



******Client Alert 13-2009******
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**CALIFORNIA AIR RESOURCE BOARD (CARB) TO BEGIN
ENFORCEMENT OF LOW SULFUR FUEL REQUIREMENTS ON
1 July 2009**

ECM has reported extensively on the California Air Resources Board (CARB) regulations regarding low sulfur fuel oil requirements for ocean going vessels. The regulation will become legally effective on June 28, 2009, with compliance for the Phase I fuel requirements beginning on July 1, 2009 for the main engines, auxiliary engines, diesel electric engines and auxiliary boilers. The regulations are an effort to reduce diesel particulate matter (diesel PM), particulate matter (PM), nitrogen oxides (NOx), and sulfur oxides (SOx) by requiring the use of low sulfur marine distillate fuels in auxiliary diesel engines, diesel-electric engines, main propulsion diesel engines, and auxiliary boilers in oceangoing vessels operating within Regulated California Waters (RCW). For purposes of these regulations, CARB considers RCW to extend 24 miles off the coast of California.

The regulation applies to any person who owns, operates, charters, rents, or leases ocean-going vessels (both U.S. and foreign-flagged) in any of the RCW. The fuel requirements in the proposed regulation are summarized in the table below.

Fuel Requirements for Ocean-Going Vessel Main (Propulsion) Diesel Engines, Auxiliary Diesel Engines (Including Diesel-Electric), and Auxiliary Boilers

Fuel Requirement	Effective Date	Fuel
Phase I	July 1, 2009	Marine gas oil (DMA) at or below 1.5% sulfur; or Marine diesel oil (DMB) at or below 0.5% sulfur
Phase II	January 1, 2012	Marine gas oil (DMA) or Marine diesel oil (DMB) at or below 0.1% sulfur

Note that diesel-electric engines are included as auxiliary engines under this regulation. The "Phase I" fuel requirement specifies the use of marine gas oil up to 1.5 percent sulfur, or marine diesel oil up to 0.5 percent sulfur. The "Phase II" fuel requirement specifies the use of marine gas oil or marine diesel oil up to 0.1 percent sulfur fuel. The Phase II requirement would become effective on January 1, 2012, for all sources covered by this regulation.

Vessel operators must keep the following records (in English) for at least three years, the date, local time, and location (longitude and latitude) when they enter and leave RCW; the date, local

time, and location at the initiation and completion of any fuel switching used to comply with the regulation (e.g. upon entering/leaving RCW; the date, local time, and location of any fuel switching conducted within RCW; the type of fuels used (e.g. heavy fuel oil, marine gas oil, etc.) in each auxiliary engine, main engine, and auxiliary boiler within RCW; and purchase records of the types of fuel lifted, amounts, and actual percent sulfur by weight, as reported by the fuel supplier or a fuel testing firm.

In addition, ship operators shall maintain onboard the vessel, a fuel system diagram that shows all storage, service, and mixing tanks, fuel handling, pumping, and processing equipment, valves, and associated piping.

The diagram or other documentation shall list the fuel tank capacities and locations, and the nominal fuel consumption of the machinery at rated power; a description of the fuel switch over procedure with detailed instructions and clear identification of responsibilities; and the make, model, rated power or output, and serial number of all main engines, auxiliary engines, and auxiliary boilers.

In many cases, the above records are already collected or maintained for other regulatory requirements or standard practices, and they may be submitted (if requested) in a format consistent with these other requirements.

CARB has allowed for a couple of exemptions to the rule; the first is a safety exemption. The requirements of this regulation do not apply if the master determines that compliance would endanger the safety of the vessel, its crew, its cargo or its passengers because of severe weather conditions, equipment failure, fuel contamination, or other extraordinary reasons beyond the master's reasonable control.

This exemption applies only as long as and to the extent necessary to secure the safety of the vessel, its crew, its cargo, or its passengers and provided that; the master takes all reasonable precautions after the incident to avoid or minimize repeated claims of exemption; the master notifies the Executive Officer of a safety exemption claim within 24 hours after the end of each episode; and the master submits to the Executive Officer, within 4 working days after the notification, all documentation necessary to establish the conditions.

