently,[8] helps those rural areas to avoid the temptation for misfueling that may arise as the number of 2011+ engines increases and rural communities are faced with the choice of either building additional tankage or storing only 15 ppm fuel.

A. Highway Diesel Fuel

Under the highway diesel rule, at least 80 percent of a refinery's highway diesel fuel production (except for that produced by small refiners approved by EPA under 40 CFR 80.550–553), must meet the ultra-low sulfur content standard (15 ppm sulfur, maximum) by 2006 (see Table I.A–1). The remaining highway diesel fuel must meet the low sulfur content standard (500 ppm sulfur, maximum) and may not be used in 2007 and later model year highway diesel vehicles. These nationwide standards and deadlines apply to Alaska, including the rural areas. Since the current fuel supply in rural Alaska is primarily high sulfur, these nationwide requirements for highway fuel would cause the highway fuel supply in rural Alaska to switch to the 15 ppm sulfur diesel fuel, and possibly some to the 500 ppm sulfur diesel fuel, in 2006.

As previously discussed, Alaska has been exempt from the sulfur and dye provisions of 40 CFR 80.29 since the beginning of the 500 ppm highway diesel fuel program in 1993 because of its unique geographical, meteorological, air quality, and economic factors. The rural areas have been permanently exempt, and the urban areas have been temporarily exempt. When we finalized the 15 ppm sulfur content standard for highway diesel fuel, we recognized the factors unique to Alaska and provided the State with: (1) An extension of the temporary exemption for the urban areas from the 500 ppm sulfur standard until the implementation date of the new 15 ppm sulfur standard for highway diesel fuel in 2006, (2) an opportunity to request an alternative implementation plan for the 15 ppm sulfur diesel fuel program, and (3) a permanent exemption from the diesel fuel dye provisions. As stated in that rule and in today's proposal, our goal is to allow Alaska to transition to the 15 ppm sulfur standard for highway diesel fuel in a manner that minimizes costs while still ensuring that model year 2007 and later highway vehicles and engines receive the 15 ppm sulfur diesel fuel they need. In its subsequent request for an alternative implementation plan for the rural areas, the State indicated that the rural areas will have few if any model year 2007 and later highway vehicles in the early stage of the highway diesel program, and thus will need little if any 15 ppm sulfur diesel fuel in this timeframe. The State also indicated that rural areas could use

[7] Personal communication from Ron King, Alaska Department of Environmental Conservation. July 2, 2002.

[8] The permanent exemption under the existing regulations would still require all 2011+ nonroad engines to be fueled with 15 ppm fuel.

more time to plan the switch to 15 ppm sulfur diesel fuel, and would be less impacted if we implemented a one-step transition to 15 ppm sulfur rather than a two-step transition.

There are about 600 highway diesel vehicles in the rural areas of Alaska, and their average age is about 18 years. Many replacement vehicles are typically pre-owned, and only about five to 15 new diesel vehicles are brought into the rural areas each year.[9] Thus, most of the approximately 250 rural area villages may not obtain their first 2007 or later model year diesel highway vehicle for some time.

According to the State, the fuel storage and barge infrastructure in rural Alaska is currently designed for one grade of diesel fuel. Jet fuel is distributed, downgraded (and sometimes mixed with #1 diesel), sold, and used as #1 diesel because it meets arctic specifications. This fuel is primarily high sulfur. The efficiency and cost effectiveness of this system discourages the introduction of a small volume of a specialty fuel, such as low or ultra-low sulfur highway diesel fuel. However, the rural hub communities with jet service still have to import jet fuel untainted by dye for aviation purposes. The fuel storage tanks in the rural communities are owned and maintained by the communities, thus, any requirement for new tankage or additional tank maintenance will fall directly on the rural communities, which have a subsistence economy.

