

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AN EMERGENCY REGULATORY AMENDMENT DELAYING THE JANUARY 1, 2005 IMPLEMENTATION DATE FOR THE DIESEL FUEL LUBRICITY STANDARD

A public hearing will be conducted at the time and place noted below by the Executive Officer of the Air Resources Board (ARB or Board), or by an ARB staff member designated by her, to consider an emergency amendment delaying the January 1, 2005 implementation date for the diesel fuel lubricity standard for up to 120 days.

Date	November 24, 2004
Time	9:00 am
Place	California Environmental Protection Agency Air Resources Board Sierra Hearing Room, Second Floor 1001 I Street Sacramento, CA 95814

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service

To participate by teleconference, dial (888) 677-5720 and give the pass code: 54175 and leader name: Dean Simeroth.

DESCRIPTION OF PROPOSED AMENDMENT

Section Affected: Proposed amendment to section 2284, title 13, California Code of Regulations (CCR).

Background:

A new ARB regulation, adopted following a July 23, 2003 public hearing, phases in a minimum lubricity standard for motor vehicle diesel fuel starting January 1, 2005. The ARB standard will also apply to diesel fuel used in nonvehicular sources other than marine vessels and locomotives. Diesel fuel lubricity represents the ability of the fuel to provide surface contact lubrication. Adequate levels of fuel lubricity are necessary to protect the internal contact points in fuel pumps and injection systems in diesel engines. The Board adopted the lubricity standard at the same time it adopted an ultra-low sulfur content

standard of 15 parts per million (ppm), to be phased in starting in June 2006. Regulations of the U.S. Environmental Protection Agency impose essentially the same sulfur requirement and implementation date for diesel fuel used in on-road vehicles. The more severe hydrotreating necessary for reducing fuel sulfur to this level is expected to reduce the natural lubricity of the diesel fuel. The ARB's lubricity standard permits a maximum wear scar diameter (WSD) of 520 microns based on a High Frequency Reciprocating Rig (HFFR) test method. Earlier this year, the American Society for Testing and Materials (ASTM) – a non-profit organization that sets consensus-based standards – added the same lubricity standard to its ASTM D 975 specifications for motor vehicle diesel fuel starting January 1, 2005.

If the natural lubricity of a batch of diesel fuel is insufficient to meet a targeted level, refiners use a lubricity additive. During implementation of the ARB's statewide sulfur content standard of 500 ppm in 1993, the Governor appointed a diesel fuel task force to address various issues that arose. One of the task force's recommendations was that refiners and importers should meet a voluntary lubricity standard of 3000 grams using the Scuffing Load Ball-on-Cylinder Lubricity Evaluator (SLBOCLE) test. Subsequent monitoring by ARB staff has indicated that refiners are meeting this standard, which is somewhat less stringent than the standard imposed by the new lubricity regulation.

Since the 1993 implementation of the statewide 500 ppm sulfur standard, California refiners have used lubricity additives in a significant portion of the state's diesel fuel. The refiners have been adding the additives to diesel fuel at the refinery – before it is shipped through the pipeline system – since this has been the most efficient and cost-effective approach. The use of lubricity additives is expected to become more widespread with implementation of ARB's lubricity standard, with modest increases in the treat rates. Refiners were expecting to continue their practice of additizing diesel fuel at the refinery, and prior to October had received no indication that they would not be able to continue this practice.

When additized diesel fuel is shipped through a multi-product pipeline after it leaves the refinery, there is a possibility that subsequent fuel shipments could be contaminated with additive retained on the pipeline walls, a phenomenon sometimes referred to as trail back. Some airline companies and jet engine manufacturers have recently expressed concerns that trail back could contaminate jet fuel with lubricity additives. Their concerns focus on the unknown effects of these additives on the jet fuel and possible impacts on jet engine safety, performance and durability. On October 22, 2004, two ASTM subcommittees met to discuss the potential for lubricity additive contamination of jet fuel. Preliminary data were presented showing the potential for additive trail back and potential detrimental effects of some lubricity additives on jet fuel. It was also announced that Colonial Pipeline, the operator of the largest pipeline system on the East coast, would not allow lubricity additive-treated diesel fuel on its pipeline system starting January 1, 2005. Also on October 22, ASTM issued a ballot that, if passed, would modify the effective date of the ASTM D 975 lubricity standard from January 2005 to January 2006.

Representatives of Kinder Morgan Energy Partners, L.P. (Kinder Morgan) – California's primary common carrier pipeline operator – attended the October 22, 2004 meeting. On October 26, 2004, Kinder Morgan notified shippers on its pipelines that, effective immediately, the firm would no longer accept shipments of diesel fuel containing lubricity additives because of the possibility of jet fuel contamination due to trail back. This announcement resulted in considerable alarm for those refiners needing to additize some or all of their diesel fuel in California. It did not affect California diesel fuel shipped through proprietary (refiner-owned) pipelines or distributed at the refinery. But more than half the state's diesel fuel is shipped through Kinder Morgan pipelines, and the announcement meant that, when lubricity additives are needed for this fuel, the additives would have to be added after the fuel was shipped through the pipeline system. The options for doing this immediately were very limited, with the consequence that supplies of California diesel fuel could be disrupted almost immediately. Using additive injection equipment at the terminal racks would be the method of choice, but time is needed to obtain permits and order and install the equipment.

