

A cross reference to § 1039.1(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to “§ 1039.1(b) introductory text” would refer only to the single, parent paragraph (b).

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

Statutory authority for the engine controls proposed today can be found in sections 213 (which specifically authorizes controls on emissions from nonroad engines and vehicles), 203–209, 216 and 301 of the CAA, 42 U.S.C. 7547, 7522, 7523, 7424, 7525, 7541, 7542, 7543, 7550 and 7601.

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

### **List of Subjects**

#### **40 CFR Part 69**

Environmental protection, Air pollution controls.

#### **40 CFR Part 80**

Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

#### **40 CFR Part 89**

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

#### **40 CFR Part 1039**

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

#### **40 CFR Part 1068**

Environmental protection, Administrative practice and procedure, Incorporation by reference, Reporting and recordkeeping requirements, Research.

#### **40 CFR Part 1068**

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: April 15, 2003.

**Christine Todd Whitman,**

*Administrator.*

For the reasons set forth in the preamble, we propose to amend parts 69, 80, 89, 1039, 1065, and 1068 of title 40 of the Code of Federal Regulations as follows:

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

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

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

#### **Subpart E—[Amended]**

2. Section 69.51 is revised to read as follows:

##### **§ 69.51 Motor vehicle diesel fuel.**

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

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

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

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

(b) Beginning on the implementation dates in 40 CFR 80.500, motor vehicle diesel fuel that is designated for use in Alaska or is used in Alaska, is subject to the applicable provisions of 40 CFR part 80, Subpart I, except the language of product transfer documents under 40 CFR 80.590 and pump dispenser labels under 40 CFR 80.570(a) and (b) may be modified, as applicable, to reflect the fact that certain motor vehicle and non-motor vehicle diesel fuels or heating oil that would otherwise be required to be segregated due to the red dye

requirement for non-motor vehicle fuels under §§ 80.510(c) and 80.520(b)(2) are permitted to be commingled, distributed and dispensed as one fuel, due to the exemption from the red dye requirement under 40 CFR 69.52(b) and (c), if they meet the same sulfur and cetane and/or aromatics standards as the motor vehicle diesel fuel.

(c) The Governor of Alaska may submit for EPA approval, by April 1, 2002, a plan for implementing the motor vehicle sulfur standard in Alaska as an alternative to the temporary compliance option provided under §§ 80.530–80.532. If EPA approves an alternative plan, the provisions as approved by EPA under that plan shall apply to the diesel fuel subject to this paragraph (b).

3. A new § 69.52 is added to read as follows:

##### **§ 69.52 Non-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.

(3) *Nonroad, locomotive, or marine diesel fuel* shall have the same meaning as provided in 40 CFR 80.2.

(b) Non-motor vehicle diesel fuel and heating oil that is used or intended for use in areas of Alaska accessible by the Federal Aid Highway System is subject to the provisions of 40 CFR Part 80, Subpart I, except:

(1) The fuel is exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under §§ 80.510(c) and 80.520(b)(2). Exempt fuel under this paragraph (b) must be segregated from motor vehicle diesel fuel, unless it meets the same sulfur standard and applicable cetane and/or aromatics standards as the motor vehicle diesel fuel and it is not marked by yellow solvent 124 under §§ 80.510 and 80.511.

(2) The language of product transfer documents under 40 CFR 80.590 and pump dispenser labels under 40 CFR 80.570–80.573 may be modified, as applicable, to reflect the fact that the fuel is exempt from the red dye requirement under paragraph (b) (1) of this section, and that the exempt fuel that would otherwise be required to be segregated from motor vehicle diesel fuel is permitted to be commingled, distributed and dispensed with the motor vehicle fuel if it meets the same sulfur standard and applicable cetane and/or aromatics standards as the motor vehicle fuel and is not marked by