# TITLES 13/17. CALIFORNIA AIR RESOURCES BOARD

## NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE REGULATIONS FOR FUEL SULFUR AND OTHER OPERATIONAL REQUIREMENTS FOR OCEAN-GOING VESSELS WITHIN CALIFORNIA WATERS AND 24 NAUTICAL MILES OF THE CALIFORNIA BASELINE

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Regulations for Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline (section 2299.2, title 13, California Code of Regulations (CCR) and section 93118.2, title 17, CCR).

DATE: June 23, 2011

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 23, 2011, and may continue at 8:30 a.m., on June 24, 2011. This item may not be considered until June 24, 2011. Please consult the agenda for the hearing, which will be available at least 10 days before June 23, 2011, to determine the day on which this item will be considered.

## INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected**: Proposed amendments to section 2299.2, title 13, CCR and title 17, CCR section 93118.2, the Regulations for Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline (OGV Clean Fuel Regulation or regulation). The following documents would be incorporated in the regulations by reference: (1) International Standard ISO 8217, "Specification of Marine Fuels Requirements for Marine Residual Fuels," (as revised June 15, 2010); and (2) the National Oceanic and Atmospheric Administration (NOAA) Chart 18740, San Diego to Santa Rosa Island (March 2007).

**Background**:

The ARB adopted the OGV Clean Fuel Regulation in 2008. This regulation is one of many steps being taken to reduce emissions from goods movement activities. It also fulfills a key measure in meeting the goals of California's State Implementation Plan.

The OGV Clean Fuel Regulation requires operators of ocean-going vessels (OGVs) to use less polluting marine distillate fuels instead of heavy fuel oil in their diesel engines and auxiliary boilers while operating within approximately 24 nautical miles (nm) of the California coastline (Regulated California Waters). The fuel requirements are implemented in two phases. The Phase 1 fuel requirements, which began implementation on July 1, 2009, require the use of either marine gas oil (MGO) or marine diesel oil (MDO). Under the Phase 1 requirements, the MGO has a maximum sulfur limit of 1.5 percent (%), and the MDO has a maximum sulfur limit of 0.5%. The Phase 2 requirements, which are scheduled to begin on January 1, 2012, specify the use of either MGO or MDO at 0.1% sulfur.

The use of the marine distillate fuels instead of the heavy fuel oil typically used by OGV significantly reduces emissions of diesel particulate matter (PM), PM, sulfur oxides (SOx), oxides of nitrogen (NOx), and "secondarily" formed PM (PM formed in the atmosphere from NOx and SOx).

Prior to the implementation of the OGV Clean Fuel Regulation, the majority of OGVs going into and out of the Ports of Los Angeles and Long Beach traveled along the California coastline through the Santa Barbara Channel. In the Santa Barbara Channel, there is a traffic separation scheme established by the Commandant of the United States Coast Guard under the Ports and Waterways Safety Act and in accordance with international agreements. However, soon after the effective date of the OGV Clean Fuel Regulation, a large number of OGV operators chose to move from the traditional route through the Santa Barbara Channel, which lies within the zone covered by the OGV Clean Fuel Regulation, to a route on the Southern side of the Channel Islands, an area outside of the regulated zone. Because vessels on the Southern side of the Channel Islands do not have to use the cleaner marine distillate fuels required by the OGV Fuel Regulation, this change in routes has reduced the expected emissions reductions from the regulation. In addition, because this route on the Southern side of the Channel Islands goes through the United States Navy's (U.S. Navy) Point Mugu Sea Range, the U.S. Navy has raised concerns regarding the increased potential for vessels to interfere with military operations in the Point Mugu Sea Range.

ARB staff is proposing amendments to the OGV Clean Fuel Regulation. The purpose of the amendments is to adjust the offshore regulatory boundary in Southern California to lessen the potential for vessels to interfere with operations at the U.S Navy's Point Mugu Sea Range and to recapture lost emission reductions. In addition, amendments are proposed to help facilitate a successful transition to very low sulfur fuels by aligning implementation dates more closely with recently approved federal requirements. ARB staff is also taking this opportunity to propose other minor amendments. The proposed amendments are summarized below.

