

**Subpart X—Michigan**

■ 2. Section 52.1174 is amended as follows:

■ A. The first paragraph designated as paragraph (c) is redesignated as paragraph (c)(1).

■ B. The second paragraph designated as paragraph (c) is redesignated as paragraph (c)(2).

■ C. Paragraph (w) is added to read as follows:

**§ 52.1174 Control strategy: Ozone.**

\* \* \* \* \*

(w) Approval—On June 17, 2005, the Michigan Department of Environmental Quality submitted a petition requesting the exemption from Clean Air Act oxides of nitrogen control requirements in six 8-hour ozone nonattainment areas. The Grand Rapids, Kalamazoo/Battle Creek, Lansing/East Lansing, Benzie County, Huron County, and Mason County nonattainment areas each receive an exemption. Section 182(f) of the 1990 amended Clean Air Act authorizes the exceptions. The exemption will no longer apply in an area if it experiences a violation of the 8-hour ozone standard.

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 69**

[EPA–HQ–OAR–2004–0229; FRL–8178–3]

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:** Final rule.

**SUMMARY:** This final rule will implement the requirements for sulfur, cetane and aromatics for highway, nonroad, locomotive and marine diesel fuel produced in, imported into, and distributed or used in the rural areas of Alaska. Beginning June 1, 2010, diesel fuel used in these applications must meet a 15 ppm (maximum) sulfur content standard. This rule will assist the implementation of the programs for highway and nonroad diesel fuels in Alaska and provide some limited additional lead time for development of any necessary changes to the fuel distribution system in Alaska's rural areas. We believe this additional lead time is appropriate given the circumstances in the rural areas. In 2010, highway and nonroad fuel in rural Alaska will be required to meet the 15 ppm sulfur standard, providing the full environmental benefits of these programs to rural Alaska as well. In addition, fuel used by engines in rural Alaska covered by the new source performance standard (NSPS) for new stationary diesel engines will also be required to meet the 15 ppm sulfur standard in 2010.

**DATES:** This final rule is effective on July 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0229. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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 through <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Jeff Herzog or Tia Sutton, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; fax number: (734) 214–4816; telephone numbers: (734) 214–4227 or (734) 214–4018, respectively; e-mail addresses: [Herzog.jeff@epa.gov](mailto:Herzog.jeff@epa.gov) or [Sutton.tia@epa.gov](mailto:Sutton.tia@epa.gov), respectively.

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Does This Action Apply to Me?**

You are regulated by this rule 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 must follow the regulations. However, 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 <sup>a</sup>	SIC codes <sup>b</sup>
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	.....

<sup>a</sup> North American Industry Classification System (NAICS).

<sup>b</sup> Standard Industrial Classification (SIC) system code.

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comment, including the copyrighted material, will be available in the public docket.

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

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#### II. Background

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

The nationwide implementation dates (including those for all of Alaska) for highway diesel fuel at 40 CFR 80.500 *et seq.* are shown in Table II.A-1. (See 66 FR 5002, January 18, 2001; also see *Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs* (70 FR 70498, November 22, 2005).)

TABLE II.A-1.—FEDERAL IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD

Date	Applicable parties
June 1, 2006 .....	Refiners and importers.
September 1, 2006 .....	Downstream facilities except retailers and wholesale-purchaser consumers.
October 15, 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.<sup>1</sup> Nationwide, 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—this is commonly referred to as 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 model year 2007 and later highway engines and emission control systems to fuel with high sulfur content, those engines must not be fueled with diesel fuel having a sulfur content greater than 15 ppm. This requires that all 500 ppm sulfur highway diesel fuel (*i.e.*, fuel from the 80/20 Temporary Compliance Option, credit-trading, or EPA-approved small refiners) be segregated from the 15 ppm sulfur highway diesel fuel, labeled for its specific use, and dispensed, only in 2006 and earlier highway vehicles and engines. Labeling requirements and

instructions are discussed at length in a later section of this rule.

From the beginning of the 500 ppm highway diesel fuel program in 1993, Alaska was exempted from both the 500 ppm highway diesel fuel sulfur standard and the non-highway dye provisions of 40 CFR 80.29 because of its unique geographical, meteorological, air quality, and economic factors.<sup>2</sup> We granted temporary exemptions for the urban areas of the State served by the

<sup>1</sup> Alaska was granted an exemption from the 500 ppm standard until June 1, 2006.

<sup>2</sup> 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, aromatics 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 action by EPA are available in public docket A-96-26.

Federal Aid Highway System, and a permanent exemption for the remaining State-defined 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 the temporary exemption. While considering that petition, we began work on a nationwide rule to impose more stringent requirements for the sulfur content in highway diesel fuel. In the subsequent highway diesel final rule (66 FR 5002, January 18, 2001), we applied the complete highway engine emission standards in Alaska. The permanent exemption from the 500 ppm sulfur standard of 40 CFR 80.29 for rural Alaska terminates on 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 minimum cost mechanism to make appropriate modifications for transitioning Alaska to the ultra-low sulfur (15 ppm sulfur maximum) highway diesel fuel program, 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 of new sulfur requirements for nonroad, locomotive, and marine (NRLM) diesel fuel at 40 CFR 80.500 *et seq.* (69 FR 38958, June 29, 2004) begins June 1, 2007 for refiners and importers. This implementation date begins the first step of a two-step program of transitioning the nation from uncontrolled sulfur levels in non-highway diesel fuel to 15 ppm sulfur NRLM diesel fuel. In this first step, beginning in 2007, all NRLM diesel fuel produced in or imported into the U.S. must meet the 500 ppm sulfur standard and applicable cetane or aromatic standards. Facilities downstream of the refiners and importers must meet the 500 ppm standard on subsequent dates depending on location and facility type, as shown below:

TABLE II.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.*
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.

\* Other than small refiners and those with early-use credits.

