

State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information

PROPOSED CONTROL MEASURE FOR OCEAN-GOING VESSELS AT BERTH

Public Hearing Date: December 5, 2019, and June 25, 2020

Public Availability Date: July 10, 2020

Deadline for Public Comment: July 27, 2020

At its December 5, 2019, public hearing, the California Air Resources Board (CARB or Board) considered staff's proposed amendments to title 13, division 3, chapter 5.1, section 2299.3, and title 17, division 3, chapter 1, subchapter 7.5, section 93118.3, California Code of Regulations (CCR); and adoption of new title 17, division 3, chapter 1, subchapter 7.5, sections 93130-93130.22, CCR (collectively referred to as the "proposed regulation" or "Control Measure").¹ These amendments and new provisions would amend, and supersede in large part, the existing 2007 Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port ("existing 2007 At-Berth Regulation").

Staff published its initial proposed changes to the originally-proposed regulatory text on March 26, 2020.

Staff again appeared before the Board at the June 25, 2020 Board Meeting to present an informational update, and to discuss potential further changes to the proposed regulation. Staff requested the Board's perspective and input in considering a second round of proposed changes, given the current global economic situation. The board supported the staff's presentation and emphasized community involvement when reviewing innovative concepts. Under the framework of the regulation's public

¹ At the December 2019 Board hearing, the Board directed the Executive Officer to consider written comments submitted during the public review period, and to determine if additional conforming modifications to the regulation are appropriate and to make any proposed modified regulatory language available for public comment, with any additional supporting documents and information, for a period of at least 15 days in accordance with Government Code section 11346.8. The Executive Officer was directed to evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare written responses to such comments as required by CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9, subdivision (a). The Executive Officer was further directed to present to the Board, at a subsequently scheduled public hearing, staff's written responses to environmental comments and the final environmental analysis for consideration for approval, along with the finalized regulation for consideration for adoption.

comment period for innovative concepts, staff will work with local community groups, especially the Assembly Bill 617 community steering committees, to ensure those impacted by an innovative concept have a voice in the process. For Board consideration, staff will include direction for consultation with AB 617 community steering committees in the resolution. This package releases for public review a further set of proposed changes. Staff's proposed changes, summarized in and attached to this notice, are sometimes referred to colloquially in this package as the "second 15-day changes."²

These proposed changes include:

- Continuing compliance for container, refrigerated cargo, and cruise vessels under the 2007 At-Berth Regulation through 2022, and beginning compliance under the proposed regulation in 2023.
- Returning to the originally-proposed compliance start date of 2025 for roll-on roll-off (ro-ro) vessels.
- Align reporting requirements under the new Control Measure for all vessel types and terminal operators to January 1, 2023, to coincide with the proposed compliance start date.
- Extending the compliance period for an approved innovative concept from three years to up to five years.

The December 5, 2019, Board resolution and all other regulatory documents for this rulemaking are available online at the following [CARB website](https://ww2.arb.ca.gov/rulemaking/2019/ogvatberth2019):

<https://ww2.arb.ca.gov/rulemaking/2019/ogvatberth2019>

The text of the modified regulatory language is shown in Attachment A. The originally-proposed 45-day amendments to title 13, section 2299.3 and title 17, section 93118.3 are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. The proposed changes set forth in the March 26, 2020 15-day changes are shown in double underline to indicate additions, and ~~double strikeout~~ to indicate deletions. The proposed changes set forth in this notice to these two sections that are made public with this notice are shown in **bold/double-underline** to indicate additions, and ~~**bold/double-strikeout**~~ to indicate deletions.

The other sections set forth below (sections 93130 through 93130.22) are new sections proposed in this rulemaking proceeding. Therefore, for simplicity, the originally-proposed 45-day language in those sections is shown in "normal type". Proposed changes set forth in the March 26, 2020, 15-day changes are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The proposed changes set forth

² This term derives from the Administrative Procedure Act, which specifies that proposed changes from the originally-released regulatory text must be made available to the public for at least 15 days of review. (Cal. Gov. Code § 11346.8(c).)

in this notice to those sections that are made public with this notice are shown in double underline to indicate additions, and ~~double strikeout~~ to indicate deletions.

In the Final Statement of Reasons, staff will respond to all timely-filed comments received during the noticed comment periods. The Administrative Procedure Act requires that staff respond to timely comments received regarding all noticed changes. Therefore, staff will only address comments received during this second 15-day comment period that are responsive to this notice, documents added to the record through this notice, or the changes detailed in Attachments A-D of this notice.

Summary of Overlapping Provisions Between Existing Regulation and Proposed Control Measure

The majority of the provisions in Staff's proposed new Control Measure (including the new emissions control requirements) will begin on January 1, 2023, and will largely supersede the 2007 At-Berth Regulation (Existing Regulation) on January 1, 2023. However, for a well-ordered transition between the regulations, a limited number of provisions from the new Control Measure, primarily for planning, application and approval provisions, will begin prior to January 1, 2023. Also, some of the Existing Regulation provisions, such as recordkeeping and reporting, will extend past January 1, 2023.

For the reader's convenience, Table 1 below (following page) lists the provisions from the new Control Measure that become operative before January 1, 2023. Table 2 lists the provisions of the Existing Regulation that extend beyond January 1, 2023. These tables are provided as a courtesy, and the information they contain does not replace or modify any requirements in the regulatory text. Readers must ensure they have read and understand the regulatory text, and that they comply with its terms.

