

**[FRL-4156-1]****Public Meetings on Combined Sewer Overflows****AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

**SUMMARY:** EPA's Office of Water and the Office of Water's Management Advisory Group (MAG) will hold a MAG work group meeting with organizations that represent State and municipal governments, environmental and/or wastewater facility organizations and industry on July 23-24. The purpose of the meeting is to discuss development of a National Pollutant Discharge Elimination System permitting policy that will expedite implementation of the National Combined Sewer Overflow Strategy, issued by the EPA in 1989. The public is invited to attend, and at specified times, to contribute comments.

**DATES:** July 23-24 and if necessary, August 6-7 and August 25-26. All meetings will begin at 8:30 a.m. and end no later than 5 p.m. A determination on whether or not to proceed with subsequent meetings will be made at the conclusion of each meeting.

**ADDRESSES:** The July 23-24 meeting will be held at the Park Hyatt Hotel, 1201 Twenty-fourth St. NW., Washington, DC, 20037, (202) 789-1234. If the additional meetings are necessary, they will be held at the offices of RESOLVE/WWF, 1250 Twenty-fourth St., NW., Washington, DC 20037, (202) 778-9653.

**FOR MORE INFORMATION CONTACT:** For more information on substantive matters, please contact Rich Kuhlman, Office of Wastewater Enforcement and Compliance, at (202) 260-7361. For information on administrative matters, or to advise of your intent to attend, please contact Abby Arnold, EPA's convener at (202) 778-9653.

Dated: July 14, 1992.

Michael B. Cook,

Director, Office of Wastewater Enforcement and Compliance.

[FR Doc. 92-17018 Filed 7-17-92; 8:45 am]

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**[FRL-4155-9]****Diesel Fuel Sulfur Content; Petition for Exemption****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of final decision.

**SUMMARY:** On April 30, 1991, the Governor of American Samoa submitted

a petition for an exemption from the limitation on the sulfur content of diesel fuel under section 211(i) of the Clean Air Act, as amended (Act). This petition also sought an exemption for American Samoa from the requirements of certain regulations which specify diesel fuel requirements for use in on-highway motor vehicles and engines. See 40 CFR part 80. The petition sought the exemptions pursuant to section 325 of the Act.

Today's Final Decision grants an exemption to American Samoa from the sulfur content requirements for diesel fuel under section 211(i) (1) and (2) of the Clean Air Act. The exemptions are based on a finding that is unreasonable to require persons in American Samoa to comply with the sulfur content limitation of section 211(i) of the Act and those portions of EPA's motor vehicle diesel fuel regulations (40 CFR part 80) that pertain to the 0.05% sulfur limit required under section 211(i), due to unique geographical, meteorological and economic factors in American Samoa, as well as other significant local factors.

**DATES:** The exemptions are effective on August 19, 1992.

**ADDRESSES:** Copies of information relevant to this final notice of decision are available for inspection in public docket A-91-40 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 260-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A duplicate public docket, R9-AS-DF-01, is also available at U.S. EPA, Region 9, Air & Toxics Division, 17th Floor, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1227, and is available between the hours of 8 a.m. to 4:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Joseph B. Fernandes, Chemical Engineer, Fuels Section, Field Operations and Compliance Policy Branch, Field Operations and Support Division (6406)], 401 M Street SW., Washington, DC 20460, (202) 233-9016.

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

This prohibition is self-effectuating, although EPA is required to promulgate regulations to implement and enforce these requirements pursuant to section 211(i)(2). Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. In addition, section 211(i)(4) requires the Administrator to take final action on any petition filed under section 324<sup>1</sup> of the Act seeking an exemption from the requirements of section 211(i) within 12 months of the date of such petition.

Prior to enactment of the Clean Air Act Amendments of 1990, which added section 211(i), EPA promulgated regulations which closely mirror the sulfur content and minimum cetane index requirements of section 211(i) (55 FR 34120, August 21, 1990). EPA has published a Notice of Proposed Rulemaking amending these regulations so they conform with section 211(i) (56 FR 32533, July 17, 1991).

Section 325(a)(1) of the Act provides that upon application by the governor of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including section 211(i). Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological or economic factors of such territory, or such other local factors as the Administrator deems significant.

