

MSAT2 Questions and Answers

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Assessment and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency

I. Introduction

This document responds to questions we have received concerning the manner in which the U.S. Environmental Protection Agency (EPA) intends to implement and ensure compliance with the regulations in the Control of Hazardous Air Pollutants From Mobile Sources (“MSAT2”) rulemaking published on February 26, 2007 (72 FR 8428).

Regulated parties may use this document to aid in achieving compliance with the MSAT2 regulations. However, it does not in any way alter the requirements of the MSAT2 regulations. While the answers provided in this document represent the Agency’s interpretation and general plans for implementation at this time, some of the responses may change as additional information becomes available or as the Agency reconsiders certain issues.

This document does not establish or change legal rights or obligations. It does not establish binding rules or requirements and is not fully determinative of the issues addressed. Agency decisions in any particular case will be made by applying the law and regulations on the basis of specific facts and actual action.

The EPA Office of Transportation and Air Quality (OTAQ) posts MSAT2 regulations, regulatory supporting documents, Question and Answer documents and other MSAT2 related documents on the following EPA Internet site:

<http://www.epa.gov/otaq/toxics.htm>

(Look in What’s New or under the specific rulemaking topic for recently published regulations.)

Official Federal Register notices are made available on the date of publication on the following Internet site:

<http://www.epa.gov/doc/fedrgstr/EPA-AIR/index.html>

II. Early Credit Generation and Benzene Baselines

II-1. Question: The provisions of §80.1275(d) include a requirement that a refiner must show that it is using one of several benzene reduction strategies/technologies listed in §80.1275(d)(1) in order to generate early benzene credits. Can a benzene reduction strategy/technology that is not listed also be used?

Answer: The regulations as currently written allow only those benzene reduction strategies/technologies listed in §80.1275(d)(1) to fulfill the requirement for §80.1275(d). However, we are strongly considering amending the rule to allow us to consider and approve the use of other benzene reduction strategies or technologies if they are consistent with the intent of the technology requirement for early credit generation. For instance, under this potential revision, we would expect to consider benzene alkylation to

be a strategy that is consistent with the intent of that requirement. We intend to initiate rulemaking action on this matter in the near future.

II-2. Question: With regard to the benzene reduction strategies/technologies listed at §80.1275(d)(1), the regulations do not clearly indicate when or where or how a refiner should "show" that they have fulfilled this requirement. Please clarify.

Answer: §80.1354 specifies the requirements for the Annual Gasoline Benzene Report. A refiner must submit an Annual Gasoline Benzene Report beginning with the first period in which it participates in the gasoline benzene program. (See §80.1354(a) and §80.1347(a)(2).) This report must be submitted by the last day of February for the prior calendar year averaging period. Since the strategy/technology must be implemented in order for early benzene credits to be valid, we believe that the Annual Gasoline Benzene Report is the most appropriate place to include the showing that at least one of the benzene reduction strategies/technologies listed at §80.1275(d)(1) has been implemented since 2005. §80.1354(c) allows EPA to require submission of additional information.

We expect that a refiner will provide a brief but detailed write-up indicating which of the listed benzene strategies/technologies it has implemented, and when the strategy/technology was implemented or became effective. (Per §80.1275(d)(1), the implementation date must have been after 2005.) We encourage refiners to provide any additional information related to the planning or installation of equipment that would support the refiner's stated implementation date of the strategy/technology, and "before and after" gasoline benzene levels. Note that the use of the technology does not have to result in a 10% reduction in average gasoline benzene levels. The amount of benzene reduction attributable to the strategy/technology can be a fraction of the required 10% reduction, with the rest of the reduction resulting from other means, e.g., ethanol blending.

The write-up described above would not be expected to change from year to year because the strategy/technological change only needs to be made once. However, the write-up should be included with the Annual Gasoline Benzene Report for each year the refiner generates early credits. We intend to initiate rulemaking action to codify this reporting process as a regulatory requirement in the near future.

II-3. Question: What constitutes gasoline suitable for inclusion in a benzene baseline application for a foreign refiner?

Answer: Under this program, a benzene baseline is required for those refiners that intend to generate early benzene credits. Such refiners must have produced gasoline for sale in the U.S. during the 2004-05 baseline period. For a foreign refiner to be able to generate early benzene credits it had to have sent gasoline to the U.S. during 2004-05 that it included in its compliance calculations (i.e., the gasoline was Certified-FRGAS). Only

the foreign refiner's 2004-05 Certified-FRGAS can be used in determining its benzene baseline.