We agree with the State that a 2010 implementation date in rural Alaska is justified. We expect only a very small demand for the 15 ppm sulfur fuel in rural Alaska between 2006 and 2010 because of the very small number of 2007 and later highway diesel vehicles expected to enter the rural Alaska market during those years. Requiring the rural areas to comply with the nationwide requirements for 15 ppm fuel [10] during the first step of the highway program (2006–2010) would cause significant burden on rural Alaska's distribution system and communities without corresponding environmental benefits. We also agree that 2010 is an appropriate time to implement a sulfur content requirement for highway diesel fuel in the rural areas. The number of 2007 and later highway vehicles, and thus the benefits of the 15 ppm sulfur diesel fuel will be increasing. Extending the lead time for sulfur-controlled diesel fuel by an additional four years (from 2006 to 2010) should be adequate for the distributors and rural communities to make decisions on the most economical way to transition to sulfur-controlled highway diesel fuel, and to make any necessary capital improvements. Finally, 2010 marks the points at which both the Temporary Compliance Provision for highway diesel fuel ends and the requirement for 15ppm nonroad diesel fuel begins. Distribution of diesel fuel to meet demand will thus be made more efficient if the same sulfur standards apply everywhere. As a result 2010 represents an ideal year in which to transition rural Alaska to 15 ppm fuel in a single step.

We are not proposing to require 500 ppm sulfur highway diesel fuel between June 1, 2006 and June 1, 2010 as a transition to 15 ppm sulfur highway diesel fuel. Such an interim step would create the same burden to Alaska's distribution system and rural communities as requiring 15 ppm sulfur highway diesel fuel on June 1, 2006. As discussed in more detail below, the primary burden of requiring low sulfur highway diesel fuel in rural Alaska is not the source of the low-sulfur diesel fuel, or whether it meets the 500 or 15 ppm sulfur standard, but the distribution and storage tank constraints associated with an additional fuel type and the associated economic burden of increased fuel costs imposed on communities having subsistence economies. If we imposed a 500 ppm sulfur content standard on June 1, 2006 as a transition to 15 ppm sulfur highway diesel fuel, rural Alaska would not get the relief intended by today's proposal.

As discussed in the January 18, 2001 **Federal Register** notice, any revisions to the final rule for highway diesel fuel in Alaska would, at a minimum, have to: (1) Ensure an adequate supply (either through production or imports) of 15 ppm fuel to meet the demand of any 2007 or later model year vehicles, (2) ensure sufficient retail availability of low sulfur fuel for new vehicles in Alaska, (3) address the growth of supply and availability over time as more new vehicles enter the fleet, (4) include measures to ensure segregation of the 15 ppm fuel and avoid contamination and misfueling, and (5) ensure enforceability. We believe that the provisions proposed in this notice meet these criteria, as discussed below.

1. Ensure an Adequate Supply (Either Through Production or Imports) of 15 ppm Sulfur Diesel Fuel To Meet the Demand of Any 2007 or Later Model Year Vehicles

Alaska has nearly 9,000 highway diesel vehicles. The fuel provided to those vehicles in the areas served by the Federal Aid Highway System—approximately 8,400 vehicles—must meet the requirements of the highway rule, regardless of today's proposal. At least 80 percent of that fuel produced or imported, except that which is produced or imported by a small refiner having EPA approval under 40 CFR 80.550–553, must meet the 15 ppm sulfur standard beginning June 1, 2006. The remainder of that fuel must meet the 500 ppm sulfur standard.

Consumption of highway diesel fuel in the rural areas is about seven percent of highway diesel fuel consumption in Alaska (assuming the same average vehicle consumption throughout the state). Consumption of highway diesel fuel by the five to 15 new vehicles per year from 2007 through 2010 (for a total of 20 to 60 model year 2007 and later vehicles by the end of 2010) will be much smaller—less than one percent of the highway diesel fuel consumption in Alaska. Thus, production or imports of 15 ppm sulfur diesel fuel for the model year 2007 and later highway vehicles in the rural areas until June 1, 2010 under today's proposal should not be a challenge, and is less than what would be required under the current regulations.

