



## Gasoline Sulfur Rule Questions and Answers

The following are responses to questions received by the Environmental Protection Agency (EPA) concerning the manner in which the EPA intends to implement and assure compliance with the gasoline sulfur regulations at 40 CFR Part 80. This document was prepared by EPA's Office of Air and Radiation, Office of Transportation and Air Quality, and the Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement.

Regulated parties may use this document to aid in achieving compliance with the gasoline sulfur 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 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 to date, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document will be answered in a subsequent document. The Agency intends to provide any additional responses as expeditiously as possible. Questions that merely require a justification of the regulations, or that have previously been answered or discussed in the preamble to the regulations have been omitted.

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## Standards

1. **Question:** If a refinery is sold in 2004 and the prior owner exceeded the per-gallon cap standard, is the new owner subject to the adjusted cap standard under § 80.195(d)(2) in 2005?

**Answer:** Yes. Section 80.195(d)(2) applies to the refinery rather than to the refiner. Specifically, it provides: “In 2004 only, a refiner or importer may produce or import gasoline with a per-gallon sulfur content greater than 300 ppm, to a maximum of 350 ppm, provided .... [t]he *refinery* [emphasis added] or importer becomes subject to an adjusted per-gallon cap standard in 2005....” As a result, if the refinery produced gasoline that exceeded the cap standard of 300 ppm sulfur in 2004 (but not above 350 ppm), the new owner will be subject to the adjusted cap standard under § 80.195(d) for gasoline produced by the refinery in 2005.

2. **Question:** Does the gasoline sulfur rule require refiners and downstream parties to account for the sulfur content of a registered fuel additive, such as a corrosion inhibitor used to help prevent sulfur-related fuel gauge sending unit failures?

**Answer:** Currently, there is no requirement under the gasoline sulfur rule for refiners or downstream parties to demonstrate compliance with the gasoline sulfur standards for registered fuel additives. Parties who add fuel additives, however, are responsible for ensuring that the addition of the additive does not cause the gasoline to exceed the applicable downstream sulfur standard under § 80.210.

## GPA/Small Refiners

1. **Question:** The regulations say that a small refiner’s annual average sulfur standards shall apply to the volume of gasoline produced by a small refiner’s refinery up to the lesser of 105 percent of the refinery’s baseline gasoline volume or the volume of gasoline produced by the refinery during the averaging period by processing crude oil. Since baselines were calculated based on the total volume of gasoline produced during the baseline period, including gasoline produced from purchased blendstocks and gasoline produced by processing small amounts of purchased intermediate feedstocks, should the volume of gasoline produced during the averaging period be calculated in the same manner as the baseline calculation (i.e., include gasoline produced from purchased blendstocks and gasoline produced by processing small amounts of purchased intermediate feedstocks)?

**Answer:** Section 80.240(c)(1) provides that “The refinery annual average standards specified in [§ 80.240(a)] apply to the volume of gasoline produced by a small refiner’s refinery up to the lesser of:

- (i) 105% of the baseline volume as determined under § 80.250(a)(1); or
- (ii) The volume of gasoline produced at that refinery during the averaging period by processing crude oil.”

The preamble to the gasoline sulfur rule states that this limitation is included in the regulations to ensure that refineries owned by small refiners receive relief only for the gasoline produced from crude oil, which is the portion of the refinery operation requiring capital investment to meet lower sulfur standards. *See* 65 FR 6769 (February 10, 2000). The preamble indicates that the baseline volume is the volume of gasoline produced during the baseline years (1997-1998) from crude oil, excluding the volume of gasoline for export as well as gasoline produced using purchased blendstocks. Note that the preamble made an exception, however, for purchased blendstocks that were substantially transformed using a refinery processing unit – such blendstocks could be included in baseline volumes. *See* 65 FR 6769, footnote 94.

As the preamble indicates, the intent of the regulations was to exclude gasoline produced from purchased blendstocks from the small refiner baseline volume calculations. Where gasoline is determined to be subject to the volume limitation of 105 percent of the baseline volume under § 80.240(c)(1)(i), including gasoline produced from purchased blendstocks in the refinery's baseline volume would have the effect of increasing the volume of gasoline subject to the small refiner standards. Although gasoline produced from purchased blendstocks may have been included in some small refinery baseline calculations, we believe the amount is minimal and does not undermine the intent of the provisions of § 80.240(c)(i.e., to limit application of the small refiner standards to gasoline produced by processing crude oil).

