

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.

(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.

[66 FR 5136, Jan. 18, 2001, as amended at 69 FR 39173, June 29, 2004; 70 FR 40895, July 15, 2005; 70 FR 70510, Nov. 22, 2005; 71 FR 25717, May 1, 2006]

§ 80.532 How are motor vehicle diesel fuel credits used and transferred?

(a) *Credit use stipulations.* Motor vehicle diesel fuel credits generated under § 80.531 may be used to meet the volume limit of § 80.530(a)(3) provided that:

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

(2) The conditions of this section are met.

(b) *Use of credits generated under § 80.531.* Motor vehicle diesel fuel credits generated under § 80.531 may be used by a refiner or by an importer to comply with § 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) *Credit banking.* Motor vehicle diesel fuel credits generated may be banked for use or transfer in a later compliance period or may be transferred to another refiner or importer for use as provided in paragraph (d) of this section.

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

(i) The motor vehicle diesel fuel credits were generated in the same CTA as

the CTA in which motor vehicle diesel fuel credits are used to achieve compliance, except as provided in § 80.531(c)(5);

(ii) The motor vehicle diesel fuel 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 August 31 following the compliance period when the motor vehicle diesel fuel 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 motor vehicle diesel fuel credits necessary to meet the transferor's annual compliance requirements before transferring motor vehicle diesel fuel credits to any other refinery or importer;

(vi) No motor vehicle diesel fuel 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 motor vehicle diesel fuel credits were generated, the identity of the refiner (and refinery) or importer who generated the motor vehicle diesel fuel credits, the CTA of credit generation, and the identity of the transferring entity, if it is not the same entity who generated the motor vehicle diesel fuel credits.

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

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

(ii) The refiner or importer who used the motor vehicle diesel fuel credits, and any transferor of the motor vehicle

§ 80.533

40 CFR Ch. I (7–1–07 Edition)

diesel fuel credits, must adjust their credit records, reports and compliance calculations as necessary to reflect the proper motor vehicle diesel fuel credits.

(iii) Any properly created motor vehicle diesel fuel credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies motor vehicle diesel fuel credits as needed to meet the compliance requirements at the 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.

[69 FR 39173, June 29, 2004, as amended at 71 FR 25717, May 1, 2006]

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline for the generation of NRLM credits or the use of the NRLM small refiner compliance options?

(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.

(iii) For purposes of a total diesel baseline volume for use in determining compliance with the provisions of § 80.554(d), the baseline volumes of motor vehicle diesel fuel produced during the calendar years beginning January 1, 1998 and 1999 (per §§ 80.595(a) and 80.596(a)); and the baseline volumes of non-highway diesel fuel produced during the three calendar years beginning January 1, 2003, 2004, and 2005. This shall be calculated as stated under paragraph (f) 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.