The significant challenge in the rural areas is the distribution and storage infrastructure, which is currently designed to handle only one type of distillate fuel. The highway diesel rule would require changes to the distribution and storage infrastructure to handle the additional fuel type, or a shift to 15 ppm sulfur diesel fuel for all purposes, to occur by July 15, 2006. However, under today's proposal, changes to the distribution and storage infrastructure, or a shift to 15 ppm sulfur diesel fuel for all purposes, would not be required to occur in the rural areas until October 1, 2010. Thus, this proposal would grant the rural area fuel distributors and villages four additional years to make the necessary changes, but they would still have to supply the required 15 ppm sulfur fuel to all 2007 and later model year highway vehicles and engines.

Supplying 15 ppm sulfur diesel fuel for 2007 and later model year diesel vehicles until October 1, 2010 can be accomplished several ways. A village not having any 2007 or later model year

[9] Diesel vehicle registration data (12,000 pound and greater, unladed weight) as of October 1998 provided by the State of Alaska.

[10] The first step of the nationwide highway program would require only 80% of each refinery's production to meet the 15 ppm standard; the rest must meet a 500 ppm standard.

diesel vehicles or engines would not have a need for the new fuel and/or infrastructure changes until October 1, 2010. When a village obtains one or more 2007 or later model year highway vehicles or engines, 15 ppm sulfur fuel could be shipped in 55 gallon drums, or the fuel infrastructure can be changed to handle a second diesel fuel type, or the village could shift to 15 ppm sulfur fuel for all purposes.

The first option—using 55 gallon drums—would likely have additional transportation costs for shipping the new fuel for the 2007 and later model year diesel vehicles, but the volume would be very low (only 20 to 60 of those vehicles by the end of 2010 distributed among the approximate 250 villages in rural Alaska). Thus, the overall incremental cost of diesel fuel in rural Alaska would be negligible on average.

The second option (changing the fuel infrastructure to handle the additional fuel type) probably has the most cost impact because the distributors would need to split their barge deliveries into multiple fuel types, and the villages would need to have multiple storage, handling, and delivery systems. All of these distribution modifications will cost money. The need to have multiple fuel types will likely impact the consumer by increasing the cost for all fuel, not just the 15 ppm diesel.

The third option (switching all diesel uses to 15 ppm sulfur) would avoid any incremental transportation, storage and delivery systems costs, but may incur the higher cost of the 15 ppm sulfur fuel for all purposes in the villages. This probable higher fuel cost would be imposed on heating and electricity generation, which accounts for all but about five percent of the distillate consumption in the villages.

Under today's proposal, it is possible that all of the above options, or a combination of these options, might be found prior to December 1, 2010 among the villages that need the fuel. In any case, we believe an adequate supply of 15 ppm sulfur diesel fuel for all 2007 and later model year vehicles and engines in the rural areas should present no significant challenge in this time period.

2. Ensure Sufficient Retail Availability of Low Sulfur Fuel for New Vehicles in Alaska

Sufficient retail availability [11] is not an issue if adequate supply is provided to rural Alaska. Fuel deliveries to rural Alaska are made to village tank farms (typically one tank farm per village). Some villages have no separate consumer tanks and pumps. In such cases the villagers withdraw the fuel directly from the tank farm. In villages having one or more optional refueling locations, those pumps are filled directly from the village tank farm. Presumably, any fuel deliveries in 55 gallon drums would be delivered either to the village tank farm or directly to the vehicle owners.

3. Address the Growth of Supply and Availability Over Time as More New Vehicles Enter the Fleet

Under today's proposal, all diesel fuel for 2007 and later model year highway diesel vehicles and engines in the rural areas must meet the 15 ppm sulfur standard, as it is required nationwide. As previously discussed, the demand from 2007 and later model year diesel vehicles in the rural areas is expected to be very low—between 20 and 60 vehicles from late 2006 to December 1, 2010, the proposed implementation date by which all highway diesel fuel in the rural area retail facilities would have to meet the 15 ppm sulfur content standard. Whether the small volume of fuel that would be needed for these vehicles prior to December 1, 2010 is distributed and stored in 55 gallon drums, in segregated tanks, or in village tanks from which diesel fuel for all purposes is withdrawn, incremental increases to that small volume for a few additional new vehicles should present no significant challenge.

