

end of the compliance period, must first be applied to correct the invalid transfers before the transferor trades or banks the motor vehicle diesel fuel credits.

(e) *Limitations on credit use.* (1) Motor vehicle diesel fuel credits may not be used to achieve compliance with any requirements of this subpart other than the volume limit of § 80.530(a)(3), unless specifically approved by the Administrator pursuant to a hardship relief petition under § 80.560 or 80.561.

(2) A refiner or importer possessing motor vehicle diesel fuel credits must use all motor vehicle diesel fuel credits in its possession prior to applying the credit deficit provisions of § 80.530(a)(6).

(3) No motor vehicle diesel fuel credits may be used to meet compliance with this subpart subsequent to the compliance period ending May 31, 2010.

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline?

(a) A refiner or importer wishing to generate credits under § 80.535 or use the small refiner provisions under § 80.554 must submit an application to EPA that includes the information required under paragraph (c) of this section by the dates specified in paragraph (f) of this section. A refiner must apply for a motor vehicle baseline for each refinery in order to generate credits under § 80.535 and apply for a non-highway baseline for each refinery to use the provisions of § 80.554 (a), (b), or (d).

(b) The baseline must be sent to the following address: U.S. EPA—Attn: Nonroad Rule Diesel Fuel Baseline, Transportation and Regional Programs Division (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (regular mail) or U.S. EPA, Attn: Nonroad Rule Diesel Fuel Baseline, Transportation and Regional Programs Division (6406J), 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail).

(c) A baseline application must be submitted for each refinery or import facility and include the following information:

(1) A listing of the names and addresses of all refineries or import facilities owned by the company for which the refiner or importer is applying for a motor vehicle or non-highway baseline.

(2)(i) For purposes of a motor vehicle baseline volume for use in determining early credits per § 80.535(a) and (b) and for purposes of a non-highway baseline

volume used in determining compliance with the provisions of § 80.554(a) or (d), the baseline volume produced during the three calendar years beginning January 1, 2003, 2004, and 2005, as calculated under paragraph (e)(1) of this section.

(ii) For purposes of a motor vehicle baseline volume for use in determining early credits per § 80.535(c) and for purposes of a non-highway baseline volume used in determining compliance with the provisions of § 80.554(b), the baseline volumes produced during the three calendar years beginning January 1, 2006, 2007, and 2008, as calculated under paragraph (e)(2) of this section.

(3) A letter signed by the president, chief operating officer of the company, or his/her delegate, stating that the information contained in the motor vehicle or non-highway baseline application is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and e-mail address of a corporate contact person.

(5) For each batch of diesel fuel produced or imported during each calendar year:

(i) The date that production was completed or importation occurred for the batch and the batch designation or classification.

(ii) The batch volume.

(6) Other appropriate information as requested by EPA.

(d) *Calculation of the Motor vehicle Baseline, B_{MV} .* (1) Under paragraph (c)(2)(i) of this section, B_{MV} equals the average annual volume of motor vehicle diesel fuel produced or imported from January 1, 2003 through December 31, 2005.

(2) Under paragraph (c)(2)(ii) of this section, B_{MV} equals the average annual volume of motor vehicle diesel fuel produced during the period from January 1, 2006 through December 31, 2008.

(3) For purposes of this paragraph, fuel produced for export, jet fuel (kerosene), and fuel specifically produced to meet military specifications (such as JP-4, JP-8, and F-76), shall not be included in baseline calculations.

(e) *Calculation of the Non-highway Baseline, B_{NRLM} .* (1) Under paragraph (c)(2)(i) of this section, B_{NRLM} equals the average annual volume of all #2D

§ 80.534

40 CFR Ch. I (7-1-04 Edition)

distillate produced or imported from January 1, 2003 through December 31, 2005, less B_{MV} as determined in paragraph (d)(1) of this section.

(2) Under paragraph (c)(2)(ii) of this section, $NRLM$ equals the average annual volume of $MVNRLM$ produced or imported from January 1, 2006 through December 31, 2008, less B_{MV} as determined in paragraph (d)(2) of this section.

(3) For purposes of this paragraph (e), fuel produced for export, jet fuel, kerosene, and fuel specifically produced to meet military specification (such as JP-4, JP-8, and F-76), shall not be included in baseline calculations.

(f)(1) Applications submitted under paragraph (c)(2)(i) of this section must be postmarked by February 28, 2006.

(2) Applications submitted under paragraph (c)(2)(ii) of this section must be postmarked by February 28, 2009.

(g)(1) For applications submitted under paragraph (c)(2)(i) of this section, EPA will notify refiners or importers by June 1, 2006 of approval of the baselines for each of the refiner's refineries or importer's import facilities or of any deficiencies in the refiner's or importer's application.

(2) For applications submitted under paragraph (c)(2)(ii) of this section, EPA will notify refiners or importers by June 1, 2009 regarding approval of the baselines for each of the refiner's refineries or importer's import facilities of any deficiencies in the refiner's or importer's application.

(h) If at any time the motor vehicle baseline or non-highway baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner or importer of the corrected baseline and any compliance calculations made on the basis of that baseline will have to be adjusted retroactively.

[69 FR 39174, June 29, 2004]

EFFECTIVE DATE NOTE: At 69 FR 39174, June 29, 2004, §80.533 was added, effective Aug. 30, 2004.

§ 80.534 [Reserved]

§ 80.535 How are NRLM diesel fuel credits generated?

(a) *Generation of high sulfur NRLM credits from June 1, 2006 through May 31,*

2007. (1) During the period June 1, 2006 through May 31, 2007, a refiner or importer may generate credits pursuant to the provisions of this section if all of the following conditions are met:

(i) The refiner or importer notifies EPA of its intention to generate credits and the period during which it will generate credits. This notification must be received by EPA at least 120 calendar days prior to the date it begins generating credits under this section.

(ii) Each batch or partial batch of NRLM diesel fuel for which credits are claimed shall be subject to all of the provisions of this subpart for NRLM diesel fuel as if it had been produced after June 1, 2007 and before June 1, 2010.

(iii) The number of high-sulfur NRLM credits (HSC) that are generated shall be a positive number.

(2) The refiner or importer shall choose one of the following methods for calculating credits for each calculation period.

(i) For fuel that is dyed under the provisions of §80.520, HSC equals the volume of fuel in gallons produced or imported during the period identified in paragraph (a)(1) of this section that is designated as NRLM diesel fuel and that is subject to and complies with the provisions of §80.510(a); or

(ii) For dyed or undyed fuel that complies with the provisions of §80.598 for a calculation period of June 1, 2006 through May 31, 2007, determine HSC as follows:

$$HSC = V_{510} + V_{520} - B_{MV}$$

Where:

V_{510} = The total volume of NRLM diesel fuel produced or imported during the annual calculation period that complies with the standards of §80.510(a) or (b).

V_{520} = The total volume of motor vehicle diesel fuel produced or imported during the annual calculation period that complies with the standards of §80.520(a) or (c).

B_{MV} = As calculated in §80.533(d)(1).

(3) High-sulfur NRLM credits shall be generated and designated as follows:

(i) Credits shall be generated separately for each refiner or importer.

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