Vessel operators can only utilize this exemption if they can demonstrate that they cannot meet the fuel-use requirements in the regulation without "essential modifications," as defined in the rule. Vessel operators must apply for this exemption at least 45 days prior to their first California visit (or at the earliest practicable date prior to their port visit if the ship operator will be visiting California less the 45 days after the effective date of the regulation). In their applications, ship operators will need to supply an "Essential Modifications Report" signed by the Chief Engineer of the vessel that identifies the specific modifications needed to comply with the fuel-use requirements, and identifying the maximum extent to which the cleaner fuels specified in the regulation can be used (e.g., some engines or boilers may still be able to operate on the cleaner fuel without modifications, or engines and boilers may be able to operate on the cleaner fuel for a portion of the voyage in RCW without modifications). The application must be approved before the vessel operator can rely on the Essential Modifications exemption. After approval of the application, the vessel operator must inform the CARB prior to each entry into RCW that the operator will be complying under this provision. Vessel operators are strongly advised to refer to the regulation and contact CARB staff prior to applying for the Essential Modifications exemption. This will ensure that they understand the requirements of this provision before preparing an application.

The CARB will provide a temporary grace period for vessel operators seeking to comply with the regulation under the Essential Modifications exemption from July 1, 2009 to August 15, 2009. During this time, a vessel operator will be exempted from the requirements of subsection (e)(1) between July 1, 2009 and August 15, 2009, whether their application for an exemption is

ultimately approved or denied, if they do the following; notify the CARB in writing (email is acceptable) prior to entering RCW that the operator intends to apply for an Essential Modifications exemption, and actually submit an application with an Essential Modifications Report at the earliest practicable date, but no later than August 1, 2009.

The operator of a vessel that is in RCW when the regulation takes effect on July 1, 2009 will be granted the same grace period if the operator provides CARB written notice no later than July 6, 2009 of the operator's intent to rely on the Essential Modification exemption, and then submits an application with an Essential Modifications Report at the earliest practicable date, but no later than August 1, 2009.

Vessel operators can comply with the regulation by paying a noncompliance fee under the following circumstances; unplanned redirection to a California port; inability to purchase complying fuel; inadvertent purchase of defective fuel; or inability to schedule vessel modifications in time for compliance.

The Noncompliance Fee Schedule is shown in the table below.

Noncompliance Fee Schedule, Per Vessel

California Port Visits	Per-Port Visit Fee
1 st Port Visit	\$45,500
2 nd Port Visit	\$91,000
3 rd Port Visit	\$136,500
4 th Port Visit	\$182,000
5 th or more Port Visit	\$227,500

In addition to the cases above, the noncompliance fee provision may be utilized by infrequent visitors that would be required to make vessel modifications to comply with the regulation, but do not wish to utilize the "Essential Modifications" exemption discussed above.

Under this scenario, "infrequent" means a vessel operator that makes no more than two port visits per vessel in any calendar year and no more than four visits total during the life of the vessel after the effective date of the regulation. In this special case, the fee schedule shown in Table 2 would not apply after four port visits. Vessel operators are strongly advised to refer to the regulation prior to relying on the noncompliance fee option. This will ensure that they meet the specific requirements for each case mentioned above. For example, there are notification requirements, and in some cases, records that need to be provided to demonstrate the need to utilize the provision.

ECM fully expects CARB to begin enforcing the regulation on July 1, 2009. To prepare for compliance with the regulation, we recommend that vessels owners/operators ensure that; vessel crews are thoroughly familiar with the operational procedures used to switch fuels in main engines, auxiliary engines, and auxiliary boilers; sufficient quantities of the specified "Phase I" cleaner fuels are onboard the vessel prior to making a California port visit; and vessel crews understand the relevant record-keeping requirements discussed above.

ECM will continue to monitor CARB regulations and report any new information to our clients. Should you have any questions regarding CARB regulations please contact Justin Likens at ecm@ecmmaritime.com.