Until June 1, 2010, EPA-approved small refiners/importers and refiners/importers with early-use credits can produce NRLM uncontrolled sulfur content diesel fuel (also uncontrolled aromatics content and cetane index), in most of the U.S. (the areas contained in the Northeast/Mid-Atlantic Exclusion Area, as defined in 40 CFR 80.510(g)(1)). Until 2010, there is no restriction on the use of this EPA-approved small refiner/importer NRLM uncontrolled sulfur content diesel fuel in NRLM engines. Nevertheless, according to this rule, as it applies nationwide, other uncontrolled sulfur content diesel fuel (*i.e.*, all fuel meeting the definition of

heating oil) must be segregated from NRLM diesel fuel, dyed with a yellow marker and red dye, and must not be used in NRLM engines and equipment.

As previously stated, 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 NRLM high sulfur content diesel fuel (40 CFR 80.510). However, in that rule, we determined that a dye requirement would impose a significant challenge to Alaska's unique distribution system, which cannot easily handle another fuel grade that must be segregated. Apart from that challenge, 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.<sup>3</sup>

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 II.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.

<sup>3</sup> 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)).

TABLE II.B-2.—FEDERAL IMPLEMENTATION DATES FOR NR DIESEL FUEL 15 PPM STANDARD—Continued

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
December 1, 2010 .....	December 1, 2014 All facilities including farm tanks and construction facility tanks.	

\* Other than small refiners and those with early-use credits.

TABLE II.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.

\* Other than small refiners and those with early-use credits.

Nationally, EPA-approved small refiners/importers and refiners/importers, except in Alaska, with early-use credits, as noted above, may produce or import nonroad diesel fuel that meets the 500 ppm sulfur standard until June 1, 2014. While the early-use credit provisions do not apply to Alaska, nevertheless, EPA-approved small refiner/importers in Alaska may produce 500 ppm sulfur content diesel fuel for all approved uses until June 1, 2014. In addition, because of the sensitivity to fuel sulfur content of the model year 2011 and later nonroad engines and emission control systems that will be certified to the Tier 4 emission standards, those engines must not be fueled with diesel fuel having a sulfur content greater than 15 ppm.

Alaska submitted its suggested modification of the highway diesel rule for rural Alaska to the Agency on June 12, 2003, after publication of our NRLM proposal but before we had completed the final NRLM rule. This suggested modification covered only highway diesel for use in rural areas. Urban areas of Alaska were addressed in a previous submission<sup>4</sup> for highway fuel and in Alaska's comments on the NRLM proposed rule. 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, finalized in the NRLM final rule, 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 action requested by the State. As such, this would have imposed the NRLM sulfur content standards on all diesel fuel in rural Alaska, including all the associated labeling, recordkeeping, and reporting requirements. However, we deferred imposing the sulfur content standards, along with the labeling and recordkeeping, in order to coordinate the NRLM with highway sulfur standards. This rule addresses those issues from the NRLM final rule raised by the State for NRLM diesel fuel in the rural areas, as well as the State's suggestion for an alternative implementation plan for highway diesel fuel in the rural areas.

#### *C. Alaska's Submission and Comments in Response to NRLM Proposal*

On June 12, 2003, Alaska submitted its suggested modifications to the implementation of the highway diesel fuel sulfur standards in Alaska. In its plan, the State indicated that the rural areas will 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.) If we implement a one-step, rather than a two-step, transition to 15 ppm sulfur, the rural areas will have more time to plan the switch to 15 ppm sulfur diesel fuel, which would lessen the overall impact. The two-step transition would have required a minimum of 80 percent 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. Nevertheless, since all model year 2007 and later highway diesel vehicles must use 15 ppm sulfur diesel fuel, fuel meeting this standard must be available in rural communities, in which, prior to 2010, there is one or more model year 2007 or later highway vehicles. This approach provides rural Alaska more time to transition to the low sulfur fuel program in a manner that minimizes costs while still ensuring that the model year 2007 and later 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 made the following three requests, stressing the need to avoid the segregation of rural Alaska's fuel stream: (1) The State previously requested that June 2010 be the deadline for conversion to highway diesel fuel in the rural areas of Alaska; (2) it further requested that June 2010 be the deadline for conversion of all NRLM diesel fuel to 15 ppm sulfur content in the rural areas; and, (3) it requested that the 15 ppm standard applicable to locomotive and marine diesel fuel produced in, imported into, and distributed or used within rural Alaska

<sup>4</sup> 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.

be moved up to June 2010, from the June 2012 date in the final nationwide NRLM rule.

Although it was outside the scope of this rule, Alaska also suggested that we capture marine engines, locomotive engines, and more engine sizes under the 15 ppm sulfur standard in the NRLM final rule, and that we 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.<sup>5</sup>

#### *D. How Was Alaska Treated in the NSPS for New Stationary Diesel Engines*

On July 11, 2005, EPA proposed a new source performance standard (NSPS) applicable to stationary compression-ignition (*i.e.*, diesel) engines manufactured on or after April 1, 2006 and modified or reconstructed after July 11, 2005 (70 FR 39869). The proposed standards mirrored in many

ways the standards promulgated for nonroad CI engines, including requiring non-emergency engines to meet standards likely to require sulfur-sensitive aftertreatment beginning in 2011. In addition, the proposed NSPS included a requirement that all engines subject to the NSPS must use diesel fuel meeting the 500 ppm sulfur standard beginning October 1, 2007 and meeting the 15 ppm sulfur standard beginning October 1, 2010.<sup>6</sup>

EPA received comment from entities in Alaska requesting that EPA allow similar exemptions for diesel fuel used by stationary engines in rural Alaska as were expected to be proposed for NRLM fuel in rural Alaska. EPA subsequently proposed such exemptions in the proposal for this rule. The final NSPS rule as not yet been completed, but it is expected to reference this issue and discuss EPA's agreement with the commenters. The exemptions in this final rule are intended to resolve these concerns.

### **III. What Is EPA Specifying for Rural Areas of Alaska?**

#### *A. Highway Diesel Fuel*

With this rule, we are delaying the implementation dates for the requirements of 40 CFR 80.500 *et seq.* for highway diesel fuel produced in, imported into, and distributed or used within the rural areas of Alaska. We are also specifying that the rural areas of Alaska join the rest of Alaska and the nation in implementing the 15 ppm sulfur content standard for highway diesel fuel on the final implementation date of the nationwide program in 2010.<sup>7</sup> These provisions were proposed in the Notice of Proposed Rulemaking (NPRM) for this rule, which published in the **Federal Register** on October 13, 2005 (70 FR 59690), and are being finalized today. The implementation dates for our highway diesel fuel requirements in the rural areas of Alaska are shown in table III.A–1.