4. Include Measures To Ensure Segregation of the 15 ppm Fuel and Avoid Contamination and Misfueling

All segregation and contamination avoidance measures that apply nationwide to highway diesel fuel, except for the dye requirements, would be applicable under today's proposal to any diesel fuel used in the rural areas between 2006 and December 1, 2010 in 2007 and later model year highway vehicles and engines. We believe that Alaska can meet these requirements and no additional measures beyond these will be needed. Beyond 2010, all diesel fuel meeting the 15 ppm standard must be segregated from all other diesel fuel.

5. Ensure Enforceability

All quality assurance measures (including testing and sampling) and enforcement provisions that apply nationwide to highway diesel fuel, except for the dye requirements, would be applicable under today's proposal to any diesel fuel used in the rural areas between 2006 and December 1, 2010 in 2007 and later model year highway vehicles and engines. We do not believe that any additional measures beyond these will be needed.

B. NRLM Diesel Fuel

As discussed above, today's proposal would require 15 ppm sulfur highway diesel fuel in retail facilities in the rural areas by December 1, 2010. In its comments on the NRLM proposal, the State also asked that we apply the nationwide NRLM fuel requirements to the rural areas beginning in 2010 (except for the dye and marker requirements). This approach allows for the coordination of the highway and NRLM diesel fuel requirements in the rural areas. Given the significant distribution limitations in rural areas, this is a critical need.

With one exception, today's proposal would apply the nationwide NRLM standards and implementation deadlines to diesel fuel produced or imported for, distributed to, or used in rural Alaska beginning June 1, 2010. The one exception is that locomotive and marine diesel fuel would be required to meet the 15 ppm sulfur standard in 2010 instead of 2012.

We believe that imposing the 15 ppm standard on all NRLM diesel fuel in rural Alaska, rather than allowing the current exemption to continue indefinitely, is both warranted and feasible. First, all NRLM fuel in urban areas, and all highway diesel fuel, will meet the 15 ppm standard by 2010. Given the limited ability of the distribution system for handling multiple grades, much if not all of the NRLM diesel fuel that would end up in the rural areas may meet the 15 ppm standard even under the existing regulations. Second, because 2011+ nonroad engines will represent an increasing fraction of the nonroad fleet beginning in 2010, under the existing indefinite exemption rural communities will be faced with the decision about when their NRLM fuel should be switched entirely to 15 ppm. There may be a temptation to misfuel 2011+ engines in order to avoid having to make this switch. If misfueling occurs, the environmental benefits of the 2011+ nonroad engines may be lost. Finally, there are logistical and economic benefits for coordinating the implementation of highway and NRLM 15 ppm sulfur standards in urban and rural areas of Alaska and with the rest of the nation. We believe that these benefits exceed the costs in rural Alaska.

The NRLM final rule exempts all areas in Alaska from the red dye and yellow marker requirements, and the

[11] For the purpose of this discussion concerning rural Alaska, we assume that retail availability means availability to the end user (*e.g.* diesel vehicle or engine owner/operator).

related segregation requirements that would otherwise apply for fuels meeting the same sulfur, aromatics and/or cetane standards. Thus, in rural Alaska prior to June 1, 2010, uncontrolled highway and non-highway diesel fuels could continue to be commingled. Beginning June 1, 2010, the highway and NRLM diesel fuels could continue to be allowed to be commingled if they both met the 15 ppm sulfur standard and applicable aromatics and/or cetane standards, thus eliminating the need for segregation. The market would determine on a case-by-case basis whether to supply segregated or commingled distillate fuel for highway, NR, LM, and heating oil applications.