Table 1

A limited number of provisions in the new Control Measure, including certain provisions needed for planning, application and approval purposes, would begin prior to January 1, 2023. These include, but are not limited to:

Provision	Location in Regulation	Description
CARB Approval of Emissions Control Strategies	93130.5 (e) Application process (for a CARB approved emission control strategy)	The provisions regarding the application process for CARB Approval of Emission Control Strategies for compliance with the new Control Measure begin January 1, 2021.
Terminal Plans	93130.14 (a) Terminal Plans	Terminal plans due for container, refrigerated cargo, passenger, ro-ro and tanker terminal by December 1, 2021. Revised terminal plans for ro-ro and LA/LB tanker terminals, February 1, 2024 and all other tanker terminals due February 1, 2026.
Port Plans	93130.14 (b) Port Plans	Port plans for container, refrigerated cargo, passenger, ro-ro and tanker terminals due December 1, 2021. Plans due by July 1 the following year for any newly included terminals.
Interim Evaluation	93130.14 (d) Interim evaluation for new technologies and applications	By-December 1, 2022, CARB Staff will publish an analysis and findings in a report and make it available for public review.
Approval of Entities to Administer a Remediation Fund	93130.16 Remediation Fund Administration	The requirements for CARB approval of entities to administer a Remediation Fund begin January 1, 2021.
Application for Innovative Compliance Option	93130.17 (b) Application and approval process (for the innovative concept compliance option)	Applications for container, refrigerated cargo, passenger, ro-ro and tanker innovative concepts are due by December 1, 2021.

Table 2

A limited number of record and reporting provisions in the Existing Regulation extend past January 1, 2023. These include, but are not limited to:

Provision	Location in Regulation	Description
Existing Reporting and Record Keeping Requirements*	Reporting and recordkeeping requirements of section 93118.3 (g) of title 17	Remains in effect for compliance years through 2022.
Existing Statements of Compliance*	The annual statements of compliance for 2022 in section 93118.3 (g)(1)(A)(2) and (g)(2)(A)(3)	Due to the Executive Officer on March 1, 2023.
Existing Wharfinger Data Reporting	Annual Wharfinger data from the ports under section 93118.3 (g)(3)	Due to the Executive Officer on April 1, 2023.
Existing Compliance Record Maintenance	Compliance records in section 93118.3 (g)(1)(B), (g)(2)(B), and (g)(3)(B)	Required to be maintained for five years, through December 31, 2027.

* For 2023 the number of Terminal Incident Events (TIEs) and Vessel Incident Events (VIEs) will be determined by the fleet 2021 recordkeeping requirements and Wharfinger data.

Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

A. Substantive Modifications

1. Modifications to Section 2299.3 and 93118.3

- a. Staff proposes to adjust the date upon which the existing 2007 At-Berth Regulation (set forth in 17 C.C.R. section 93118.3 will be superseded by section 93130 (adjusted from 2021 to 2023). This change is proposed given the direction Staff received from the Board at the June 25, 2020 Board meeting. This change is necessary to explain that the control requirements in the existing 2007 At-Berth Regulation will remain in effect until the new Control Measure begins on January 1, 2023.

However, note that certain provisions in the new Control Measure will become effective before January 1, 2023, as specified in the regulatory text

(and as described in the “Modification to Section 93130” section below). This is because, while the primary emissions control related provisions of the proposed Control Measure do not begin to phase in until 2023, certain provisions in the Control Measure must become operative before 2023 to allow for the phase-in that year, such as certain reporting and application submittal requirements.

2. Modification to Section 93130

- a. Staff proposes to add a paragraph to the proposed regulation language clarifying that the Control Measure is effective alongside the existing 2007 At-Berth Regulation from January 1, 2021, until January 1, 2023. This addition is necessary to clarify to the reader that both regulations will be in effect for a period of time, as there are certain sections of the new Control Measure that need to become operative before the control measure supersedes the existing 2007 At-Berth Regulation on January 1, 2023. These provisions are: sections 93130.5 (e) Application process (for a CARB approved emission control strategy), 93130.14 (a) Terminal Plans, 93130.14 (b) Port Plans, 93130.14 (d) Interim evaluation for new technologies and applications, 93130.16 Remediation Fund Administration, 93130.17 (b) Application and approval process (for the innovative concept compliance option), and 93139.20 Violations (to allow for enforcement of the provisions that become operative January 1, 2021 as specified in this paragraph).
- b. Staff proposes to adjust the date upon which the existing 2007 At-Berth Regulation will be superseded by the proposed Control Measure (adjusted from 2021 to 2023) to align with the proposed revised implementation dates in subsection 93130.7(b). This change is necessary to explain that control requirements for the existing 2007 At-Berth Regulation will remain in effect until they are superseded by the new Control Measure on January 1, 2023.
- c. Staff proposes to adjust the dates that reporting and recordkeeping requirements for the existing 2007 At-Berth Regulation remain in effect (adjusted from 2020 to 2022) to align with the proposed revised implementation dates in subsection 93130.7(b). This change is necessary to explain that reporting and recordkeeping requirements for the existing 2007 At-Berth Regulation will remain in effect until they are superseded by the new Control Measure on January 1, 2023.
- d. Staff proposes to adjust the dates annual statements of compliance are due to CARB’s Executive Officer for the existing 2007 At-Berth Regulation (adjusted from 2021 to 2023) to align with the proposed revised implementation dates in subsection 93130.7(b). This change is necessary to explain that annual compliance statements required under the existing 2007 At-Berth Regulation are due to CARB’s Executive Officer annually on March

1 through the year 2023. These compliance statements are necessary to verify compliance with the existing 2007 At-Berth Regulation.

- e. Staff proposes to adjust the dates that annual Wharfinger data is due to CARB's Executive Officer for the existing 2007 At-Berth Regulation (adjusted from 2021 to 2023) to align with the proposed revised implementation dates in subsection 93130.7(b). This change is necessary to explain that the requirement in the existing 2007 At-Berth Regulation for ports to submit annual Wharfinger data by April 1 of the following year remains in effect through April 1, 2023.
- f. Staff proposes to adjust the date that compliance records required in sections 93118.3 (g)(1)(B), (g)(2)(B), and (g)(3)(B) are required to be maintained and kept (adjusted from 2021 to 2023) to align with the proposed revised implementation dates in subsection 93130.7(b). This change was necessary in order to keep a five year recordkeeping requirement for all compliance records from the existing 2007 At-Berth Regulation.

3. Modifications to Section 93130.2 Section Summary, and Definitions

Staff proposes modifications to Subsection 93130.2 (b) Definitions as follows:

- i. Subsection 93130.2(b)(4) – Staff proposes to add the word “regulated” for clarity. This change was necessary for clarity and to align with the definition of “Regulated California Waters” already included in the regulation.
- ii. Subsection 93130.2(b)(5) – Staff proposes to add the phrase “to administer a remediation fund” to the definition of “Applicant”. This change was necessary to explain to the reader the use of the word “Applicant” in the remediation fund section (93130.16).
- iii. Subsection 93130.2(b)(6) – Staff proposes to add the phrase “for the process outlined in section 93130.16 of this Control Measure for remediation fund administration” to the definition of “Application”. This change was necessary to explain to the reader the use of the word “Application” in the remediation fund section (93130.16).
- iv. Subsection 93130.2(b)(21) – Staff proposes to update the definition of “Compliance Period” to last for up to five years (the March 26, 2020 15-day package specified this period as three years). This change was necessary to align with changes made to the Innovative Concept Compliance Option section of the regulation (93130.17).

- v. Subsection 93130.2(b)(40) – Staff proposes to update the definition of “IMO NOx tier” to clarify the definition based on comments received from stakeholders. This change was necessary so that regulated entities have a clear understanding of what information they need to report as required in sections 93130.7(e)(4) and 93130.9(d)(5).
- vi. Subsection 93130.2(b)(49) – Staff proposes to add a definition of “moor” to provide a definition for this term. This change is necessary to enable regulated entities to understand the meaning of that term, which is used in the proposed Control Measure.
- vii. Subsection 93130.2(b)(60) – Staff proposes to remove the definition of “Previously Unregulated Vessels”. This definition is no longer necessary to include in the regulation because the proposed Control Measure’s new phase-in would occur in 2023 and there is no longer a need to define the small subset of container, refrigerated cargo, and cruise vessels that would have phased into the regulation at a date after the Control Measure’s implementation date (since they would instead phase in immediately in 2023).
- viii. Subsection 93130.2(b)(80)(A) – Staff proposes to add “fire prevention” to the definition of utility event as a circumstance in which the utility may need to reduce power. This change was necessary to clarify that vessels planning to comply with the regulation using shore power will not be penalized if the utility ceases providing electricity due to a shutdown for fire prevention.
- ix. Subsection 93130.2(b)(87) – Staff proposes to add the phrase “For the purpose of this definition, direct control is the person who decides where a vessel is to call and is considered a responsible party” to the definition and modified the last sentence to align with this addition. This change was made to clarify what qualifies an entity as a vessel operator, which is essential to determining who has regulatory requirements.

4. Modifications to Section 93130.5 CARB Approved Emission Control Strategy

- a. Subsection 93130.5(i)(3) – Staff proposes to delete this section and move the revocation information to a new subsection 93130.5(l) to clarify the fact that the revocation section is separate from the requirements that determine CARB approval of an emission control strategy.
- b. Subsection 93130.5(l) – Staff proposes to add this section (largely moved from prior subsection 93130.5(i)(3)), along with minor changes, to clarify the revocation process for a CARB approved emission control strategy (CAECS).

This is necessary to specify that a CAECS approval may be revoked if the CAECS operator fails to meet any requirements in the Control Measure pertaining to the CAECS, or if the CAECS operator fails to comply with the conditions in the Executive Officer's approval for the CAECS.

5. Modifications to Section 93130.7 Vessel Operator Requirements

- a. Subsection 93130.7(b) – Staff proposes to revise the compliance start years for container, refrigerated cargo vessels, and passenger vessels from 2021 to 2023 and for ro-ro vessels from 2024 to 2025. These changes are proposed in direct response to the CARB Board's discussion at its June 25, 2020, hearing to delay implementation dates for container, refrigerated cargo, cruise, and ro-ro vessels in order to give regulated entities additional time to prepare for compliance in light of the current economic downturn.
- b. Subsection 93130.7(e)(4) – Staff proposes to add the phrase "Beginning on January 1, 2023 and thereafter, all vessel operators must report...". This addition was necessary to clarify that all vessel operators must begin reporting the information required in section 93130.7(e)(4) beginning January 1, 2023, and that this requirement is independent of the vessel compliance start dates for emissions reductions in subsections 93130.7(b) and (c).

