

MARINE NOTICE 2011-3

November 2011
Advisory to Owners or Operators of Ocean-Going Vessels Visiting California Ports

NONCOMPLIANCE FEE PROVISION INFORMATION AND SUBMITTAL FORM

Regulation on Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels within California Waters and 24 Nautical Miles of the California Baseline

The purpose of this Marine Notice (which replaces Marine Notice 2009-7) is to advise owners and operators of ocean-going vessels of the noncompliance fee provision in California's regulation establishing fuel sulfur requirements for ocean-going vessels ("regulation"). This regulation imposes fuel sulfur limits on vessels in Regulated California Waters (a zone approximately 24 nautical miles seaward of the California baseline), or moor, dock, or otherwise visit a California Port, roadstead, or terminal facility ("port"). This was amended by the California Air Resources Board in June, 2011, and the amended requirements will be enforced beginning on December 1, 2011. Marine Notice 2011-1 and 2011-2 summarize the requirements in the amended regulation. The full regulatory language can be found in 13 CCR§2299.2, and 17 CCR §93118.2. It can also be found at CARB's website at: <http://www.arb.ca.gov/regact/2011/ogv11/ogv11.htm>.

The fuel requirements in the amended regulation are summarized in Table 1 below. These fuel requirements apply to ocean-going vessel main (propulsion) diesel engines, auxiliary diesel engines, and auxiliary boilers when operating within Regulated California Waters.

TABLE 1: FUEL REQUIREMENTS FOR OCEAN-GOING VESSEL MAIN (PROPULSION) DIESEL ENGINES, AUXILIARY DIESEL ENGINES, AND AUXILIARY BOILERS

Fuel Requirement	Effective Date	Percent Sulfur Content Limit
Phase 1	July 1,2009	Marine gas oil (DMA) at or below 1.5% sulfur; or Marine diesel oil (DMB) at or below 0.5% sulfur
	August 1,2012	Marine gas oil (DMA) at or below 1.0% sulfur; or Marine diesel oil (DMB) at or below 0.5% sulfur
Phase 2	January 1,2014	Marine gas oil (DMA) or marine diesel oil (DMB) at or below 0.1% sulfur

The regulation allows affected persons to pay a non-compliance fee instead of using the specified fuels. The payment of fees under the Noncompliance Fee Provision (NFP) is allowable only under specific and limited circumstances (see Attachment B for the circumstances).

If you elect to use the noncompliance fee provision, you must notify CARB before your vessel enters Regulated California Waters (notification is not required if you do not plan to use this provision).

MARINE NOTICE 2011-3

TTD/FAB-084 (REV. 11/2020) PAGE 2 OF 13

For your convenience, we are providing a **suggested notification form in Attachment C (Form OGV-2A)**. This form may be submitted by electronic-mail to:

California Air Resources Board
Attention: Marine Strategies Section
E-mail: OGVFuelRule@arb.ca.gov

We are also providing a **suggested payment form in Attachment D (Form OGV-2B)**. You must pay the applicable fee before leaving the last California port of this voyage or a later date agreed to by CARB. To request a later date for submittal of payment or supporting documentation, contact the e-mail address listed above.

We are also providing a **suggested payment form in Attachment D (Form OGV-2B)**. You must pay the applicable fee before leaving the last California port of this voyage or a later date agreed to by CARB. To request a later date for submittal of payment or supporting documentation, contact the e-mail address listed above.

California Air Resources Board
Attention: Accounting
P.O. Box 1436
Sacramento, CA 95812-1436

Persons whose vessels do not meet the regulation requirements when the vessels enter Regulated California Waters will be in violation of the regulation. Persons in violation of the regulation are subject to substantial civil and criminal penalties as provided under California Health and Safety Code, section 42400 et seq. and other applicable provisions of California law.

PAYMENT INFORMATION

Noncompliance Fees should be made payable to: CALIFORNIA AIR RESOURCES BOARD

Payment may be submitted by check, money order, wire transfer, or credit card. Include vessel name, Lloyds/IMO #, type of vessel, company name, mailing address, contact name and title, phone number, FAX number, e-mail address, dates and ports visited under the noncompliance fee provision. You may use the suggested payment form in Attachment D (Form OGV-2B).

