



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

MEMORANDUM

TO: David Potter, Senior Staff Counsel
Office of Administrative Law

FROM: Amy Whiting
Regulations Coordinator

DATE: January 12, 2010

SUBJECT: OAL Regulatory Action Number: 2009-1125-05S; Low Carbon Fuel Standard

The Office of Administrative Law is authorized to make the following corrections, substitutions, and additions in connection with the above-referenced rulemaking:

- (1) Substitute the enclosed pages 9, 57, 58, 59 and 61 of the Final Regulation Order for the corresponding pages originally submitted. The nonsubstantial changes to the text are described below.

On page 9, in section 95481(b)(14), “GVRW’ means gross vehicle weight rating” has been changed to “GVWR’ means gross vehicle weight rating.”

On page 57, the text of section 95486(e)(2)(B) has been changed as shown below, with underline indicating text that has been added and strikeout showing the text that has been deleted, compared to the originally submitted Final Regulation Order (the actual text on page 57 is the final adopted language in normal type):

The regulated party can and is expected~~s~~ to provide in California more than 10 million gasoline gallon equivalents per year (1,156 MJ) of the regulated fuel. This requirement applies to a transportation fuel only if the total amount of the fuel sold in California from all providers of that fuel exceeds 10 million gasoline gallon equivalents per year.

On page 58, the text of section 95486(f)(2) has been changed as shown below, with the underline indicating text that has been added, compared to the originally submitted Final Regulation Order (the actual text on page 58 is the final adopted language in normal type):

Use of Method 2A or 2B Prohibited Without Executive Officer Approval.

The regulated party must obtain the Executive Officer’s written approval pursuant to section 95486(f)(5) of its application submitted pursuant to section 95486(f)(1)

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

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above before using a proposed Method 2A or 2B for any purpose under the LCFS regulation. Any use of a proposed Method 2A or 2B before Executive Officer approval is granted shall constitute a violation of this regulation for each day that the violation occurs. A regulated party that submits any information or documentation in support of a proposed Method 2A or 2B must include a written statement clearly showing that the regulated party understands and agrees to the following:

- (A) All information not identified in 95486(e)(3)(C) as trade secrets are subject to public disclosure pursuant to 17 CCR §§ 91000-91022 and the California Public Records Act (Government Code section 6250 et seq.); and
- (B) If the application is approved by the Executive Officer, the carbon intensity values, associated parameters, and other fuel pathway-related information obtained or derived from the application will be incorporated into the Method 1 Lookup Table for use on a free, unlimited license, and otherwise unrestricted basis by any person;

On page 59, the text of section 95486(f)(4) and (f)(5) has been changed as shown below, with the changes indicated in the same manner as the page 57 changes:

- (4) *Public Review.* After determining an application is complete, the Executive Officer shall publish the application and its details on ARB's website at <http://www.arb.ca.gov/fuels/lcfs/lcfs.htm> and make it available for a public review process in accordance with applicable provisions of the Administrative Procedure Act (Government Code section 11340 et seq.). The Executive Officer shall treat all trade secrets specifically identified by the regulated party under section 95486(e)(3)(C) above in accordance with 17 CCR §§ 91000-91022 and the California Public Records Act (Government Code section 6250 et seq.).
- (5) *Final Action.* The Executive Officer shall take final action to approve or disapprove an application for approval of a new carbon intensity value and associated fuel pathway submitted pursuant to this subsection (f) by amending the Lookup Table(s) in accordance with applicable the rulemaking provisions of the Administrative Procedure Act (Government Code section 11340 et seq.). The Executive Officer shall notify the regulated party accordingly and publish the final action on ARB's website at <http://www.arb.ca.gov/fuels/lcfs/lcfs.htm>. ~~If the final action is~~

~~approval of a new carbon intensity value and associated fuel pathway, the Executive Officer shall update the Lookup Table to reflect the new value accordingly pursuant to applicable provisions of the Administrative Procedure Act (Government Code section 11346 et seq.). If the Executive Officer disapproves an application, the disapproval shall identify the basis for the disapproval.~~

On page 61, the text of the last paragraph of section 95487(c)(2), reflects the following changes:

~~Fuels currently subject to this provision~~ section 95487(c)(2) include CaRFG, diesel fuel, E100, E85, CNG, LNG, and hydrogen. ~~This provision~~ The exemption applies only to the extent that the Executive Officer does not amend the fuel specification for any of the above fuels. When OAL approves an ARB amendment to a fuel specification identified above, ~~this provision~~ the exemption shall no longer apply for that fuel.

On page 61, the text of the last paragraph of section 95487(c)(3), reflects the following changes:

~~Fuels currently subject to this provision~~ section 95487(c)(3) include biomass-based diesel, and electricity. ~~This provision~~ The exemption applies only to the extent that the Executive Officer does not adopt a fuel specification for any of the above fuels. When OAL approves an ARB-adopted fuel specification for a fuel identified above, ~~this provision~~ the exemption shall no longer apply for that fuel.

On page 61, in the Authority and Reference Note for section 95487, Health and Safety Code section 43830.8 has been added under "Reference cited."

On page 61, in section 95488, "[Reserved]" has been substituted for the Section title and "(a) [This section is reserved for future use]" has been deleted, as has the Authority and Reference Note.

- (2) Substitute the enclosed revised Table of Contents in the beginning of the rulemaking file, before Tab 1.
- (3) Substitute the enclosed revised and updated Certificate of Closure for the Rulemaking File at the beginning of the rulemaking file following the Table of Contents.

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- (4) Substitute the enclosed revised pages 17-18 of the Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses in Tab 5. The revised text inserts the following three lines that had inadvertently been omitted between the bottom of page 17 and the top of page 18:

2. Modifications Regarding Identification of Carbon Intensity Values

In response to comments after publication of the original proposal, staff became concerned that the Executive Officer's action of certifying carbon intensity values could

- (5) Add the enclosed Supplement to the Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses behind Tab. 5 of the rulemaking file.
- (6) Add this memo behind the enclosed Tab 22 to the rulemaking file.

Thank you for your assistance in this matter. If you have any questions please feel free to contact me at (916) 322-6533.

Enclosures