6. Modifications to Section 93130.8 Vessel Visit Exceptions

- a. Subsection 93130.8(e) – Staff proposes to delete the section exempting "Previously unregulated vessels". This section was no longer necessary with the proposed revised implementation date of 2023 for container, refrigerated cargo, and cruise vessels, because with that change, there is no longer a need to define the small subset of these same vessels that would have phased into the regulation at a date after the Control Measure's implementation date (since they would instead phase in immediately in 2023).
- b. Subsection 93130.8(e)(2) – Staff proposes to adjust the date all vessel operators are required to report vessel visit information, from January 1, 2021, to January 1, 2023. This change is necessary to align with the proposed revised implementation dates in section 93130.7(b).

7. Modifications to Section 93130.9 Terminal Operator Requirements

- a. Subsection 93130.9(b) – Staff proposes to add the phrase "berths at" to the subsection header and the phrase "that receive a vessel at a berth". This change is necessary to clarify that this section applies specifically to

terminals that receive vessels at a berth that does not have shore power. This language is necessary to clarify that if a terminal has berths that are not shore power capable and they receive regulated visits at those berths, that the terminal has a responsibility to come up with an alternative method of reducing emissions.

- b. Subsection 93130.9(d)(5) – Staff proposes to add the phrase “Beginning on January 1, 2023, all terminal operators must report....” This addition was necessary to clarify that all terminal operators must begin reporting the information required in section 93130.9(d)(5) on January 1, 2023, (and on an ongoing basis thereafter), and that this provision is not tied to the vessel compliance start dates for emissions reductions from subsections 93130.7(b) and (c).

8. Modifications to Section 93130.10 Terminal Exceptions

- a. Subsection 93130.10(a)(2) – Staff proposes to adjust the dates “2019” and “2020” to read “2021” and “2022”, respectively. This change was necessary to align with the proposed revised implementation dates in Subsection 93130.7(b).
- b. Subsection 93130.10(a)(4) – Staff proposes to adjust the year “2021” to “2023”. This change was necessary to align with the proposed revised implementation dates in Subsection 93130.7(b).
- c. Subsection 93130.10(b) – Staff proposes to adjust the year “2021” to “2023”. This change was necessary to align with the proposed revised implementation dates in Subsection 93130.7(b).

9. Modifications to Section 93130.11 Vessel Incident Events (VIE) and Terminal Incident Events (TIE).

- a. Subsection 93130.11(a)(1) – Staff proposes to add the phrase “and reported to CARB by January 7” to the regulation language in two places in this subsection. This change was necessary to ensure that vessel and terminal operators have time to report visit information from the previous calendar year to CARB in order for the visits to be considered in TIE/VIE calculations. Staff chose January 7 of each calendar year as the submittal deadline in order to give sufficient time for regulated entities to report visit information while still getting the information to CARB staff in an expeditious manner, as CARB staff need this visit information in order to be able to meet the regulatory commitment to granting TIEs/VIEs as of February 1 each calendar year as specified in this subsection. This January 7 submittal is not required in all cases; it is only required if a terminal or fleet wishes to obtain TIEs/VIEs.

Staff also proposes to adjust the year “2021” to “2023” in the last sentence of this subsection. This particular change was necessary to align with the proposed revised implementation dates in Subsection 93130.7(b).

- b. Subsection 93130.11(a)(2) – Staff proposes to add the sentence “Fleet operators that did not have a compliance obligation under California Code of Regulations, title 17 section 93118.3 may instead request TIEs and VIEs for 2023 per section 93130.11(c) of this Control Measure.” This addition was necessary to provide vessel fleet operators who are not regulated under the existing 2007 At-Berth Regulation the opportunity to request CARB to consider their 2023 projected activity as the basis for granting their 2023 TIEs/VIEs. This provision is expected to assist newly regulated vessel fleets that may have had low amounts of visits to California prior to 2023 in obtaining additional VIEs for use, as specified in subsection 93130.11(c).

Staff also proposes to adjust the dates of “2021” and “2019” to “2023” and “2021”, respectively. This particular change was necessary to align with the proposed revised implementation dates in subsection 93130.7(b).

- c. Subsection 93130.11(b) – Staff proposes to delete the columns for the years 2021 and 2022 from the Table of VIEs and TIEs rates. Staff also deleted the 5% from the “ro-ro” row for the year 2024. These changes were necessary to align with the proposed revised implementation dates in subsection 93130.7(b).
- d. Subsection 93130.11(e) – Staff proposes to delete the phrase “can be used for infrequent situations” and replaced it with “apply to incidents”. This change is necessary in order to not limit what VIEs and TIEs may be used for (they can be used for any event the VIE or TIE owner chooses, not just infrequent situations).

10. Modifications to Section 93130.12 CAECS Operator Requirements

- a. Subsection 93130.12(b)(3) – Staff proposes to add the phrase “Beginning on January 1, 2023, and thereafter, the...”. This addition was necessary to ensure that all CAECS operators know they must begin reporting the information required in section 93130.12(b)(3) beginning January 1, 2023.
- b. Subsection 93130.12(c)(2)(A) – Staff proposes to change the word “nature” to “source”. This change was necessary to avoid confusion for the reader about the type of information that CARB requires for recordkeeping in the event of a CAECS malfunction.

11. Modifications to Section 93130.14 Terminal and Port Plans and Interim Evaluation

- a. Subsection 93130.14(a)(1) – Staff proposes to adjust the referenced year in the second sentence of the regulation text in this subsection from “2021” to “2023” and add the phrase “and submit a revised plan the year before the compliance date reflecting any changes to the terminal operator’s strategy”. This change is necessary to align with the proposed revised terminal plan submission dates in subsection 93130.14(a)(2) and advise those regulated entities with compliance dates after January 1, 2023, of when they must submit revised terminal plans if any changes occur prior to their respective implementation dates.
- b. Subsection 93130.14(a)(2)(A) – Staff proposes to adjust terminal plan submission dates for container, refrigerated cargo, and passenger terminals from July 1, 2021, to December 1, 2021. This change is made in response to the proposed revised implementation dates in subsection 93130.7(b).
- c. Subsection 93130.14(a)(2)(i) – Staff proposes to adjust the revised terminal plan submission date for ro-ro terminals from 2023 to 2024. This change is made in response to the proposed revised implementation dates in subsection 93130.7(b).
- d. Subsection 93130.14(a)(3)(D) – Staff proposes to delete the phrase “identity of” and replaced it with “identify”. This change is necessary to avoid confusion about what CARB staff is asking terminals to provide in the terminal plan; staff need to know which berths terminals will use emissions control equipment at to ensure the terminal is planning ahead for compliance.
- e. Subsection 93130.14(b)(2)(A) – Staff proposes to adjust port plan submission dates for container, refrigerated cargo, and passenger terminals from July 1, 2021, to December 1, 2021. This change is made in response to the proposed revised implementation dates in subsection 93130.7(b).
- f. Subsection 93130.14 (a)(2)(F)(i) – Staff proposes to change revised ro-ro terminal plans due date back to 2024 reflecting a change back to a 2025 compliance start for ro-ro vessels.
- g. Subsection 93130.14 (d) – Staff proposes to rephrase the sentence “CARB staff will review the potential requirements for control technologies for use with bulk and general cargo vessels, and for ocean-going vessels at anchor.” This sentence now reads “CARB staff will review control technologies for use with bulk and general cargo vessels, and for ocean-going vessels at anchor, and potential requirements for these vessel types”. This change clarifies that CARB will focus on what technologies are available, and will consider potential requirements for these specific vessel categories (rather than requirements for the control technologies themselves).

12. Modifications to Section 93130.15 Remediation Fund Use

- a. Subsection 93130.15 (b)(3) – Staff proposes to add the clause “or a failure of the CAECS operator under contract to perform.” This ensures that vessel operator or terminal operators that are under contract with a CAECS operator are eligible for the remediation fund if the CAECS operator was expected to perform but does not. The language change is meant to clarify this point; it was previously unclear whether the use of the remediation fund option was or was not allowed.
- b. Subsection 93130.15 (b)(3) – Staff proposes to remove the phrase “If CARB approved emission control strategy operator is under contract to reduce emissions from that vessel visit and a malfunction” and replace it with “If a CAECS operator has a malfunction that”. This is necessary to emphasize reporting a malfunction rather than performance under a contract.
- c. Subsection 93130.15 (f) – Staff proposes to adjust the table for the remediation fund hourly amount to reflect the new start of the remediation fund in 2023.

13. Modifications to Section 93130.17 Innovative Concept Compliance Option

- a. Subsection 93130.17 (a)(1) – Staff proposes to adjust the due date for innovative compliance applications for container/reefer and cruise vessel types to December 1, 2021, to match the other vessel types. This change was made to align the innovative concept applications with the revised due dates for terminal and port plans.
- b. Subsection 93130.17 (a)(3) – Staff proposes to add the phrase “as of the date that the compliance period begins”. This phrase clarifies that the innovative concept must achieve reductions that are considered early or in excess of other requirements up to the date that the compliance period starts. Without this phrase, it was unclear when an innovative concept could be invalidated when a new requirement comes into effect that affects the innovative concept.

Staff also proposes to add the phrase “that is in effect, has been approved, or is noticed” to the last sentence. This change is necessary to clarify that this subsection applies to any state, federal or international rule, regulation, statute, or any other legal requirement (including any requirement under a Memorandum of Understanding with a government entity) that is in effect, has been approved, or is currently being noticed, or an emission reduction strategy identified in an AB 617 Community Emissions Reduction Program that has been approved by CARB’s Governing Board.

- c. Subsection 93130.17(a)(7) – Staff proposes to add the phrase “including any requirement under a Memorandum of Understanding with a government entity” in two places in this subsection. This addition is necessary to clarify that a Memorandum of Understanding qualifies as a legally binding mandate for the purposes of this Control Measure.