**II. Petition for Exemption**

On April 30, 1991, the Honorable Peter Tali Coleman, Governor of American Samoa, submitted a petition to exempt motor vehicle diesel fuel in American Samoa from the sulfur content limitation of section 211(i) and regulations promulgated under 40 CFR Part 80 (55 FR 34120, August 21, 1990). The petition did not seek an exemption from the minimum cetane index of 40

<sup>1</sup> Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law 101-549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625-1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

requirement.<sup>2</sup> The petition was based on geographical, climatological, meteorological, air quality, economical and environmental factors.

According to the petition, "(t)he source to be exempted is diesel fuel for use in motor vehicles \* \* \*. If granted, the exemption would therefore apply to all persons in American Samoa subject to the prohibitions of section 211(i) of the Act and the diesel fuel requirements in 40 CFR Part 80. The exemption would apply to all persons to the extent they manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce, in American Samoa, motor vehicle diesel fuel. This includes but is not limited to the Government of American Samoa.

The following discussion summarizes the contents of the petition.

#### *A. Geography and Location of American Samoa*

The Territory of American Samoa consists of seven islands of volcanic origin located approximately 2,500 miles south of Honolulu, Hawaii, almost 4,500 miles southwest of Los Angeles, California and 1,600 miles northeast of Auckland, New Zealand. The total land area is 76 square miles. The main island of Tutuila has a land area slightly over 52 square miles and is the home of approximately 45,000 of the Territory's 48,000 inhabitants and the capital, Pago Pago. Tutuila has approximately 92 miles of paved road where the maximum speed limit is 30 mph. Tutuila's volcanic terrain is highly mountainous. The other islands have no paved roads, except for Ta'u which has a small paved strip used by fewer than 50 vehicles.

#### *B. Climate, Meteorology and Air Quality*

The climate on Tutuila is tropical with an average rainfall of 180 inches annually. Temperatures range between 70 degrees F to 90 degrees F with an average humidity of 80 percent. Strong and ever-present trade winds, combined with the lack of any heavy industries, prevent any air pollution from gathering. American Samoa has no sulfur dioxide or sulfate particulate air pollution problem and does not foresee any. Air quality levels are below the national secondary ambient air quality standards for all pollutants. 40 CFR part 50. EPA

<sup>2</sup> Section 211(i) of the Act authorizes EPA to establish an equivalent alternative aromatic level to the minimum cetane index specification. EPA's current regulations provide for such an alternative aromatic level. 40 CFR 80.29(a) Since the American Samoa Government does not seek an exemption from the minimum cetane index requirement, presumably they also do not seek exemption from the alternative aromatic level requirement.

has not identified any areas in the territory as having the potential for violation of the national ambient air quality standards within ten years. 40 CFR 52.2826(a) (1989), 51 FR 40675 (November 7, 1986).

#### *C. Economic Factors*

American Samoa is remote from the United States mainland and must rely on materials shipped in by sea or air. The cost of construction is 25-50 percent higher than on the mainland, yet the annual per capita income is only \$3,900 and the highest minimum wage is \$2.82 per hour. The unemployment rate is approximately 13 percent.

The American Samoa Government (ASG) is the owner of the only petroleum storage facility in the Territory, which is leased to PRI South Pacific, Inc. (PRI), a wholly-owned subsidiary of Pacific Resources, Inc., a petroleum refiner based in Honolulu, Hawaii, and in turn a wholly-owned subsidiary of Broken Hill Proprietary, Ltd., an Australian corporation. PRI shares the storage facility with Shell Company (Pacific Islands) Ltd. (Shell) and BP South-West Pacific, Ltd. (BP), both Australian corporations. The lease terminates on December 31, 1994. The petroleum storage facility was constructed by the United States Navy during 1942 as part of its World War II South Pacific operations. The ASG began a total upgrade of the facility in 1986, which was to be completed in 1992. However, due to lack of adequate funding, many projects had to be curtailed or delayed and completion does not appear likely until 1995 or beyond.

Without an exemption, the ASG claims it will be required to construct segregated tank storage, service lines and modifications to the load racks at an estimated minimum cost of \$300,000, not including the necessary containment berms, which could add an additional \$250,000 to the costs. The ASG does not have the funds to construct segregated storage at this time nor does it anticipate having funds available in the foreseeable future.

