

Program.<sup>10</sup> In order to be applied toward the refiners NO<sub>x</sub> payback obligations, the allowances or credits must be current, marketable allowances or credits and must actually be retired by EPA or the administering state agency, and the retired credits or allowances must reflect actual NO<sub>x</sub> emissions reductions. It is the refiner's responsibility to ensure that the credits or allowances are legitimate and are actually retired.

### *C. Correction of Quarterly Compliance Equations and Quarterly Reporting Requirements*

Today's direct final rule will change the equations for calculating quarterly NO<sub>x</sub> deficits and benefits to reflect ordinary seasonal variation in gasoline quality and differences in the applicable seasonal versions of the Complex Model. The current regulations require a refiner to purchase NO<sub>x</sub> credits when, on a quarterly basis, its average NO<sub>x</sub> emissions exceed the annual statutory NO<sub>x</sub> value. As stated in the September 8, 2000, rule, " \* \* credits function as collateral against any NO<sub>x</sub> deficiency that the refiner creates to minimize the possibility of environmental harm in the event the refinery does not fulfill its obligation under the other requirements of the rule."

EPA has determined that the current method of calculating NO<sub>x</sub> emissions deficits and benefits at § 80.101(k)(3)(ii) may have the unintended effect of creating an unnecessary pattern of buying and selling because of the combined effects of seasonal gasoline quality and the application of seasonal versions of the Complex Model. EPA believes that we can achieve the same environmental outcome with the changes contained in today's action while avoiding the unnecessary outlay of capital by the refiner at a time when the refiner is operating under an alternative compliance period specifically to reduce the impact of financial constraints.

On a quarterly basis, gasoline production during the first and fourth quarters of the calendar year is almost all, if not entirely, winter gasoline for most refiners. Winter gasoline is not only gasoline with different properties (like higher RVP) than summer gasoline, but it must also be evaluated using the winter Complex Model (which is substantively different from the summer Complex Model used for gasoline produced during the summer months). For a given fuel composition (based on

fuel properties used in the Complex Model), the winter Complex Model yields higher emissions than the summer Complex Model. Winter emissions determined using the Complex Model will always be higher than annual emissions determined by combining winter and summer results from the Complex Model.<sup>11</sup> Thus, under the current equation for calculating NO<sub>x</sub> deficit and benefit under § 80.101(k)(3), a refiner will almost always have to purchase credits for the first and fourth quarters simply because the equation requires the comparison of the quarterly production against the annual average. A refiner could produce extremely clean winter gasoline in these quarters in order to not have to purchase credits under § 80.101, but it is unlikely that a refiner in start-up mode would be able to produce such clean gasoline.

In the second and third quarters, winter gasoline constitutes roughly 20–30 percent of total gasoline production. Because of the inclusion of summer gasoline, second and third quarter NO<sub>x</sub> emissions determined via the Complex Model are generally less than the annual statutory NO<sub>x</sub> value. In fact, under § 80.101(k)(3)(ii), this overcompliance in the second and third quarters (resulting in a quarterly NO<sub>x</sub> benefit) would likely more than exceed the deficit created in the first and fourth quarters, allowing those credits to be sold.

Thus, as a result of the combined effects of seasonal gasoline quality and the provisions of the Complex Model, the current manner in which NO<sub>x</sub> benefit and deficit are determined can cause a refiner with an alternative compliance period to expend capital, on a regular basis, to purchase credits to cover NO<sub>x</sub> deficits caused by the production of winter gasoline in the first and fourth quarters and to then be able to, regularly, sell those credits back following production of a mix of summer and winter gasoline in the second and third quarters.

EPA believes that today's action, which modifies the equations at § 80.101(k)(3) used to calculate the quarterly NO<sub>x</sub> deficit or benefit, does not change the environmental protection aspects intended under § 80.101(k) and will facilitate start-up

refineries' ability to install sulfur reducing technology and introduce cleaner gasoline to the market sooner. For the limited application of determining an approved refiner's quarterly NO<sub>x</sub> deficit or benefit for purposes of determining the refinery's obligations regarding the purchase of collateral NO<sub>x</sub> credits, today's action provides that the refiner's quarterly NO<sub>x</sub> emissions will be compared to a quarterly NO<sub>x</sub> emissions value rather than to the annual statutory baseline NO<sub>x</sub> emissions value. The quarterly and annual NO<sub>x</sub> values (to which the refinery's NO<sub>x</sub> emissions are compared) are based on the statutory NO<sub>x</sub> seasonal values. A memo detailing the calculation of the quarterly NO<sub>x</sub> values has been placed in the docket.

Additionally, the September 8, 2000, rule omitted the requirement that quarterly reports be signed and certified by the owner or a responsible corporate officer of the refinery. This requirement is included in other fuels programs that have periodic compliance reporting. This direct final rule corrects the previous omission and requires that quarterly reports be appropriately signed and certified.

### *D. Use of Conventional Gasoline Baseline Toxics Requirement as MSAT Baseline*

This direct final rule will allow a refinery with an approved alternative anti-dumping compliance period to petition EPA to substitute the anti-dumping statutory baseline toxic value for the mobile source air toxics (MSAT) default toxics baseline for some or all of a refinery's alternative anti-dumping compliance period. On March 29, 2001, EPA published a rule for the control of emissions of hazardous air pollutants from mobile sources.<sup>12</sup> This rule is generally known as the Mobile Source Air Toxics, or "MSAT," rule. This rule requires that the average toxics emissions of gasoline produced or imported during each annual averaging period not exceed the average toxics emissions of gasoline produced or imported during the baseline period 1998–2000. Toxics emissions must be determined on a refinery or importer basis, and must be determined separately for reformulated gasoline and conventional gasoline.

The MSAT regulations specify that a refinery or importer must determine a unique individual baseline if it has data on gasoline produced or imported over at least a 12 month period between January 1, 1998, and December 31, 2000. The regulations further specify that a

<sup>10</sup> See <http://www.epa.gov/airmarkets/progsregs/novview.html> for more detailed information about NO<sub>x</sub> allowances and credits.

<sup>11</sup> The annual statutory baseline value for NO<sub>x</sub> emissions is 1461 milligrams per mile (mg/mile). (See § 80.91(c)(5)(iv).) The summer and winter statutory baseline values for NO<sub>x</sub> are 1340 and 1540 mg/mile, respectively. These were determined by inputting the summer and winter statutory baseline fuel parameters into the summer or winter Complex Model, respectively. (See § 80.45(b).) The annual statutory NO<sub>x</sub> baseline emissions value was determined from the weighting of the summer and winter baseline emissions using a 0.396 fraction of summer and a 0.604 fraction of winter gasoline.

<sup>12</sup> 66 FR 17230.