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300 ppm, to a maximum of 350 ppm, provided the following conditions are met:

(i) The refinery or importer becomes subject to an adjusted per-gallon cap standard in 2005, calculated using the following formula:

$$ACS=300 - (S_{max} - 300)$$

Where:

ACS=Adjusted cap standard.

S_{max}=Maximum sulfur content of any gasoline produced at a refinery or imported by an importer during 2004.

(ii) The adjusted cap standard calculated under paragraph (d)(2)(i) of this section applies to all gasoline produced at a refinery or imported by an importer during 2005.

(iii) The refinery or importer remains subject to the 30.00 average standard under paragraph (a) of this section for 2005.

(iv) The provisions of this paragraph (d)(2) apply to gasoline designated as GPA gasoline under § 80.219(a).

(v) The provisions of this paragraph (d)(2) do not apply to small refiners as defined in § 80.225.

[65 FR 6823, Feb. 10, 2000; 65 FR 10598, Feb. 28, 2000, as amended at 67 FR 40181, June 12, 2002]

§ 80.200 What gasoline is subject to the sulfur standards and requirements?

For the purpose of this subpart, all reformulated and conventional gasoline and RBOB, collectively called "gasoline" unless otherwise specified, is subject to the standards and requirements under this subpart, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or

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dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) California gasoline as defined in § 80.375.

(c) Gasoline that is exported for sale outside the U.S.

§ 80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?

(a) The annual refinery or importer average and corporate pool average gasoline sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^n (V_i \times S_i)}{\sum_{i=1}^n V_i}$$

Where:

S_a = The refinery or importer annual average sulfur level, or corporate pool average level, as applicable.

V_i=The volume of gasoline produced or imported in batch i.

S_i=The sulfur content of batch i determined under § 80.330.

n=The number of batches of gasoline produced or imported during the averaging period.

i=Individual batch of gasoline produced or imported during the averaging period.

(b) All annual refinery or importer average or corporate pool average calculations shall be conducted to two decimal places.

(c) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the sulfur content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(d) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Sulfur-FRGAS;

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(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.200.

(e)(1) A refiner or importer may exceed the refinery or importer annual average sulfur standard specified in § 80.195 for a given averaging period for any calendar year through 2010, creating a compliance deficit, provided that in the calendar year following the year the standard is not met, the refinery or importer shall:

(i) Achieve compliance with the refinery or importer annual average sulfur standard specified in § 80.195; and

(ii) Use additional sulfur credits sufficient to offset the compliance deficit of the previous year.

(2) No refiner or importer may have a compliance deficit in any year after 2010. Any deficit that exists in 2010 must be made up in 2011.

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40182, June 12, 2002]

§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

The sulfur standard for gasoline at any point in the gasoline distribution system downstream from refineries and import facilities, including gasoline at facilities of distributors, carriers, oxygenate blenders, retailers and wholesale purchaser-consumers (“downstream location”), shall be determined in accordance with the provisions of this section.

(a) *Definition.* S-RGAS means gasoline that is subject to the standards under § 80.240 or § 80.270, including Certified Sulfur-FRGAS as defined in § 80.410, except that no batch of gasoline may be classified as S-RGAS if the actual sulfur content is less than the applicable per-gallon refinery cap standard specified in § 80.195.

(b) *Standards for gasoline that does not qualify for S-RGAS downstream standards.* The following standards apply to any gasoline that does not qualify for S-RGAS downstream standards under in paragraph (d) of this section:

(1) Starting February 1, 2004 the sulfur content of gasoline at any down-

stream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2004 the sulfur content of gasoline at any downstream location, shall not exceed 378 ppm.

(2) Except as provided in § 80.220(a), starting February 1, 2005 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2005 the sulfur content of gasoline at any downstream location, shall not exceed 326 ppm.

(3) Except as provided in § 80.220(a), starting February 1, 2006 the sulfur content of gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and starting March 1, 2006 the sulfur content of gasoline at any downstream location, shall not exceed 95 ppm.

(c) *Standards for gasoline that qualifies for S-RGAS downstream standards.* In the case of any gasoline that qualifies for S-RGAS downstream standards under paragraph (d) of this section, the sulfur standard shall be the downstream standard for the gasoline calculated under paragraph (f) of this section. In the case of mixtures of gasoline that qualify for different S-RGAS downstream standards, the sulfur standard shall be the highest downstream standard applicable to any of the S-RGAS in the mixture.

(d) *Gasoline that qualifies for S-RGAS downstream standards.* Gasoline qualifies for S-RGAS downstream standards if all of the following conditions are met:

(1) The gasoline must be comprised in whole or part of S-RGAS.

(2) Product transfer documents applicable to the gasoline when received at that location must represent that the gasoline contains S-RGAS.

(3) Except as provided in paragraph (d)(4) of this section, the gasoline must have been sampled and tested at that location subsequent to the most recent receipt of gasoline at that location, and the test result must show a sulfur content greater than:

(i) 350 ppm starting February 1, 2004;

(ii) 300 ppm starting February 1, 2005; and