

Environmental Protection Agency

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(i) The refiner or importer complies with the volume limit in paragraph (a)(3) of this section; and

(ii) The refiner or importer produces or imports a volume of motor vehicle diesel fuel subject to the 15 ppm sulfur standard, or obtains credits properly generated and used pursuant to the requirements of §§80.531 and 80.532 that represent a volume of motor vehicle diesel fuel, equal to the volume of the exceedance for the prior compliance period.

(b) After May 31, 2010, no refiner or importer may produce or import motor vehicle diesel fuel subject to the 500 ppm sulfur content standard pursuant to this section.

EFFECTIVE DATE NOTE: At 69 FR 39172, June 29, 2004, §80.530 was revised, effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 80.530 Under what conditions can 500 ppm motor vehicle diesel fuel be produced or imported after May 31, 2006?

(a) Beginning June 1, 2006, a refiner or importer may produce or import motor vehicle diesel fuel subject to the 500 ppm sulfur content standard of §80.520(c) if all of the following requirements are met:

(1) Each batch of motor vehicle diesel fuel subject to the 500 ppm sulfur content standard must be designated by the refiner or importer as subject to such standard, pursuant to §80.598(a).

(2) The refiner or importer must meet the requirements for product transfer documents in §80.590 for each batch subject to the 500 ppm sulfur content standard.

(3)(i) The volume of motor vehicle diesel fuel that is produced or imported during a compliance period (V_{500} , as provided in paragraph (a)(5) of this section, may not exceed the following volume limit:

(A) For the compliance periods prior to the period from July 1, 2009 through May 31, 2010, 20 percent of the volume of motor vehicle diesel fuel that is produced or imported during a compliance period (V_i) plus an additional volume of motor vehicle diesel fuel represented by credits properly generated and used pursuant to the requirements of §§80.531 and 80.532.

(B) For the compliance period from July 1, 2009 through May 31, 2010, 20 percent of the volume of motor vehicle diesel fuel that is produced or imported prior to January 1, 2010 during the compliance period (V_i), plus an additional volume of motor vehicle diesel fuel represented by credits properly generated and used pursuant to the requirements of §§80.531 and 80.532. From January 1, 2010 through May 31, 2010, the volume of

motor vehicle diesel fuel that is produced or imported shall not exceed the volume represented by credits used pursuant to §80.532.

(ii) The terms V_{500} and V_i have the meaning specified in §80.531(a)(2).

(4) Compliance with the volume limit in paragraph (a)(3) of this section must be determined separately for each refinery. For an importer, such compliance must be determined separately for each Credit Trading Area (as defined in §80.531) into which motor vehicle diesel fuel is imported. If a party is both a refiner and an importer, such compliance shall be determined separately for the refining and importation activities.

(5) Compliance with the volume limit in paragraph (a)(3) of this section shall be determined on an annual basis, where the annual compliance period is from July 1 through June 30. For the year 2006, compliance shall be determined for the period June 1, 2006 through June 30, 2007. For the year 2010, compliance shall be determined for the period of July 1, 2009 through May 31, 2010.

(6) Any motor vehicle diesel fuel produced or imported above the volume limit in paragraph (a)(3) of this section shall be subject to the 15 ppm sulfur content standard. However, for any compliance period prior to the compliance period July 1, 2009 through May 31, 2010, a refiner or importer may exceed the volume limit in paragraph (a)(3) of this section by no more than 5 percent of the volume of diesel fuel produced or imported during the compliance period (V_i), provided that for the immediately following compliance period:

(i) The refiner or importer complies with the volume limit in paragraph (a)(3) of this section; and

(ii) The refiner or importer produces or imports a volume of motor vehicle diesel fuel subject to the 15 ppm sulfur standard, or obtains credits properly generated and used pursuant to the requirements of §§80.531 and 80.532 that represent a volume of motor vehicle diesel fuel, equal to the volume of the exceedance for the prior compliance period.

(b) After May 31, 2010, no refiner or importer may produce or import motor vehicle diesel fuel subject to the 500 ppm sulfur content standard pursuant to this section.

§ 80.531 How are motor vehicle diesel fuel credits generated?

(a) *Generation of credits from June 1, 2006 through December 31, 2009.* (1) A refiner or importer may generate credits during the period June 1, 2006 through December 31, 2009, for motor vehicle diesel fuel produced or imported that is designated as subject to the 15 ppm sulfur content standard under §80.520(a)(1). Credits may be generated only if the volume of motor vehicle

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diesel fuel designated under § 80.523 as subject to the 15 ppm sulfur standard of § 80.520(a) exceeds 80% of the total volume of diesel fuel produced or imported as described in paragraph (a)(2) of this section.

(2) The number of credits generated shall be calculated for each compliance period (as specified in § 80.530(a)(5)) as follows:

$$C = V_{15} - (0.80 \times V_t)$$

Where:

C = the positive number of credits generated, in gallons.

V₁₅ = the total volume in gallons of motor vehicle diesel fuel produced or imported that is designated under § 80.523 as subject to the standards of § 80.520(a) during the compliance period.

V₅₀₀ = the total volume in gallons of motor vehicle diesel fuel produced or imported that is designated under § 80.523 as subject to the 500 ppm sulfur standard under § 80.520(c) plus the total volume of any other diesel fuel (not including V₁₅, or diesel fuel that is dyed in accordance with § 80.520(b) at the refinery or import facility where the diesel fuel is produced or imported) represented as having a sulfur content not exceeding 500 ppm.

$$V_t = V_{15} + V_{500}.$$

(3) Credits shall be generated and designated as follows:

(i) Credits shall be generated separately for each refinery of a refiner.

(ii) Credits shall be generated separately for each credit trading area (CTA), as defined in paragraph (a)(5) of this section, into which motor vehicle diesel fuel is imported by an importer.

(iii) Credits shall be designated separately by year of generation and by CTA of generation. In the case of a refiner, credits shall also be designated by refinery, and in the case of an importer, credits shall also be designated by port of import.

(iv) Credits may not be generated by both a foreign refiner and by an importer for the same motor vehicle diesel fuel.

(4) Credits shall be generated by a foreign refiner as provided in § 80.620(c) and this section.

(5) For purposes of this subpart, the CTAs are:

(i) PADDs 1, 2, 3 and 4, as described in § 80.41(r), except as provided in paragraph (a)(5)(iv) of this section. The CTAs shall be designated as CTA 1, 2, 3,

and 4, respectively, and correspond to PADD 1, 2, 3, and 4, respectively;

(ii) CTA 5 shall correspond to PADD 5, as described in § 80.41(r), except as provided in paragraphs (a)(5)(iii) and (iv) of this section;

(iii) The states of Hawaii and Alaska shall each be treated as a separate CTA and not a part of CTA 5. Alaska shall be CTA 6. Hawaii shall be CTA 7;

(iv) If any state (through a waiver of federal preemption under Section 211(c)(4) of the Clean Air Act, 42 U.S.C. 7545(c)(4)) implements a law or regulation that requires a greater volume of motor vehicle diesel fuel to meet a sulfur standard of less than or equal to 15 ppm than the volume that is required under this subpart, no motor vehicle diesel fuel produced in that state or imported directly into that state may generate credits under this subpart, effective on the implementation date of the sulfur program under the state statute or regulation that implements the more stringent state requirements.

(6) No credits may be generated under this paragraph (a) after December 31, 2009.

(7) No refinery may generate credits under both this paragraph (a) and under paragraph (e) of this section.

