

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and
Availability of Additional Documents**

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

Public Hearing Date: July 24, 2008

Public Availability of Modified Text Date: February 19, 2009
Deadline for Public Comment: March 23, 2009

At its July 24, 2008, public hearing, the Air Resources Board (ARB or the Board) approved the adoption of California Code of Regulations, title 13, sections 2299.2, and California Code of Regulations, title 17, section 93118.2. The approved section 2299.2 is a regulation for ocean-going vessels. Approved section 93118.2 is a substantively identical airborne toxic control measure (ATCM). Both sections will be referred to collectively hereafter as the "regulations."

The regulations will reduce the public's exposure to air pollutants from the use of diesel fuel in main and auxiliary engines, and auxiliary boilers, on ocean-going vessels operating within 24 nautical miles of the California shoreline (baseline), except as otherwise specified in this proposal. The emissions from these diesel sources on ocean-going vessels are transported onshore where they contribute to higher levels of diesel particulate matter (diesel PM), other PM (e.g. secondarily formed nitrate and sulfate PM), and ozone pollution in California's coastal air basins. These emissions make attainment of State and federal ambient air quality standards more difficult. Citizens living in coastal and portside communities are also exposed to high levels of diesel PM and other PM, resulting in a higher risk of cancer and other adverse health effects. The regulations support the air quality goals defined in the "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles" (approved by the Board on September 30, 2000), the Goods Movement Emission Reduction Program (approved by the Board on April 21, 2006), and the State Implementation Plan for Ozone and PM_{2.5}.

The Board's Action

At the July 24, 2008 hearing, the Board adopted Resolution 08-35 (Resolution) (appended to this notice as Attachment 1), approving the adoption of the regulations with several modifications that were proposed by staff and made available to the public at the hearing. In approving the regulations, the Board directed the Executive Officer to incorporate the approved modifications to the initially noticed text, along with such other conforming modifications as may be appropriate, and to make such modifications

available for a supplemental comment period of at least 15 days. Furthermore, the Board agreed it was appropriate to conduct a supplemental environmental analysis to evaluate the environmental impacts of vessels avoiding the Santa Barbara Channel and transiting instead through the Point Mugu Sea Range.

The staff's proposed substantive modifications are discussed below and set forth in detail in the document appended to this notice as Attachment 2. Modifications to the initially noticed regulatory text are denoted by underline and ~~strikeout~~.

Modified Text and Supplemental Information Being Made Available

Board Resolution 08-35 (Attachment 1), the revised regulatory text (Attachment 2), corrections to the Initial Statement of Reasons for Rulemaking (Attachment 3), and the supplemental environmental analysis (Attachment 4) may be downloaded from ARB's Web site at the following address:

<http://www.arb.ca.gov/regact/2008/fuelogv08/fuelogv08.htm>.

If you would like a hardcopy of any attachments sent to you through postal mail, please call Ms. Bonnie Soriano at (916) 327-6888 and give your name, company name, if any, and mailing address.

Summary of Proposed Modifications to the Regulations

The following is a summary of the proposed substantive modifications to the regulation and staff's rationale for making them. Substantively identical changes are made to both regulations. All references to California Code of Regulations, section 2299.2 and section 93118.2 are to titles 13 and 17, respectively, unless otherwise noted. The following list does not include modifications to correct typographical errors, numbering errors or grammar, nor does it include all of the minor revisions made to improve clarity. For a complete account of all modifications in the proposed regulations, please refer to the underline and strikeout text in Attachment 2.

Applicability (Subsection 2299.2(b) and 93118.2(b)): To improve clarity and organization of the regulation, the phrase "tanker and non-tanker" was deleted from subsection (b)(2), which concerns application of the regulation to both U.S.-flagged and foreign-flagged vessels. In place of this reference, language stating that the regulation applies to tankers and non-tankers was added to the definition of ocean-going vessel in subsection (d)(24).

Exemptions (Subsections 2299.2(c) and 93118.2(c)): Staff modified the "temporary experimental or research exemption" to allow ship operators complying under this exemption to apply for an extension of the initial three year maximum exemption period by up to three additional years (from the previous two years maximum extension). This change will provide an extra year for ship operators to resolve technical problems that may occur when installing and operating new emission control technologies. Staff believes this extra time may be necessary based on existing projects using new control

technologies. Specifically, such systems have sometimes encountered component failures and other difficulties that extend the time necessary to optimize these systems for maximum control of emissions, and to ensure long-term durability of marine engines.

Definitions (Subsections 2299.2(d) and 93118.2(d)): Staff modified the definition of “Essential Modification” to more clearly distinguish *essential* modifications from other types of modifications. The modified definition clarifies that essential modifications are modifications that can be demonstrated to be necessary to comply with the regulation. Specifically excluded are changes made for convenience in fuel switching, replacement of components that would have been replaced in the absence of the regulation, and modifications to increase fuel tank capacity when existing capacity is sufficient for a complete voyage within Regulated California Waters. The clarification of this definition is necessary to help implement the exemption provided in subsection (g) of the regulations. Under subsection (g), persons who cannot meet the fuel requirements without essential vessel modifications are granted an exemption, in whole or in part, from the fuels requirements specified in the regulations.

Staff also modified the definition of “Baseline” to incorporate an update to a chart that defines California’s coastline. Specifically, the new August, 2008 version of Chart 18720 (Point Dume to Purisima Point) replaces the January, 2005 version of the same chart.

The definition of “Ocean-going Vessel” was modified so that it specifically states that tankers and non-tankers are included in the definition and are subject to the regulation. This language replaces a reference to tankers and non-tankers that previously appeared in subsection (b)(2), but the change has no effect on the regulation’s continuing applicability to tankers and non-tankers.

Recordkeeping, Reporting, and Monitoring Requirements (Subsections 2299.2(e)(2) and 93118.2(e)(2)): Language in subsection (e)(2)(A)(1) that provided an exception to certain recordkeeping requirements was deleted because it was unnecessary and redundant to the exemptions already provided in subsection (c). Subsections (c)(1) through (c)(5) provide five exemptions from the regulation for specified voyages, equipment, vessels and emergencies. These exemptions, because they apply to all requirements in the regulation, already covered recordkeeping requirements.

Noncompliance for Vessels Based on the Need for Essential Modifications (Subsections 2299.2(g) and 93118.2(g)): Several changes were made to the first paragraph of this subsection. First, the term “essential vessel modifications” was modified to say “essential modifications, as defined in subsection (d).” This change was made to clarify that the definition of “essential modifications” in subsection (d) is operative. Second, the language was modified to say that the Executive Officer will (rather than may) grant an exemption for applicants that meet the requirements of subsection (g). This change clarifies the intent of the provision. Finally, the sentence stating that “this provision terminates on December 31, 2014,” was removed. This

language was included in the original proposal because it is expected that an Emission Control Area (ECA) will be established by U.S. EPA in 2015 that will achieve equivalent emission reductions in Regulated California Waters. However, because it is uncertain an ECA will be established by 2015, the provision should not be automatically repealed on a specific date. This will allow the provision to stay in force if ARB's regulation is continued beyond the end of 2014 due to a delay in the implementation of an ECA or other reason.

Language in subsections (g)(1) and (g)(2) was revised to clarify that the notification requirement in (g)(1) applies to each voyage by a vessel into Regulated California Waters, while the demonstration of need required in (g)(2) is a one-time requirement for those who assert their vessels cannot comply with the requirement in subsection (e)(1) without essential modifications. In addition, language was added to (g)(2) to provide that the 45-day lead time for demonstration of need will not apply if the vessel is relying on subsection (g) to enter California Regulated Waters sooner than 45 days after the effective date of the regulation.

Language was added to the first paragraph of subsection (g)(2) to require that each mandatory component of an Essential Modification Report be provided "to the satisfaction of the Executive Officer," and similar language was deleted from subsection (g)(2)(B). These modifications were needed to clarify that the Executive Officer has discretion to require additional information related to all three components of an Essential Modification Report, and not just in the case of the demonstration of necessity required in (g)(2)(B).

In subsection (g)(2)(A), the wording "as defined in subsection (d)" was added to "essential modifications" for the same reason discussed above, and a reference to engines and boilers was deleted as unnecessary.

The word "maximum" was added to subsection (g)(2)(C) to clarify that an Essential Modification Report must identify the *maximum* extent to which a vessel can comply with the regulation's fuel use requirements without essential modifications. This change was necessary to clarify that a vessel that cannot fully comply with the regulation without essential modifications must still identify and comply with requirements to the full extent it can short of making essential modifications. The word "maximum" was deleted from three sentences in subsection (g)(3); since each of the sentences in (g)(3) already reference (g)(2)(C), it was not necessary to specify "maximum extent" in both subsections.

In subsection (g)(3), a reference to "this section" was modified to "this subsection" to clarify the provision only applies to persons demonstrating the need for essential modifications. In (g)(3)(A), (B) and (C), the requirements that "any" engine or boiler be operated in maximum compliance with subdivision (e)(1) were modified to require that "each" engine and boiler be so operated; these changes were needed to clarify that the requirements in (g)(3) apply to all engines and boilers on vessels subject to subdivision (g). In addition, the term "feasible and safe" was removed (three times) because it is

duplicative. In each case, the reference to (g)(2)(C) achieved the same result by referring to similar language providing that ship operators that receive an exemption for “essential modifications” must operate on the cleaner fuel specified in the regulation to the extent feasible and safe.