IV. What Is the Emissions Impact of Today's Proposal?

The flexibility offered by today's proposal would not increase diesel emissions over current levels, but would likely result in a delay of some sulfate emission reduction benefits in the rural areas of Alaska until low sulfur diesel fuel becomes available to consumers in those areas starting in 2010. The sulfate emissions of pre-2007 model year highway vehicles and engines and of all marine engines in rural Alaska would remain at current levels for as long as high sulfur diesel fuel is used, but not later than December 1, 2010.

The State of Alaska previously indicated that there are approximately 600 diesel highway vehicles distributed throughout the approximate 250 villages and communities. This averages to less than three diesel vehicles per village, although the actual numbers may vary considerably between the smallest and largest villages. We believe that the sulfate emission reductions from the small number of pre-2007 model year diesel highway vehicles that would be delayed until December 1, 2010 by today's proposal would be very small. The villages would receive the full emission reduction benefits from the 2007 and later model year diesel highway vehicles, because they would be fueled with 15 ppm sulfur diesel fuel, but their numbers will be very small.

We do not know the number of NRLM equipment and engines in rural Alaska. However, we do know that the consumption of distillate fuel in the rural areas by marine engines is about four percent, and is negligible for other nonroad and locomotive engines (if any). Thus, the sulfate emission benefits from NRLM sources are almost entirely from marine engines and would be delayed as long as high sulfur diesel fuel is used, but no later than December 1, 2010. At that time, given the distribution limitations in rural Alaska, ULSD may also be used much more broadly in locomotive, marine, heating, and power generation services. If this were the case, there would be significantly greater sulfate PM benefits than strictly required.

As in previous actions to grant Alaska exemptions from the current 500 ppm sulfur standard, we would not base any vehicle or engine recall on emissions exceedences caused by the use of high sulfur fuel (greater than 500 ppm sulfur for pre-2007 model year vehicles and engines; greater than 15 ppm sulfur for 2007 and later vehicles and engines) in rural Alaska during the period prior to the proposed implementation dates of this notice. Our in-use testing goals are to establish whether representative engines, when properly maintained and used, will meet emission standards for their useful lives. These goals are consistent with the requirements for recall outlined in Section 207(c)(1) of the CAA. Further, manufacturers may have a reasonable basis for denying emission related warranties where damage or failures are caused by the use of high sulfur fuel in rural Alaska.

The Engine Manufacturers Association commented in previous actions to grant Alaska sulfur exemptions that the level of protection provided to engine manufacturers falls short of what they believe is reasonable and necessary. It asserted that the use of high sulfur diesel fuel by an engine should raise a ''rebuttable presumption'' that the fuel has caused the engine failure, and that EPA should have the burden of rebutting that presumption. It also asserted that the emissions warranty is a regulatory requirement under Section 207, that only EPA has the authority to exclude claims based on the use of high sulfur diesel fuel.

We understand and concur with the manufacturers' concerns about in-use testing of engines operated in an area exempt from fuel sulfur requirements, or in the case of today's proposal, engines operated in an area with an implementation date later than that of the rest of the country. Consequently, we affirm that, for recall purposes, we would not seek to conduct or cause the in-use testing of engines we know have been exposed to high sulfur fuels in rural Alaska. We would likely screen any engines used in our testing program to see if they have been operated in rural Alaska. We believe we can readily obtain sufficient samples of engines without testing engines operated in rural Alaska. In reviewing the warranty concerns of the Engine Manufacturers Association associated with previous actions to grant sulfur exemptions, we have determined that our position regarding warranties, as previously stated and described above, is consistent with section 207(a) and (b) of the CAA and does not require any new or amended regulatory language to implement.

V. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How and to Whom Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under DATES above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal. Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Please follow the instructions in Section I.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

B. Will There Be a Public Hearing?

We do not plan to hold a public hearing on this proposed rule. If you would like to request a public hearing, you must make that request to the person identified in the **FOR FURTHER INFORMATION CONTACT** section no later than 30 days after publication. If a request for public hearing is made by this date, we will publish the date and location in a separate **Federal Register** notice.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action 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 or 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 the Executive Order.''