TABLE III.A–1.—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 III.A–1 are slightly different from the downstream dates that mark the end of the nationwide Temporary Compliance Option. We specified the above dates for highway diesel fuel because they are more consistent with the downstream implementation dates associated with NRLM, as described in section III.B below.

Prior to the dates shown in Table III.A–1, rural areas of Alaska will continue to be exempt from the sulfur standards. However, that exemption, notwithstanding, we require that diesel fuel used in model year 2007 and later vehicles and engines meet the 15 ppm sulfur content standard, because emission control systems on those engines are sensitive to fuel sulfur content. The same fueling requirement

applies nationwide, including the urban areas of Alaska, in the 2006–2010 time frame.

To fully implement the transition program for rural Alaska, we are extending the current exemption from the 500 ppm sulfur standard of 40 CFR 80.29 until the implementation dates in 2010. Had we not included this 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.* However, under this rule, highway diesel fuel sulfur content will remain uncontrolled in rural Alaska until the implementation dates in 2010.

In its comments to the proposal for this rule, the State expressed concern regarding how the implementation schedule may adversely impact the villages in rural Alaska. That is, that the rule sets out distinct transition dates for different applicable parties, including refiners and importers; downstream facilities; retailers and wholesale purchasers; and tank farms, including construction facility tanks. The State's concern was that in a typical Alaskan village, many of these designations either do not exist or may all be included in a combined entity. For example, there may be a village or villages in which fuel is pumped from a barge into a tank from which villagers purchase fuel. Thus, it is arguable that retail customers in such a rural village could be forced into compliance as early

<sup>5</sup> 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.

<sup>6</sup> For purposes of this preamble, we are simplifying the discussion of the fuel provisions of the NSPS for stationary engines. There are different regulations, for example, for stationary engines with displacement greater than 30 liters per cylinder.

The regulations promulgated in this rule exempt all regulated stationary engines in rural Alaska from the fuel provisions of the NSPS until December 1, 2010, after which time all of the provisions of the NSPS, including those particular regulations not discussed in the preamble, apply.

<sup>7</sup> 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 will be harmonized with those of the U.S., and this rule will have rural Alaska catch up to the requirements in both the U.S. and Canada on June 1, 2010.

as August 1, 2010, when in fact the last seasonal fuel barge typically doesn't arrive until October. Regarding this concern and for this rule, we accept, as a single entity, any legally recognized combination (defined above as a "combined entity") of the downstream parties as listed in the above implementation table. The compliance date for the "combined entity" is to be that date on which the "party or member of the entity" listed at the latest date on the implementation schedule is to be in compliance. For example, in cases where there may be no combined entity, each party is expected to be in compliance according to the schedule. On the other hand, there may be cases in which all the downstream parties, including retail sales, are combined into single entities. In these cases, the compliance date for the entities would be December 1, 2010.

#### *B. Nonroad, Locomotive, and Marine and Stationary Engine 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 finalizing any provisions for rural Alaska so they could be coordinated with those for the highway diesel program in rural Alaska. This rule specifies that NRLM diesel fuel produced in, imported into, and distributed or used within the rural areas of Alaska is not subject to the requirements of 40 CFR 80.500 *et seq.*, until 2010. Thus, during the first step of the nationwide program from June 1, 2007 until June 1, 2010, NRLM diesel fuel sulfur content will remain uncontrolled in rural Alaska. Beginning June 1, 2010, nonroad diesel fuel in rural Alaska will join the rest of Alaska and the nation in implementing the nonroad diesel fuel requirements of 40

CFR 80.500 *et seq.* Also, due to the unique circumstances in rural Alaska which limit the number of grades of diesel fuel that can be stored and distributed, this rule further specifies that the 15 ppm sulfur standard applicable to locomotive and marine fuel (LM) be moved forward to 2010 to be implemented at the same time as the 15 ppm sulfur standard for nonroad (NR) diesel fuel. In this way, there will only be one 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 be present elsewhere in the U.S. The implementation dates for the NRLM diesel fuel sulfur standards in rural Alaska are shown in Table II.B-1. All of the provisions noted above that are being finalized in this rule were proposed on October 13, 2005 (70 FR 59690).

TABLE III.B-1.—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.

Similarly, diesel fuel used in engines covered by the NSPS for diesel stationary engines in rural Alaska is exempt from the requirements of 40 CFR 80.510 until December 1, 2010. Beginning on December 1, 2010, all diesel fuel used in engines covered by the stationary internal combustion engine NSPS (*i.e.*, all stationary diesel engines manufactured on or after April 1, 2006 and all stationary diesel engines modified or reconstructed after July 11, 2005) is subject to the requirements of 40 CFR part 60, which is expected to refer to the provisions of 40 CFR 80.510, as they apply to nonroad engines.

Since the urban areas of Alaska will follow the nationwide schedule for sulfur standards, some 500 ppm LM fuel will likely be available in these areas in the 2010–2012 timeframe, during which time nonroad and stationary engines requiring 15 ppm fuel will also likely be present. We remind all those who will be handling both 500 ppm and 15 ppm sulfur content fuel that model year 2011 nonroad and stationary engines are prohibited from using the 500 ppm sulfur content LM fuel. We wish to further stress that although heating oil will remain uncontrolled for sulfur content in all areas of Alaska, it must

not be used in any model year 2007 or later highway vehicles or engines, or in any model year 2011 or later nonroad or stationary engines or equipment.

#### *C. Summary of Sulfur Standards for Alaska*

Table III.C-1 shows the Federal and Alaskan sulfur standards for highway and NRLM diesel fuel. Note that Alaska must ensure that model year 2007 and later highway engines and model year 2011 and later nonroad and stationary source engines are only fueled with fuel meeting the 15 ppm standard.

