

State of California  
AIR RESOURCES BOARD

**EXECUTIVE ORDER R-11-012**

*Relating to 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*

WHEREAS, on June 23, 2011, the Air Resources Board (ARB or Board) conducted a public hearing to consider amendment 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, as set forth in the Initial Statement of Reasons released to the public on May 4, 2011;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts, unless specific overriding considerations are identified which outweigh the potential adverse consequences of any unmitigated impacts;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report or negative declaration (i.e., a functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's regulatory program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, ARB's certified regulatory program provides that when an action contemplated by the Board may have a significant effect on the environment, ARB staff shall prepare a staff report that shall contain a description of the proposed action, an assessment of anticipated significant long or short-term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts, which shall include a discussion of feasible mitigation measures and alternatives to the proposed action;

WHEREAS, concurrent with publication of the 45-Day Notice, ARB issued an Initial Statement of Reasons (Staff Report) that included an environmental analysis that addressed potential long and short-term environmental impacts related to the proposed amendments;

WHEREAS, at the June 23, 2011 public hearing, the Board considered the proposed regulation and adopted Resolution 11-25 in which the Board directed the Executive Officer to:

1. Modify the regulations as specified in Attachment B and make the modified regulatory language, with such other conforming modifications as may be appropriate, available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such further modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.
2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare and approve written responses as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and title 17, California Code of Regulations (CCR), section 60007;
3. Determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same time facilitating a successful transition to the 0.1 percent low sulfur fuels and reducing the potential for vessels to interfere with the United States Navy's operations in the United States Navy Point Mugu Sea Range;
4. Make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental effects;
5. Take final action to adopt the proposed regulations set forth in Attachment A, with the modifications specified in Attachment B and any additional conforming modifications that may be appropriate, including any additional modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts have been incorporated into the final action; or return the proposed regulations and findings to the Board for further consideration before taking final action, if he determines that this is warranted.

WHEREAS, on July 25, 2011, the modified regulations, reflecting the amendments considered by the Board and other changes made to best reflect the intent of the Board at the hearing, were made available for public comment for a period of 15 days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, CCR, section 44;

WHEREAS, written comments were received during the initial 45-day comment period and after issuance of 15-day comment period and oral comments were received as part of the testimony taken at the June 23, 2011 Board hearing, and among the comments received were comments that raised environmental issues; and

WHEREAS, pursuant to the Board's direction in Resolution 11-25, ARB staff has summarized and prepared written responses to comments raising environmental issues in the Final Statement of Reasons (a copy of which is attached hereto as Attachment 2).

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 11-25 are incorporated by reference herein.

IT IS FURTHER ORDERED that I hereby certify that the environmental analysis prepared for the amendments to the amendment 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 was prepared in accordance with the requirements of ARB's certified regulatory program under CEQA.

IT IS FURTHER ORDERED that I hereby approve each of the written responses to comments raising environmental issues as set forth in Attachment 2.

IT IS FURTHER ORDERED that, after fully considering the amendments as modified by the 15-Day Notice, the environmental analysis, and the full record before me, I find:

1. The proposed amendments will not result in any adverse impacts on aesthetics, land-use/planning, population and housing, transportation, agricultural and forestry resources, cultural resources, hazards and hazardous materials, mineral resources, public services, utility and service systems, geology and soils, hydrology and water quality, oil spills, or recreation;
2. The statewide emissions of PM, NO<sub>x</sub> and SO<sub>x</sub> from OGVs will continue to decline as a result of the OGV Clean Fuel Regulations, with or without the proposed amendments, but the anticipated statewide emission benefits will be greater if the proposed amendments are adopted than if the proposed amendments are not adopted;
3. ARB staff has investigated the regional emission reduction impacts of the proposed amendments, and emissions of PM and SO<sub>x</sub> from OGVs will continue to decline over the next four years and in most regions of the State will be lower than what would be expected without the amendments;
4. In the Bay Area Air Quality Management District in 2012 and 2013, and in the South Coast Air Quality Management District in 2013, emissions will continue to decline with the proposed amendments; however, the emission benefits from the proposed amendments would be less than what would have occurred

under the current regulation with no amendments; these forgone emission benefits could be viewed as a significant adverse environmental impact;

5. These potential regional adverse impacts have been significantly lessened because of the economic downturn and its impact on vessel port visits, and the adoption of the ECA; the result is that emissions are much lower than originally anticipated when the current regulation was adopted in 2008;
6. While the proposed amendments will result in OGVs using slightly more marine distillate fuels relative to what is being used now, this small increase will have a negligible impact on the production of fuel;
7. The potential adverse impacts due to a slight increase in CO<sub>2</sub> emissions have been significantly lessened because of the economic downturn and its impact on vessel port visits, which has resulted in significantly lower CO<sub>2</sub> emissions compared to the emissions estimates originally anticipated when the current regulation was adopted in 2008;
8. The potential adverse impacts from the slight increase in CO<sub>2</sub> emissions are also counteracted by the many other strategies ARB is implementing to reduce emissions of greenhouse gases as part of ARB's Climate Change Program;
9. Under the proposed amendments, the OGV Clean Fuel Regulations will continue to provide significant health benefits by reducing premature mortality from PM<sub>2.5</sub> exposure and localized potential cancer risk from diesel PM. Because the proposed amendments reduce projected emissions to levels below the 2008 adopted regulation, implementation of the proposed amendments will have public health benefits similar to the benefits from the original rule;
10. The expected increase in vessel traffic through the Santa Barbara Channel could lead to potential adverse impacts on Humpback whales due to a potential increase in vessel strikes and an increase in vessel noise;
11. ARB will use an adaptive management approach to address any potential adverse environmental impacts to fin or humpback whales. In the event that the data indicates that there is an increase in strikes, ARB staff will work with NOAA, the U.S. Coast Guard, the shipping industry, and others to identify appropriate solutions.
12. ARB considered but could not find any feasible alternatives or other mitigation measures to the amendments that would eliminate or further lessen any adverse impact caused by the identified foregone emission benefits and impacts to marine mammal life and concurrently meet the objectives of the amendments; and

13. To the extent that mitigation or alternative measures have not fully eliminated the loss of foregone emission reductions and impacts to marine mammal life, upon balancing the remaining unavoidable potential significant environmental effects against the benefits of the amendments, overriding considerations exist for adopting the amendments:
- The finding of overriding considerations is based, among other things on the fact that the amendments provide: maximized emissions reductions from the regulation of about 12 tons per day PM<sub>2.5</sub> and 116 tons per day SO<sub>x</sub>;
  - Better alignment with Federal Standards (i.e., North American Emission Control Area);
  - Greater flexibility for vessel operators to find compliant fuels with higher viscosity to address viscosity related operational issues;
  - Additional time for the marine fuel industry to provide distillate fuels with properties that meet the enhanced specifications of the newly revised ISO 8217; and
  - Continued public health benefits by reducing premature mortality from PM 2.5 exposure and localized potential cancer risk from diesel PM.

IT IS FURTHER ORDERED that amendments to section 2299.3, title 13, CCR, and section 93118.3, title 17, CCR, and the incorporated documents, are approved and adopted as set forth in Attachment 1 hereto.

IT IS FURTHER ORDERED that the adopted regulatory text may be further revised with nonsubstantive changes, which will be added to the rulemaking record and indicated as such.

Executed this 13<sup>th</sup> day of September 2011, at Sacramento, California.

/s/

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James N. Goldstene  
Executive Officer

Attachments