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Regulations Amending the Sulphur in Diesel Fuel Regulations

*Statutory authority**Canadian Environmental Protection Act, 1999**Sponsoring department*

Department of the Environment

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REGULATORY IMPACT ANALYSIS STATEMENT

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Description

The purpose of the proposed *Regulations Amending the Sulphur in Diesel Fuel Regulations* (hereinafter referred to as the "proposed Amendments") is to provide additional flexibility to facilitate the introduction of 15 milligrams per kilogram (mg/kg) sulphur diesel fuel for on-road use in 2006. The proposed Amendments allow a slightly higher sulphur limit of 22 mg/kg for sales of on-road diesel fuel during a period of 45 days, from September 1, 2006, to October 15, 2006, after which the final sales limit of 15 mg/kg takes effect.

These proposed amendments would maintain continued alignment of diesel fuel sulphur standards, in both level and timing, with the recent change, as described below, announced by the United States Environmental Protection Agency (U.S. EPA).

The proposed Amendments would come into effect on the day they are registered.

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Background

The *Sulphur in Diesel Fuel Regulations* were published in the *Canada Gazette*, Part II, on July 31, 2004. ([see footnote 1](#)) The goal of those Regulations is to ensure that the level of sulphur in diesel fuel used in on-road vehicles does not impede the effective operation of advanced emission-control technologies installed on new vehicles and engines. This goal is achieved by limiting the maximum allowable level of sulphur in diesel fuel. The requirements of the Regulations are aligned, in level and timing, with those of the U.S. EPA.

The sulphur limit for on-road diesel fuel is presently 500 mg/kg, and it will decrease to 15 mg/kg in 2006. The timeline for the 15 mg/kg sulphur limit to come into effect is as follows:

- June 1, 2006, for production and imports; and
- September 1, 2006, for sales.

The three-month lag between the production/import limit and the sales limit is intended to allow time for 15 mg/kg fuel to be distributed and higher-sulphur diesel fuel to be sold.

However, based on an improved understanding of the challenges within the U.S. fuel distribution system, the U.S. EPA determined that facilities at the tail end of fuel distribution systems require additional time to fully turn over the higher-sulphur diesel fuel inventory for on-road use. Diesel fuel is distributed by pipeline and tankers and moves through storage tanks at terminals, bulk plants and service stations that have previously contained the higher levels of sulphur in diesel fuel. Presently the higher sulphur diesel fuel for on-road use is subject to the 500 mg/kg limit. Diesel fuel meeting the new 15 mg/kg production and import limit can become contaminated above that limit if it mixes with very small amounts of the higher sulphur diesel fuel.

As a result, on May 27, 2005, the U.S. EPA announced proposed changes to its rule in order to facilitate a smooth transition to the final 15 mg/kg sulphur standard. It plans to allow a slightly higher limit of 22 mg/kg for sales of diesel fuel for on-road use during a 45-day period from September 1, 2006, to October 15, 2006. The allowance of an interim 22 mg/kg sulphur limit diesel fuel for sales to be used in on-road vehicles will help mitigate the potential contamination of diesel fuel and supply impact on the on-road diesel fuel pool during this transition. It will also maintain the environmental benefits of the clean diesel program which is aligned on that of the United States.

In response to the U.S. EPA announcement, the Canadian Petroleum Products Institute (CPPI) requested, in a letter dated July 12, 2005, that Canada's Regulations be amended to incorporate the same changes that have been announced by the U.S. EPA. The CPPI's rationale for adopting the same changes prescribed by the U.S. EPA is that

- Alignment of specifications for fuels that enable vehicle or engine technology promotes a competitive level playing field between Canada and the United States;
- On-road diesel fuel supply in Canada may be sourced out of the United States. If Canada's compliance timing is earlier than the United States, this alternative supply may not be available and the subsequent impact could be significant; and

- In general, the distribution system in Canada is comparable to that of the United States. Therefore, the potential for supply disruptions is as much of an issue for Canada as for the United States.

The proposed Amendments

The proposed Amendments would facilitate the introduction of 15 mg/kg sulphur diesel fuel for on-road use in 2006, by lengthening the period between the dates that the production/import limit and the sales limit come into effect. This would provide additional time to fully turn over the higher-sulphur diesel fuel inventory for on-road use in the distribution system. The proposed Amendments would allow a slightly higher sulphur limit of 22 mg/kg for sales of on-road diesel fuel for 45 days, starting September 1, 2006, and ending October 15, 2006, after which the final sales limit of 15 mg/kg would take effect. The proposed Amendments maintain alignment with the U.S. EPA's new requirements.

The proposed Amendments would adopt the following sales limit timeline for the introduction of the lower sulphur limits in on-road diesel fuel:

1. From September 1, 2006, to October 15, 2006, all on-road diesel fuel sold must not exceed 22 mg/kg; and
2. After October 15, 2006, all on-road diesel fuel sold must not exceed 15 mg/kg.

Alternatives

In response to the U.S. EPA's decision to amend its regulations, and to the submission by the CPPI that Canada's regulations should be amended, the following three alternatives were examined:

1. Maintain status quo

Environment Canada (EC) considered making no changes to the Regulations. However, such a situation could result in temporary disruptions in the supply of on-road diesel fuel during the transition to 15 mg/kg sulphur diesel fuel, leading to potential higher diesel fuel prices for Canadians.

Under this approach, Canadian limits for sulphur in on-road diesel fuel would not be aligned with U.S. requirements, albeit for a short time. As part of the Federal Agenda on Cleaner Vehicles, Engines and Fuels published by the federal Minister of the Environment in the *Canada Gazette*, Part I, on February 17, 2001, EC developed a federal policy on aligning fuel standards with other jurisdictions. The Federal Agenda includes regulatory and non-regulatory measures, to be developed and implemented over a ten-year period in order to reduce emissions from a broad range of on-road and off-road vehicles and engines. Hence, the status quo was rejected.

2. Amendments to shift the implementation date of the sales limit without adding an interim limit

EC considered amending the Regulations by providing only for a later implementation date of the 15 mg/kg sales limit. However, without adding an interim limit to the proposed Amendments, this option would result in a longer period during which on-road diesel fuel

with a sulphur level of up to 500 mg/kg could be sold. This would result in slightly higher emissions of pollutants from vehicles during that period.

Under this approach, Canadian limits for sulphur in on-road diesel fuel would not be aligned with U.S. requirements, albeit for a short time. For these reasons, the option of shifting the implementation date without adding an interim limit was rejected.

3. Amendments to shift the implementation date of the sales limit with an interim limit

EC considered amending the Regulations to allow a sulphur limit of 22 mg/kg for sales of on-road diesel fuel for 45 days, from September 1, 2006, to October 15, 2006, after which the final sales limit of 15 mg/kg would take effect. This minor flexibility would facilitate the introduction of 15 mg/kg sulphur diesel fuel for on-road use in 2006, while restricting the sulphur limit of diesel fuel sold for on-road use to a low level.

This approach would maintain alignment of Canadian limits for sulphur in on-road diesel fuel with U.S. requirements, and minimize the potential for disruptions in the supply of on-road diesel fuel. As a result, this option has been selected as the most appropriate.

Benefits and costs

Benefits

The proposed Amendments would facilitate transition to 15 mg/kg on-road diesel fuel, by providing additional time to fully turn over the higher-sulphur diesel fuel inventory for on-road use in the distribution system.

In addition, the short transition period, lasting an additional 45 days, is expected to reduce the industry's costs of introducing lower-sulphur diesel fuel.

The proposed Amendments would continue to maintain alignment of Canadian and U.S. standards for sulphur in diesel fuel at the same interim-limit level, and implementation timing would apply in both countries. As a result, the proposed Amendments would provide for continued supply of such fuel from the United States, and would thereby also minimize the potential for supply disruptions and associated price impacts.

The alignment of the proposed Amendments with the U.S. EPA's new requirements provides for a continued competitive level playing field between Canada and the United States. Alignment of fuel standards plays a key role in avoiding impeding the effective operation of new vehicle emission-control technologies that will be required to comply with new emission standards for 2007 and later model year vehicles and engines.

The U.S. EPA notes that the changes will not reduce the environmental benefits from its clean diesel program. This will also be true in Canada, given that our diesel program is aligned with that of the United States.

Costs

No incremental compliance costs associated with the proposed Amendments have been

identified for the industry. The proposed Amendments are also not expected to result in any increased inspection activities and costs for the Government.

Consultation

The proposed Amendments are in response to an announcement by the U.S. EPA that it intends to amend its regulations to facilitate the transition to the 15 mg/kg sulphur diesel fuel for on-road use in 2006 and to a recent submission from the CPPI that Canada should similarly amend its Regulations.

The CPPI expressed concern over the possibility that the competitive level playing field between Canada and the United States could be jeopardized in the event that the alignment of specifications for fuels was not maintained.

Given our comparable logistical distribution systems, the CPPI commented that without the alignment of the Canadian and U.S. interim sales limit of 22 mg/kg, the risk of supply disruptions could arise in Canada. Similarly, with respect to the implementation date, the CPPI recommended that Canadian regulations adopt the same retail compliance date as in the United States (shifted from September 1 to October 15, 2006) to avoid potential disruptions in alternative fuel supply.

All the comments received from the CPPI have been addressed in the proposed Amendments.

In August 2005, EC released a discussion paper on amending the Regulations to preserve alignment with the United States and to add flexibility, as requested by the CPPI. EC received comments from six stakeholders during the public comment period, which ended on September 16, 2005. None of the commenters opposed the proposed changes.

Compliance and enforcement

Since the proposed Regulations are promulgated under the *Canadian Environmental Protection Act, 1999* (CEPA 1999), enforcement officers will, when verifying compliance with the Regulations, apply the Compliance and Enforcement Policy implemented under the Act. The Policy outlines measures designed to promote compliance, including education, information, promoting of technology development, and consultation on the development of regulations. The Policy also sets out the range of possible responses to alleged violations: warnings, directions, environmental protection compliance orders, ticketing, ministerial orders, injunctions, prosecution and environmental protection alternative measures (which are an alternative to a court trial after the laying of charges for a CEPA 1999 violation). In addition, the Policy explains when EC will resort to civil suits by the Crown for cost recovery.

When, following an inspection or an investigation, an enforcement officer discovers an alleged violation, the officer will choose the appropriate enforcement action based on the following factors:

- Nature of the alleged violation: This includes consideration of the damage, the intent of the alleged violator, whether it is a repeat violation, and whether an

attempt has been made to conceal information or otherwise subvert the objectives and requirements of the Act.

- Effectiveness in achieving the desired result with the alleged violator: The desired result is compliance within the shortest possible time with no further repetition of the violation. Factors to be considered include the violator's history of compliance with the Act, willingness to co-operate with enforcement officers, and evidence of corrective action already taken.
- Consistency: Enforcement officers will consider how similar situations have been handled in determining the measures to be taken to enforce the Act.

Contacts

Bruce McEwen, Oil, Gas and Energy Division, Clean Air Directorate, Environment Canada, Ottawa, Ontario K1A 0H3, (819) 953-4673 (telephone), (819) 953-8903 (fax), bruce.mcewen@ec.gc.ca (email), or Céline Labossière, Impact Analysis and Instrument Choice Division, Strategic Analysis and Research Directorate, Environment Canada, Ottawa, Ontario K1A 0H3, (819) 997-2377 (telephone), (819) 997-2769 (fax), celine.labossiere@ec.gc.ca (email).

PROPOSED REGULATORY TEXT

Notice is hereby given, pursuant to subsection 332(1) ([see footnote a](#)) of the *Canadian Environmental Protection Act, 1999* ([see footnote b](#)), that the Governor in Council proposes, pursuant to sections 140 and 330 of that Act, to make the annexed *Regulations Amending the Sulphur in Diesel Fuel Regulations*.

Any person may, within 60 days after the date of publication of this notice, file with the Minister of the Environment comments with respect to the proposed Regulations or a notice of objection requesting that a board of review be established under section 333 of that Act and stating the reasons for the objection. All comments and notices must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be sent to the Chief, Fuels Section, Clean Air Directorate, Environmental Stewardship Branch, Department of the Environment, Ottawa, Ontario K1A 0H3.

A person who provides information to the Minister may submit with the information a request for confidentiality under section 313 of that Act.

Ottawa, March 23, 2006

DIANE LABELLE
Acting Assistant Clerk of the Privy Council

REGULATIONS AMENDING THE SULPHUR IN DIESEL FUEL REGULATIONS

AMENDMENT

1. Subsection 3(2) of the *Sulphur in Diesel Fuel Regulations* ([see footnote 2](#)) is amended by deleting the word "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(b) 22 mg/kg from September 1, 2006 until October 15, 2006; and

(c) 15 mg/kg after October 15, 2006.

COMING INTO FORCE

2. These Regulations come into force on the day on which they are registered.

[13-1-o]

[Footnote 1](#)

The Regulations were subsequently amended on October 19, 2005 (SOR/2005-305).

[Footnote a](#)

S.C. 2004, c. 15, s. 31

[Footnote b](#)

S.C. 1999, c. 33

[Footnote 2](#)

SOR/2002-254

NOTICE:

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with hypertext language (HTML). Its content is very similar except for the footnotes, the symbols and the tables.

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