All petroleum currently consumed in American Samoa is imported in small tankers. Due to the lack of demand for 0.05 weight percent sulfur diesel fuel in the Pacific, Shell and BP have advised they will not furnish it to American Samoa. PRI estimates that diesel fuel which complies with section 211(i)(1)'s sulfur restrictions will cost \$0.08 to \$0.10 per gallon more than the diesel fuel currently imported to American Samoa. If the ASG is required to comply and construct segregated storage facilities, the petition states that a tax in excess of

\$0.25 per gallon would need to be imposed to recover the storage facility construction cost. Hence, the total increased cost of automotive diesel oil on Tutuila would be \$0.35 per gallon. Fuel is supplied to the outer islands in 55 gallon drums by barge or small vessels from Tutuila, thus creating even higher costs.

#### *D. Environmental Factors*

Current ASG petroleum specifications for diesel fuel allow a maximum sulfur content of 0.4 weight percent and require a minimum cetane index of 40. The ASG set this sulfur content specification to provide high quality diesel fuel for the ASG's electric utility. By regulation, the ASG prohibits burning of any fuel in excess of 1.5 weight percent sulfur. The Territorial Energy Office (TEO) analysis of diesel fuel imports during fiscal year 1990 disclosed that the weighted average of the sulfur content was 0.1918 weight percent and the average cetane index was 52.4. The petroleum suppliers advised the ASG that they should be able to continue to supply diesel fuel at or below the current sulfur levels. The ASG's sulfur content restrictions apply to the diesel fuel used for all power generation, and both highway and off-highway vehicles.

American Samoa has only 60 vehicles licensed for highway use that require diesel fuel. The ASG owns 31 of these and the remaining 29 are commercial vehicles. The petition states that these vehicles are necessary for government and commercial use e.g. container hauling equipments are used in the dock and are generally diesel powered. They are used for loading and unloading of the cargo. Based on a TEO survey, these vehicles consume on average fewer than 14 gallons per week of diesel fuel. Based on the current diesel fuel sulfur weight percentage of diesel fuel in American Samoa, this totals less than 600 pounds of sulfur annually from all the vehicles. This small amount of sulfur emitted over a year, coupled with the trade winds which disperse any pollutant, does not constitute a health risk nor would it cause any air quality standard to be exceeded.

#### *III. Public Participation*

Following the November 18, 1991 publication of EPA's proposed decision, a thirty-day comment period was open which ended December 18, 1991. During this time, the Agency received no request for a public hearing. Comments were received from two parties, Volvo GM Heavy Truck Corporation (Volvo GM) and the Engine Manufacturers Association (EMA), both of whom

supported granting the petition. The following section includes the substantive issues raised regarding the waiver and EPA's response.

Volvo GM and EMA both suggested that EPA, in connection with granting ASC's petition, grant two additional exemptions in the case of 1994 and later model year engines in American Samoa: (1) An exemption from the section 203(a)(1) prohibition against the sale of engines not certified under section 206 as being in compliance with the applicable emission standards; and (2) an exemption from the section 203(a)(3) prohibition against tampering with certified engines. EMA went on to recommend an exemption for heavy-duty diesel engines manufacturers from the section 207(a) requirement that they warrant to the ultimate purchaser of engines affected by the fuel exemption that the engines will conform to applicable emissions regulations for their useful lives. The EMA also recommended exempting heavy-duty engine manufacturers from recall liability under section 207(c) for any engine affected by the fuel exemption.

As an initial matter, the Agency questions whether it has the authority to grant the exemption suggested by Volvo GM and EMA. Section 325 authorizes EPA to grant exemptions from Clean Air Act requirements "upon petition by the Governor of Guam, American Samoa, \* \* \*". The exemptions Volvo GM and EMA requested were not also requested by the Governor of American Samoa. Since Congress was specific in authorizing EPA to grant exemptions in response to petitions from Governors of certain territories, it is unlikely that Congress meant to grant EPA broader authority to grant exemptions in response to any requests from any party.

In any event, action on these additional requests is not within the scope of this rulemaking. Since the requests were first made in comments on ASC's petition, the Agency's notice of proposed rulemaking contained no mention of them. Without the benefit of an EPA notice regarding the requests, it is doubtful that the public has had adequate notice or opportunity to comment on them. EPA thus is not in a position to take final action on the requests at this time.