On the other hand, we believe that including batches of gasoline produced solely by blending purchased blendstocks in calculating the annual volume of gasoline produced using crude oil under § 80.240(c)(1)(ii) may undermine the intent of the regulations, particularly if large amounts of gasoline are produced by blending purchased blendstocks. As a result, batches of gasoline produced by blending two or more purchased blendstocks together, or by blending purchased blendstocks with previously certified gasoline, may not be included for purposes of determining the annual volume of gasoline production under § 80.240(c)(1)(ii). However, as indicated in the preamble, gasoline produced using purchased blendstocks, or intermediate feedstocks, which are substantially transformed using a refinery processing unit may be included in the volume under § 80.240(c)(1)(ii).

We understand that, as a part of normal refinery operations, butane produced by a refinery is often stored or sold during the summer when it is not needed. Butane is then brought back to the refinery, or purchased, for use in the winter. We assume that the amount of butane which is added to gasoline produced by a refinery during the winter is roughly the same amount of butane that is produced and stored or sold by the refinery during the summer. Therefore, we will consider such butane to be part of a refinery's production volume for purposes of determining the volume under § 80.240(c)(1)(ii).

We also believe that it is normal business practice for a refinery to add some small amounts of other purchased blendstocks to the gasoline it produces. Therefore, although purchased blendstocks added to gasoline produced by a refinery generally must be excluded for purposes of the volume determination under § 80.240(c)(1)(ii), we believe that *de minimus* amounts of such blendstocks may be included.

2. **Question:** Small refiners and Geographic Phase-In Area (GPA) refiners have the option of extending their gasoline sulfur standards if they produce 100 percent of their highway diesel fuel at the 15 ppm sulfur level. During their extension period, may these same small and GPA refiners continue to generate gasoline sulfur credits, or use “early” gasoline sulfur credits to meet the sulfur standards?

**Answer:** Yes. The regulations at § 80.540 allow a GPA refiner to extend its gasoline sulfur standards from December 31, 2006, to December 31, 2008, if 100 percent of the GPA refiner’s highway (motor vehicle) diesel fuel complies with the 15 ppm sulfur standard at § 80.520(a)(1) by June 1, 2006 (at a volume that is at least 85 percent of its baseline volume). The regulations at § 80.553 allow a small refiner to extend its gasoline sulfur standards to December 31, 2010, if 100 percent of the small refiner’s highway diesel fuel complies with the 15 ppm sulfur standard at § 80.520(a)(1) by June 1, 2006 (at a volume that is at least 85 percent of its baseline volume). Where EPA has approved this extension of the gasoline sulfur standards for a GPA or small refiner, we interpret the regulations to also extend the gasoline sulfur provisions relating to *compliance* with the GPA or small refiner gasoline sulfur standards. As a result, a GPA or small refiner with an approved extension of its GPA or small refiner standards may continue to generate gasoline sulfur credits based on its GPA or small refiner status, or use credits to meet its gasoline sulfur standards, including early credits (i.e, credits generated before 2004), during the appropriate extension period.

3. **Question:** The term  $S_b$  in the equation in § 80.240(c)(2) is the small refiner sulfur *baseline* as determined under § 80.250. Should this term be the small refiner *standard* as determined under § 80.240(a) instead of the small refiner baseline?

**Answer:** Yes. The term “ $S_b$ ” in the equation in § 80.240(c)(2), where “ $S_b$  = Small refiner sulfur baseline as determined under § 80.250,” should be “ $S_{std}$ ,” where “ $S_{std}$  = Small refiner sulfur standard as determined under § 80.240(a).” We intend to correct this error in a future rulemaking.

4. **Question:** If a small refiner buys a refinery that produces GPA gasoline, does the refiner have the option to retain the GPA standards for the refinery, or must the newly acquired refinery meet the small refiner standards?

**Answer:** Section 80.216(e) provides that gasoline produced by approved small refiners subject to the small refiner standards is not subject to the GPA standards. Section 80.240(b) provides that the small refiner annual average sulfur standards must be met for *each* refinery owned by a small refiner. Therefore, when a small refiner buys a refinery, that refinery becomes one of the small refiner’s refineries that is subject to the small refiner standards. As such, the gasoline produced by that refinery is not subject to the GPA standards. If, however, the small refiner withdraws its status as a small refiner under § 80.235(i), the GPA standards may apply to gasoline produced for sale in the GPA by the newly acquired refinery.

5. **Question:** Klickitat County Oregon is not included in the list of GPA counties. Was this an oversight?