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

B. Paperwork Reduction Act

The Paperwork Reduction Act stipulates that every federal agency must obtain approval from the Office of Management and Budget (OMB) before collecting the same or similar information from 10 or more members of the public. If the Environmental Protection Agency decides to gather information, the appropriate program office must prepare an Information Collection Request (ICR) and submit it to OMB for approval. An ICR describes the information to be collected, gives the reason the information is needed, and estimates the time and cost for the public to answer the request.

OMB has previously approved the ICRs contained in the existing regulations at 40 CFR 80.500 *et seq.* and has assigned OMB control number 2060–0308 and EPA ICR numbers 1718.03 (dyeing of tax exempt diesel fuel), 1718.04 (motor vehicle diesel fuel), and 1718.05 (NRLM diesel fuel). A copy of the OMB approved ICRs may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Today's proposed rule would not establish any new requirements for highway diesel fuel sold in Alaska, but instead would only delay the requirements for 15ppm fuel from 2006 to 2010 in rural areas of Alaska. Since the burden of reporting would be exactly the same in rural Alaska after 2010 under today's proposed rule as it is under the requirements of the final rule for highway diesel sulfur, the previously approved ICR for highway diesel fuel still applies to rural Alaska. Thus no new ICR or amended ICR is required for highway fuel.

The requirements for NRLM diesel fuel in rural Alaska as proposed in today's action are new, in that the NRLM final rule did not finalize the sulfur standards for rural Alaska (although it did impose the requirement that all 2011 and later engines in rural Alaska must use diesel fuel meeting the 15ppm sulfur standard). However, these new requirements for NRLM diesel fuel in rural Alaska do not require a new or amended ICR. The approved ICR for the nonroad final rule (ICR number 1718.05; OMB Control Number 2060–0308) already covers all U.S. states, including rural Alaska. For instance, this ICR made additions to the existing fuels regulations applicable to diesel fuel, where ''diesel fuel'' was explicitly defined as fuel sold in any state or territory of the U.S. In addition, the product transfer documents required in the nonroad final rule explicitly included those used to identify fuel for use in Alaska. Finally, the calculation of total information collection costs associated with the nonroad final rule represented maximum costs and included all areas of Alaska. As a result the existing ICR generated for the nonroad final rule remains applicable under the actions being proposed in today's action.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that meets the definitions based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's proposed rule applies a delayed implementation date for ultra-low sulfur highway diesel fuel in rural Alaska compared to the existing regulations and extends this same deadline to NRLM diesel fuel in rural Alaska to bring those areas in line with the national standards. Since this proposed rule would delay the 15 ppm highway sulfur standard in rural areas, the regulatory burden is effectively relieved in this respect. As a result this

proposed rule would not have an adverse economic impact on small entities in rural areas which distribute, store, or using highway diesel fuel.

Regarding NRLM diesel fuel, the requirements in today's action are new in that rural areas of Alaska were not covered by the 15 ppm sulfur standard in the NRLM final rule. As stated in that rule, it was our intention to add the 15 ppm requirement to rural Alaska at the time of the NRLM final rule, but we deferred that action so that it could be coordinated with our actions on highway diesel fuel in rural Alaska.

Even though the NRLM sulfur standards proposed in this rule are new, they do not impose a significant economic impact on a substantial number of small entities. Within the approximately 250 rural area villages in Alaska, their unique circumstances limit the number of grades of diesel fuel that can be stored and distributed. The efficiency and cost effectiveness of the rural distribution and storage system discourages the introduction of a small volume of a specialty fuel, such that these communities must generally choose between using a single fuel for all diesel applications, or purchasing extra storage and distribution equipment. The latter approach is generally more expensive and would only be pursued if the dual storage and distribution system would be needed long term. However, the number of 2011+ model year nonroad and marine engines in these rural communities will increase after 2010, requiring a greater and greater proportion of the fuel to meet the 15 ppm standard. Thus in the long term, dual segregated storage and distribution capacity would become superfluous. In addition, since the highway fuel used in rural areas will already be required to meet the 15 ppm sulfur standard by 2010, many rural communities would simply switch entirely to diesel fuel meeting the 15 ppm standard for all their diesel applications at this time to avoid the need to install additional segregated storage and distribution capacity. This proposal's requirement that all NRLM diesel fuel used in rural areas meet the 15 ppm standard starting in 2010 is therefore unlikely to create an additional economic burden for most rural areas.