TABLE III.C-1.—SUMMARY OF FEDERAL AND 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
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 500 ppm standard, is segregated from 15 ppm, and is not used in MY2007 and later engines.

#### IV. Why Are We Specifying a June 1, 2010 Effective Date for Rural Areas of Alaska?

Rural Alaska represented 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 estimated 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 five 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 (as well as aromatics content and/or cetane index).<sup>8</sup> A single grade of fuel is generally distributed to rural Alaska. It is usually downgraded Jet A (which has a pour point of -50 degrees) in order to ensure the fuel is usable in arctic conditions. If we had followed the nationwide requirements, either multiple grades of arctic grade fuel would have had to be transported and stored for multiple uses, or else a single grade of fuel meeting the 15 ppm standard would have had to be used by everyone. The limited transportation and storage capabilities in rural Alaska would have forced communities to build additional infrastructure to handle multiple fuel grades. In order to provide a single grade of fuel meeting the 15 ppm standard, these small communities would have been forced to pay a premium for a fuel that was required for only a very small number of engines in the 2006 to 2010 timeframe. Either approach could have caused significant economic hardship for the many rural communities which have primarily 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 and stationary engines and equipment certified to the Tier 4 nonroad standards beginning with the model year 2011, receive the 15 ppm sulfur content diesel fuel they need. By coordinating the transition to 15 ppm of highway, NRLM, and regulated stationary engine fuels in 2010, rural communities can make individual

decisions about whether to use only one grade of diesel fuel (*e.g.*, ultra low) or build additional storage tanks to handle two grades, one of which would be high sulfur fuel, to be used for space heating and unregulated power generation. In addition, requiring rural areas to provide 15 ppm diesel fuel for all NRLM and regulated stationary applications beginning in 2010, rather than exempting them permanently,<sup>9</sup> helps them avoid the temptation to misfuel that may arise as the number of model year 2011 and later engines increases and they are faced with the choice of either building additional tankage or using 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 80.550-80.553), 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 must not be used in model year 2007 and later highway diesel vehicles. These nationwide standards and deadlines apply to all of Alaska, including the rural areas. Since the current fuel supply in rural Alaska is primarily high sulfur, these nationwide requirements for highway fuel would have caused the highway fuel supply in rural Alaska to switch to 15 ppm sulfur diesel fuel, and possibly some to 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 are permanently exempt, and the urban areas are 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 this rule, 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 stages of the highway diesel program, and thus would need little, if any, 15 ppm sulfur diesel fuel during that time. The State also indicated that rural areas need more time to plan the switch to 15 ppm sulfur diesel fuel. We have reduced the overall impact of this fuel switch by implementing a one-step, rather than a two-step, transition to 15 ppm sulfur.

There are about 600 highway diesel vehicles with an average age of about 18 years in the rural areas of Alaska. Many replacement vehicles are typically pre-owned, and only about five to 15 new diesel vehicles are brought into the rural areas each year.<sup>10</sup> Thus, most of the approximately 250 rural area villages likely won't obtain their first model year 2007 or later diesel highway vehicle for some time after 2007.

According to the State, the fuel storage and barge infrastructure in rural Alaska is currently designed for one grade of diesel fuel. Jet fuel, usually a high sulfur content fuel, is downgraded, distributed, (and sometimes mixed with #1 diesel), sold, and used as #1 diesel because it meets arctic specifications. 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 must continue to import jet fuel untainted by dye for aviation purposes. In the rural areas, fuel storage tanks are owned, operated, and maintained by the communities. Thus, any new tankage or additional tank maintenance would have fallen directly on those rural communities, most of which have subsistence economies.

We agree with the State that a 2010 implementation date for rural Alaska is justified. We expect that the demand for 15 ppm sulfur content fuel will be very low in rural Alaska between 2006 and 2010, because very few model year 2007 and later highway diesel vehicles are expected there during those years.

<sup>8</sup>Personal communication from Ron King, Alaska Department of Environmental Conservation. July 2, 2002.

<sup>9</sup>The permanent exemption under the existing regulations still requires all model year 2011 and later nonroad engines to be fueled with 15 ppm fuel.

<sup>10</sup>Diesel vehicle registration data (12,000 pound and greater, unloaded weight) as of October 1998 provided by the State of Alaska.

Requiring the rural areas to comply with the nationwide requirements for 15 ppm fuel<sup>11</sup> during the first step of the highway program (2006–2010) would have imposed a significant economic burden on Alaska's rural communities to expand their distribution and storage systems without providing 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. As the number of model year 2007 and later highway vehicles increases, the environmental benefits from using 15 ppm sulfur diesel fuel will also increase. Extending the lead time for sulfur-controlled diesel fuel by an additional four years (from 2006 to 2010) is 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 point in time at which both the Temporary Compliance Option (TCO) for highway diesel fuel ends and the requirement for 15 ppm nonroad diesel fuel begins. Distribution of diesel fuel to meet demand is obviously more efficient if the same sulfur standards apply everywhere. As a result, 2010 is an ideal year in which to transition rural Alaska to 15 ppm fuel in a single step.

We do not require the use of 500 ppm sulfur highway diesel fuel as a transition to 15 ppm fuel between June 1, 2006 and June 1, 2010. Such an interim step would have created the same burden on 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 issue of requiring low sulfur highway diesel fuel in rural Alaska was not whether there was a source of the low-sulfur diesel fuel, nor whether the fuel might meet the 500 ppm or 15 ppm sulfur standard. The issue was that most of the distribution systems, including the storage tanks, were designed to handle a single fuel grade. To have required an additional fuel grade would have imposed an unreasonable economic burden on communities already functioning under subsistence economies. If we had imposed a transition of 500 ppm to 15 ppm sulfur content highway diesel fuel on June 1, 2006, rural Alaska would not have the relief provided by this rule.

Based on a comment received in response to our NPRM, we learned that there are, in fact, marine facilities in some of the State-defined rural areas of Western Alaska, particularly along the Pribilof and Aleutian islands, which can handle more than one grade of fuel. Under the regulations, small refiners/importers with access to such facilities could continue to supply 500 ppm sulfur content fuel to such marine facilities until June 1, 2014. We remind those who handle both 500 ppm and 15 ppm sulfur content fuels that they must be kept segregated, properly labeled, and sold only to legal end-users.

