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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.

[69 FR 39172, June 29, 2004]

§ 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 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:

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

Where:

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

V_{15} = 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.

$$V_{in} = V_{15} + V_{500}$$

V_{500} = 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 V_{15} , 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.

(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 I, II, III and IV, as described in § 80.502(f) 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 PADDs I, II, III, and IV, respectively;

(ii) CTA 5 shall correspond to PADD V, as described in § 80.502(f), 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.

(v) The U.S. territories specified in § 80.502(f)(6) shall be included in CTA 1.

(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

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(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 produced or imported that meets the 15 ppm sulfur standard in § 80.520(a)(1) that is delivered into the distribution system. 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 30 calendar days prior to the date it begins generating credits under this paragraph (c).

(ii) [Reserved]

(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.

(5) *Credit transfers for early credits.* For early credits generated under § 80.531(c), credits may be used in any of the CTAs 1 through 5 that were generated in any of the CTAs 1 through 7 to achieve compliance with the volume limit in § 80.503(a)(3);

(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 § 80.598, and all recordkeeping and reporting requirements of §§ 80.592 (except for paragraph (a)(3)), 80.593, 80.594, 80.600, and 80.601.

(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, except as provided under paragraph (c)(5) of this section.

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

(4) [Reserved]

(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 (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 § 80.598 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.

(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

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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 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