



# Mobile Source Air Toxics (MSAT) Rule Questions And Answers

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**June 20, 2001**

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

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The following are responses to questions received by the Environmental Protection Agency (“EPA” or the “Agency”) concerning the Mobile Source Air Toxics (“MSAT” or “Toxics”) Rule published in the Federal Register on March 29, 2001 (66 FR 17230).

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

This guidance 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.

While we have attempted to include answers to all questions received, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document may be answered in a subsequent document.

**MSAT Rule Questions and Answers**

1. Question: The toxics standard in the anti-dumping program for conventional gasoline (CG) is an exhaust toxics standard, not a total toxics standard. The reformulated gasoline (RFG) program includes a total toxics standard. Based on several statements in the Preamble for the MSAT final rule, it appears that the Agency clearly intends the Subpart J toxics standard for CG to remain an exhaust toxics standard. The regulations, however, do not clearly specify that the Subpart J CG toxics standard is an exhaust toxics standard.

Answer: Throughout the regulations at Subpart J, we used the term “toxics” in the generic sense, and refer separately to the requirements for conventional gasoline and to the requirements for reformulated gasoline and RBOB, combined. The anti-backsliding provisions are intended to apply to the toxics performance standards applicable to the specific type of gasoline. Thus, the standard for conventional gasoline applies to exhaust toxics emissions, in mg/mile, and the standard for reformulated gasoline and RBOB applies to total toxics, in percent reduction.

2. Question: In § 80.915(a)(3), what does “All consecutive and non-consecutive batch toxics measurements” mean?

Answer: The intent of the phrase “All consecutive and non-consecutive batch toxics measurements” at § 80.915(a)(3) was to instruct the refiner or importer that all data during the baseline period must be included in the baseline determination.

3. Question: On page 17250 of the preamble, EPA states: “Because this data is already required to demonstrate compliance with RFG and anti-dumping requirements, a refiner must simply submit the same information found in its original submittals of its RFG and anti-dumping reports.” The 1998 and 1999 toxics calculations were reported based on Phase I of the Complex Model. The regulations require that Phase II of the Complex Model be used.

Answer: The procedure listed in the regulations should be followed. See 40 CFR § 80.915(d). All 1998 and 1999 batch toxics values (as applicable for RFG or CG) should be determined using the Phase II Complex Model.

4. Question: Should Gasoline Treated as Blendstock (GTAB) be included in the baseline determination?

Answer: Yes, GTAB should be included in the baseline determination to the same extent it was used in determining compliance with the RFG or anti-dumping requirements.

5. Question: Should Oxygenated Fuels Program Reformulated Gasoline (OPRG) be included in the baseline determination?

Answer: Yes, OPRG should be included in the baseline determination because it is considered RFG.

6. Question: In one of the baseline years, we were not in compliance with our anti-dumping baseline requirement. How do we handle this in calculating our individual baseline?

Answer: If a refinery’s or importer’s anti-dumping standard was not met during one (or more) of the baseline years under this rule (i.e., 1998, 1999, 2000), then the refinery’s or importer’s anti-dumping toxics standard should be used as the toxics value for all batches produced in the year(s) the anti-dumping standard was not met.

7. Question: How should the compliance margin be used in calculating the baseline toxics value?

Answer: The compliance margin value should be included in a toxics baseline determination in such a manner that its inclusion provides an additional margin of flexibility to comply with the standard. The technique of including the compliance margin value can vary depending on the

sign convention applied to the toxics standard, especially in the case of RFG, where toxics emissions are determined as “percent reductions”. For example, the compliance margin value for RFG is given as -0.7% (§ 80.915(h)(1)). For a refiner or importer whose batch calculations result in a toxics value of -32% (also known as a 32% reduction), proper inclusion of the compliance margin would result in a toxics baseline value (per § 80.915 (b)(1)) of -31.3%.

8. Question: Would an equivalent method for calculating the baseline be to use a volume weighted average of the compliance performance for 1998, 1999 and 2000?

Answer: No, the toxics value of each batch (determined according to the RFG or anti-dumping requirements, as applicable) must be determined using the appropriate Phase II seasonal Complex Model, and then the toxics values of all of the batches (separately for RFG/RBOB and CG) must be volume-weighted together.

9. Question: Under § 80.855 (a) and (b) a refiner or importer must use the default values “if it cannot determine an applicable toxics value for every batch of gasoline produced or imported for 12 or more consecutive months during January 1, 1998 through December 31, 2000.” So if a refiner produced only one batch over the three-year period and is able to determine the toxics value, would its baseline be based on that one value, or would the refiner need to have batches with a toxics determination in each month of a 12 month period in order to use the calculated baseline?

Answer: Our intent in establishing the default compliance baseline was that it apply to those refiners or importers with minimal or inconsistent production or importation of gasoline during the baseline period. By providing threshold criteria in § 80.855 for when a default baseline will apply, we sought to ensure that individual baselines are developed rigorously, considering volume, batch frequency, etc. The default compliance baseline provision was not intended to apply to refiners or importers with continuous gasoline production or supply (import) during the baseline period. Most refiners will have produced gasoline during every month of a 12-month period and will have data for every batch of gasoline produced over that period. Thus, the 12-month requirement in § 80.855 is easily met by these refiners no matter how EPA interprets the requirement. Importers on the other hand, supply gasoline in many patterns. Some importers bring in gasoline only seasonally, but they do it every season, and in significant quantity. Other importers bring in batches regularly throughout the year. Particularly for importers, we were wary of the possibility of a very small number of batches during the baseline period constituting a baseline.

We interpret § 80.855 to apply to a refiner or importer which does not have data spanning a 12-month period between 1998 and 2000 (that is, any 12-month period between 1998 and 2000). For example, § 80.855 would not apply to an importer that imported two batches – a batch in January 1999 and a batch in December 1999. Nor would § 80.855 apply if the two batches were imported in June 1998 and May 1999. However, if the only two batches imported by the importer were in January 1999 and June 1999, the importer would not have data for batches over

a 12-month period and would be subject to the default baseline. Likewise, if the two batches are spread out by more than 12 months (e.g., a batch in January 1999 followed by a January 2000 batch), this would not be considered sufficient to support an individual baseline and the importer would be subject to the default compliance baseline.

It is important to note that this 12-month requirement is simply a threshold. Once a refiner or importer satisfies this requirement and determines it is eligible for an individual baseline, it must include all data on any gasoline produced or imported (for use in the United States, excluding California gasoline per § 80.845)) during the baseline period (1998-2000).

It is also important to note that a baseline adjustment under § 80.915(g) is only available to those eligible for an individual baseline; refiners or importers subject to the default compliance baseline are not eligible for such an adjustment.

10. Question: A party could have activity in every calendar month but not in both RFG and CG. Does the default baseline apply separately?

Answer: Yes. The baselines should be determined separately. In other words, you should look only at the CG data in determining whether the minimum data requirements in § 80.915(a)(1) are satisfied for the CG baseline and only at the sufficiency of the RFG data for the RFG baseline. Refer to Question 9 for additional discussion on the minimum data requirements of § 80.915(a)(1).

11. Question: If the default compliance baseline (under § 80.855) is applicable due to insufficient data, must the batch information required under § 80.910(c)(5) be submitted?

Answer: Yes. Section 80.910 applies to all refiners and importers, whether or not they are subject to the default compliance baseline provided in § 80.855. Section § 80.910(c)(2), for example, specifically addresses the information to be submitted under that paragraph in the event that a refinery or importer is subject to § 80.855. The information required to be submitted under § 80.910(c)(5) will help us to verify that such facilities have correctly determined that the default baseline is the appropriate baseline for that facility.

12. Question: Two of our refineries produced a few batches of RBOB/RFG over the baseline period. Is this considered sufficient data for calculating a toxics baseline?

Answer: See Question 9 regarding minimum data requirements.

13. Question: A refinery that had not previously produced RFG may choose to do so in the future. Its 1998-2000 baseline RFG volume will be zero. Will future RFG production be based on an incremental volume production basis (i.e., the new RFG production is subject to existing RFG standards) or is the refinery judged as incapable of establishing a 1998-2000 RFG baseline and therefore subject to the new default RFG standard (not based on environmental need nor

cost-effectiveness)?