MAILING ADDRESS:

California Air Resources Board
Attention: Accounting
P.O. Box 1436
Sacramento, CA 95812-1436

MARINE NOTICE 2011-3

TTD/FAB-084 (REV. 11/2020) PAGE 3 OF 13

WIRE TRANSFER INFORMATION:

Bank Name: Bank of America

Bank Address: Bank of America
State of California Treasurer
Interbranch to 0148
555 Capital Mall, Ste 150
Sacramento, CA 95814
USA

Beneficiary: State of California-California Air Resources Board

State Account Number: 01482-80005

Routing Number: 0260-0959-3

Additional Information: Provide explanation for transfer. [Ship NFP payment. Notify TTD, when payment received by CARB]

Assistance Contact: Administrative Services Division, Fiscal Branch
California Air Resources Board
1001 I Street
P. O. Box 1436
Sacramento, CA 95812-1436
USA

FEIN: 06-0288069

MARINE NOTICE 2011-3

CREDIT CARD AUTHORIZATION

(Print or Type)

Owner/Operator Company Name:	
Paying Company Name:	
Address:	City/State/Zip:
Telephone Number:	Facsimile Number:
Type of Vessel:	Vessel Name:
Lloyds/IMO #:	

Ports Visited (list them down below)	Dates (list them down below)

Noncompliance Fee Amount:

Charge my: <input type="checkbox"/> Visa <input type="checkbox"/> Master Card <input type="checkbox"/> American Express <input type="checkbox"/> Discover	
Credit Cardholder Name:	
Credit Card Number:	
Expiration Date:	Amount Authorized:
Authorized Signature:	Today's Date:

MARINE NOTICE 2011-3

**ATTACHMENT B-REASON FOR NONCOMPLIANCE AS BASIS FOR USE OF THE NCF
PROVISIONS**

Important: The following are excerpts from and adaptations of section 2299.2(h), title 13, CCR, and section 93118.2(h), title 17, CCR. They are simplified and condensed versions of the NFP requirements and do not in any way modify the requirements of those regulations. You are advised to refer to the entire regulations in 13 CCR 2299.2 and 17 CCR 93118.2 for the exact regulatory language. References to “subsections” are to the corresponding subsections in 13 CCR 2299.2 and 17 CCR 93118.2.

The Executive Officer may permit a person to pay NFP fees, as shown in Attachment D (Form OGV-2B), in lieu of using the fuels specified in subsection (e)(1) of the regulations provided the person meets the requirements of the NFP as provided in (1), and (2), (3) or (4) below.

1. NOTIFICATION REQUIREMENTS

For each voyage before the person’s vessel enters Regulated California Waters from waters outside Regulated California Waters, a person must notify the Executive Officer that the person will not meet the requirements of subsection (e)(1) while operating within Regulated California Waters, but the person will instead meet the requirements of this subsection (h). If the Executive Officer has not received such notice and the person enters Regulated California Waters, the person will be in violation of this section.

2. NONCOMPLIANCE FOR REASONS BEYOND A PERSON’S REASONABLE CONTROL

Demonstration of Need: The person shall, through adequate documentation, demonstrate to the Executive Officer’s satisfaction that the person’s noncompliance with the requirements of subsection (e)(1) of the regulations is beyond the person’s reasonable control. Provide documentation that noncompliance is beyond your reasonable control. “Beyond your reasonable control” applies only when one or more of the following sets of circumstances (1, 2, or 3) applies:

1. Unplanned Redirection.

This provision applies only when all of the following criteria are met:

- a. After leaving the last port of call, the person’s vessel was redirected from his/her original, officially logged, non-California destination to a California port, roadstead, or term facility (“port”); and
- b. The vessels does not contain a quantity of fuel sufficient for the auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1).

2. Inadequate Fuel Supply.

This provision applies only when all of the following criteria are met:

- a. The person made good faith efforts to acquire a quantity of fuel sufficient for the vessel’s auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1); and
- b. The person was unable to acquire fuel sufficient for auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1).