## DESCRIPTION OF THE PROPOSED REGULATORY ACTION

ARB staff is proposing the following amendments to the OGV Clean Fuel Regulation. A more detailed description can be found in the Initial Statement of Reasons for Rulemaking at http://www.arb.ca.gov/ports/marinevess/ogv.htm.

*Regulated California Waters*: ARB staff is proposing to amend the regulatory boundary, by extending it further off shore by aligning it more closely in Southern California with the "Contiguous Zone," which is 24 nm from the California Baseline (shoreline), which includes offshore islands. In addition, we are proposing to exempt vessels from the Clean Fuel requirements when transiting a small "window" within the 24 nm boundary off Point Conception. This exemption window is being provided to encourage vessels to travel in the established shipping lanes in the Santa Barbara Channel when headed to or from the Ports of Los Angeles and Long Beach. These proposed changes in the boundary will lessen the economic incentive for OGVs to transit through the Point Mugu Sea Range instead of the Santa Barbara Channel and will help recapture lost emission reductions. No changes are being proposed to the Regulated California Waters in Northern California.

*Phase 2 Implementation Date:* The original regulation requires the use of Phase 2 0.1% sulfur distillate fuel beginning January 1, 2012. We are proposing to extend the deadline to use the Phase 2 fuel by two years to January 1, 2014. ARB staff believes this two-year delay will help facilitate a more successful transition to the 0.1% sulfur distillate fuels by more closely aligning California requirements with recently adopted federal requirements and providing OGV operators with more flexibility to acquire compliant fuels.

*Noncompliance Fee Provision:* ARB staff is proposing minor modifications to the "Noncompliance Fee Provision," which in certain specified situations allows the payment of fees in lieu of direct compliance with the rule through the use of cleaner fuels. This provision has been used five times since the OGV Clean Fuel Regulation began implementation. The proposed amendments are based on experience gained through implementation of the regulation to date, and focus primarily on the way fees are assessed. The proposed amendments include adjusting the fee schedule specified in the regulation, reducing the fees by half for vessel operators that purchase and use complying fuels after making a noncompliant port visit, and proposing that offshore anchorages made in conjunction with a port visit not be counted as a "port visit. We believe these changes will help to incentivize the use of the cleaner fuels as quickly as possible.

*Other Proposed Amendments:* ARB staff is proposing to amend the regulation to include a March 2007 update to the National Oceanic and Atmospheric Administration (NOAA) nautical chart 18740 covering California's coastline from San Diego to Santa Rosa Island. These charts are used to help define California Regulated Waters. In addition, ARB staff is proposing to amend the definitions of the fuels required under the

OGV Clean Fuel Regulation to reflect recent changes in how these fuels are specified under international standards.

## COMPARABLE FEDERAL REGULATIONS

On March 26, 2010, the International Maritime Organization designated waters off North American coasts as an Emission Control Area (ECA), referred to as the North American ECA. The proposal for an ECA was introduced by the United States and Canada. In addition to establishing stringent engine exhaust standards that begin in 2016, the North American ECA requires the use of fuels with progressively lower sulfur levels. Under the approved North American ECA, which will be enforced by the federal government, OGVs traveling within a 200 nm zone off the North American coasts are required to use fuels with sulfur levels of 1% or less beginning in August 2012 and 0.1% sulfur in 2015. Until 2015, the ARB OGV Clean Fuel Regulation is more stringent than the North American ECA and is necessary to protect air quality and public health in California. However, the OGV Clean Fuel Regulation does include a "sunset" provision under which the requirements would cease to apply if it is determined by the Executive Officer that the United States Environmental Protection Agency adopts and enforces regulations that will achieve equivalent or greater emission reductions. This is expected to occur in 2015.

## AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: *Proposed Amendments To The Regulation For Fuel Sulfur And Other Operational Requirements For Ocean-Going Vessels Within California Waters And 24 Nautical Miles Of The California Baseline*.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on Thursday, May 5, 2011.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Peggy Taricco, Manager of the Technical Analysis Section, at (916) 323-4882, or Bonnie Soriano, Air Resources Engineer, at (916) 327-6888.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at www.arb.ca.gov/regact/2011/ogv2011/ogv2011.htm.

## COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed amendments are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, except as discussed below, or other nondiscretionary savings to State or local agencies.

The estimated total costs associated with the proposed amendments are approximately $10 million annually in the years 2012 and 2013, and $47 million in 2014. These estimated annual costs represent the additional costs associated with the proposed amendments over and above compliance with the current regulation wherein the majority of vessels that historically transited through the Santa Barbara Channel are now transiting outside the regulatory zone. In other words, vessel operators will now incur the costs associated with using the more expensive cleaner marine distillate fuels that were originally attributed to the OGV Clean Fuel Regulation and that were avoided by transiting outside the existing regulatory zone in Southern California. In addition, the costs also reflect cost savings associated with the two-year delay of the Phase 2 requirements.

We estimate the overall total 2011 present value cost of the proposed amendments to be approximately $59 million dollars for the years 2012-2014, assuming the total annual costs mentioned above. The added cost to a typical ship operator is estimated to be about $20,000 in years 2012 and 2013, and about $90,000 in 2014. We expect these added costs can be absorbed by typical affected businesses without a significant adverse impact. The cost-effectiveness of the proposed amendments is estimated to be about $32,000 per ton or $16 per pound of diesel PM reduced (attributing all regulatory costs to diesel PM reductions). This compares favorably to other diesel PM regulations the Board has adopted previously, as well as to the original regulation.

The Executive Officer has determined that, because the added costs of the proposed regulatory actions are a small percentage of the overall operating costs, no significant impact on ship operators, businesses that import or export goods, California port competitiveness, or on individuals purchasing such goods is expected, even if all these costs were passed on to the consumer.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. A number of businesses are integrally linked to the goods that travel through California ports. However, we do not believe that the added costs of the proposed regulatory action will result in vessel operators choosing alternative ports outside California.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined that, pursuant to title 1, CCR, section 4, the proposed regulatory action will have no impact on small businesses because we do not believe that the ship operators subject to this proposal would qualify as small businesses due to the large capital and operating costs associated with vessel operation.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the proposed regulatory action will have no impact with regard to reporting requirements since no changes are proposed to the existing reporting provisions of the regulation.

In accordance with H&SC sections 43013(a) and (b), the Executive Officer has determined that the standards and other requirements in the proposed amendments are necessary, cost-effective, and technologically feasible for auxiliary diesel and diesel-electric engines main engines, and auxiliary boilers operated on ocean-going vessels within the regulated California waters.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on May 9, 2011. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after May 9, 2011 and received **no later than 12:00 noon on June 22, 2011**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: http://www.arb.ca.gov/lispub/comm/bclist.php

***New Feature***

**You can now sign up online in advance to speak at the Board meeting** when you submit an electronic board item comment. For more information go to: http://www.arb.ca.gov/board/online-signup.htm

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

## STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code sections 39600, 39601, 41510, 41511, 43013, and 43018; and Western Oil and Gas Ass'n v. Orange County Air Pollution Control District, 14 Cal.3rd 411, 121 Cal.Rptr. 249 (1975). This action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41510, 41511, 43013, 43016, and 43018; and Western Oil and Gas Ass'n v. Orange County Air Pollution Control District, 14 Cal.3rd 411, 121 Cal.Rptr. 249 (1975).

## HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

## SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at 916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

Robert Sletcher for
James N. Goldstene
Executive Officer

Date: April 26, 2011

*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 at www.arb.ca.gov.*