

§ 80.533

40 CFR Ch. I (7-1-08 Edition)

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 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

Environmental Protection Agency

§ 80.533

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.

(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 or imported 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} .* For purposes of this paragraph (e), B_{MV} shall only include

the average annual volume of #2D distillate fuel.

(1) Under paragraphs (c)(2)(i) and (c)(2)(iii) of this section, B_{NRLM} equals the average annual volume of all #2D 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, B_{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) *Calculation of the Total Diesel Baseline, B_{MVNRLM} .* B_{MVNRLM} equals the sum of B_{MV} (as calculated under § 80.596) plus B_{NRLM} (as calculated under paragraph (e)(1) of this section).

(g)(1) Applications submitted under paragraphs (c)(2)(i) and (c)(2)(iii) 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.

(h)(1) For applications submitted under paragraphs (c)(2)(i) and (c)(2)(iii) 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 or any deficiencies in the refiner's or importer's application.

(i) 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

§ 80.534

40 CFR Ch. I (7-1-08 Edition)

made on the basis of that baseline will have to be adjusted retroactively.

[69 FR 39174, June 29, 2004, as amended at 70 FR 70510, Nov. 22, 2005; 71 FR 25717, May 1, 2006]

§ 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 30 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.

(iii) Credits shall not be generated under both § 80.531 and this section for the same diesel fuel.

(iv) Any credits generated by a foreign refiner shall be generated as provided in § 80.620(c) and this section.

(4) No credits may be generated under this paragraph (a) after May 31, 2007.

(5) Any fuel for which a refiner or importer wishes to generate credits must be designated as 500 ppm sulfur NRLM diesel fuel when delivered to the next entity. The refiner may not designate the fuel as 500 ppm sulfur with the intent that it be mixed by the next entity with a batch of distillate with a higher sulfur level to create a fuel with a classification other than 500 ppm sulfur or the classification of the fuel it is mixed with (*e.g.*, it cannot mix fuel designated as 500 ppm sulfur with fuel classified as high sulfur to produce a fuel classified as 2000 ppm sulfur to meet state or local sulfur limits).

(6) The refiner or importer must submit a report to the Administrator no later than July 31, 2007. The report must demonstrate that all the NRLM diesel fuel produced or imported which generated credits met the applicable requirements of paragraphs (a)(1) through (a)(5) of this section. If the Administrator finds that such credits did not in fact meet the requirements of paragraphs (a)(1) through (a)(5) 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.

(b) *Generation of high-sulfur NRLM credits by small refiners from June 1, 2006*