II-4. Question: How should California gasoline be considered in the development of a benzene baseline?

Answer: Benzene baselines are based on the information contained in the 2004-05 reformulated gasoline (RFG) and anti-dumping reports. Because information on California gasoline is not reported to us, these reports do not contain any California gasoline data. Thus, no benzene baseline will "contain" California gasoline. We intend to initiate rulemaking action to clarify this aspect of the rule in the near future.

II-5. Question: Are "blenders" -- that is, parties that blend blendstocks to create gasoline -- eligible to generate early credits under the new benzene rule?

Answer: No; §80.1270(a) limits eligibility to generate early benzene credits to refineries that "process crude oil and/or intermediate feedstocks through refinery processing units." (40 CFR 80.1270(a)(1)(ii)). Only these types of entities would be able to make the kinds of changes required under §80.1275(d)(1) to generate early credits.

II-6. Question: What information should be included in a benzene baseline submission?

Answer: Under §80.1285(c)(3), we require that copies of the RFG and anti-dumping annual reports be included in a refinery's benzene baseline application.

We also encourage refiners to include benzene and volume data for each batch of gasoline (RFG and conventional gasoline) produced by the refinery during 2004-05. This is particularly helpful in reviewing data for the refinery if a company complies with anti-dumping on an aggregate basis (the annual report reflects combined information and not the individual refinery information). We have provided a benzene baseline (submission) template on <http://www.epa.gov/otaq/toxics.htm> which refiners may use as part of their baseline submission. This template includes space for batch information.

III. Inclusion of Gasoline Products

III-1. Question: How does the benzene standard apply to products subject to downstream oxygenate addition, i.e., blendstock for oxygenate blending (BOBs – RBOB, CBOB, etc.)?

Answer: BOBs are included in a refinery's benzene compliance determination. (See §80.1235(a)). Oxygenate added downstream of the refinery is included according to the requirements as §80.1238(b).

IV. Relation to RFG Standards

IV-1. Question: How do the RFG NOx and toxics emissions requirements change with MSAT2?

Answer: The gasoline sulfur program becomes the sole regulatory means for achieving compliance with the RFG and anti-dumping NOx requirements beginning in 2007. Certain small refiners continue to be subject to the NOx requirements through 2007, or through 2010, as applicable. (See §80.41(e)(2), §80.41(f)(2), and §80.101(c)(3)).

The gasoline benzene program becomes the sole regulatory means for achieving compliance with the RFG and anti-dumping toxics requirements beginning in 2011, or beginning in 2015 for approved small refiners. (See §80.41(e)(3), §80.41(f)(3), and §80.101(c)(4)). MSAT2 replaces the MSAT1 toxics performance requirements.

IV-2. Question: How does the 1.3 vol% per gallon RFG cap change with MSAT2?

Answer: In MSAT2, even though the benzene standard becomes the "sole mechanism" for achieving compliance with the RFG toxics performance requirements at §80.41, we intended to keep the 1.3 vol% per gallon benzene cap for RFG under the RFG averaging standards at §80.41(f) (see footnote 200 at the bottom of page 8498 of the FR notice). Because we recognize that some of our regulatory language is ambiguous on this point, we intend to initiate regulatory action in the near future to clarify our intent that the 1.3 vol% RFG cap remains.

V. Benzene Credit Trades

V-1. Question: For benzene credits, a maximum of two trades are allowed before the credit must be used or retired. Does this also apply to intracompany transfers?

Answer: An intracompany credit transfer occurs when a credit is passed from one facility of a company (i.e., a refiner or importer) to another facility of the same company. Intracompany benzene credit transfers under MSAT2 are unlimited. The discussion on page 8489 in the preamble to the final rule refers exclusively to transfers from refiners and importers to other refiners and importers, and does not address transfers between facilities of the same refiner or importer. The regulatory language at §80.1295(a)(3) indicates that intracompany credit transfers differ from transfers from one company to another. In addition, §80.1295(b)(1)(iii) discusses transfers from the generating refinery or importer to another refiner or importer, thus indicating that only transfers between companies are limited.