



Petroleum Transportation & Storage Association

REGULATORY ALERT

January 31, 2006

LOW SULFUR TIER II GASOLINE DEADLINE APPROACHING

NEW RULE: The EPA is introducing a multi tiered low sulfur standard for gasoline. The low sulfur gasoline must reach retail outlets by 3/1/06.

NEW SULFUR STANDARDS: The EPA has created the following low sulfur gasoline standards:

- **At the Refinery Gate:** Refiners must produce gasoline with an average sulfur content of 30 parts per million (ppm) per gallon with no product more than 80 ppm sulfur content leaving the refinery gate.
- **At the Retail Pump:** Retailers must not exceed a gasoline sulfur content greater than 95 ppm in retail tanks (*See "Temporary Exceptions" below*).
- **Temporary Standards:** (*See "Temporary Exceptions" below*).

COMPLIANCE DEADLINES: Deadlines for introduction of the new low sulfur gasoline are:

- **1/1/06:** On this date refiners must produce low sulfur 30/80 gasoline.
- **2/1/06:** On this date terminal operators must supply low sulfur gasoline.
- **3/1/06:** On this date retailers may not sell gasoline with sulfur content greater than 95 ppm.

TEMPORARY EXCEPTIONS: The following exceptions to the 95 ppm standard apply:

- **Small Refinery Exception:** The EPA will allow refineries with approved small refinery status to supply gasoline with sulfur content above the 95 ppm retail cap (designated as S-RGAS) until 1/1/08. Retailers obtaining S-RGAS will not be held to the 95 ppm standard. Instead, retailers will be held to the S-RGAS standard adjusted upward to account for blending with 95 ppm low sulfur gasoline. The EPA will measure compliance with the S-RGAS standard by calculating the sulfur content that should be in a tank based on review of product transfer documents over a period of time.
- **Geographic Phase in Area –** Refiners in the "Geographic Phase-in Area" (GPA) are allowed to produce gasoline at 300 ppm sulfur content as measured at the refinery gate until 3/1/07. The downstream sulfur standard for retailers of GPA-GAS is 326 ppm per gallon. The GPA areas include the following states:

Alaska, Colorado, Idaho, Montana, New Mexico, North Dakota, Utah and Wyoming.

In addition, the GPA includes the following counties in the states indicated:

Arizona; Apache, Coconino, Gila, Greenlee and Navajo; **Nebraska:** Banner, Box, Butte, Cheyenne, Dawes, Deuel, Garden, Keith, Kimball, Morrill, Scotts Bluff, Ahridan

and Sioux; **Nevada:** Elko, Eureka, Humbolt, Lander and Lincoln; **Oregon:** Baker, Crook, Gilliam, Grant, Harney, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler; **South Dakota:** Bennett, Butte, Corson, Custer, Dewey, Fall River, Haakon, Harding, Jackson, Jones, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Stanley, Todd and Zieback.

ISSUES: The following issues apply to downstream (below the terminal) petroleum marketers:

- **Tank Turnover** – Retail petroleum marketers subject to the 95 ppm gasoline sulfur standard have a 30-day period (2/1/06 to 3/1/06) to turn over tanks. There is some concern that mid-grade and premium grade tanks at slower moving locations cannot be turned over in time. This should not be a major concern because many refiners began producing low sulfur gasoline well before the 1/1/06 deadline. Therefore, it is possible that retail tanks may already be compliant with the 95 ppm or well into the turnover process. Check product transfer documents or call suppliers to determine if and when low sulfur gasoline was delivered to your retail tanks and calculate a turnover schedule accordingly.
- **Avoiding Liability** – The EPA holds all parties along the fuel distribution chain liable for maintaining the appropriate gasoline sulfur standard (either the 95 ppm low sulfur gasoline, the GPA 326 ppm gasoline, or the S-RGAS variable standard).

