

REQUEST FOR AN EARLY EFFECTIVE DATE
Control Measure for Ocean-Going Vessels At Berth

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Pursuant to Government Code Section 11343.4(b)

The California Air Resources Board (CARB or Board) formally requests, under Government Code section 11343.4(b), that the Office of Administrative Law (OAL) prescribe an “earlier effective date” for the Proposed Control Measure for Ocean-Going Vessels At Berth, amending title 13, California Code of Regulations, section 2299.3 and title 17, California Code of Regulations section 93118.3, and adopting title 17, California Code of Regulations, sections 93130 through 93130.22. Specifically, CARB requests that the amendments become effective on January 1, 2021. The Board approved the adoption of these amendments at its hearing on August 27, 2020 (Resolution 20-22). The following demonstrates good cause for OAL to allow the amendments to be effective on the date requested.

DEMONSTRATION OF GOOD CAUSE

The Control Measure for Ocean-Going Vessels At Berth (Regulation) is an updated version of the California Air Resources Board’s (CARB or Board) At-Berth Control Measure (Existing Regulation) that will supersede the Existing Regulation, as specified, and is designed to achieve further emissions reductions from vessels at berth to improve air quality in communities surrounding ports and terminals throughout California. The Existing Regulation has been in place since 2007.

CARB has developed the new Regulation to achieve additional emissions reductions needed to meet more stringent State Implementation Plan (SIP) requirements, and to further improve air quality in communities surrounding port areas. The Regulation’s new emission reductions will be achieved through the inclusion of new vessel categories (such as vehicle carriers and tanker vessels), new ports, and independent marine terminals, and through updated control requirements, among other provisions.

Since the beginning of this rulemaking process, CARB has been targeting January 1, 2021, as the effective date for this regulation. CARB intended to complete this rulemaking earlier in 2020, and was on course to do so. However, when the global health crisis and ensuing economic crisis arrived, CARB decided further consideration was warranted given the potential impact of the economic crisis on its stakeholders. CARB held a further Board meeting on the Regulation before releasing a second round of 15-day changes, which required some extra time.

Certain compliance obligations under the Regulation are set to begin on January 1, 2021, including tracking data for reporting purposes. Wharfinger data reporting obligations also begin on January 31, 2021 (see section 93130.13(d)). These reporting obligations are necessary for tracking, as a threshold matter, which terminals are subject to the Regulation (this determination is based on an annual visit threshold of 20 visits, beginning January 1, 2021). These reporting obligations are also necessary to

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allow the orderly phase-in of the Regulation's emissions reduction obligations and associated flexibility measures, some of which are based on previously-reported data (i.e., including data beginning January 1, 2021). The requested early effective date is also needed to give fleets regulatory certainty regarding other important near-term deadlines, including terminal and port plans, some of which are due July 1, 2021.

If the Regulation does not become effective by January 1, 2021, it will generate regulatory confusion and possible compliance and enforceability issues, since there would be a "limbo period" during which the Regulation should apply but is not on the books. Once the Regulation becomes effective, it then would purportedly supersede a prior version of the At Berth regulation, but only retroactively (on a date that would then be in the past). Stakeholders for this Regulation are concerned about regulatory certainty, and they are expecting January 1, 2021, to be the effective date.

The requested early effective date of January 1, 2021, would have been the normal effective date if the regulation was approved by OAL in the course of its standard review. With Executive Orders N-40-20 and N-66-20 allowing for additional time for OAL's review, this review may not be concluded in time to meet the requested effective date. CARB hopes that approval of the Request for Early Effective Date would allow this regulation to keep its original planned effective date.

For these reasons, CARB hereby requests that OAL approve an early effective date of January 1, 2021.



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California Air Resources Board

November 12, 2020

Date