**Answer:** Yes. Klickitat County is included in the GPA, but was inadvertently omitted from the list of GPA counties when the list was published in the Federal Register. We intend to correct this error in a subsequent rulemaking.

6. **Question:** Does § 80.255, which requires small refiners to provide a compliance plan and demonstration of progress, apply only to applications for small refiner gasoline hardship extensions under § 80.260, or do these requirements also apply to applications for small refiner gasoline hardship extensions under § 80.553?

**Answer:** To be eligible for an extension of the small refiner standards under the gasoline sulfur rule, a small refiner must fulfill the requirements under § 80.255 to provide a compliance plan and demonstration of progress. These reports provide EPA with information regarding the small refiner's efforts toward compliance with the gasoline sulfur standards in § 80.195 and provide a basis upon which to determine whether an extension of the small refiner standards is warranted. Extensions of the small refiner standards under the gasoline sulfur rule are based on significant economic hardship and the inability of the refinery to produce gasoline meeting the sulfur standards in § 80.195. In contrast, the criteria for obtaining an extension of the small refiner gasoline standards under the motor vehicle diesel fuel regulations is fulfillment of the requirements in § 80.553, including a demonstration that starting no later than June 1, 2006, all motor vehicle diesel fuel produced by the refiner will comply with the 15 ppm sulfur standard. The regulations do not require a small refiner to fulfill the requirements in § 80.255 to be eligible for an extension of the small refiner gasoline standards under § 80.553 of the diesel fuel regulations. As a result, we believe that the requirements in § 80.255 do not apply to small refiner gasoline hardship extensions under § 80.553.

7. **Question:** Can both credits and allotments be used to comply with the adjusted small refiner standard under § 80.240(c)(2)?

**Answer:** As discussed above (Standards, Question 2), § 80.240(c)(1) provides that the small refiner annual average standards in § 80.240(a) apply to the volume of gasoline produced by a small refiner's refinery up to the lesser of 105 percent of the baseline volume as determined under § 80.250(a)(1) or the volume of gasoline produced by that refinery during the averaging period by processing crude oil. For small refiners who exceed the volume limitation under § 80.240(c)(1), § 80.240(c)(2) provides an equation that adjusts the refiner's refinery standard to subject that portion of the refinery's production volume that is in excess of the volume limitation to 120 ppm sulfur in 2004, 90 ppm sulfur in 2005, and 30 ppm sulfur every year thereafter. Thus, that portion of a small refiner's gasoline that is not subject to the small refiner standards is subject to the same sulfur limitations as the corporate pool annual average standards in 2004 and 2005, and the same limitations as the national refinery average standard in 2006 and beyond. Small refiners, however, do not comply with the corporate pool average standards per se; i.e., a small refiner does not pool volumes from all of its refineries and comply with the 120/90 ppm

sulfur standards on a company-wide basis, and it does not generate allotments based on reductions from the 120/90 standards. *See* § 80.195(c)(4); § 80.275(f). *See also* 65 FR 6760. The equation in § 80.240(c)(2) calculates a single “adjusted” sulfur standard applicable to all of a small refiner refinery’s gasoline production during the annual averaging period. As such, this adjusted standard is the small refiner annual average standard for the refinery for that annual averaging period.

Section 80.240(c)(3) provides that the small refiner average standards under 80.240(a) may be met using sulfur allotments or credits. The intent of the regulations was to allow a small refiner to use allotments or credits (or both) to achieve compliance with the small refiner’s refinery average standard. *See* 65 FR 6770-71 (February 10, 2000). As discussed above, for a small refiner whose refinery production exceeds the volume limits under § 80.240(c)(1), the refinery’s standard *is* the adjusted standard calculated under § 80.240(c)(2). Although the equation in § 80.240(c)(2) subjects the refiner’s volume that is in excess of the volume limitation to the same sulfur limits as the corporate pool annual average standards in 2004 and 2005, as discussed above, the small refiner does not comply with the corporate pool average standards as such. As a result, small refiners are not limited to the use of allotments to achieve compliance for gasoline production in excess of the volume limitation under § 80.240(c)(1). Small refiners may use credits *or* allotments (or both) to achieve compliance with the small refiner standard calculated under § 80.240(c)(2) for all of their annual production volume. We intend to clarify this in a future rulemaking.

## **Allotments and Credits**

1.     **Question:** Can butane blenders generate allotments and credits?