Noncompliance Fee (Subsections 2299.2(h) and 93118.2(h)): In subsection (h)(5)(A), column headings in a table showing the fees to be paid for port visits by vessels using a noncompliance fee provision were modified to read “Port Visit” and “Per-Port Visit Fee.” These changes are intended to further clarify that the fees listed in the table are for each single visit and not a running total of fees for all visits combined.

In subsection (h)(5)(C), the limited-use fee waiver provision applicable in years 2012-2014 was modified to require that the specified fuels be used in each engine and boiler on a vessel, any not just on any engine and boiler.

Sunset Provision (Subsections 2299.2(j) and 93118.2(j)): Staff modified this provision, as directed by the Board, so that the fuel requirements in the regulation are repealed without further action by the Board if the U.S. EPA adopts and enforces International Maritime Organization or U.S. EPA requirements that will achieve equivalent emission reductions within Regulated California Waters. The repeal would take effect if the Executive Office makes a finding that federal requirements are in place that will achieve equivalent emissions reductions. This change was made to allow for an expeditious transition to equivalent IMO or U.S. EPA requirements in California and avoid any future redundancy between state and federal measures.

Summary of Corrections to the Initial Statement of Reasons for Rulemaking (Staff Report)

ARB staff is also publishing corrections to the Initial Statement of Reasons for Rulemaking (Staff Report) in conjunction with this notice. The document containing these corrections is appended as Attachment 3. The following is a summary of the proposed corrections made to the staff report and staff’s rationale for making them.

- Several changes to the list of references at the end of Chapter VII are proposed, as specified in Attachment 3. The references proposed for deletion were not used in the text of the chapter, while the added references were cited in the text but were inadvertently not included in the reference list. It should be noted that all of the references “added” to Chapter VII are already part of the administrative record because they were also listed as references to other chapters in the staff report.
- Corrections to some of the PM_{2.5} emission factors are proposed for Tables II-6, II-7, and II-8, in Appendix D. The corrections are detailed in Attachment 3.

Supporting Documents and Information

In accordance with Government Code section 11347.1, staff has added to the rulemaking record and invites comments on the following documents that support the proposed action:

- Electronic communication from the United States Coast Guard to ARB staff dated August 15, 2008.
- Electronic communication from the United States Coast Guard to ARB staff dated September 17, 2008.
- National Oceanic and Atmospheric Administration (NOAA) Chart 18720, Point Dume to Purisima Point (August 2008).

In addition, the Board agreed that it is appropriate to conduct a supplemental environmental analysis to better evaluate the possibility that more vessels may avoid the Santa Barbara Channel and take a longer route through the Point Mugu Sea Range and determine if this would result in significant adverse environmental impacts. In response, ARB staff conducted an analysis which is included as Attachment 4 to this notice and is entitled: "Supplemental Environmental Analysis of Potential Impacts From Changes in Southern California Vessel Routing as a Result of the ARB Ocean-going Vessel Fuel Rule." In accordance with Government Code section 11347.1, staff has also added to the rulemaking record this analysis and the references noted therein on pages 42-44 and A1-6.

Availability of the Attachments and Other Materials

With this notice, the modified regulations, corrections to the staff report, supplemental environmental analysis, and other documents added to the rulemaking file and identified above are being made available for public comment prior to the final action by the Board's Executive Officer. As noted above, the documents listed as attachments to this notice can be obtained from the ARB's Web site at the following address: <http://www.arb.ca.gov/regact/2008/fuelogv08/fuelogv08.htm>, or from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California, 95814. If you would like a paper copy of any of these attachments sent to you through postal mail, please call Ms. Bonnie Soriano at (916) 327-6888 and give your name, company name, if any, and mailing address.

ARB is also accepting public comments on the other documents, listed above, that are being added to the rulemaking file. These documents are available for public inspection at ARB's Sacramento offices. Please contact Amy Whiting, Regulations Coordinator, at (916) 322-6533, 1001 "I" Street, 23rd floor, Sacramento, California 95814 to arrange viewing of these documents.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt section 2299.5, title 13, CCR and section 93118.5, title 17, CCR, after making the modified regulatory language available to the public for a supplemental written comment period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

Consistent with the Board's directions and with provisions of the California Environmental Quality Act, ARB is making the revised regulatory text, the supplemental environmental analysis, and the additional documents relied upon available for a 30-day public comment period. Written comments on the modifications, environmental analysis, and other additional documents added to the rulemaking file must be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail is to be sent to:

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

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

Facsimile submissions must be transmitted to the Clerk of the Board at (916) 322-3928.

Please note that under the California Public Records Act (Government Code section 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.

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the modifications to the text of the regulation, to the environmental analysis or to the additional documents referenced above shall be considered by the Executive Officer.

Attachments (4)