(b) *Generation of early credits from June 1, 2001 through May 31, 2005.* (1) Beginning June 1, 2001, a refiner or importer may generate one credit for each gallon of motor vehicle diesel fuel meeting the sulfur content standard in § 80.520(a)(1) that is used in vehicles with engines that are certified to meet the model year 2007 heavy duty engine PM standard under 40 CFR 86.007-11, or vehicles with retrofit technologies that achieve emission levels equivalent to the 2007 NO_x or PM emission standard verified as part of a retrofit program administered by EPA or a state. Such refiners and importers must comply with the requirements of paragraphs (b) and (d) of this section.

(2)(i) Any refiner or importer planning to generate credits under this paragraph must provide notice of intent to generate early credits at least 120 calendar days prior to the date it begins generating credits under this paragraph by submitting such notice to Attn: Early Diesel Credits Notice, at the address in § 80.595.

(ii) The notice shall include a detailed plan that demonstrates that the motor vehicle diesel fuel meeting the 15 ppm sulfur standard of § 80.520(a)(1) for which credits are generated under this paragraph will be used in vehicles with engines that are certified to meet the model year 2007 heavy duty engine PM standard under 40 CFR 86.007-11 or in vehicles with retrofit technologies that achieve emission levels equivalent to the 2007 NO_x or PM emission standard verified as part of a retrofit program administered by EPA or a state. The notice must include the refiner's or importer's detailed plan for ensuring that all motor vehicle diesel fuel that generates early credits under this paragraph will be segregated from all other motor vehicle diesel fuel not meeting the sulfur standard under § 80.520(a)(1), from the refinery or import facility to its ultimate use in motor vehicles.

(3) No credits may be generated under this paragraph (b) after May 31, 2005.

(4) A refiner or importer may generate credits under this paragraph and also generate credits under paragraph (a) of this section, and a small refiner, as defined under § 80.550, may generate credits under this paragraph (b) and paragraph (e) of this section.

(c) *Generation of early credits from June 1, 2005 through May 31, 2006.* (1) Beginning June 1, 2005, a refiner or importer may generate one credit for each gallon of motor vehicle diesel fuel that is dispensed at retail outlets or at wholesale-purchaser consumer facilities exclusively as motor vehicle diesel fuel meeting the 15 ppm sulfur standard in § 80.520(a)(1). Such refiners and importers must comply with the requirements of this paragraph (c) and paragraph (d) of this section.

(2)(i) Any refiner or importer planning to generate credits under this paragraph must provide notice of intent to generate early credits at least 120 calendar days prior to the date it begins generating credits under this paragraph (c).

(ii) The notice shall include a detailed plan that demonstrates that the motor vehicle diesel fuel meeting the sulfur standard under § 80.520(a)(1) will be dispensed exclusively at retail outlets or at wholesale-purchaser con-

sumer facilities as 15 ppm sulfur content motor vehicle diesel fuel. The plan must demonstrate that the refiner or importer will assure that all motor vehicle diesel fuel that generates early credits under this paragraph (c) will be segregated from all other motor vehicle diesel fuel from the refinery or import facility to its ultimate use in motor vehicles.

(3) No credits may be generated under this paragraph after May 31, 2006.

(4) A refiner or importer may generate credits under this paragraph (c) and also generate credits under paragraph (a) of this section, and a small refiner, as defined under § 80.550, may generate credits under this paragraph (c) and paragraph (e) of this section.

(d) *Additional requirements for early credits.* Early credits generated under paragraphs (b) and (c) of this section are subject to the following additional requirements:

(1) The designation requirements of § 80.523, and all recordkeeping and annual reporting requirements of §§ 80.592, 80.593 and 80.594.

(2) Credits generated under paragraphs (b) and (c) of this section shall be generated separately by CTA as defined in paragraph (a)(5) of this section and must be designated by CTA of generation, and by the refiner and refinery, or by importer and port of import, as applicable.

(3) Credits may not be generated for the same fuel by both a foreign refiner and an importer.

(4) The plan under paragraph (b)(2)(ii) or (c)(2)(ii) of this section must include provisions to include information on product transfer documents and on pump stands dispensing the fuel identifying the fuel as 15 ppm sulfur content motor vehicle diesel fuel. The plan must also identify the specific retail outlets or wholesale purchaser-consumer facilities that the fuel will be provided to. The Administrator may require a refiner or importer to submit additional information, as needed.