As discussed in the January 18, 2001 **Federal Register** notice, any revisions to the final rule for highway diesel fuel in Alaska, must as a minimum: (1) Ensure an adequate supply (either through production or imports) of 15 ppm fuel to meet the demand of any model year 2007 or later 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. As discussed below, we believe the provisions in this rule meet these criteria.

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

Alaska has nearly 9000 highway diesel vehicles. The fuel provided to those vehicles in the areas served by the Federal Aid Highway System—approximately 8400 vehicles—must meet the requirements of the highway rule, regardless of this rule. Other than diesel fuel produced or imported by an EPA-approved small refiner/importer under 40 CFR 80.550–80.553, at least 80 percent of the fuel produced or imported into Alaska, 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, under this rule, the

production or importation of 15 ppm sulfur diesel fuel until June 1, 2010 for the model year 2007 and later highway vehicles in the rural areas should not be a challenge.

The significant challenge in the rural areas is the distribution and storage infrastructure, which is currently designed to handle only one grade of distillate fuel. The highway diesel rule would have required changes to that infrastructure in order to handle an additional grade, including a shift to 15 ppm sulfur diesel fuel for all purposes, to occur by September 1, 2006. However, under this rule, changes to the distribution and storage infrastructure, or a shift to 15 ppm sulfur diesel fuel for all purposes, will not be required in rural areas until October 1, 2010. Thus, this rule grants the fuel distributors and villages in rural areas an additional four years to make the necessary changes. However, they are still required to supply 15 ppm sulfur fuel to all model year 2007 and later highway vehicles and engines.

Supplying 15 ppm sulfur diesel fuel for model year 2007 and later diesel vehicles until October 1, 2010 can be accomplished several ways. A village with no model year 2007 or later diesel vehicles or engines will not need the new fuel and/or infrastructure changes until October 1, 2010. Nevertheless, if someone in a rural village does purchase or otherwise operate one or more model year 2007 or later highway vehicles or engines, 15 ppm sulfur fuel must be supplied by some means. One suggestion is to ship the fuel in 55-gallon drums; another is to modify the fuel infrastructure in order to handle a second fuel grade. A third option is for the village to shift to 15 ppm sulfur content fuel for all of its fuel needs.

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

The second option (changing the fuel infrastructure to handle the additional fuel grade) will likely have the highest cost impact because the distributors would need to split their barge deliveries into multiple fuel grades, and a village would need multiple storage, handling, and delivery systems. These modifications will cost money. If a village were to choose this option, we

<sup>11</sup> 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.



expect the choice would likely impact consumers by increasing the cost of all fuels, not just the 15 ppm diesel.

While the third option (switching all uses to 15 ppm sulfur diesel) would avoid any incremental transportation, storage, and delivery systems costs, nevertheless the 15 ppm sulfur fuel will likely cost more than the higher sulfur fuel. Over the short term, this higher fuel cost may be significant, especially compared to option one, in that heating and electricity generation accounts for about 95%, on average, of the distillate consumption in a village.

Under this rule, it is possible that all of the above options, or some combination of them, will be found prior to December 1, 2010 among the villages that need the fuel. In any case, during this time period, we believe an adequate supply of 15 ppm sulfur diesel fuel for all model year 2007 and later vehicles and engines in the rural areas will not present a significant challenge.

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

Sufficient retail availability<sup>12</sup> 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). In some cases, where villages have no separate consumer tanks, pumps, or separate filling stations, the villagers withdraw fuel directly from the tank farm. In villages with refueling locations other than the village tank farm, the pumps are, nevertheless, usually filled directly from the village tank farm. Presumably, fuel deliveries in 55-gallon drums will 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 this rule, and as required nationwide, all diesel fuel for model year 2007 and later highway diesel vehicles and engines in the rural areas must meet the 15 ppm sulfur content standard. As previously discussed, we expect that from as few as 20 to as many as 60 model year 2007 and later diesel vehicles will arrive in Alaska between late 2006 and December 1, 2010, the date by which all highway diesel fuel in the rural area retail facilities must meet the 15 ppm sulfur content standard. Likewise, we expect that the demand for 15 ppm sulfur content diesel fuel will

be very low for these vehicles in the rural areas. Nevertheless, regardless of whether the small volume of this fuel for these vehicles prior to December 1, 2010 is stored in 55 gallon drums, in segregated tanks, or in village tanks, storing the additional incremental volume for a few new vehicles will present no significant challenge.

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

Under this rule, between 2006 and December 1, 2010, all segregation and contamination avoidance measures that apply nationwide to highway diesel fuel, except for the dye requirements, are applicable to diesel fuel used in model year 2007 and later highway vehicles and engines in the rural areas of Alaska. We do not believe any measures beyond these are necessary. After 2010, all diesel fuel meeting the 15 ppm standard must be segregated from all other diesel fuel. After June 1, 2010 and until December 1, 2014, it is incumbent upon all fuel handlers, especially those handling both 15 ppm sulfur content fuel and 500 ppm sulfur content fuel produced and/or distributed by EPA-approved small refiners, to assure that the 15 ppm sulfur content fuel is segregated from the small refiner fuel and that both fuels are dispensed to appropriate and legal end-users, are properly labeled, and carry appropriate transfer documents for all custody transfers other than retail sales.

## 5. Ensure Enforceability

Under this rule, between 2006 and December 1, 2010, all quality assurance measures (including testing and sampling) and enforcement provisions that apply nationwide to highway diesel fuel, except for the dye requirements, are applicable to any diesel fuel used in model year 2007 and later highway vehicles and engines in the rural areas of Alaska. We do not believe that any additional measures beyond these are necessary.

## B. NRLM and Stationary Diesel Fuel

As discussed above, under this rule, 15 ppm sulfur content highway diesel fuel must be in retail facilities in the rural areas by December 1, 2010. In comments on the NRLM proposal, the State 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 allowed us to coordinate the highway, NRLM, and regulated stationary diesel fuel requirements in the rural areas. Given

the significant distribution limitations in rural areas, this was a critical need.

