



Winston H. Hickox
Agency Secretary

Air Resources Board

Alan C. Lloyd, Ph.D.
Chairman

2020 L Street • P.O. Box 2815 • Sacramento, California 95812 • www.arb.ca.gov



Gray Davis
Governor

MEMORANDUM

TO: Craig Tarpenning
Senior Staff Counsel
Office of Administrative Law
555 Capitol Mall, Suite 1290
Sacramento, CA 95814-4602

FROM: W. Thomas Jennings
Senior Staff Counsel

DATE: August 3, 2000

SUBJECT: CALIFORNIA REFORMULATED GASOLINE PHASE 3 RULEMAKING
REGULATORY ACTION NO. 00-0626-01S

In response to our telephone conversations on August 1 and 2, 2000, the Air Resources Board authorizes the Office of Administrative Law (OAL) to insert "13" as the title for the sections affected in B.1. of the Form 400.

I also enclose the following additional material:

- (1) A Supplement to the Final Statement of Reasons, which summarizes and responds to a comment from Thomas Ring.
- (2) For inclusion in Tab 15, References, seven substitute pages showing a corrected listing of the referenced material contained in the rulemaking file. The corrected listing omits items 49-56 of the original listing – these items had not been made available for public inspection, and were not intended to be included as references. The corrected listing also adds the 30 items that had been identified as references on pages 77-79 of the Staff Report: Initial Statement of Reasons. These items had been omitted from the Tab 15 list of references through an oversight, but were available to the public during the 45-day notice period. Along with the corrected listing, we are also enclosing copies of each of those 30 referenced documents. We ask that you remove the documents identified as items 49-56 of the original Tab 15 list.
- (3) A copy of the Air Resources Board's ARB/SSD/CPB Form 00-3-1, "Application for Certification of Small Refinery Under the Phase 3 Reformulated Gasoline Regulations." This form was available to the public on request during and after the

supplemental comment period that began April 7, 2000. It is to be included in a new Tab 16 of the rulemaking file.

- (4) Seven copies of the following replacement pages for the Final Regulation Order. They reflect the nonsubstantial changes described below to sections of title 13, California Code of Regulations. Please substitute them for the corresponding pages in the Final Regulation Order we submitted on June 26, 2000.
- (a) Page 12: In the section 2262 table, the second to the last row – crossed out text pertaining to Driveability Index – has been deleted. Since the entire table is new, text deleted as part of the “15-day changes” should be omitted rather than shown in ~~strikeout~~.
- (b) Page 13: In section 2262.3(c)(3), line 2, “section 2264(d)” is changed to “section 2264(c)” to correctly reflect the referenced section.
- (c) Page 15: In section 2262.4(b)(1), line 8, “section (b)(3)” is changed to “section (b)(2)” to correctly reflect the referenced section. There is no (b)(3).
- (d) Page 16: In newly numbered section 2262.4(c)(2), line 3, “supplying, or offering or transporting” is changed to “supplying, offering or transporting” to accurately reflect the current text in Barclays.
- (e) Page 25: In the table in section 2263(b)(1), the second line of the Test Method column for sulfur content, a struck out superscript “f” is shown after “ASTM D 5453-93.” In the current Barclays, footnote f appears both for the sulfur test method and the test method for olefins. The text of footnote f pertains solely to the reproducibility values for olefins under the olefins test method. Since footnote f has no connection to the sulfur test method and appears with that test method by mistake, deletion of footnote f from the sulfur test method row is a nonsubstantive change without regulatory effect.
- In addition, I note a printing error in Barclays, in that footnote c shown for the benzene test method should be footnote e, as shown in the Final Regulation Order for the phase 3 reformulated gasoline regulations.
- (f) Page 35: In section 2265(a)(2), line 5, “December 11, 1999” is changed to “December 11, 1998” to accurately reflect the current text in Barclays. In addition, on line 10, the June 16, 2000 adoption date of the “California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model” (the “Phase 3 CaRFG Predictive Model Procedures”) is substituted for “[Insert date of adoption]”.