**Answer:** Section 80.340(b)(1) provides that butane blenders may comply with the gasoline sulfur rule sampling and testing requirements using test results from the butane supplier provided that certain requirements are met. One requirement is that the sulfur content of the butane must not exceed 120 ppm in 2004 and 30 ppm in 2005 and thereafter on a per-gallon basis. Section 80.340(b)(3) requires that the sulfur content and volume of each batch of butane used to produce gasoline is treated as a separate batch for purposes of calculating compliance with the sulfur standards in §§ 80.195 and 80.216. These sections include the corporate pool and refinery and importer annual average standards.

Although the regulations require refiners who blend butane into previously certified gasoline under § 80.340(b) to comply with the sulfur standards for the butane on a per-gallon basis, we believe that the regulations at § 80.340(b)(3) also require refiners to include the butane in compliance calculations for purposes of complying with the corporate pool standards and the refinery annual average standards. Thus, a refiner that produces gasoline by blending butane into previously certified gasoline and also produces gasoline by processing crude oil or blending other components will include the butane in its corporate pool average in 2004 and 2005, and in its refinery average beginning in 2005. Similarly, a refiner that produces gasoline only by

blending butane into previously certified gasoline will comply with the corporate pool and refinery average standards based on the batches of butane blended into the gasoline. In either case, we believe that sulfur allotments and credits may be generated based on reductions from the corporate pool and refinery annual average standards as provided in §§ 80.275 and 80.310.

2. **Question:** Under § 80.275(e)(3), are allotments generated in 2003 and 2004 discounted when they are used to meet the refinery annual average standard in 2005?

**Answer:** Section 80.195(b)(4) provides that, in 2005 only, the refinery or importer annual average sulfur standard may be met using credits or allotments as provided under § 80.275, or credits as provided under § 80.315. Section 80.275(e)(3) provides that allotments generated in 2003 or 2004 which are carried over to 2005 are discounted by 50 percent. Section 80.275(e)(3) also provides that the discounted allotments may be used to demonstrate compliance with the corporate pool average standard in 2005, or converted to credits for use in demonstrating compliance with the refinery average standard in 2005 or a subsequent year. Although § 80.275(e)(3) does not specifically state that 2003/2004 allotments used to meet the refinery annual average standard in 2005 are discounted, we interpret § 80.275(e)(3) to provide that *any* allotments generated in 2003 or 2004 that are carried over for use in 2005 are discounted, including allotments used to meet the refinery annual average standard in 2005. This interpretation is consistent with the language in § 80.275(e)(3) which provides that 2003/2004 allotments that are carried over to 2005, and then converted to credits and used for compliance with the refinery annual average standard, are to be discounted.

3. **Question:** What constitutes a “transfer” of credits or allotments under the gasoline sulfur regulations? Do the regulations preclude the use of futures contracts?

**Answer:** The gasoline sulfur regulations provide that allotments and credits may be transferred from one refiner or importer to another, provided that no allotment or credit is transferred more than twice. The first transfer is from the refiner or importer who generated the allotments or credits to a refiner or importer who intends to use the allotments or credits for demonstrating compliance with the sulfur standards. If the transferee refiner or importer cannot use the allotments or credits, the refiner or importer may make a final transfer to another refiner or importer who intends to use the allotments or credits for compliance. If that refiner or importer does not use them, the allotments or credits must be terminated. *See* §§ 80.275(d)(1), 80.315(b)(1)(iv). A refiner or importer must use any allotments or credits necessary to meet its sulfur standards before transferring any allotments or credits to another refiner or importer. *See* §§ 80.275(d)(2), 80.315(b)(1)(v).

The regulations also provide that, if any allotments or credits are transferred to or obtained from another party, the refiner or importer must report to EPA the name and EPA registration number of the party it transferred the allotments or credits to or received them from, and the number of allotments or credits that were obtained or transferred. *See* § 80.370(a)(6)(iv). In addition, the regulations provide that refiners or importers must keep records regarding credits and allotments, including the name and EPA registration number of any party that the refiner or

importer transferred allotments or credits to or obtained them from, and the number of allotments or credits that were transferred or obtained. *See* § 80.365(b)(2)(iv).

A “transfer” under the regulations occurs when one refiner or importer conveys allotments or credits to another refiner or importer and all of the requirements regarding transfers under the regulations are met, including all of the applicable reporting and recordkeeping requirements. As a result, for a transfer to be executed, both parties to the transfer must keep records of the transaction and report the transfer to EPA. The transfer must be reported by both parties in the reports they submit for the annual averaging period in which the transaction occurs. For example, if a refiner generates credits in 2005 and plans to convey them to another refiner in 2006, the refiner must report the generation of the credits in its 2005 report and indicate that the credits are being carried over to the next reporting period. The refiner must then report the transfer of the credits in its 2006 report. The transferee refiner must also report the transfer (i.e., receipt of the credits) in its 2006 report. If a conveyance takes place and one party fails to report the transaction, the transfer will not be executed. For example, if a buyer reports a purchase of credits but the generator/seller of the credits does not report the transaction, the transfer will not be executed and the buyer will not be able to use the credits for demonstrating compliance (or make a final transfer to another refiner or carry them over to the next reporting period.) If, in this example, the failure to report was due to a clerical error or similar mistake, the seller may submit an amended report reflecting the transfer of the credits. However, the buyer of the credits will not be able to use the credits until the seller submits the amended report.

As we indicated in the preamble to the gasoline sulfur rule, there is nothing in the regulations that would prevent a person from facilitating the transfer of credits from parties that have generated them to parties who need them for compliance, e.g., a broker who would act like a real estate broker, so long as the title to the credits or allotments is transferred directly from the generator to the user (with one intermediate transfer allowed, as noted above.) *See* 65 FR 6764 (February 10, 2000). Therefore, even if extraneous transactions involving allotments or credits, such as brokering transfers or trading futures contracts occur, an actual “transfer” will not occur under the regulations unless and until all of the regulatory requirements regarding transfers, including all reporting and recordkeeping requirements, are fulfilled by both parties.

4. **Question:** Do the regulations allow parties to transfer allotments beginning January 1 through the last day of February following the compliance year in question? For example, could company A buy 2004 allotments from company B after January 1, 2005, for application to company A's 2004 compliance year? Would the allotments in this example be discounted by 50 percent because the transaction occurred in 2005?

**Answer:** The gasoline sulfur regulations provide that credits may be used to meet the annual average standards provided that “[a]ny credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.” *See* § 80.315(b)(1)(iii). Although the regulations do not contain a similar provision for allotments, it was EPA’s intention to treat allotment transfers in the same way that credit transfers are treated with regard to the time period for trading. As a result, we believe that allotments generated in



2004 may be transferred after January 1, 2005, and used by the buyer refiner or importer for demonstrating compliance for the 2004 annual averaging period, as long as the transfer is reported by both parties in their EPA reports for 2004 (due the last day of February, 2005). In such a situation, the allotments will not be discounted even though the actual transfer takes place in 2005. If, however, the buyer refiner or importer does not use the credits for compliance for the 2004 annual averaging period, and instead carries them over and uses them to demonstrate compliance for the 2005 annual averaging period, then the allotments will be discounted by 50 percent.

### **California Gasoline Exemption**

1. **Question:** Can California gasoline be included for purposes of generating allotments or credits if the gasoline is also certified with EPA?

**Answer:** Under § 80.375(a), California gasoline is defined for purposes of the gasoline sulfur regulations as “any gasoline designated by the refiner as for use in California.” Under § 80.375(c)(2) and (c)(3), gasoline designated by the refiner as California gasoline must be kept segregated from gasoline produced for use outside of California, and it must ultimately be used in California and not used elsewhere. Therefore, gasoline may not be designated, or certified, as both California gasoline and gasoline for use outside California.

Sections 80.200(b) and 80.375(b) provide that gasoline that complies with the requirements for California gasoline under § 80.375 is not subject to the requirements under the gasoline sulfur rule. California gasoline, therefore, is excluded from a refiner’s volume for purposes of gasoline sulfur compliance calculations. Since allotments and credits are generated based on the volume of gasoline included in a refiner’s compliance calculations, and since California gasoline is not included for purposes of compliance calculations, California gasoline also is not included for purposes of calculating the amount of allotments and credits generated. The regulations do not provide for California gasoline to be added back into a refinery’s production volume for purposes of calculating allotments and credits.

## Downstream Issues

1. **Question:** How should small refiner gasoline be identified on product transfer documents (PTDs) where the terminal's sulfur test result is not available before the gasoline leaves the terminal?