MARINE NOTICE 2011-3

TTD/FAB-084 (REV. 11/2020) PAGE 6 OF 13

3. Inadvertent Purchase of Defective Fuel.

This provisions applies only when all of the following criteria are met:

- a. Based on the fuel supplier's certification of the fuel specifications, the person reasonably believed, and relied on such belief, that the fuel the person purchased on the route from the vessel's home port to California would enable the auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1);
- b. The person determined that the vessel's auxiliary engines, main engines, and auxiliary boilers in fact will not meet the requirements of subsection (e)(1) using any of the fuel purchased under paragraph 3.a. above; and
- c. The vessel is already on its way to California, and there are no other ports of call on the vessel's route where fuel can be purchased sufficient to meet the requirements of subsection (e)(1).

3. NONCOMPLIANCE BECAUSE VESSEL NEEDS TO BE TAKEN OUT OF SERVICE FOR MODIFICATIONS TO MEET THE REGULATION

If a person cannot meet the requirements of subsection (e)(1) without vessel modifications, and such modifications cannot be completed prior to the effective date of subsection (e)(1) (i.e., July 1, 2009), the Executive Officer may permit the person to pay NFP fees. The vessel must be scheduled to complete the necessary modifications (e.g. during a dry dock operation) as soon as possible, but no later than December 31, 2014.

Demonstration of Need: For this provision to apply, the person shall meet all of the following criteria and provide the necessary documentation to the Executive Officer:

The person shall provide the Executive Officer a Compliance Retrofit Report, signed by the Chief Engineer of the person's vessel, which:

1. Identifies the specific vessel modifications ("modifications") (e.g., installation of additional fuel tanks) the person plans to use for meeting the requirements of subsection (e)(1);
2. Identifies the specific date by which the modifications will be completed (e.g., while the vessel is in dry dock); and
3. Demonstrates to the satisfaction of the Executive Officer that the modifications will be made at the earliest possible date (e.g., the vessel has been scheduled for the earliest available dry dock appointment).

Within ten (10) business days after the scheduled or actual completion of the modifications, whichever occurs first, the person shall provide written certification to the Executive Officer that the modifications specified under subsection (h)(3) have been completed. If the modifications have not been completed, the person shall certify which modifications have been completed, which have not, and the anticipated completion date for the remaining modifications. The notification requirement specified in this paragraph, the notification requirements in subsection (h)(1) above, and the NCF fee provisions shall apply until all the modifications have been completed.

4. NONCOMPLIANCE BECAUSE THE VESSEL IS AN INFREQUENT VISITOR AND NEEDS MODIFICATIONS TO MEET THE REGULATION

If a person cannot meet the requirements without modifications for the vessel at issue, and that vessel will make no more than two California port visits per calendar year, and no more than 4 California port visits after July 1, 2009 during the life of the vessel, noncompliance fees may be paid according to the NFP fee schedule in Attachment D (Form OGV-2B).

MARINE NOTICE 2011-3

**ATTACHMENT C: SHIP NONCOMPLIANCE FEE PROVISION NOTIFICATION FORM-FORM
OGV-2A**

Form OGVA-2 should be filed with the CARB before your vessel enters Regulated California Waters.

If you intend to use the Noncompliance Fee Provision (NFP), you must notify the CARB as required under the regulation before your vessel enters Regulated California Waters (notification is not required if you do not plan to use this provision). For your convenience, we are providing you with this suggested notification form (Form OGV-2A). You are not required to use this form to notify the CARB. Regardless of how you submit the information, you will be subject to substantial penalties under State law if you fail to disclose your noncompliance and the reason(s) for noncompliance before your vessel enters Regulated California Waters. You will also be subject to penalties if you fail to pay the noncompliance fee before you leave the last California port of this voyage or by a later date agreed upon by the CARB. A suggested form to submit payment is provided in Attachment D (Form OGV-2B). Form OGV-2A or similar information may be submitted by electronic-mail to:

California Air Resources Board

Attention: Ship NFP Notification;

E-mail: OGVFuelRule@arb.ca.gov

SHIP AND CONTACT INFORMATION

Vessel Name:	Lloyd/IMO #:
Country Flag:	Type of Vessel:
Company Name:	Mailing Address:
Contact Person:	Title:
Telephone:	FAX:
Email:	

REASON FOR NON-COMPLIANCE (CHECK WHICHEVER APPLIES; SEE ATTACHMENT B)

The following are the **ONLY** permissible reasons, as specified under the Noncompliance Fee provision. **You must also provide the supporting information for the applicable noncompliance reason to the CARB's Executive Officer before your vessel leaves Regulated California Waters or a later date agreed to by CARB (see Attachment B for the required supporting information).**

MARINE NOTICE 2011-3

<input type="checkbox"/> Reasons beyond a person's reasonable control-check A., B., or C. below <input type="checkbox"/> A. Unplanned Redirection to a California Port (see Attachment B) <input type="checkbox"/> B. Inadequate Fuel Supply (see Attachment B) <input type="checkbox"/> C. Inadvertent Purchase of Defective Fuel (see Attachment B) <input type="checkbox"/> Vessels Needs to be Removed from Service for Modifications to Meet the Regulation (see Attachment B) <input type="checkbox"/> Vessel Is an Infrequent Visitor that Needs Modifications to Meet the Regulation (see Attachment B)
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PORTS YOUR VESSELS WILL VISIT DURING THIS VOYAGE TO AND FROM CALIFORNIA

List all stops at a port, roadstead, or terminal facility while in Regulated California Waters, as well as all moorings (i.e., ship drops anchor) at an offshore location in Regulated California Waters, while your vessel is in noncompliance.

Name of California Port or Location (Longitude & Latitude) of Mooring	Expected Date

NOTE: Add additional ports or locations of moorings on separate sheet if needed.

Certification: I am an officer and authorized representative of the company listed in Form OGV-2A and hereby certify that all information entered on this Noncompliance Fee Notification is complete and accurate to the best of my knowledge and belief.

Print Name:	Title:
Signature:	Date:

MARINE NOTICE 2011-3

ATTACHMENT D: SHIP NONCOMPLIANCE FEE PAYMENT FORM-FORM OGV-2B

Form OGV-2B should be filed with the CARB before your vessel leaves the last California port of this voyage or a later date agreed to by CARB.

If you plan to use the Noncompliance Fee Provision, you must first notify the CARB prior to entering Regulated California Waters (see Form OGV-2A). You must then provide the information required in the regulation (see Attachment B) and fee payment before your vessel leaves the last California port of this voyage. You are not required to use this form to notify CARB. Regardless of how you submit the information, if you fail to pay the noncompliance fee and submit the information required by the regulation (see Attachment B) before you leave the last California port of this voyage or by the date approved by the CARB, you will be subject to substantial penalties under State law. This form or similar information and the required supporting information may be submitted by electronic-mail to:

California Air Resources Board
Attention: Ship NFP Notification
E-mail: OGVFuelRule@arb.ca.gov

Or mailed with payment to:

California Air Resources Board
Attention: Accounting
P.O. Box 1436
Sacramento, CA 95812-1436

Noncompliance Fees should be made payable to: CALIFORNIA AIR RESOURCES BOARD
Payment may be submitted by check, money order, wire transfer, or credit card.

SHIP AND CONTACT INFORMATION

Vessel Name:	Lloyd/IMO #:
Country Flag:	Type of Vessel:
Company Name:	Mailing Address:
Contact Person:	Title:
Telephone:	FAX:
Email:	

MARINE NOTICE 2011-3

PORTS VISITED DURING EACH VOYAGE TO AND FROM CALIFORNIA

List all stops at a port, roadstead, or terminal facility while in Regulated California Waters, as well as all moorings (i.e., ship drops anchor) at an offshore location in Regulated California Waters, while your vessel is in noncompliance. Also note whether fuel compliant with subsection (e)(1) of the regulation was/or will be purchased at the noted port and used at this port and upon departure.