This rule specifies one exception to the nationwide NRLM standards and implementation deadlines in effect for diesel fuel produced in, imported into, and distributed or used within rural Alaska, beginning June 1, 2010. This exception is that locomotive and marine diesel fuel will also be required to meet the 15 ppm sulfur content standard on June 1, 2010 rather than in 2012.

Rather than allowing the current exemption to continue indefinitely, we believe that imposing the 15 ppm standard on all NRLM and regulated stationary diesel fuel in rural Alaska is both warranted and feasible. First, all highway diesel fuel, as well as all NRLM diesel fuel and all diesel fuel for regulated stationary engines in urban areas, must 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 in the rural areas will likely meet the 15 ppm standard even under the existing regulations. Second, we expect that the model year 2011 and later nonroad and stationary engines will represent an increasing fraction of the nonroad and stationary fleet beginning in 2010. Under the indefinite exemption, rural communities would have had to decide when to switch their NRLM fuel to only 15 ppm sulfur content fuel. Under those conditions, there may have been a temptation to misfuel model year 2011 and later model year engines in order to avoid making this switch. If misfueling had occurred for this or any other reason the environmental benefits of the model year 2011 and later nonroad and stationary engines would be compromised. In addition, while pre-2007 highway engines and pre-2011 nonroad and stationary engines are not sensitive to high sulfur fuels, the direct environmental benefits from using lower sulfur fuel, including reduced sulfur dioxide and diesel sulfate particulate, would be lost if there were an indefinite exemption. In summary, there are logistical and economic benefits for coordinating the implementation of highway, NRLM, and stationary 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.

In response to our proposal, we received a comment expressing concern about whether an EPA-approved small refiner's status will be affected by the June 1, 2010 NRLM rule as we have described its implementation. That is, whether an EPA-approved small refiner

<sup>12</sup> 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).

can produce, import, or otherwise distribute 500 ppm NRLM diesel fuel for general use in other than model year 2007 and later diesel vehicles and engines between June 1, 2010 and mid-2014. As stated previously in this rule, "EPA-approved small refiners \* \* \* may produce or import diesel fuel that meets the 500 ppm sulfur standard until June 1, 2014." It should also be clear that until June 1, 2014 EPA-approved small refiners can distribute or otherwise sell 500 ppm sulfur content NRLM diesel fuel for use in pre-model year 2007 diesel vehicles and engines as well as for heating and, if the engine is unregulated, electrical generation. However, along with all other rules and restrictions that apply to small refiners, we stress that the small refiner 500 ppm sulfur content NRLM diesel fuel can only be sold to appropriate and legal end-users and must be properly labeled and segregated from all other fuels after June 1, 2010.

The NRLM final rule exempts all areas in Alaska from the red dye and yellow marker requirements, and any 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 can be commingled. To eliminate the need for segregation, beginning June 1, 2010, highway and NRLM diesel fuels may be commingled if both meet the 15 ppm sulfur standard as well as applicable aromatics and/or cetane standards. The market will determine whether segregated or commingled distillate fuel for highway, NRLM, and heating oil are available in any given area.

#### **V. Transition Dates for Urban Areas of Alaska**

As stated above in section II.A., under the final highway diesel rule, provisions were provided for the transition of the distribution system from 500 ppm diesel fuel to 15 ppm diesel fuel. These provisions were recently modified such that refiners are required to begin producing 15 ppm highway diesel fuel on June 1, 2006, while distributors are allowed until September 1, and retail outlets and wholesale purchaser-consumers until October 15. A comment was received from the State of Alaska that the current language of the regulations would essentially require that all parties downstream of the refinery in Alaska would have to transition to a 500 ppm standard by June 1 since they are currently exempted from the 500 ppm standard and are at a higher sulfur level. This was clearly not the intent of the final

highway diesel rule. The intent was for fuel distributors in Alaska to have the same transition period as distributors in the rest of the country. Therefore, distributors would be allowed to remain at high sulfur until September 1 and retail outlets and wholesale purchaser-consumers would be allowed to remain at high sulfur until October 15. This final rule is making this change to be consistent with the original intent of the highway diesel rule.

#### **VI. What Is the Emissions Impact of This Rule?**

The flexibility offered by this rule will not increase diesel emissions over current levels, but will likely delay some sulfate emission reduction benefits in rural Alaska until 2010, when low sulfur diesel fuel is more widely used. The sulfate emissions of pre-model year 2007 highway vehicles and engines and of all marine engines in rural Alaska will likely remain at current levels until December 1, 2010. Accordingly, where low sulfur fuel is available, sulfate emissions will be reduced.

The State of Alaska reported that there are approximately 600 diesel highway vehicles distributed among approximately 250 villages or rural communities. That is an average of fewer than three diesel vehicles per village, although the absolute numbers likely vary considerably between the smallest and largest villages. We believe that if 15 ppm sulfur content fuel is available for this small number of pre-model year 2007 diesel highway vehicles, the sulfate emission reductions will, nevertheless, be very small. On the other hand, the villages will receive the full emission reduction benefits from any model year 2007 and later diesel highway vehicles fueled with 15 ppm sulfur content diesel fuel that may be present. Once again, we don't expect many of these late-model vehicles will be present in the rural areas, so the emissions reduction benefits will be limited.

We do not know the actual 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 that the fuel used for other nonroad and locomotive engines is negligible. We also know that fuel used for power generation constitutes about 45 percent of total fuel used, but we do not know how many new stationary engines regulated under the NSPS will be installed in rural Alaska prior to 2010, given the long life of such engines. Thus, sulfate emission benefits, primarily from marine and new

stationary engines, will be delayed as long as high sulfur diesel fuel is used, for the most part, 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 unregulated power generation services. If this is the case, there will be significantly greater sulfate PM benefits than strictly required. Nevertheless, there is at least one EPA-approved small refiner in Alaska that can produce, import, and distribute 500 ppm sulfur content fuel for all uses other than highway use in Alaska or in model year 2007 and later diesel vehicles and engines, between December 1, 2010 and June 1, 2014. Accordingly, to the extent this 500 ppm sulfur content fuel is used by legal end-users, rather than the 15 ppm sulfur content that would otherwise be used, the sulfate emissions benefit will be reduced by a smaller amount. Nevertheless, we expect the net difference will be quite small. Ultimately there will be benefits in terms of reduced PM (including sulfate PM), HC, sulfur dioxide, and NO<sub>x</sub> emissions from highway, nonroad, and stationary engines meeting the new standards, and required to use 15 ppm fuel.