Staff also proposes to add the phrase “, is approved, or is noticed” and “or being approved, or being noticed” in two separate places in this subsection. This change is necessary to clarify that this subsection applies to any state, federal or international rule, regulation, statute, or any other legal requirement (including any requirement under a Memorandum of Understanding with a government entity) that is in effect, has been approved, or is currently being noticed, or an emission reduction strategy identified in an AB 617 Community Emissions Reduction Program that has been approved by CARB’s Governing Board

- d. Subsection 93130.17 (a)(7), (a)(11), and (b)(1)(F) – Staff proposes to revise the duration of a compliance period from three years to up to five years to allow more certainty to innovative concept projects to be used for compliance under the Control Measure.
- e. Subsection 93130.17 (a)(7) – Staff proposes to add the following sentences: “If any law, regulation, or legally binding mandate (including any requirement under a Memorandum of Understanding with a government entity) requiring emission reductions comes into effect, is approved, or is noticed, which would affect the innovative concept, during an innovative concept’s compliance period, then the innovative concept may continue to claim those emission reductions for the remainder of the compliance period, but the innovative concept may not be renewed for another compliance period. If an innovative concept has not been approved prior to the law, regulation, or legally binding mandate (including any requirement under a Memorandum of Understanding with a government entity) going into effect, or being approved, or being noticed, or the law, regulation, or legally binding mandate goes into effect before the innovative concept’s compliance period renews, then only emission reductions that are in excess of what is required to comply with those laws, regulations, and/or legally binding mandates may be attributed toward the innovative concept.” These sentences are necessary to specify that an innovative concept may continue to be used during a compliance period, even if a new rule comes into effect during that compliance period that would require some or all of the emissions reductions provided by the innovative concept. Additionally, this new language is necessary to specify that if an innovative concept has not been approved prior to the law, regulation, or legally binding mandate (including any requirement under a Memorandum of Understanding with a

government entity) going into effect, or being approved, or being noticed, or the law, regulation, or legally binding mandate goes into effect before the innovative concept's compliance period renews, then only those reductions that are in excess of the requirement may be counted toward the innovative concept.

- f. Subsection 93130.17(a)(11) – Staff proposes to change the language in this subsection to read “first compliance period of up to five years”. This change is necessary to align with the proposed revised compliance period as detailed in subsection 93130.17 (a)(7).
- g. Subsection 93130.17 (b)(3)(F)(ii) – Staff proposes to change the phrase “the applicant must submit documentation from the local lead agency explaining environmental review is not required” to the phrase “the applicant must submit documentation explaining why environmental review is not required, to the Executive Officer’s satisfaction.” This change is necessary because if there is no local lead agency for a given proposed activity, then there would be no documentation from such an agency explaining why environmental review is not required.
- h. Subsection 93130.17 (d)(1)(B) and (d)(1)(C) – Staff proposes to add the word “rate” to clarify that anticipated emission reduction rate is indeed a rate.
- i. Subsection 93130.17 (d)(1)(B) and (d)(1)(C) – Staff proposes to further explain the meaning of “anticipated emission reduction rate”, clarifying that it is the difference between the default emission rate and the archived emission rate. Previously the phrase “anticipated emission reduction rate” lacked a specified meaning.

14. Modifications to Section 93130.18 Summary of Responsibilities

- a. Table 6 Summary of Responsibilities – Staff proposes to revise the language for one of the circumstances that may qualify for a VIE/TIE or remediation. The situation “CAECS failure” was changed to “CAECS equipment failure, or CAECS failure to perform” to clarify the responsibility of CAECS operators to provide emission reductions from vessels at berth.

B. Non-Substantive Modifications

In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are non-substantive.

- 1. Staff updated definition numbers from 93130.2(b)(50) through (b)(60) to

- account for the addition of a new definition for the word "Moor".
2. Section 93130.1 – Staff added the word "the" for clarity.
 3. Section 93130.1 – Staff capitalized "Approved Emission Control Strategy" for formatting consistency.
 4. Subsection 93130.2(a) – Staff updated the Section Summary to reflect new page numbers.
 5. Subsection 93130.2(b)(20) – Staff corrected a formatting error that should have shown the capital "S" in strike-out.
 6. Subsection 93130.2(b)(43) – Staff deleted the unnecessary word "when" for clarity.
 7. Subsection 93130.2(b)(71) – Staff corrected a formatting error that should have shown the capital "R" in strike-out.
 8. Subsection 93130.2(b)(79) – Staff revised the word "engage" to "engaged" for proper grammar.
 9. Subsection 93130.5(d)(6) – Staff added the word "is" for clarity and changed the word "regulation" to "Control Measure" for consistency with the rest of the regulation language.
 10. Subsection 93130.5(e)(3) – Staff deleted the word "of" for clarity.
 11. Subsection 93130.5(f)(1) – Staff added parenthesis around the letter "s" in the first sentence to clarify that a contact person can be one of more parties and added an "s" to the end of persons for the same reason.
 12. Subsection 93130.5(i) – Staff changed a reference to subsection 93130.5(i)(3) to 93130.5(l), because of moving the CAECS revocation section as explained in the substantive changes portion of this document.
 13. Subsection 93130.5(i)(1) – Staff corrected a reference to subsection 93130.5(d), which had been incorrectly written as subsection (h) in previous versions of the draft regulation.
 14. Subsection 93130.5(i)(2)(B) – Staff deleted the remainder of the word "strategy" which was unintentionally not deleted with the previous draft of the regulation language.
 15. Subsection 93130.7(c) – Staff deleted the letter "s" from the word "exceptions" as a grammatical correction.
 16. Subsection 93130.7(d) – Staff added the word "the" for clarity purposes.
 17. Subsection 93130.8(e) (new) – Staff relabeled this subsection from (f) to (e) due to the deletion of subsection 93130.8(e) – "Previously Unregulated Vessels".
 18. Subsection 93130.10(e) – staff added the words "the" and "in" to the second sentence for grammar and clarification purposes.
 19. Subsection 93130.11(c) – Staff added the word "when" to the regulation text for clarity.
 20. Subsection 93130.14(a)(2)(E) – Staff deleted the letter "s" on "exceeds" for grammatical reasons.
 21. Subsection 93130.14(a)(2)(F) – Staff added the letter "s" to "plans" for grammatical reasons.
 22. Subsection 93130.14 (b)(1) – Staff added the word "a" as a grammatical correction.

23. Subsection 93130.14 (b)(2) – Staff added a period as a formatting correction.
24. Subsection 93130.14 (d) – Staff added the word “an” as a grammatical correction.
25. Subsection 93130.15 (b)(3) – Staff changed the words “have notified” to “notify” as a grammatical correction.
26. Subsection 93130.14(a)(3)(F) – Staff replaced the word “implementing” with “installing” for clarity.
27. Subsection 93130.14(a)(4) – Staff added the word “CARB” and deleted the word “enforcement” to clarify who is responsible for verifying terminal plans.
28. Subsection 93130.15 (f) – Staff added an “a” and an apostrophe as grammatical corrections.
29. Subsection 93130.17(a)(8)(A) – Staff removed an extraneous “T” from the text “Tthe” as a formatting correction.
30. Subsection 93130.17(b)(1)(e) – Staff capitalized “memorandum of understanding” in two places for consistency with the rest of the language in the Control Measure.
31. Section 9310.17(d)(1)(B) – Staff added a “d” to the word “achieve” for grammatical correctness.
32. Section 9310.17(d)(1)(C) – Staff added a “d” to the word “achieve” for grammatical correctness.
33. Section 93130.18 – Staff added the letter “s” from the word “reduction” as a grammatical correction.
34. Section 93130.21 – Staff added a missing period as a formatting correction.

Environmental Analysis

These modifications do not change implementation of the regulation in any way that affects the conclusions of the Draft Environmental Analysis (Draft EA) included in Appendix D of the Initial Statement of Reasons (ISOR). Many of the modifications consist primarily of definitional changes, numbering changes, and provision clarifications that do not alter the compliance responses of regulated entities, so no additional environmental analysis or recirculation of the analysis is required.

Certain modifications would affect compliance responses to some extent, including modifications which would:

- Change the date the Control Measure supersedes the existing 2007 At-Berth Regulation.
- Extend the compliance period for an innovative concept from three years to up to five years
- Return to the originally-proposed implementation dates for ro-ro vessels.

However, these modifications would not result in any new reasonably foreseeable significant environmental impacts or substantially increase the severity of an identified environmental impact.

Changing the date that the Control Measure supersedes the existing 2007 At-Berth Regulation would not result in any emissions increases, because the existing 2007 At-Berth Regulation would simply remain in effect through December 31, 2022. Furthermore, changing this date would not substantially affect any proposed emission reduction benefits. In 2021 and 2022, the existing 2007 At-Berth Regulation and Control Measure both require the same group of vessels to reduce emissions at-berth. Vessels that were not previously included under the existing 2007 At-Berth Regulation would still phase in after January 1, 2023, as originally proposed.

Extending the compliance period for an innovative concept from three years to up to five years would not result in any impacts beyond those analyzed in the Draft EA, because it would simply extend the length of time before an innovative concept would need to be re-evaluated by CARB for a potential additional compliance period, as well as extending the time that early reductions from an innovative concept could be applied for compliance by two years.

Returning to the originally-proposed implementation dates for ro-ro vessels would not change the nature or extent of physical changes to the environment analyzed in the Draft EA, because this aspect remains the same as analyzed in the Draft EA.

Emissions reductions are occurring as a result of reduced vessel visits associated with the current economic downturn, and CARB staff expect these reductions to continue for the next few years, particularly for the cruise and ro-ro vessel categories. CARB staff evaluated historical data from the 2008-2010 economic recession and found that under those economic conditions, cruise vessels took on the order of four to five years to return to pre-recession visit levels while ro-ro vessels took on the order of three to four years. Separately, container and tanker vessel visits took around one to two years to recover. Because the current circumstances are unique from past recession events, CARB staff expect there may be a reduction in emissions to continue over the next few years from reduced vessel visit activity but outcomes are unknown. Therefore we did not make changes to our inputs or methodologies at this time.

Additional References and Supplemental Documents

Supplemental Documents:

Three supplemental documents are added as attachments to this notice to reflect changes in cost, health outcomes, and emissions inventory from the proposed second 15-day changes. These supplemental documents are as follows:

1. Summary of Proposed Changes and Impacts on Cost (included as Attachment B to this notice)

This document presents updates to Chapter IX of the ISOR document. This addendum provides a summary of staff's proposed changes as of this notice and covers changes in costs that are directly related to the proposed changes staff made to the proposed Control Measure as of this notice. CARB staff expect there may be economic or activity impacts as a result of the current economic downturn, but outcomes are unknown. Therefore, staff did not make changes to our inputs or methodologies at this time. The proposed regulatory changes primarily affect the phase-in dates for container, refrigerated cargo, cruise, and ro-ro vessels, and include the extension of the Innovative Concepts approval period from three years to up to five years.

