

(b) Credits generated under § 80.535 may be used by a refinery or an importer to comply with the diesel fuel standards of § 80.510(a) and (b) by applying one credit for every gallon of diesel fuel that does not comply with the applicable standard.

(c) Credits generated may be banked for use at a later time or may be transferred to any other refinery or importer nationwide for use as provided in paragraph (d) of this section.

(d) *Credit transfers.* (1) Credits generated under § 80.535 that are obtained from another refinery or importer may be used to comply with the diesel fuel sulfur standards of § 80.510(a) and (b) if all the following conditions are met:

(i) The credits are used in compliance with the time period limitations for credit use in this subpart;

(ii) Any credit transfer is completed no later than the last day of February following the calendar year when the credits are used to comply with a standard under paragraph (a) of this section;

(iii) No credit is 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 that 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 it is used or it expires;

(iv) The credit transferor applies any credits necessary to meet the transferor's annual compliance requirements before transferring credits to any other refinery or importer;

(v) No credits are transferred that would result in the transferor having a negative credit balance; and

(vi) Each transferor supplies to the transferee records indicating the year the credits were generated, the identity of the refiner (and refinery) or importer that generated the credits, and the identity of the transferor, if it is not the same party that generated the credits.

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

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

(ii) The refiner or importer that used the credits, and any transferor of the credits, must adjust its credit records, reports and compliance calculations as necessary to reflect the proper credits.

(iii) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the compliance requirements at the end of the calendar year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(e) *Limitations on credit use.* (1) Credits may not be used to achieve compliance with any requirements of this subpart other than the standards of § 80.510(a) and (b), unless specifically approved by the Administrator pursuant to a hardship relief petition under § 80.560 or § 80.561.

(2) No credits may be used after May 31, 2012.

(f) *Use of high sulfur NRLM credits.* (1) High sulfur nonroad credits (HSC) generated under § 80.535(a) or (b) may be used on a one for one basis to meet the NRLM diesel fuel sulfur standard of § 80.510(a) from June 1, 2007 through May 31, 2010 subject to the following restrictions. Any high sulfur NRLM diesel fuel produced after June 1, 2007 through the use of credits must:

(i) Be dyed red per the provisions of § 80.510(c)(1)(i) at the point of production, importation, or redesignation under § 80.511(c);

(ii) Be associated with a product transfer document that bears a unique product code as specified in § 80.590;

(iii) Be segregated in the distribution system from any 15 ppm sulfur diesel fuel throughout the distribution system to the end-user; and

(iv) Be segregated from any 500 ppm sulfur diesel fuel in the distribution system up to the point where both fuels are dyed red per Internal Revenue Service Code (26 U.S.C. 4082).

(2) No high sulfur NRLM credits may be used subsequent to the compliance period ending May 31, 2010.

(3) Any high sulfur NRLM credits not used under the provisions of paragraph (f)(1) may be converted into 500 ppm nonroad credits on a one for one basis.

(g) *Use of 500 ppm nonroad credits.* (1) 500 ppm nonroad credits (C500) generated under § 80.535(c) or (d) or converted from high sulfur nonroad credits under paragraph (f)(3) of this section may be used on a one for one basis to meet the NR diesel fuel sulfur standard of § 80.510(b) from June 1, 2010 through May 31, 2012, subject to the restrictions in paragraphs (g)(2) and (g)(3) of this section.

(2) Any 500 ppm nonroad diesel fuel produced or imported after June 1, 2010 through the use of these credits would have to:

(i) Be dyed red per the provisions of § 80.510(c)(1)(i) at the point of

production, importation, or redesignation under § 80.511(c);

(ii) Bear a unique product code as specified in § 80.590; and

(iii) Be segregated in the distribution system from any 15 ppm sulfur diesel fuel or 500 ppm sulfur locomotive and marine diesel fuel throughout the distribution system to the end-user.

(3) Refiners or importers wishing to produce or import 500 ppm sulfur nonroad diesel fuel and sell it as nonroad diesel fuel after May 31, 2010 would first have to provide EPA with a plan for EPA approval demonstrating that they will ensure the product segregation described in paragraph (g)(2)(iii) of this section.

(4) No 500 ppm sulfur credits may be used after May 31, 2012.

26. Section 80.550 is revised to read as follows:

§ 80.550 What is the definition of a motor vehicle diesel fuel small refiner or a NRLM diesel fuel small refiner under this subpart?

(a) A motor vehicle diesel fuel small refiner is defined as any person, as defined by 42 U.S.C. 7602(e), who:

(1) Produces diesel fuel at a refinery by processing crude oil through refinery processing units; and

(2) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1999, to January 1, 2000; and

(3) Had an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1999; or

(4) Has been approved by EPA as a small refiner under § 80.235 and continues to meet the criteria of a small refiner under § 80.225.

(b) A NRLM diesel fuel small refiner is defined as any person, as defined by 42 U.S.C. 7602(e), who:

(1) Produces diesel fuel at a refinery by processing crude oil through refinery processing units; and

(2) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 2002, to January 1, 2003; and

(3) Had an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2002.

(c) For the purpose of determining the number of employees and crude capacity under paragraph (a) of this section:

(1) The refiner shall include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company in which the parent has 50% or greater ownership, and any joint venture partners.