(5) In addition to the reporting requirements under paragraph (d)(1) of this section, the refiner or importer must submit a report to the Administrator no later than the last day of February for the prior calendar year period (or for the period June 1, 2001

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through December 31, 2001, the period June 1, 2005 through December 31, 2005, or the period January 1, 2006 through May 31, 2006, as applicable) demonstrating that all the motor vehicle diesel fuel produced or imported for which credits were generated met the applicable requirements of paragraph (b), (c), or (d)(4) of this section. If the Administrator finds that such credits did not in fact meet the requirements of paragraphs (b)(1) and (c)(1) of this section, as applicable, or if the Administrator determines that there is insufficient information to determine the validity of such credits, the Administrator may deny the credits submitted in whole or in part.

(e) Credits generated by small refiners.

(1) Notwithstanding the provisions of paragraph (a) of this section, a small refiner that is approved by the EPA as a small refiner under § 80.551(g) may generate credits under § 80.552(b). Such a small refiner may generate one credit for each gallon of motor vehicle diesel fuel produced that is designated under § 80.523 as subject to the 15 ppm sulfur standard under § 80.520(a)(1).

(2)(i) Credits may be generated under this paragraph (e) and § 80.552(b) only during the compliance periods beginning June 1, 2006 and ending on May 31, 2010. Credits shall be designated separately by refinery, separately by CTA of generation, and separately by annual compliance period. The annual compliance period for 2006 shall be June 1, 2006 through December 31, 2006. The annual compliance period for 2010 shall be January 1, 2010 through May 31, 2010.

(ii) The small refiner must meet the requirements of paragraphs (d)(1), (d)(2) and (d)(3) of this section, and the recordkeeping and reporting requirements of §§ 80.592, 80.593 and 80.594.

(iii) In addition, a foreign refiner that is approved by the Administrator to generate credits under § 80.552(b) shall comply with the requirements of § 80.620.

EFFECTIVE DATE NOTE: At 69 FR 39173, June 29, 2004, § 80.531 was amended by revising paragraphs (a)(1), (a)(2), (d)(1) (d)(5), (e)(1), and (e)(2)(i), effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 80.531 How are motor vehicle diesel fuel credits generated?

(a) * * *

(1) A refiner or importer may generate credits during the period June 1, 2006 through December 31, 2009, for motor vehicle diesel fuel produced or imported that is designated as subject to the 15 ppm sulfur content standard under § 80.520(a)(1). Credits may be generated only if the volume of motor vehicle diesel fuel designated under § 80.598(a) as subject to the 15 ppm sulfur standard of § 80.520(a) exceeds 80 percent of the total volume of motor vehicle diesel fuel produced or imported as described in paragraph (a)(2) of this section.

(2) The number of motor vehicle diesel fuel credits generated shall be calculated for each compliance period (as specified in § 80.530(a)(5)) as follows:

C = V15₁₅ - (0.80 × V_i)

Where:

C = the positive number of motor vehicle diesel fuel credits generated, in gallons.

V₁₅ = the total volume in gallons of diesel fuel produced or imported that is designated under § 80.598 as motor vehicle diesel fuel and subject to the standards of § 80.520(a) during the compliance period.

V_i n =₁₅ + V₅₀₀.

V₅₀₀ = the total volume in gallons of diesel fuel produced or imported that is designated under § 80.598(a) as motor vehicle diesel fuel and subject to the 500 ppm sulfur standard under § 80.520(c) plus the total volume of any other diesel fuel (not including V₁₅, diesel fuel that is dyed in accordance with § 80.520(b) at the refinery or import facility where the diesel fuel is produced or imported, or diesel fuel that is designated as NRLM under § 80.598(a)) represented as having a sulfur content less than or equal to 500 ppm.

* * * * *

(d) * * *

(1) The designation requirements of § 80.598, and all recordkeeping and reporting requirements of §§ 80.592, 80.593, 80.594, 80.600, and 80.601.

* * * * *

(5) In addition to the reporting requirements under paragraph (d)(1) of this section, the refiner or importer must submit a report to the Administrator no later than August 31, 2005 for the period from June 1, 2004 through May 31, 2005, or August 31, 2006 for the period from June 1, 2005 through May 31, 2006, demonstrating that all the motor vehicle diesel fuel produced or imported for which credits were generated met the applicable requirements of paragraph (b), (c), or

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(d)(4) of this section. If the Administrator finds that such credits did not in fact meet the requirements of paragraphs (b)(1) and (c)(1) of this section, as applicable, or if the Administrator determines that there is insufficient information to determine the validity of such credits, the Administrator may deny the credits submitted in whole or in part.

(e) * * *

(1) Notwithstanding the provisions of paragraph (a) of this section, a small refiner that is approved by the EPA as a small refiner under §80.551(g) may generate credits under §80.552(b). Such a small refiner may generate one credit for each gallon of motor vehicle diesel fuel produced that is designated under §80.598 as motor vehicle diesel fuel subject to the 15 ppm sulfur standard under §80.520(a)(1).

(2) * * *

(i) Credits may be generated under this paragraph (e) and §80.552(b) only during the compliance periods beginning June 1, 2006 and ending on May 31, 2010, however diesel fuel produced after December 31, 2009 shall not generate credits. Credits shall be designated separately by refinery, separately by CTA of generation, and separately by annual compliance period. The annual compliance period for 2006 shall be June 1, 2006 through June 30, 2007. The annual compliance period for 2010 shall be July 1, 2009 through May 31, 2010.

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§80.532 How are credits used and transferred?

(a) *Credit use.* Credits generated under §80.531 may be used to meet the volume limit of §80.530(a)(3) provided that:

(1) The credits were generated and reported according to the requirements of this subpart; and

(2) The requirements of paragraphs (b), (c), (d), and (e) of this section are met.

(b) Credits generated under §80.531 may be used by a refinery or by an importer to comply with section 80.530 by applying one credit for every gallon of motor vehicle diesel fuel needed to meet compliance with the volume limit of §80.530(a)(3).

(c) Credits generated may be banked for use or transfer in a later compliance period or may be transferred to another refinery or importer for use as provided in paragraph (d) of this section.

(d) *Credit transfers.* (1) Credits obtained from another refinery or from another importer, including early credits and small refiner credits as described in §80.531 (b), (c) (d), and (e), may be used to satisfy the volume limit of §80.530(a)(3) if all the following conditions are met:

(i) The credits were generated in the same CTA as the CTA in which credits are used to achieve compliance;

(ii) The credits are used in compliance with the time period limitations for credit use in this subpart;

(iii) Any credit transfer takes place no later than the last day of February following the compliance period when the credits are used;

(iv) No credit may be transferred more than twice, as follows: The first transfer by the refiner or importer who generated the credit may only be made to a refiner or importer who intends to use the credit; if the transferee cannot use the credit, it may make a second and final transfer only to a refiner or importer who intends to use the credit. In no case may a credit be transferred more than twice before being used or terminated;

(v) The credit transferor must apply any credits necessary to meet the transferor's annual compliance requirements before transferring credits to any other refinery or importer;

(vi) No credits may be transferred that would result in the transferor having a negative credit balance; and

(vii) Each transferor must supply to the transferee records indicating the year the credits were generated, the identity of the refiner (and refinery) or importer who generated the credits, the CTA of credit generation, and the identity of the transferring party, if it is not the same party who generated the credits.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid credits cannot be used to achieve compliance with the transferee's volume requirements regardless of the transferee's good faith belief that the credits were valid.

(ii) The refiner or importer who used the credits, and any transferor of the credits, must adjust their credit