Answer: Refineries in operation during 1998-2000 that did not make one or the other type of gasoline (reformulated or conventional) are subject to the default baseline for the type of gasoline they did not produce. As we explained in the preamble to the final rule, “For those refineries or importers that are unable to establish a volume baseline for 1998 to 2000 either because they were not operating during that period, or did not exist as a refining or importing facility, the applicable standard shall be the 1998-2000 national average toxics performance for RFG and CG.” 66 FR 17230, 17249 (March 29, 2001). We explained further that, “[A] refiner or importer which did not produce or import one or more types of gasoline (either RFG or CG) during the baseline period but who produces or imports that type of gasoline after December 31, 2000 will have the applicable default toxics anti-backsliding baseline . . . .” 66 FR at 17521.

Thus, a refinery which, during 1998-2000, produced RFG and/or RBOB but insufficiently per the requirements at § 80.855 (see Question 9)) or begins the production of reformulated gasoline after December 31, 2000, will be subject to the default RFG toxics baseline for its reformulated gasoline.

14. Question: § 80.815(c)(2) calls for complying with subpart J on an aggregate basis consistent with subpart E. Does this then apply to RFG as well as conventional gasoline?

Answer: No. The regulations at Subpart E (Anti-Dumping), including the provisions in 40 CFR § 80.101(h) allowing refiners to comply on an aggregate basis, apply only to conventional gasoline, unless otherwise referenced. During the period 1995-1997, when refiners and importers could opt to use the “simple model” to determine compliance with the reformulated gasoline requirements, the annual average standards applicable to reformulated gasoline for sulfur, olefins and T90 were required to be met on the same basis as the aggregate chosen for conventional gasoline. 40 CFR § 80.41(h)(2)(iii). This option to comply with the simple model RFG standards on an aggregate basis, however, is no longer available. RFG must now meet the Phase II complex model standards and there are no aggregation provisions applicable to these standards.

15. Question: A refinery that had not previously produced RFG may choose to do so in the future. If the refinery was part of an aggregation group wherein other refineries produced RFG in 1998-2000 and therefore are capable of determining a refinery-specific RFG standard, is the refinery that produced only conventional gasoline in 1998-2000 now subject to the RFG standard set by other refineries in its aggregate, by the existing RFG standards, or by the new default RFG standard?

Answer: As indicated in Question 14, aggregation provisions do not apply to reformulated gasoline. As a result, if a refinery is part of an aggregate for anti-dumping purposes, it will not change the baseline applicable to RFG produced at the refinery whether the refinery produced RFG during the baseline period or not.

16. Question: My company chose to aggregate all refineries for the purposes of Subpart E. One of these refineries was permanently shutdown in January of 2001. How should this refinery be factored into the toxics baseline?

Answer: Every facility of a company must have its own individual baseline (be it a unique individual baseline or the default baseline). For this rule, as for the anti-dumping program, to determine the aggregated standard for your refineries, the individual facility baselines are volume-weighted together to form the aggregate baseline. Also, as required for the anti-dumping program, when a facility is sold or shutdown, its contribution to the aggregate compliance standard is removed. Thus, in this case, the aggregate baseline would exclude the shutdown refinery's baseline.

17. Question: What is the process for getting a baseline adjustment?

Answer: The baseline adjustment provision at § 80.915(g) specifies the procedure and general requirements for submitting a toxics baseline adjustment petition. A refinery or importer which is eligible for an individual baseline under this rule must submit the petition with its baseline submittal. The petition must include the unadjusted and adjusted baseline fuel parameters, applicable toxics values and volumes. The petition must also include “[a] narrative describing how the circumstances during 1998-2000 materially affected the baseline toxics value . . . .” 40 CFR § 80.915(g)(2)(ii). The narrative must include an appropriate description, including the reasoning underlying the adjustment, and the calculations used to determine the adjusted values.

Because the reasons a refiner or importer may petition for a baseline adjustment under this rule may vary widely, we will evaluate all petitions for a toxics baseline adjustment on a case-by-case basis, with significant interaction between EPA and the petitioner.