Intense discussions ensued at once between oil producers, regulatory agencies, and the pipeline operators. As a result, on November 5, 2004, Kinder Morgan notified shippers that in order to avoid a disruption in the supply of compliant fuel to terminals served throughout California, the pipeline operator will permit the transport of California diesel fuel treated with the type and amount of additive consistent with regular practices in the past years. Additionally, on an interim basis, Kinder Morgan will coordinate product shipments such that jet fuel will not follow additized diesel fuel in the pipeline. These policies are in effect until fuel additization blending equipment can be installed at the terminals.

In the November 5, 2004 announcement, Kinder Morgan also requested a delay in the January 1, 2005 implementation date for the ARB's lubricity standard. In order to meet the January 1, 2005 lubricity standard, at least some California refiners will have to increase the percentage of diesel fuel that is additized and the treatrate for the lubricity additive. Kinder Morgan's policy announced November 5 does not permit diesel fuel containing increased levels of lubricity additive to be shipped on the operator's California pipelines. Those refiners would have to additize their diesel fuel after it is shipped through the Kinder Morgan pipelines in order to comply with the new lubricity standard.

The Proposed Amendment

The current phase-in dates for the lubricity standard are January 1, 2005 for diesel fuel being supplied from the production or import facility, February 15, 2005 for diesel fuel being supplied from terminals, and April 1, 2005 for diesel fuel being sold at fueling facilities or supplied from bulk plants. At the hearing, the Executive Officer or her designee will consider the adoption of an amendment delaying these implementation dates for 120 days, until May 1, 2005. Diesel fuel marketed as having a maximum sulfur content of 15 ppm will be exempt from this delay.

Under the California Administrative Procedure Act and state regulations, state agencies are normally required to submit a hearing notice to the Office of Administrative Law (OAL) at least 55 days before a hearing to amend a regulation, so that it can be published in the California Notice Register at least 45 days before the hearing. However, an agency is authorized to amend a regulation on an emergency basis without following the regular procedural requirements upon a finding that the amendment "is necessary for the immediate preservation of the public health and safety or general welfare." OAL has an abbreviated 10-day period to review the amendment after it is submitted by the adopting agency, and the amendment may go into effect immediately after it is approved by OAL and filed with the Secretary of State. An amendment adopted on an emergency basis may remain in effect for no more than 120 days unless the adopting agency complies with the procedural requirements for a normal amendment. (Government Code section 11346.1.)

A finding of emergency would be based on the disruptions in supplies of diesel fuel if refiners are unable to ship additized diesel fuel through the Kinder Morgan pipeline system at the beginning of 2005, before additive injection equipment can be installed and used at all terminals where the equipment is needed. Adding lubricity additives at fueling facilities as an ongoing practice is not permitted by the regulation, since the diesel fuel normally has to meet the lubricity standard by the time it is supplied from the terminal or bulk plant. Manually adding lubricity additives at the fuel terminals with splash blending into the trucks is not viable due to safety concerns. Also, transporting all additized fuel by truck is not reasonable due to the large volume of fuel that is impacted.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report for the proposed regulatory action, which includes a summary of the environmental and economic impacts of the proposal. The report is entitled "Proposed Emergency Regulatory Amendment Delaying the January 1, 2005 Implementation Date for the Diesel Fuel Lubricity Standard."

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 the 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, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

Inquiries concerning the substance of the proposed regulatory action may be directed to the designated agency contact persons, Mr. Gary Yee, Manager, Industrial Section, (916) 327-5986, or Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, at (916) 322-6020.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or 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 Staff Report, and all subsequent regulatory documents are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/dieslub/dieslub.htm>

ECONOMIC AND ENVIRONMENTAL IMPACTS AND COSTS TO PUBLIC AGENCIES

The ARB staff does not believe the proposed emergency amendment will have any adverse economic impacts on businesses or individuals. The objective of the amendment is to avoid disruptions of diesel fuel supplies, which could have adverse economic impacts.

In light of the fact that the lubricity of diesel fuels in the state is expected to continue to meet the voluntary standard recommended by the diesel fuel task force, the short-term delay is not expected to have any adverse impacts on diesel engines. Ultra-low sulfur diesel fuel is likely to have a greater need for lubricity additives due to the more severe hydrotreating to reduce the sulfur content. Some 15 ppm diesel fuel is currently marketed in California, especially for use in diesel vehicles with advanced emission controls. All of this diesel fuel is currently being transported by truck from the refinery terminal to the user, and it is accordingly feasible for the fuel to be adequately additized to meet the new ARB standard. Because of this, diesel fuel represented as having a sulfur content not exceeding 15 ppm will remain subject to the preexisting phase-in schedule in the lubricity regulation.

The ARB staff does not expect the emergency amendment would have any significant adverse environmental impacts. The 120-day delay in implementation of the new ARB standard will not cause an increase in emissions due to increased fuel system wear in existing vehicles since historic lubricity levels will be maintained. Although this minimum lubricity level may be adequate for the short term, it is not adequate for enabling and maintaining future low emissions technology.

The ARB staff 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, or other nondiscretionary savings to state or local agencies.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, November 23, 2004**, and addressed to the following:

Postal mail is to be sent to:

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

Electronic mail is to be sent to: dieslub@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, November 23, 2004.**

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, November 23, 2004.**

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43013, 43018, and 43101, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). This regulatory action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

HEARING PROCEDURES

At the hearing, all parties wishing to testify will be given an opportunity to do so, although the Executive Officer or her designee may limit the time allotted each party if necessary. Following the hearing, the Executive Officer or her designee may make the necessary emergency findings if supported by the record, and adopt the emergency amendment as proposed or with appropriate modifications. The final amendment will be posted on the ARB's Internet site for this rulemaking. The public may request a copy of the final amendment from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon
Executive Officer

Date: November 18, 2004