Even if the Agency could grant the exemptions at this time, it would not be inclined to do so, as explained below.

#### *Issue: Sale of Certified Engines*

EPA believes that the prohibition against the sale of uncertified engines in American Samoa should continue to apply. After model year 1993, heavy-duty diesel engines probably will be

equipped with devices which will be adversely impacted by the level of sulfur in diesel fuel allowed by the exemption being granted today, but it is likely that some emissions benefits can still be accrued. The average sulfur content in diesel fuel currently consumed in American Samoa is less than 0.2 weight percent. Engines designed to comply with the more stringent particulate emission standards applicable to 1994 and later model year engine will emit fewer particulates than older engines even given 0.2 weight percent sulfur in the fuel.

#### *Issue: Exemption From Tampering*

EPA believes that a blanket waiver from the tampering prohibition for model year 1994 and later heavy-duty engines would allow tampering in situations where such tampering may result in an increase in emissions. For example, removal of an emissions related device that is not affected by the high sulfur fuel or is rendered less effective but not inoperative by the high sulfur fuel would increase emissions over what would have occurred in the absence of tampering.

However, some model year 1994 and later heavy-duty engines may be built with after treatment devices that may be rendered inoperative by the use of diesel fuel with sulfur content exceeding 0.05 weight percent. The exercise of enforcement discretion may be appropriate in the case of tampering with a device that has been or is likely to be rendered inoperative by the use of high sulfur diesel fuel. However, EPA should not allow tampering with an emissions control device that has been or is likely to be rendered less effective, but not rendered inoperative, as a result of the use of higher sulfur fuel.

#### *Issue: Warranty Exemption*

EPA believes an exemption from the warranty provisions of section 207 is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects which cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emission and emission related engine components.

It has been consistent EPA policy that misuse and/or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty

coverage for the specific emission and emission related engine components affected by this misuse. In this case, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling", it will have the same adverse effect: it will have an adverse effect on emissions control components. Thus, EPA believes that where the use of noncomplying diesel fuel will have an adverse impact on the emissions durability of specific engine parts or systems, such as a trap oxidizer the manufacturer will have a reasonable basis for denying warranty coverage. However, as has consistently been EPA's policy, those components not adversely affected by the misfueling should continue to receive full emissions warranty coverage. In any event, the number of engines likely to be covered in American Samoa, and the potential for excessive costs or disputes, are extremely small.

#### *Issue: Recall Liability*

Heavy-duty engine manufacturers are responsible for recalling and repairing engines that do not comply with emission requirements for their useful life. The EPA tests engine classes to determine whether engines comply with applicable emission standards when properly used and maintained. Under section 207(c), if a substantial number of engines in a specific engine class do not comply when tested, that entire class can be recalled. If a situation arose in which an engine fueled with noncomplying diesel fuel were included in an EPA in-use compliance test program, EPA would determine, on a case-by-case basis, if the noncompliance were the result of the use of noncomplying diesel fuel. If it were determined that the noncomplying diesel fuel was the cause of the engine's failure to meet the applicable emission standards, that fact would be considered before seeking recall of the class. Given the very small number of diesel engines used in American Samoa, it is highly unlikely that noncompliance by those engines would ever result in an engine class being recalled. In cases in which it was determined that the overall class was subject to recall, however, individual engines would not be excluded from repair on the basis of fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or malmaintenance. The situation that would occur in American Samoa is no different and thus the manufacturers should remain liable for performing recall repairs on these engines when required.

#### IV. Final Decision

American Samoa must rely totally on the costly importation of petroleum supplies, including diesel fuel, as a result of its remote location, along with its lack of internal petroleum supplies or refining capability. Given the petroleum storage infrastructure in American Samoa, compliance with section 211(i) diesel fuel sulfur content requirements could be accomplished in only one of two ways.