As in previous exemptions from the 500 ppm sulfur standard, we will not order any vehicle or engine recalls based on emissions exceedances caused by the use of high sulfur fuel (greater than 500 ppm sulfur for pre-model year 2007 vehicles and engines; greater than 15 ppm sulfur for model year 2007 and later vehicles and engines) in rural Alaska during the period prior to the implementation dates of this rule. Our testing goal is to establish whether properly maintained and operated engines will meet emission standards during their useful lives. This is consistent with the requirements for recall specified in section 207(c)(1) of the CAA. Further, manufacturers may have a reasonable basis for denying emission related warranties where damages or failures are caused by the use of high sulfur fuel in rural Alaska.

In a comment to a previous proposal to grant Alaska a sulfur exemption, the Engine Manufacturers Association expressed concern 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 in an engine should raise a "rebuttable presumption" that the fuel caused the engine to fail, and that the EPA should have the burden of rebutting that presumption. It also

asserted that an emissions warranty is a regulatory requirement under section 207, according to which, only the 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 as in the case of this rule, engines operated in an area with an implementation date later than that for the rest of the country. Consequently, we affirm that, for recall purposes, we will not seek to conduct or otherwise cause the in-use testing of engines we know have been exposed to high sulfur fuels in rural Alaska. We believe we can readily obtain the necessary number of engines for our testing program by screening-out engines that were operated in rural Alaska. Having reviewed the warranty concerns of the Engine Manufacturers Association regarding previous sulfur exemptions, we believe, as previously stated, that our position regarding warranties is consistent with section 207(a) and (b) of the CAA and does not require any new or amended regulatory language for implementation.

The additional changes that this rule is making to clarify that fuel distributors and retailers and wholesale purchaser-consumers in urban Alaska will follow the same transition period as the rest of the country will not have any emissions impacts. These additions merely ensure that the original intent of the highway diesel rule transition period is reflected in the regulations.

## VII. 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 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 previously approved the ICRs contained in the existing regulations at 40 CFR 80.500 et seq. and assigned OMB control number 2060-0308 and EPA ICR numbers 1718.03 (dying 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.

This rule does not establish any new requirements for highway diesel fuel sold in Alaska, but instead only delays the requirements for 15 ppm fuel from 2006 to 2010 in rural areas of Alaska. Under this rule, reporting requirements in rural Alaska after 2010 will be exactly the same as they are under the final highway diesel sulfur rule. The previously approved ICR for highway diesel fuel applies to rural Alaska. Thus no new ICR or amended ICR is required for highway fuel.

As the NRLM final rule did not finalize the sulfur standards for rural Alaska, the requirements in this rule for NRLM diesel fuel in rural Alaska are new. Nevertheless, according to the NRLM rule, all model year 2011 and later engines in rural Alaska must use fuel meeting the 15 ppm diesel fuel sulfur content 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) covers all U.S. states, including rural Alaska. For example, the aforementioned nonroad ICR made an addition to the existing diesel fuel regulations by explicitly defining "diesel fuel" as fuel sold in any state or territory of the U.S. In addition, product transfer documents, as required in the nonroad final rule, explicitly include those to be 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 nonroad final rule ICR is applicable for this rule.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (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.

After considering the economic impacts of this final rule on small

entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

This rule delays the implementation date for ultra-low sulfur highway diesel fuel in rural Alaska compared to the existing regulations and extends the same deadline to NRLM diesel fuel in rural Alaska to bring those areas in line with the national standards. Since this rule delays the 15 ppm highway sulfur standard in rural areas, the regulatory burden is effectively relieved.

Regarding NRLM diesel fuel in Alaska, the requirements in this rule are new in that rural areas of Alaska need not switch to the 15 ppm diesel fuel sulfur content standard as specified in the NRLM final rule. It was our stated intention in that rule that all of Alaska, including the rural areas, switch to 15 ppm sulfur diesel fuel content fuel at the time specified in the NRLM final rule. However, as previously explained, we deferred that action in order to coordinate the implementation of highway and NRLM diesel fuel in rural Alaska.

Even though the NRLM sulfur standards in this rule are new, they do not impose a significant economic impact on a significant number of small entities. The distribution and storage system limits the number of grades of diesel fuel that can be stored and distributed within the approximately 250 rural area villages in Alaska. This discourages the introduction of a small volume of a specialty fuel, generally forcing these communities to 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 likely be pursued only if the equipment would be needed in the long term. On the other hand, we believe that after 2010 an increasingly greater proportion of the fuel inventory in an average rural village will need to meet the 15 ppm standard, as the number of model year 2011 and later stationary, nonroad and marine engines in these villages is expected to increase. Thus, in the long term, segregated storage and distribution capacity would become unnecessary. In addition, since the highway fuel in rural areas will already be 15 ppm sulfur standard diesel fuel by 2010, we believe many rural communities will simply switch to 15 ppm sulfur standard diesel for all uses, rather than install additional storage and distribution capacity. This rule'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 rural areas.