**Answer:** Section 80.210(d) requires small refiner gasoline (S-RGAS) to be sampled and tested and shown to contain a threshold sulfur content in order to continue to be designated as S-RGAS on product transfer documents (PTDs). Section 80.210(e) provides that where S-RGAS is being delivered into a terminal storage tank containing non-S-RGAS and the tank is simultaneously supplying gasoline to a transport truck, the terminal has the option to identify the gasoline as S-RGAS before the delivery into the terminal tank is completed and a sample is taken and tested. For such gasoline, the terminal is not required to change the PTDs even if it is later determined, based on test results, that the gasoline may not have qualified as S-RGAS. However, upon completion of the delivery, the terminal may identify the gasoline as S-RGAS only if the test results show that it qualifies as S-RGAS. As a result, for any gasoline loaded into the truck *after* the delivery into the terminal tank was completed and the sample was taken, but *before* the test results are received, the terminal *may* identify the gasoline as S-RGAS on PTDs, but must correct the PTDs if the test results show that the gasoline did not qualify as S-RGAS. Alternatively, the terminal may choose not to identify the gasoline as S-RGAS, but must correct the PTDs if the test results show that the gasoline qualified as S-RGAS. To avoid confusion downstream, we recommend that the PTDs accompanying such gasoline include language which indicates that the designation is provisional, such as "S-RGAS, pending test results," or "Non-S-RGAS, pending test results," as appropriate.

In a situation where non-S-RGAS is being delivered into a terminal storage tank containing S-RGAS, the terminal may continue to identify the gas as S-RGAS until the delivery into the terminal tank is completed and the sample is taken. The terminal will not have to correct PTDs if the test results later indicate that the gasoline may not have qualified as S-RGAS. After the delivery into the terminal tank is completed and a sample is taken, but before receiving the test results, the terminal may identify the gasoline as either S-RGAS or non-S-RGAS, but must correct the PTDs if the test results indicate a different designation is appropriate. As discussed above, we recommend that such gasoline be identified on PTDs as "S-RGAS, pending test results," or "Non-S-RGAS, pending test results," as appropriate." These requirements are summarized in Table 1, below.

**Table 1. PTD Language Requirements for Gasoline Loaded Into a Transport Truck from a Terminal Storage Tank that is Simultaneously Receiving a Gasoline Delivery**

New Fuel Delivered into Terminal Storage Tank	Fuel Contained in Terminal Storage Tank	Fuel Delivery Into Tank Completed (Yes or No)	Test Result Received Before Transport Truck Leaves (Yes or No)	PTD Language for Gasoline Loaded Into Transport Truck	PTD Correction Required If Necessary After Test Result Received (Yes or No)
S-RGAS	Non-S-RGAS	No	No	"S-RGAS"	No
S-RGAS	Non-S-RGAS	Yes	No	"S-RGAS, pending test results" or "Non-S-RGAS, pending test results," as appropriate	Yes
Non-S-RGAS	S-RGAS	No	No	"S-RGAS"	No
Non-S-RGAS	S-RGAS	Yes	No	"S-RGAS, pending test results" or "Non-S-RGAS, pending test results," as appropriate	Yes

The regulations require that PTDs must be provided “on each occasion” that custody or title of the gasoline is transferred from one party to the next. *See* § 80.77. We have interpreted this requirement to mean, in the case of custody transfers, that the PTDs must be provided before, during, or immediately following the transfer of the gasoline. *See Reformulated Gasoline and Anti-Dumping Questions and Answers*, October 17, 1994. To fulfill this requirement, we believe that any corrections to the PTDs must be made no more than three business days following receipt of the test results.

We believe there is currently available at least one portable, reasonably priced American Society for Testing and Materials (ASTM) test method that would give relatively instantaneous test results, eliminating the need to send the sample to a lab for testing and the risk of having to change the PTDs if the test results indicate that the gasoline was incorrectly identified.

2. **Question:** What PTD language is required for gasoline that includes both GPA gasoline and S-RGAS, where the S-RGAS has a higher downstream sulfur standard than the GPA gasoline?

**Answer:** Section 80.219(c)(ii) provides that all parties in the distribution system are prohibited from commingling GPA gasoline with gasoline not designated as GPA gasoline unless the mixture is classified as GPA gasoline. As a result, for a mixture of S-RGAS and GPA gasoline, the PTDs must identify the gasoline as GPA gasoline. As such, the gasoline may not be sold outside the GPA. *See* § 80.219(c)(i). Section 80.220(b) provides that the downstream

sulfur standard applicable to a mixture of GPA gasoline and S-RGAS is the greater of the downstream standard for the GPA gasoline or the downstream standard for the S-RGAS. We believe, where a mixture of GPA gasoline and S-RGAS has a S-RGAS downstream standard that is greater than the GPA downstream standard, the PTDs for the gasoline must identify the product as containing both GPA gasoline and S-RGAS and state the S-RGAS downstream sulfur standard. The product transfer documents also must include a statement that the gasoline may not be distributed or sold for use outside the GPA.