

(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 party, if it is not the same party 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 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.

22. A new § 80.533 is added to read as follows:

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

(a) The refiner or importer 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 non-highway baseline percentage for each refinery. An importer must apply for a non-highway baseline percentage for each CTA, as defined in § 80.531(a)(5), into which it imports NRLM fuel.

(b) The non-highway baseline percentage application must be sent to the following address: U.S. EPA—Attn: Non-highway Baseline (6406J), 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (regular mail) or U.S. EPA, Attn: Non-highway Baseline, Transportation and Regional Programs Division, 501 3rd Street, NW (6406J), Washington, DC 20001 (express mail).

(c) A non-highway baseline percentage application must be submitted for each refinery or importer and include the following information:

(1) A listing of the names and addresses of all refineries or importers owned by the corporation for which the refiner or importer is applying for non-highway baseline percentages.

(2)(i) For refiners or importers, the non-highway baseline percentage for produced during the three calendar years beginning January 1 of 2003, 2004, and 2005, as calculated under paragraph (d)(1) of this section.

(ii) For refiners that so choose, in addition to the baseline percentage under paragraph (c)(2)(i) of this section, an alternate non-highway baseline percentage for fuel produced during the period from June 1, 2006 through May 31, 2007, as calculated under paragraph (d)(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 non-highway baseline determination 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 or heating oil produced or imported during each 12-month baseline calculation period:

(i) The date that production was completed or importation occurred for the batch and the batch designation under § 80.523.

(ii) The batch volume; and

(iii) Whether the batch was dyed or not dyed, and if not dyed, whether the batch was exempt from the dye provisions of § 80.520(b)(2) and not defined as motor vehicle diesel fuel.

(6) Other appropriate information as requested by EPA.

(d) *Calculation of the Non-Highway Baseline Percentage, B%.* (1) Under paragraph (c)(2)(i) of this section, B% equals the average annual volume of diesel fuel and heating oil produced or imported during the three baseline calendar years that was dyed with solvent red 164 (or if exempt from the dye provision of § 80.520(b)(2), does not meet the definition of motor vehicle diesel fuel) divided by the total volume of diesel fuel and heating oil produced or imported during this period, multiplied by 100.

(2) Under paragraph (c)(2)(ii) of this section, B% equals the average annual volume of diesel fuel and heating oil produced during the period from June 1, 2006 through May 31, 2007 that was dyed with solvent red 164 (or if exempt from the dye provision of § 80.520(b)(2), does not meet the definition of motor vehicle diesel fuel) divided by the total volume of diesel fuel and heating oil produced during this period, multiplied by 100.

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

(e) Refineries that did not produce or import facilities that did not import diesel fuel for at least 12 months during the period from January 1, 2003 through December 31, 2005 shall be assigned a non-highway baseline percentage based on their location, as specified in the following table: