

$$T_{CBase} = \frac{T_{Base} \times V_{Base} + T_{Exist} \times V_{Inc} + T_{SBase} \times V_{SBase} + T_{SEExist} \times V_{SInc} + T_{WBase} \times V_{WBase} + T_{WEExist} \times V_{WInc}}{V_{Base} + V_{Inc} + V_{SBase} + V_{SInc} + V_{WBase} + V_{WInc}}$$

Where:

$T_{CBase}$  = Compliance baseline toxics value.

$T_{Base}$  = Baseline toxics value for the refinery or importer, calculated according to § 80.915(b)(1) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

$V_{Base}$  = Baseline volume for the refinery or importer, calculated according to § 80.915(b)(2) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

$T_{Exist}$  = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

$V_{Inc}$  = Volume of gasoline produced or imported, excluding the volume of gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands during the averaging period, which is in excess of  $V_{Base}$ .

$T_{SBase}$  = Baseline toxics value for the refinery or importer, calculated according to § 80.915(e)(2)(i) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

$V_{SBase}$  = Baseline volume for the refinery or importer, calculated according to § 80.915(e)(2)(ii) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

$T_{SEExist}$  = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

$V_{SInc}$  = Volume of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands during the averaging period which is in excess of  $V_{SBase}$ .

$T_{WBase}$  = Baseline toxics value for the refinery or importer, calculated according to § 80.915(e)(1)(i) for gasoline produce or imported for use in Alaska.

$V_{WBase}$  = Baseline volume for the refinery or importer, calculated according to § 80.915(e)(1)(ii) for gasoline produce or imported for use in Alaska.

$T_{WEExist}$  = The refinery's or importer's anti-dumping compliance baseline value for ex-

haust toxics, in mg/mi, per § 80.101(f) for gasoline produce or imported for use in Alaska.

$V_{WInc}$  = Volume of gasoline produced or imported for use in Alaska during the averaging period which is in excess of  $V_{WBase}$ .

(d) If the refinery or importer produced less gasoline during the compliance period than its applicable baseline volume, the value of  $V_{Inc}$ ,  $V_{SInc}$  or  $V_{WInc}$ , as applicable, will be zero.

[66 FR 17263, Mar. 29, 2001, as amended at 72 FR 60581, Oct. 25, 2007]

#### § 80.855 What is the compliance baseline for refineries or importers with insufficient data?

(a) A refinery or importer shall use the methodology specified in this section for determining a compliance baseline 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.

(b)(1) A refinery or importer that cannot determine an applicable toxics value on every batch of gasoline produced or imported for 12 or more consecutive months during the period January 1, 1998 through December 31, 2000 or a refinery or importer that did not produce or import reformulated gasoline and/or RBOB (combined) or conventional gasoline or both during the period between January 1, 1998 and December 31, 2000, inclusive, shall have the following as its compliance baseline for the purposes of this subpart:

(i) For conventional gasoline, prior to January 1, 2006, 94.64 mg/mile; starting January 1, 2006, 97.38 mg/mile.

(ii) For reformulated gasoline, prior to January 1, 2006, 25.31 percent reduction from statutory baseline; starting January 1, 2006, 26.78 percent reduction from statutory baseline.

(2)(i) A refinery or importer that has an approved anti-dumping baseline under § 80.93(d) for gasoline produced or imported for use in Alaska, and that cannot determine an applicable toxics value according to paragraph (b)(1) of this section, shall have the following as

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its compliance baseline for the purposes of this subpart: 110.72 mg/mile.

(ii) A refinery or importer that has an approved anti-dumping baseline under § 80.93(d) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands and that cannot determine an applicable toxics value according to paragraph (b)(1) of this section, shall have the following as its compliance baseline for the purposes of this subpart: 77.82 mg/mile.

(iii) The provisions of this paragraph (b)(2) shall apply to any refiner, for any refinery, or importer that received approval of a petition under § 80.93(d) prior to November 26, 2007 beginning with the 2008 annual averaging period.

(iv) Any new refiner or importer without a toxics baseline that produces or imports gasoline for use in Alaska, Hawaii, the Commonwealth of Puerto Rico or the Virgin Islands shall be subject to the applicable toxics default baseline under paragraph (b)(1) of this section unless the refiner or importer petitions for and receives approval of use of a seasonal baseline and seasonal Complex Model under § 80.93(d).

(c)(1) *Eligibility to petition.* A refiner who has been granted an alternative anti-dumping averaging period under § 80.101(k) may petition the Administrator to have the statutory baseline exhaust toxics emissions, Phase II value specified in § 80.91(c)(5)(iv) as its compliance baseline for the purposes of this subpart J for one or more of the years of the refiner's approved alternative anti-dumping averaging period.

(2) *Application process.* Applications must be submitted to the Administrator by January 1, 2004 to the following address: U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (certified mail/return receipt) or U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), Transportation & Regional Programs Division, 501 3rd Street, NW., Washington, DC 20001 (express mail/return receipt).

(3) *Contents of the application petition.* Each petition must include:

(i) A copy of the refinery's approval for an alternative averaging period under section 80.101(k).

(ii) A description of the hardships that make it infeasible, on a cost and/or technological basis, for the refinery to comply with the compliance baseline specified in paragraph (b) of this section.

(iii) A quarterly timeline, from the date of the application, indicating the expected exhaust toxics emissions performance of the refinery's conventional gasoline, and the reasons for any expected non-compliance with the compliance baseline specified in paragraph (b) of this section (for example, a particular gasoline blendstock-producing unit not yet installed). The timeline shall include the date by which the refinery will produce conventional gasoline that complies with the baseline specified in paragraph (b) of this section on an annual average basis.

(4) *Approval or disapproval of petitions.*

(i) The Administrator may approve a petition if it includes information sufficient to demonstrate to the Administrator's satisfaction that cost and/or technological constraints make it infeasible for the refinery to comply with the baseline specified in paragraph (b) of this section. The Administrator will approve or deny a petition in writing within six months of receipt.

(ii)(A) Each approval will specify the date by which the refinery must comply with the baseline specified in paragraph (b) of this section. No petition approval shall allow for use of the statutory baseline exhaust toxics emissions, Phase II value as a refinery's compliance baseline under this subpart J beyond the last day of a refinery's alternative anti-dumping averaging period under § 80.101(k) or § 80.101(l).

(B) An approval may include any conditions or other requirements to which the approval is subject.

(5) *Effective date for petition.* (i) Beginning with the averaging period immediately following the end of the approved period under paragraph (c)(4) of this section, the compliance baseline for the purposes of this subpart J shall be as specified in paragraph (b) of this section.

(ii) Notwithstanding the requirement specified in paragraph (c)(5)(i) of this section, if at any time the alternative compliance period approved under § 80.101(k) or § 80.101(l) ceases to apply,

the approval granted under this paragraph (c) shall also cease to apply.

[68 FR 24309, May 6, 2003, as amended at 70 FR 58335, Oct. 6, 2005; 72 FR 60582, Oct. 25, 2007]

**§§ 80.860–80.905 [Reserved]**

**BASELINE DETERMINATION**

**§ 80.910 How does a refiner or importer apply for a toxics baseline?**

(a)(1) A refiner or importer shall submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001, or 3 months prior to the first introduction of gasoline into commerce from the refinery or by the importer, whichever is later.

(2) A refiner or importer shall submit an application to EPA for the purposes of this subpart simultaneously with the submission of a petition under § 80.93(d).

(b) The toxics baseline request shall be sent to: U.S. EPA, Attn: Toxics Program (6406J), 1200 Pennsylvania Ave., NW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Toxics Program, 501 3rd Street NW, Washington, DC 20001.

(c) The toxics baseline application shall include the following information:

(1) A listing of the names and addresses of all refineries owned by the company for which the refiner is applying for a toxics baseline, or the name and address of the importer applying for a toxics baseline.

(2) For each refinery and importer—

(i) The baseline toxics value for each type of gasoline, per § 80.815(b), calculated in accordance with § 80.915;

(ii) The baseline toxics volume for each type of gasoline, per § 80.815(b), calculated in accordance with § 80.915;

(iii) For those with insufficient data pursuant to § 80.855, a statement that the refinery's or importer's baseline toxics value is the default compliance baseline specified at § 80.855(b), and that its baseline toxics volume is zero.

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the toxics baseline deter-

mination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a company contact person.

(5) The following information for each batch of gasoline produced or imported during the period 1998–2000, separately for each type of gasoline listed at § 80.815(b):

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Applicable toxics value determined as specified at § 80.915(c).

(d) Foreign refiners shall follow the procedures specified in § 80.1030(b) to establish individual toxics baseline values for a foreign refinery.

(e) By October 31, 2001, or 4 months after the submission date, whichever is later, EPA will notify the submitter of approval of its toxics baseline.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies ab initio and the annual average toxics requirements are deemed to be those applicable under the corrected information.

[66 FR 17263, Mar. 29, 2001, as amended at 72 FR 60582, Oct. 25, 2007]

**§ 80.915 How are the baseline toxics value and baseline toxics volume determined?**

(a)(1) A refinery or importer shall use the methodology specified in this section for determining a baseline toxics value if it can 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.

(2) The determination in paragraph (a)(1) of this section is made separately for each type of gasoline listed at § 80.815(b) produced or imported between January 1, 1998 and December 31, 2000, inclusive.

(3) All consecutive and non-consecutive batch toxics measurements between January 1, 1998 and December 31, 2000, inclusive, are to be included in the baseline determination, unless the refinery or importer petitions EPA to exclude such data on the basis of data quality, per § 80.91(d)(6), and receives