2. Updates to Appendix H: 2019 Update to Inventory for Ocean-Going Vessels At Berth: Methodology and Results (included as Attachment C to this notice)
This document presents updates to Appendix H of the ISOR. The updates presented in this document reflect the changes staff proposed to the Control Measure for Ocean-Going Vessels At Berth from both the October 15, 2019, and March 26, 2020, versions. CARB staff expect there may be economic or activity impacts as a result of the current economic downturn, but outcomes are unknown. Therefore, staff did not make changes to our inputs or methodologies at this time. The proposed changes as of this notice primarily impact the implementation dates for container, refrigerated cargo, cruise, and ro-ro vessels.
3. Updates to the Health Analyses: Control Measure for Ocean-Going Vessel At Berth (included as Attachment D to this notice)

This document presents updates to Appendix G of the ISOR. This addendum covers changes in impacts to non-cancer mortality and illness estimates that are directly related to the changes staff proposed to the Control Measure for Ocean-Going Vessels At Berth to both the October 15, 2019, and March 26, 2020, versions. CARB staff expect there may be economic or activity impacts as a result of the current economic downturn, but outcomes are unknown. Therefore, staff did not make changes to our inputs or methodologies at this time.

Additional Reference Documents:

In accordance with Government Code section 11347.1, subdivision (a), staff has added to the rulemaking record and invites comments on the following:

1. Berth Analysis Record of Development

Comment letters and records of telephone conversations that guided development of CARB staff's Berth Analysis (Appendix E of the ISOR). This material is being added to the record for transparency.

2. Blokus-Roszkowska, A. and Kwiatkowska-Sarnecka, B., Publications of the Hazard Project, Analysis of the Crude Oil Transfer Process and Its Safety, Gdynia Maritime University, Gdynia, Poland, December 2017.
3. OCIMF, Inert gas systems – The use of inert gas for the carriage of flammable cargoes, First Edition 2017.
4. Chevron Refinery Modernization Project Environmental Impact Report, Consolidated Version – Volume 1: Draft EIR October 2015.
5. Chevron Products Company – El Segundo Refinery Heavy Crude Project, Final EIR, August 2006 (accessed June 24, 2020), Available: <http://www.aqmd.gov/docs/default-source/ceqa/documents/permit-projects/2006/chevron/finaleir.pdf?sfvrsn=4>.
6. U.S. Department of Labor, “Longshoring Industry Booklet”, 2001 (accessed January 15, 2020), Available: <https://www.osha.gov/Publications/OSHA2232/osha2232.html>.
7. San Francisco Bay Conservation and Development Commission. Accessed June 2020, BCDC Application Form: Box 8, Environmental Impact Documentation, Available: <https://www.bcdc.ca.gov/forms/appform.pdf>.
8. Port of Long Beach “Air Emissions Inventory - 2017”, July 2018 (accessed July 11, 2019), Available: <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=14652>.
9. Leachman, Robert C., 2010, “Final Report: Port and Modal Elasticity Study. Phase II”, Available: <http://www.freightworks.org/DocumentLibrary/Port%20and%20Modal%20Elasticity%20Study%20Phase%20II%20-%20Final%20Report.pdf>.
10. Sacramento Metropolitan Air Quality Management District, 2019, Friant Ranch Interim Recommendation, Available: <http://www.airquality.org/LandUseTransportation/Documents/FriantInterimRecommendation.pdf>. Accessed January 22, 2019.
11. CARB, Community Air Protection BLUEPRINT, October 2018, Available at: https://www2.arb.ca.gov/sites/default/files/2018-10/final_community_air_protection_blueprint_october_2018.pdf.
12. U.S. Environmental Protection Agency, Current Methodologies in Preparing Mobile Source Port-Related Emission Inventories - Final Report, April 2009 (accessed June 13, 2018), Available at:

<https://www.epa.gov/sites/production/files/2016-06/documents/2009-port-inventory-guidance.pdf>.

13. U.S. Environmental Protection Agency, Estimation of Particulate Matter Emission Factors for Diesel Engines on Ocean-Going Vessels, Memo Docket EPA-HQ-OAR-2007-0121, September 12, 2007.
14. Port of Oakland, Port of Oakland reports more ships than ever plugging into grid, January 22, 2019, Available at: <https://www.portoakland.com/community/port-oakland-reports-ships-ever-plugging-grid/>
15. Starcrest Consulting Group, LLC, Greenhouse Gas Route Comparison Tool, August 2017.
16. Martin Associates, The potential economic and environmental impacts of the at-berth regulation amendment concepts at the Port of Hueneme, August 9, 2017.

These documents are available for inspection at the California Air Resources Board, 1001 I Street, Sacramento, California, 95814, between the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays). To inspect these documents please contact Chris Hopkins, Regulations Coordinator, at chris.hopkins@arb.ca.gov or (916) 445-9564. Because of current travel, facility, and staffing restrictions, the California Air Resources Board's offices may have limited public access. Please contact Chris Hopkins (via email for quickest response) if you need physical copies of the documents.

Agency Contacts

Inquiries concerning the substance of the proposed Control Measure may be directed to Angela Csondes, Manager, Marine Strategies Section at acsondes@arb.ca.gov or Nicole Light Densberger, Staff Air Pollution Specialist at nicole.lightdensberger@arb.ca.gov.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

Postal mail: Clerks' Office of the Board, California Air Resources Board
1001 I Street, Sacramento, California 95814

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

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal 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.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB no later than the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations will be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerks' Office at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: July 10, 2020

Attachment(s)

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see CARB's website at www.CARB.ca.gov.