First, ASG, as owner of the only storage facility for such fuel, could build segregated storage space for 0.05 weight percent sulfur diesel fuel. EPA believes that the cost of such construction, as discussed earlier would impose a great burden on the economy, and is financially unreasonable given the lack of commensurate environment benefits. The high cost of exacerbated by American Samoa's remote location. The second alternative for compliance would be allowed importation into American Samoa of only complying diesel fuel. In effect, instead of building another storage tank for low sulfur diesel fuel, only low sulfur diesel fuel would be imported for storage in the single tank. The single storage facility would then continue to service all the uses for diesel fuel, including power generation, on-highway fuel and off-highway fuel. The cost of this alternative is clearly exorbitant, given the on-highway diesel fuel comprised only 0.112 percent of all imports of diesel fuel.

It would cost over 4 million dollars per year to bring much less than one percent of the diesel fuel in compliance with section 211(i), and would be much more expensive than building segregated storage facilities.

This major economic burden would provide almost no environmental benefit, in a context where there are no current air pollution problems. There is no identified potential for violations of national ambient air quality standards in American Samoa. The Territory has only 92 miles of paved roads and fewer than 60 diesel-fueled vehicles licensed for highway use. The estimated 800 pounds of sulfur currently emitted by these vehicles is dispersed by the islands; trade winds and presents no public health or welfare risk at this time. Exemption from the section 211(i) requirements would not lead to future problems, in light of American Samoa's current regulatory limits and purchase specifications on diesel fuel sulfur content. In addition, the section 211(i) diesel sulfur requirements are designed primarily to protect the emission control hardware on model year 1994 and later heavy-duty vehicles, and the already

very small American Samoa fleet can be expected to contain few if any of these vehicles for the foreseeable future.<sup>3</sup> Imposition of the section 211(i) requirements are therefore not necessary to either solve an air pollution problem or to avoid one in the future.

The economic and environmental factors discussed above flow directly from the unique geography, meteorology and economic situation of American Samoa. The severe economic burden which would be imposed by the section 211(i) requirements far outweighs the almost nonexistent environmental benefit from application of these requirements to American Samoa. The Agency therefore finds that compliance with the diesel sulfur content limitation of section 211(i) (1) and (2) of the Act, and compliance with 40 CFR 80.29(a), is unreasonable for persons on American Samoa, and therefore exempts any person or source in American Samoa from these provisions.

For the same reasons, the Agency also exempts persons in American Samoa from those provisions of section 211(g)(2) of the Act which prohibit the fueling of motor vehicles with high-sulfur diesel fuel.<sup>4</sup> Although American Samoa did not explicitly request exemption from this provision in its petition, it is reasonable to read the petition as including such a request. Section 211 (g) and (i) both restrict the use of high-sulfur motor vehicle diesel fuel, and exempting American Samoa from the section 211(i) sulfur content requirements but not from the section 211(g) related prohibition, would provide no relief in fact from the problems American Samoa presented in its petition.

<sup>3</sup> During the diesel fuel rulemaking, EPA considered the general applicability of the diesel fuel requirements to Hawaii and the Pacific territories. 55 FR 34134 (August 21, 1990) Comments submitted by ASG and Pacific Resources, Inc. in that rulemaking questioned whether the diesel fuel requirements should apply to Hawaii and the Pacific territories. EPA did not accept the commentators' suggested geographic limits on the scope of the rule, primarily because of the potential use of 1994 and later heavy-duty diesel vehicles in these areas. That decision cannot be compared to today's final decision, however, as EPA's focus in that rulemaking was Hawaii and the Pacific territories viewed as a whole. The basic focus of this final decision is one specific territory, American Samoa.

<sup>4</sup> This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). The final action includes exemption from this prohibition, but does not include the prohibitions in section 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

#### V. Statutory Authority

Authority for the final action in this notice is section 325(a)(1) of the Clean Air Act, as amended (42 U.S.C. 7625-1(a)(1)).

#### VI. Administrative Designation and Regulatory Analysis

Under Executive Order (EO) 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. This final decision is not a regulation or rule as defined in EO 12291, therefore, no regulatory impact analysis has been prepared.

#### VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact on small entities. Since today's final decision exempt entities in American Samoa from complying with regulatory requirements, a regulatory flexibility analysis is not needed.

#### VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: July 12, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-17013 Filed 7-17-92; 8:45 am]

BILLING CODE 6560-50-M

### FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-946-DR]

#### Minnesota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota (FEMA-946-DR), dated June 26, 1992, and related determinations.

**EFFECTIVE DATE:** July 7, 1992.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.