Retailer Defense to Liability - Retailers will not be held liable for violation of any sulfur standard so long as they did not cause the non-compliance and product transfer documents show that only compliant gasoline with the allowable sulfur content was delivered into retail tanks. ***Retailers are not required to test product for sulfur content.***

Fuel Distributor Defense to Liability – Fuel distributors (including motor carriers), who ***hold title*** to low sulfur gasoline before delivery to a wholesale purchaser-consumer or retail location ***must have*** a quality assurance program in place to raise a defense against liability for non-compliant gasoline. The quality assurance program ***must*** include periodic testing and sampling to ensure that the gasoline sold, dispensed, supplied stored or transported meets the 95 ppm sulfur standard (or the GPA or S-RGAS standard if applicable). To raise a defense a distributor must also stop selling the non-compliant product immediately, remove the fuel from distribution until it is compliant and identify the cause of the violation and correct it to ensure violations will be repeated.

Motor Carrier Liability – Motor carriers who ***do not hold title*** to the low sulfur gasoline transported, are not required to test for sulfur content in order to raise a defense to liability. Instead, they may rely on the quality assurance and testing program carried out by the party who holds title to the gasoline.

- **Which Gasoline Sulfur Standard Applies -**

The 95 ppm Gasoline Sulfur Standard - All retail outlets located ***outside*** the designated GPA listed above area must comply with the 95 ppm low sulfur gasoline standard beginning 3/1/06.

The GPA Gasoline Sulfur Standard – All retail outlets located ***inside*** the GPA designated area listed above must comply with the 326 ppm standard until 3/1/07 when the gasoline sulfur standard will be lowered to 95 ppm.

The Small Refinery Gasoline Sulfur Standard – Gasoline produced at a refinery operating under an EPA small refinery exception (S-RGAS) may produce gasoline with sulfur content greater than either the low sulfur 95 ppm gasoline or GPA 326 ppm gasoline. S-RGAS may be blended in retail tanks with either GPA 326 ppm gasoline or low sulfur 95 ppm gasoline. The resulting mixture will not be considered a

violation even where the blend exceeds either of the applicable sulfur standards. The S-RGAS sulfur standard is variable, but is listed on the PTD and is adjusted to account for the 95 ppm or 326 ppm gasoline with which it is blended.

IMPORTANT POINTS TO REMEMBER ABOUT THE NEW LOW SULFUR GASOLINE STANDARD.

- Retail tanks must be turned over to the appropriate sulfur standard (low sulfur 95 ppm gasoline, 326 GPA gasoline or variable S-RGAS) by 3/1/06.
- Tanks may be already turned over or close to full turnover because many refiners have been producing low sulfur gasoline well before the 1/1/06 deadline for introduction.
- Check PTDs or call suppliers to determine if and when low sulfur gasoline was first introduced in your area. Arrange for tank draw down and turnover accordingly.
- Retailers are not required to test for sulfur content. EPA will measure compliance by reviewing PTDs to check for deliveries of non-compliant gasoline.
- Keep PTDs organized according to the tank in which the low sulfur 95 ppm gasoline, GPA or S-RGAS was dropped.
- S-RGAS may be mixed with low sulfur 95 ppm gasoline in a retail tank at any time until 1/1/08.
- S-RGAS may be mixed with GPA gasoline in a retail tank, within the GPA area at any time until 1/1/07.
- S-RGAS should be relatively uncommon since few refineries have been granted small refiner status.
- PTDs will clearly indicate the type (low sulfur 95 ppm gasoline, S-RGAS or GPA gasoline) and sulfur content of gasoline delivered.
- Distributors that **take title** to low sulfur 95 ppm gasoline S-RGAS and GPA gasoline must have a quality assurance program in place that includes periodic sampling and testing to prove compliance. Motor carriers who do not take title (for hire) to product are not required to test and may rely on the terminal operators assurance that the fuel is compliant.
- Downstream sulfur contamination should not be a significant issue because refiners are producing gasoline with significantly lower sulfur content than the maximum required for retail outlets.
- Distributors may not deliver gasoline above the 95 ppm sulfur content standard unless the fuel is accompanied by a S-RGAS PTD or a GPA gasoline PTD and delivered within the GPA geographical location.

Got Questions? Contact Mark S. Morgan, Esq. (202) 364-6767 or mmorganptsa@cox.net