Name of California Port or Location (Longitude & Latitude) of Mooring	Date and Time of Visit or Mooring	Was Compliant Fuel Purchased and Used?

FEE CALCULATION:

Your NFP Fee will be calculated according to the following fee schedule. Note that the fee is halved for port visits where the vessel operator purchases fuel compliant with subsection (e)(1) of the regulation and uses this fuel at this port and upon departure. "Port Visit" includes all stops at a port, roadstead, or terminal facility in Regulated California Waters, as well as all moorings (i.e., the ship drops anchor) at an offshore location in Regulated California Waters away from a port, roadstead, or terminal facility (e.g., Catalina Island or off Monterey). However, for the purposes of assessing NCP fees, offshore anchorages made in conjunction with a port visit shall not be considered as a separate port visit.

As an example of how the fees are calculated, if a vessel operator makes three port visits in the same voyage to California while using noncompliant fuel, and then purchases and uses compliant fuel at the third port visited, the total fee that you will pay will add up to \$136,500 (\$45,500 for Port 1, \$45,500 for Port 2, and \$45,500 for Port 3 because the \$91,000 fee is halved due to the purchase and use of complying fuel). Regarding the submission of this form OGV-2B, you can either submit it with the applicable fee and information required by the regulation (see Attachment B) before leaving each California port you visited while in noncompliance, or before leaving the last California port of this voyage.

MARINE NOTICE 2011-3

NONCOMPLIANCE FEE SCHEDULE, PER PORT PER VESSEL

Port Visit	Per-Port Visit	Fee if Compliant Fuel Purchased and Used
1 st Port Visited	\$45,500	\$22,750
2 nd Port Visited	\$45,500	\$22,750
3 rd Port Visited	\$91,000	\$45,500
4 th Port Visited	\$136,500	\$68,250
5 th or more Port Visited	\$182,000	\$91,000

FEE PAYMENT SUBMITTED FOR THIS VOYAGE

Port Visited	Fee Submitted (USD)	Date Fee Submitted	Form of Payment

Total Payment:

Noncompliance Fees should be made payable to: CALIFORNIA AIR RESOURCES BOARD

Payment may be submitted by check, money order, wire transfer, or credit card.

MAILING ADDRESS:

California Air Resources Board
Attention: Accounting
P.O. Box 1436
Sacramento, CA 95812-1436

WIRE TRANSFER INFORMATION:

Bank Name: Bank of America
Bank Address: Bank of America
State of California Treasurer
Interbranch to 0148
555 Capital Mall, Ste 150
Sacramento, CA 95814
USA

Beneficiary: State of California- California Air Resources Board

State Account Number: 01482-80005

MARINE NOTICE 2011-3

TTD/FAB-084 (REV. 11/2020) PAGE 12 OF 13

Routing Number: 0260-0959-3

Additional Information: Provide explanation for transfer. [Ship NFP payment. Notify TTD, when payment received by CARB]

Assistance Contact: Administrative Services Division, Fiscal Branch
California Air Resources Board
P.O. Box 1436
Sacramento, CA 95812-1436
USA

FEIN: 06-0288069

CREDIT CARD AUTHORIZATION INFORMATION

If contact information is the same as Form OGV-2B pages 1 and 2, check here

Owner/Operator Company Name:	
Paying Company Name:	
Address:	
Country:	City/State/Zip:
Telephone Number:	FAX:

Charge my: <input type="checkbox"/> Visa <input type="checkbox"/> Master Card <input type="checkbox"/> American Express <input type="checkbox"/> Discover			
Credit Cardholder Name:			
Credit Card Number:			
Expiration Date:		Amount Authorized:	
Authorized Signature:		Today's Date:	

MARINE NOTICE 2011-3

Certification: I am an officer and authorized representative of the company in Form OGV-2B and hereby certify that all information entered on this Noncompliance Fee Notification, including all supporting information submitted pursuant to the requirements noted in Attachments B through D, is complete and accurate to the best of my knowledge and belief.

Print Name:	Title:
Signature:	Date: