

(ii)(A) By the end of the applicable alternative averaging period, the refinery must generate a net NO_x benefit (compared to the statutory baseline) that is at least twice as large as the total NO_x deficit generated during the period of time during which the refiner produced gasoline that did not comply with the statutory baseline.

(B) At least one-half of the total NO_x benefit required under paragraph (k)(3)(ii)(A) of this section must be generated by production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO_x standard, as calculated on a quarterly basis in accordance with the provision of this paragraph (k)(3)(ii).

(C) Any portion of the total NO_x benefit beyond that portion described under paragraph (k)(3)(ii)(B) of this section may come from either the production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO_x standard, as calculated on a quarterly basis, or from the purchase and retirement of stationary source NO_x credits or allowances, as provided in paragraph (k)(3)(iii) of this section.

(D) For the purposes of this § 80.101(k) and § 80.101(l), the NO_x deficit in tons shall be calculated in accordance with the following equation:

$$NO_{xDef} = (NO_{xAd} - NO_{xSea}) * G_d * 2.7 \times 10^{-8}$$

Where:

NO_{xDef} = the NO_x deficit, in tons, for a calendar quarter in which the refiner's NO_x performance for that quarter exceeds NO_{xSea}.

NO_{xAd} = the average volume weighted NO_x emissions performance, in mg/mile, for a calendar quarter in which the refiner exceeds NO_{xSea}.

NO_{xSea} = quarterly statutory NO_x performance values. First calendar quarter = 1540 mg/mile; Second calendar quarter = 1383 mg/mile; Third calendar quarter = 1381 mg/mile; Fourth calendar quarter = 1540 mg/mile.

G_d = the volume of gasoline produced during a quarter in which the refiner exceeds the applicable NO_x standard, measured in gallons.

(E) For the purposes of this § 80.101(k) and § 80.101(l), the NO_x benefit in tons shall be calculated in accordance with the following equation:

$$NO_{xBen} = (NO_{xSea} - NO_{xAb}) * G_d * 2.7 \times 10^{-8}$$

Where:

NO_{xBen} = the NO_x benefit, in tons, for a calendar quarter in which the refiner's NO_x performance for that quarter is below NO_{xSea}.

NO_{xAb} = the average volume weighted NO_x emissions performance, in mg/mile, for a calendar quarter in which the refiner is below NO_{xSea}.

NO_{xSea} = quarterly statutory NO_x performance values. First calendar quarter = 1540 mg/mile; Second calendar quarter = 1383 mg/mile; Third calendar quarter = 1381 mg/mile; Fourth calendar quarter = 1540 mg/mile.

G_b = the volume of gasoline produced during a quarter in which the refiner is below the applicable NO_x standard, measured in gallons.

(iii) NO_x Credits and Allowances. (A) Within 60 days of the end of each quarter for which the refinery produces gasoline for which there is a NO_x deficit, the refiner shall purchase stationary source NO_x credits or allowances that are equal to or greater than the amount of the NO_x deficit generated during the quarter, and provide written demonstration of such transaction to the Administrator. These NO_x credits or allowances are in addition to any NO_x credits or allowances purchased during any previous quarters. NO_x deficit is to be calculated on a quarterly basis in accordance with the equation in paragraph (k)(3)(ii)(D) of this section.

(B) No NO_x credits or allowances purchased by the refiner may contribute to the refinery's compliance with the requirements of paragraphs (k)(3)(ii)(B) of this section.

(C) The refinery may sell NO_x credits or allowances purchased under this paragraph (k)(3)(iii) only in an amount equal to or less than any NO_x benefit that the refinery generates subsequently through the production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO_x standard, as calculated on a quarterly basis. A refiner may retire credits or allowances purchased under this paragraph (k)(3)(iii) at any time.

(D) For purposes of satisfying a refinery's obligations under paragraphs (k)(3)(ii)(C), (k)(3)(iii)(A) or (l)(6)(ii) of this section, any NO_x credits or allowances that a refiner purchases must have been validly generated as part of a state stationary source program covered by an approved state implementation plan (SIP) and must be current and marketable NO_x credits or allowances. It shall be the refiner's responsibility to ensure that NO_x credits or allowances are valid, current and marketable.

(E) In order to be retired, NO_x allowances or credits must be retired by EPA or the administering state agency, as provided for in the applicable state

implementation plan (SIP). It shall be the refiner's responsibility to ensure that NO_x credits or allowances are actually retired and that retirement is reflected in the records of EPA or the administering state agency.

* * * * *

(vi) * * *

(B)(1) * * *

(2) A statement of the number of NO_x credits or allowances purchased, sold or retired during the quarter and a current total, based upon all quarters, indicating the current balance of NO_x credits or allowances; and

(3) Any contractual documents, or other documents, evidencing the purchasing, banking or retiring of NO_x credits or allowances.

(viii)(A) The refiner shall submit reports demonstrating compliance with deadline requirements under paragraph (k)(3)(vii) of this section no later than 30 days after the applicable deadline occurs. Upon failure to meet a deadline requirement under paragraph (k)(3)(vii) of this section, the Administrator may accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO_x standard under paragraph (k)(3)(i) or (l)(6)(i) of this section such that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. The acceleration of the requirement under paragraph (k)(3)(i) or (l)(6)(i) of this section, regarding compliance with the annual average statutory baseline NO_x standard, does not affect the applicability of any other standard or requirement applicable to the refinery under this or any other section of the Act (e.g., the refinery must still comply with the overall alternative averaging period NO_x requirements in paragraph (k)(3)(ii) of this section).

(B) The reports required by this paragraph shall be on forms and following procedures specified by the Administrator of the EPA and signed and certified as correct by the owner or a responsible corporate officer of the refiner.

* * * * *

(6) * * *

(iv) No application may result in an alternative compliance period that extends beyond January 1, 2006, except as provided in paragraph (l) of this section.

* * * * *

(l) Special alternative anti-dumping averaging period provisions for small refineries.—(1) *Eligibility for petition.* A