- (g) Page 45: In section 2266.5(g)(1)(A), line 4, “The registration must addressed to he attention of” is changed to “The registration must be addressed to the attention of” to accurately reflect the text in Barclays and make a spelling correction. In section 2266.5(g)(1)(B)1., line 1, “The identify the oxygen blender’s contact name” is changed to “The ~~identify~~ the oxygen blender’s contact name” to correct an editorial error.
- (h) Pages 60 and 61: In section 2272(c)(5), add the following sentence at the end. “(Note: At the time this section 2272(d)(5) was adopted in June 2000, section 2282 did not include a mechanism for offsetting excess emissions from small refiner CaRFG Phase 3. As such, a qualifying small refiner accordingly may not elect to have its gasoline subject to the small refiner CaRFG Phase 3 standards until section 2282 is amended to provide a mechanism for offsetting the excess emissions and those amendments become operative. The Air Resources Board intends to consider such amendments in a Fall 2000 rulemaking.)”

This additional language reflects the ARB’s unambiguous intent, as expressed in the fourth full paragraph on page 21 of the Final Statement of Reasons, and eliminates any concern that section 2272(c)(5) fails the “clarity” standard. Moreover, the CaRFG Phase 3 amendments to section 2272 will continue to meet the “necessity” standard even though a refiner is not allowed to use the small refiner mechanism until the offset provisions are added to the diesel regulation. The section 2272 amendments are designed to resolve all issues regarding the small refiner mechanism other than the generation of offsets under the diesel regulation. Given the leadtime needed for refiners to come into compliance with the CaRFG3 standards, there is a clear and substantial interest in small refiners and other members of the regulated community being informed as to how most of the small refiner elements will be applied. As part of the Fall 2000 rulemaking regarding generation of offsets under the diesel regulations, the added section 2272(c)(5) language shown above will be deleted.

- (5) A new Table of Contents for the rulemaking file, identifying the Supplement to Final Statement of Reasons as Item 15, the ARB Form Specified in the Regulations as Item 16, and renumbering References as Item 17. New Tabs 16 and 17 are also included in this transmittal.
- (6) A new certification of the rulemaking record, reflecting addition of the materials transmitted with this memorandum.
- (7) A copy of the Form 400 and Final Regulation Order for the 1996 amendments that adopted California Code of Regulations, title 13, section 2266.5. A comparison of the adopted text of section 2266.5(a)(1) with the text as shown in Barclays indicates that Barclays mistakenly omits the phrase “also apply to CARBOB” in the first

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sentence. The phrase is appropriately included in the Phase 3 CaRFG3 rulemaking, and we are requesting that the Barclays printing error be corrected.

In addition, I note that the final adopted text of the Phase 3 CaRFG Predictive Model Procedures, incorporated by reference in section 2265(a)(2) and appended to the Final Regulation Order, contained text on page 20 that differed slightly from the text made available with the Staff Report: Initial Statement of Reasons. In the originally proposed text, the first sentence of the identification of Y_{Tech} reads, " Y_{Tech} is the exhaust emission prediction in grams or milligrams per mile of a particular pollutant (NO_x, HC, benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) and for a particular technology class." In the Final Regulation Order, the sentence reads, " Y_{Tech} is the exhaust emission prediction in grams per mile (for NO_x and THC), and milligrams per mile (for benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) for a particular technology class." This was a nonsubstantial clarifying change, since emissions of NO_x and HC are typically expressed in grams per mile and the much smaller emissions of the four listed toxic air pollutants are typically expressed in milligrams per mile. I note that the modified text appeared in the complete text of the modified Phase 3 CaRFG Procedures document which, as indicated in the 15-Day Notice, was made available during the 15-day comment period on the ARB's internet site for the CaRFG3 rulemaking: <http://www.arb.ca.gov/regact/carfg3/carfg3.htm> (although the modifications were not highlighted in underline and strikeout).

Thank you for your assistance on this matter. If you have any further questions, please call me at (916) 323-9608.

Enclosures