Therefore, after considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It would impose no enforceable duty on any State, local or tribal governments or the private sector, and does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Rather, this proposal relieves burden by applying a delayed implementation date for ultra-low sulfur highway, nonroad, locomotive and marine diesel fuel in rural Alaska compared to the existing regulations and the rest of the country. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule simply applies a delayed implementation date for low sulfur highway diesel fuel in the rural areas of Alaska, and provides for inclusion of rural Alaska in the nationwide nonroad, locomotive and marine (NRLM) diesel fuel program but with a delayed implementation date. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the State of Alaska, who spent much time getting feedback from the rural communities about our highway and proposed NRLM diesel fuel requirements. In fact, this proposed rule is the direct result of, and is consistent with, State submittals to EPA of an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska, and comments to the proposed NRLM diesel rule as it relates to rural Alaska, as mentioned previously in this preamble. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. The regulations that this proposed rule amends will be implemented at the Federal level and impose compliance costs only on diesel fuel producers, importers, distributors, retailers and consumers of diesel fuel. This proposed rule relates to the standards and deadlines that apply specifically to the rural areas of Alaska, and tribal governments in the rural areas of Alaska will be affected only to the extent they purchase and use diesel fuel.

Nevertheless, tribal officials were consulted by State representatives early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. State representatives spent much time getting feedback from the rural communities, including tribal representatives, about our highway and proposed NRLM diesel fuel requirements. That feedback was considered in the State's submittals to EPA of an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska, and comments to the proposed NRLM diesel rule as it relates to rural Alaska, as mentioned previously in this preamble. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Protection of Children From Environmental Health & Safety Risks

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed action would affect only highway diesel fuel sold in rural areas of Alaska which have unique meteorological conditions and sparse populations that make environmental health and safety risks extremely small.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to the sulfur-based emissions (primarily SO^2) that are proposed for regulation in today's action.

H. Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

VII. Statutory Provisions and Legal Authority

Statutory authority for the proposal is found in sections 211(c) and 211(i) of the CAA, which allow EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment which is in general use or has been in general use. 42 U.S.C. 7545 (c) and (i). Additional support for the procedural and enforcement-related aspects of fuel controls, including record keeping requirements, comes from sections 114(a) and 301(a) of the CAA. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control.

Dated: October 4, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, we propose to amend part 69 of title 40 of the Code of Federal Regulations as follows:

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

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

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

2. Section 69.51 is revised to read as follows:

§ 69.51 Motor vehicle diesel fuel.

(a) *Definitions.* (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(b) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1) and the dye provisions of 40 CFR 80.29(a)(3) and 80.29(b) until the implementation dates of 40 CFR 80.500, provided that:

(1) The fuel is segregated from nonexempt diesel fuel from the point of such designation; and

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating:

''This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to highway diesel fuel and red dye requirements applicable to non-highway diesel fuel only if it is used in Alaska.''

(c) Beginning on the implementation dates under 40 CFR 80.500, motor vehicle diesel fuel that is designated for use in areas of Alaska accessible by the Federal Aid Highway System, or is used in areas of Alaska accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel.

(d) From the implementation dates of 40 CFR 80.500 until the implementation dates specified in paragraph (e) of this section, motor vehicle diesel fuel that is

designated for use in areas of Alaska not accessible by the Federal Aid Highway System, and is used in areas of Alaska not accessible by the Federal Aid Highway System, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and 40 CFR 80.29(b), and the motor vehicle diesel fuel standards under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in 2007 and later model year highway vehicles and engines,

(2) The exempt fuel is segregated from nonexempt highway diesel fuel from the point of such designation; and

(3) On each occasion that any person transfers custody or title to the exempt fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating:

''This fuel is for use only in those areas of Alaska not accessible by the FAHS''.

