



August 9, 2011

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

SUBMITTAL OF COMMENTS

Re: 15 Day Notice of Availability and Modified Text on the Amendments to the Proposed Regulations on Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels within California Waters and 24 Nautical Miles of the California Baseline.

The Pacific Merchant Shipping Association (PMSA), a maritime trade association representing shipping companies servicing regular trade routes into California ports, appreciates the work done by California Air Resources Board (CARB) staff in the development of this proposed regulation and have worked closely with staff throughout the process. In addition, as PMSA has commented extensively on these regulations and numerous other related regulations, including the previous Regulations on Fuel Sulfur (2009) and the Auxiliary Engine Fuel Regulation (2005), we hereby incorporate by reference that extensive body of comments as well.

In our previous comments, and here again, we compelled to point out that these regulations contain the same fundamental problems concerning the state's authority to regulate the activities of vessels both U.S.-flagged and foreign-flagged, engaged in international trade and interstate commerce, operating in international waters. While the currently proposed amendments to the regulation make some minor adjustments towards consistency with international treaties and adopted federal legislation and regulations, it remains inconsistent with, and contradictory to, existing statutes, court decisions and other provisions of law. It exceeds the rulemaking authority of the Board, and, in light of the totality of the record, it has been demonstrated that the current record is inadequate in terms of technical, safety and legal issues. The current regulation and these amendments fail to take into account supporting evidence that would fairly detract from the agency's current conclusions. These concerns are the basis of our current challenge to "The Proposed Regulations on Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels within California Waters and 24 Nautical Miles of the California Baseline" that was approved by the Board on July 24, 2008, and to our previous challenge to the "Ocean-Going Vessel Auxiliary Diesel Engine Regulation" that was approved by the CARB Board in December of 2005.

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While we understand that we are supposed to limit our comments to only those issues that are the subject to the 15 Day Notice, specifically the amendment contained in Attachment B, we feel compelled to remind CARB staff that many of our previous comments have not been addressed. These include the failure of CARB to assess the full benefits of the approved North American Emission Control Area (ECA), failure to provide for comparison the emission benefits of regulation with the California's three mile limit, unsupported assumptions of attaining the PM 2.5 federal Clean Air Act National Ambient Air Quality Standard (NAAQS) for the South Coast Air Basin by 2015, and wishful expectations that by further extending California's jurisdictional authority the vessel traffic will revert to prior behavior and alleviate the Navy's concerns regarding potential disruption of their operations (PMSA comment letter on Proposed Amendments dated July 22, 2011).

CARB staff is proposing in this 15 Day package an additional amendment to those submitted at the July 23, 2011, Board hearing. This amendment on the surface appears to be a common sense move towards improving consistency between the CARB regulation and the approved ECA beginning in August 2012. However, this amendment does nothing to provide consistency with the ECA. Primarily because compliance with the ECA 1.0% sulfur limit will occur with or without this amendment. With this modification CARB still asserts that it can regulate all fuels in use out to 24 nm from the Channel Islands in southern California, and 24 nm from the California Coast north of Point Conception. In August 2012 the North American ECA goes into effect requiring all vessels within 200 nm of the west coast of the U.S. and Canada must use a fuel with a maximum sulfur content of 1.0%. While, the ECA does not specify the type of fuel, only the sulfur content, clearly MGO at 1.0% sulfur is already included in the ECA requirements and does not need this amendment to establish the sulfur content limit. With this new amendment CARB is simply asserting an additional and duplicative authority to enforce the sulfur content of MGO beginning in August 2012. This duplicative authority will do nothing to improve air quality but further increase the burdens on the vessel owners/operators to require additional testing of MGO fuels, requires additional record keeping, and subjects the vessel owner/operator to additional penalties and fines imposed by CARB.

The amended regulation does nothing to address inconsistencies between the CARB regulation and ECA requirements for marine diesel oil (MDO) at 0.5% maximum sulfur content, and the outright ban of residual fuels. The implementation of the final phase of the CARB regulation beginning on January 1, 2014, is inconsistent with the final phase of the ECA beginning on January 1, 2015. Although the ISOR states that 90% of the benefits of the CARB regulation results from the first phase, somehow the additional 10% from the second phase is critical for the South Coast Air Basin (SCAB) to achieve the PM 2.5 National Ambient Air Quality Standard (NAAQS). However, no analysis is provided to demonstrate why this early implementation of the 0.1% sulfur content, one year in advance of the ECA, is necessary for either the 2015 attainment date of the NAAQS in the SCAB or for public health in other parts of California that are not subject to the PM 2.5 attainment date of the SCAB.

With these considerations in mind, PMSA suggests that CARB Staff does an evaluation of the need to have a duplicative regulatory requirement to the ECA from August 2012 to January 1, 2014. Considering the similarities in fuel sulfur content, the extended range of the ECA, and the limited sources of fuels to comply, it seems highly likely that the CARB regulation provides no air quality benefit during this interim period. Therefore, it appears likely that the regulation should be suspended upon implementation of the ECA in August 2012 unless and until CARB can demonstrate significant

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air quality benefits beyond those provide by the ECA. Further, CARB should suspend the 2014 implementation date of the final phase of the regulation until it can clearly demonstrate that it is necessary for the PM 2.5 SCAB attainment date in 2015, but is also of significant public health benefit for the rest of California.

PMSA appreciates the opportunity to comment on this proposed regulation. If you have any questions or need clarification of our abbreviated comments, please feel free to contact me at (562) 377-5677, or by e-mail at tgarrett@pmsaship.com.

Sincerely,

A handwritten signature in black ink, appearing to read "T.L. Garrett". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

T.L. Garrett, Vice President

Attachments: Letter of July 23, 2008 re: Vessel Fuel Regulation
Letter of March 23, 2009 re: 15 Day Notice, Vessel Fuel Regulation
Letter of July 22, 2011 re: Amendments to Vessel Fuel Regulation