Lastly, the additional changes that this rule is making to clarify that fuel distributors and retailers and wholesale purchaser-consumers in urban Alaska will follow the same transition period as the rest of the country (following the request from the State of Alaska) will not have any emissions impacts. These additions merely ensure that the original intent of the highway diesel rule transition period is reflected in the regulations.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, 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 an explanation with the final rule of 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 rules with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule 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 imposes no enforceable

duty on any State, local, or tribal governments or on the private sector, and does not contain a Federal mandate that results in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Rather, this rule: (1) 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; and, (2) clarifies that fuel distributors and retailers and wholesale purchaser-consumers in urban Alaska will follow the same transition period as the rest of the country, as was the intent of the highway diesel final rule. Thus, this 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 rule does not have federalism implications. It does 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 rule simply applies a delayed implementation date for low sulfur highway diesel fuel in the rural areas of Alaska, and provides a delayed implementation date for inclusion of rural Alaska in the nationwide nonroad, locomotive and marine (NRLM) diesel fuel program. 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 gathering feedback from the rural communities about our highway and NRLM diesel fuel requirements. In fact, this rule is an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska that resulted directly from, and is consistent with State submittals to EPA, as well as with comments to the

proposed NRLM diesel rule as it relates to rural Alaska, as previously mentioned 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, we specifically solicited comment on this 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 rule does not have tribal implications as specified in Executive Order 13175. The regulations this 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 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 that they or their constituents purchase and use diesel fuel.

We specifically solicited additional comment on this rule from tribal officials. Also, in order for tribal officials to provide us with meaningful and timely input, State representatives consulted with them early in the process of developing this regulation. State representatives spent much time gathering feedback about our highway and NRLM diesel fuel requirements from representatives of both rural and tribal communities. The State gave full consideration to that feedback in their request to EPA for an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska. Likewise, the State gave full consideration to that feedback in their comments to the proposed NRLM diesel rule as it relates to rural Alaska, as mentioned previously in this preamble.

#### *G. Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 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.

We do not believe this rule presents disproportionate environmental health or safety risks to children, nor do we believe it is economically significant. Therefore, this rule is not subject to Executive Order 12866. This rule will 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 highly unlikely and it clarifies the dates of the transition period for distributors and retailers/wholesale purchaser-consumers in urban Alaska.

We invited the public to submit or identify peer-reviewed studies and data that assessed results of early-life exposure to the sulfur-based emissions (primarily SO<sub>2</sub>) addressed by this rule, of which we may not have been aware.

#### *H. Executive Order 13211: 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 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider using any voluntary consensus standards.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 6, 2006.

#### **VIII. Statutory Provisions and Legal Authority**

The statutory procedural authority under which this rule is being promulgated is found in section 307(d) of the Clean Air Act and section 4 of the Administrative Procedure Act. Statutory authority for this rule is also found in sections 211(c) and 211(i) of the CAA, which directs 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 recordkeeping 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: May 25, 2006.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set out in the preamble, part 69 of title 40 of the Code of Federal Regulations is amended 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), the dye provisions of 40 CFR 80.29(a)(3) and (b) and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements until the implementation dates of 40 CFR 80.500 for refiners and importers, until September 1, 2006 for all downstream parties other than retailers and wholesale purchaser-consumers, and until October 15, 2006 for retailers and wholesale purchaser-consumers, provided that:

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

(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."; and,

(3) After June 1, 2006 and prior to the implementation dates specified above, diesel fuel represented by a downstream party as meeting the 500 ppm sulfur standard or the 15 ppm sulfur standard for highway diesel fuel shall be subject to and must meet such standard.

(c) Beginning on the implementation dates specified in paragraph (b) of this section, 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 specified in paragraph (b) of this section, 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 (b), and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in model year 2007 and later 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 outlets and wholesale-purchaser consumers;

(3) October 1, 2010 for:

(i) Retail outlets and wholesale-purchaser consumers, or

(ii) Downstream locations which include retail outlets and wholesale-purchaser consumers; and,

(4) December 1, 2010 at all locations.

■ 3. Section 69.52 is amended as follows:

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

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

■ c. By revising paragraph (f).

■ d. By revising paragraph (g).

■ e. By adding a new 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 III 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 and stationary diesel engines and equipment. Its use may damage these vehicles and engines."

(g) *NRLM and stationary engine 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 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 EPA.

[FR Doc. 06-5053 Filed 6-5-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2002-0003; FRL-8180-2]

RIN 2025-AA10

### Community Right-to-Know; Toxic Chemical Release Reporting Using North American Industry Classification System (NAICS); Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA has determined it is appropriate to amend its regulations for the Toxics Release Inventory (TRI) to include the North American Industry Classification System (NAICS) codes. We are including the NAICS codes that correspond to the Standard Industrial Classification (SIC) codes that are

currently subject to Toxics Release Inventory (TRI) reporting requirements in order to facilitate the transition from reporting of SIC codes on TRI reporting forms to reporting of NAICS codes. Consistent with the language of section 313(b)(1)(A) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), SIC codes still remain in the regulatory text as a basis for identifying the facilities that are subject to TRI requirements, along with the new NAICS codes.

EPA conducted a careful crosswalk between the SIC codes covered under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA) and their corresponding NAICS codes. The Agency believes it has correctly identified the covered NAICS codes and no longer expects facilities to identify their SIC codes to determine TRI Program compliance. Facilities may now rely on the list of covered NAICS codes to determine whether they are required to report to the TRI Program.

**DATES:** This final rule is effective on August 7, 2006. Facilities will be required to report NAICS codes beginning with TRI reporting forms that are due on July 1, 2007, covering releases and other waste management quantities at the facility for the 2006 calendar year.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-TRI-2002-0003. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the HQ EPA Docket Center, EPA West Building, Room B102, 1301 Constitution

Ave., NW., Washington, DC. 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, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>. For specific information on this rulemaking contact: Judith Kendall, Toxics Release Inventory Program Division, Mail code 2844T, OEI, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone: 202-566-0750; Fax: 202-566-0741; e-mail address: [kendall.judith@epa.gov](mailto:kendall.judith@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does This Action Apply to Me?

Entities that may be affected by this action are those facilities that have 10 or more full-time employees or the equivalent 20,000 hours per year that manufacture, process, or otherwise use toxic chemicals listed on the TRI, and that are required under section 313 of EPCRA and section 6607 of the PPA to report annually to EPA and States their environmental releases and other waste management quantities of such chemicals. Under Executive Order 13148, revised April 26, 2000 (65 FR 24599), all Federal facilities are required to comply with the provisions set forth in section 313 of EPCRA and section 6607 of the PPA. Federal facilities are required to comply with those provisions without regard to SIC or NAICS delineations.

Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i> ), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government .....	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the

applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action