(4) The exempt fuel must meet the labeling requirements under § 80.570, except the following language shall be substituted for the language on the labels:

''HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

WARNING

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines. Its use may damage these vehicles and engines.''

(e) Beginning on the following implementation dates, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, or is used in areas of Alaska not accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel:

(1) June 1, 2010 for diesel fuel produced or imported by any refiner or importer,

(2) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(3) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(4) December 1, 2010 at all locations.

3. Section 69.52 is amended as follows:

a. By adding paragraph (a)(4).

b. By revising paragraphs (c)(1) and (c)(2).

c. By revising paragraphs (f) and (g).

d. By adding paragraph (h).

§ 69.52 Non-motor vehicle diesel fuel.

(a) * * *

(4) Heating oil has the meaning given in 40 CFR 80.2.

* * * * *

(c) * * *

(1) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under 40 CFR 80.520(b)(2) and 80.510(d)(5), (e)(5), and (f)(5).

(2) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the marker solvent yellow 124 requirements, and the presumptions associated with the marker solvent yellow 124 requirements, under 40 CFR 80.510(d) through (f).

* * * * *

(f) Non-motor vehicle diesel fuel and heating oil that is intended for use and used only in areas of Alaska not accessible by the Federal Aid Highway System, are excluded from the applicable provisions of 40 CFR Part 80, Subpart I and 40 CFR Part 60, Subpart IIII until the implementation dates specified in paragraph (g) of this section, except that:

(1) All model year 2011 and later nonroad and stationary diesel engines and equipment must be fueled only with diesel fuel that meets the specifications for NR fuel in 40 CFR 80.510(b) or (c);

(2) The following language shall be added to any product transfer document: ''This fuel is for use only in those areas of Alaska not accessible by the FAHS;'' and

(3) Pump labels for such fuel that does not meet the specifications of 40 CFR 80.510(b) or 80.510(c) shall contain the following language:

''HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

WARNING

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines, or in model year 2011 and later nonroad diesel engines and equipment. Its use may damage these vehicles and engines.''

(g) *NRLM standards.* (1) Beginning on the following implementation dates, NRLM diesel fuel that is used or intended for use in areas of Alaska not accessible by the Federal Aid Highway System is subject to the provisions of 40 CFR part 80, subpart I, except as provided in paragraphs (c), (d), (e), and (g)(2) of this section:

(i) June 1, 2010 or diesel fuel produced or imported by any refiner or importer,

(ii) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(iii) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(iv) December 1, 2010 at all locations.

(2) The per-gallon sulfur content standard for all LM diesel fuel shall be 15 ppm maximum.

(3) Diesel fuel used in new stationary internal combustion engines regulated under 40 CFR Part 60 Subpart IIII shall be subject to the fuel-related provisions of that subpart beginning December 1, 2010.

(h) Alternative labels to those specified in paragraphs (e)(3) and (f)(2) of this section may be used as approved by the Administrator.

[FR Doc. 05–20519 Filed 10–12–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ET Docket No. 04–295; RM–10865; FCC 05–153]

Communications Assistance for Law Enforcement Act and Broadband Access and Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (Commission) initiates this rulemaking to explore whether the Communications Assistance for Law Enforcement Act (CALEA) should apply to providers of voice over Internet Protocol (VoIP) services that are not interconnected, meaning VoIP services that do not allow users generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN). This rulemaking will also explore the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers of facilities-based broadband Internet access services. This rulemaking will enhance public safety and ensure that the surveillance needs of law enforcement agencies continue to be met as Internet-based communications technologies proliferate.

DATES: Comments are due on or before November 14, 2005, and reply comments are due on or before December 12, 2005.

ADDRESSES: You may submit comments, identified by ET Docket No. 04–295, by any of the following methods: