

State of California
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and
Availability of Additional Documents**

PUBLIC HEARING TO CONSIDER THE ADOPTION OF REGULATIONS TO REDUCE EMISSIONS FROM AUXILIARY DIESEL ENGINES AND DIESEL- ELECTRIC ENGINES OPERATED ON OCEAN-GOING VESSELS WITHIN CALIFORNIA WATERS AND 24 NAUTICAL MILES OF THE CALIFORNIA BASELINE

Public Hearing Date: December 8, 2005
Public Availability of Modified Text Date: May 18, 2006
Deadline for Public Comment: June 2, 2006

At its public hearing on December 8, 2005, the Air Resources Board (the Board or ARB) approved the adoption of section 2299.1, title 13, California Code of Regulations (CCR), and section 93118, title 17, CCR. The approved section 2299.1 is a regulation for ship auxiliary engines and diesel-electric engines, and approved section 93118 is an essentially identical airborne toxic control measure (ATCM). Both sections will be referred to collectively hereafter as the “regulations.”

The regulations will reduce the public’s exposure to air pollutants from ships near California’s coastline and at the State’s ports. Specifically, the regulations will reduce emissions of diesel particulate matter (PM), nitrogen oxides (NOx), and sulfur oxides (SOx) from the auxiliary engines and diesel-electric engines used on oceangoing vessels within California waters and 24 nautical miles of the California shoreline (baseline). These emissions are transported onshore where they contribute to higher levels of ozone and particulate matter pollution in California’s coastal air basins, making attainment of State and federal ambient air quality standards more difficult. Citizens living in portside communities are also exposed to high levels of diesel PM and associated risk of cancer and other health effects. The regulation also supports the air quality goals defined in the “Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles” (approved by the Board on September 30, 2000), and the Governor’s Goods Movement Action Plan.

The Board’s Action

At its hearing on December 8, 2005, the Board adopted Resolution 05-63 (Resolution) (appended to this notice as Attachment 1), approving the adoption of the regulations with modifications. Appended to the Resolution were the initially noticed regulatory text (as Attachment A) and the staff’s suggested modifications to that text (as Attachment B), both of which were made available at the hearing. In approving the regulations, the Board directed the Executive Officer to incorporate the approved modifications to the initially noticed text, along with such other conforming modifications as may be

appropriate, and to make such modifications available for a supplemental comment period of at least 15 days.

At the Board's direction, staff worked with the Department of Fish and Game's Office of Spill Prevention and Response (OSPR), the San Francisco Harbor Safety Committee (SFHSC), and the United States Maritime Administration (MARAD) to further develop the proposed modifications described in Attachment B to the Resolution. The Board also directed the staff to incorporate additional opportunities for public comment on the Alternative Compliance Plan. The staff's proposed substantive modifications are discussed below and set forth in detail in the document appended to this notice as Attachment 2. Additions to the initially noticed regulatory text are denoted by underline and deletions by ~~strikeout~~.

Board Resolution 05-63 and the revised regulatory text, as provided in Attachment 2, may be downloaded from ARB's Internet website at the following address: <http://www.arb.ca.gov/regact/marine2005/marine2005.htm>. If you would like a hardcopy of Attachment 2 sent to you through postal mail, please call Ms. Linda Keifer at (916) 327-1505 and give your name, company name, if any, and mailing address.

Summary of Proposed Modifications

The following is a summary of the proposed substantive modifications to the regulation and staff's rationale for making them. Essentially identical changes are made to both regulations. All references to section 2299.1 and section 93118 are to titles 13 and 17, CCR, respectively, unless otherwise noted.

Applicability: Staff clarified the applicability of the regulations to specified over-water zones (i.e., at dock, 3 nautical miles (nm) offshore, 12 nm offshore, and 24 nm offshore); to foreign-flagged and U.S.-flagged vessels; and to tanker and non-tanker vessels. These modifications did not change substantively the initially noticed regulatory requirements. Staff is proposing these modifications to ensure that the requirements are severable to the maximum extent possible. (section 2299.1(b) and section 93118(b)).

Exemptions – Innocent Passage: Staff modified the exemption for vessels passing through "Regulated California Waters" without stopping at a California port to eliminate the term "innocent passage." This was done because "innocent passage," as the term is defined in these regulations, differs from the definition of that term in federal and international regulations. With the modification, the exemption remains essentially unchanged because the same concept of innocent passage was incorporated into the text of the exemption. (section 2299.1(c)(1) and section 93118(c)(1)).

Exemptions – Government and Military Vessels: At the Board Hearing, staff committed to evaluate a request by MARAD to expand the exemption for military vessels to include public or MARAD vessels. Based on staff's evaluation, staff expanded the military exemption to include vessels owned or operated by any branch of local, state, or federal government, or any foreign government. The exemption was

expanded to facilitate joint maritime exercises with foreign governments and to accommodate government vessels which can be turned over to the military during federal emergencies. Military vessels generally operate on military specification distillate fuels that must be used on a consistent basis for military equipment globally. These distillate fuels are generally cleaner than the heavy fuel oil used by most commercial vessels. Finally, very few government vessels, outside of the military, would be subject to this exemption because most are not large enough to qualify as an “ocean-going vessel” and would therefore not be covered by the regulations. (section 2299.1(c)(3) and section 93118(c)(3)).

Exemptions – Safety: The concept of a safety exemption was proposed as a 15-day modification at the Board hearing. At the Board’s direction, staff met with representatives of OSPR and the SFHSC to discuss and address, to the extent feasible, any safety or other concerns they may have. Based on these meetings, staff further developed the safety exemption. As proposed, the provision provides the master of the vessel with a limited exemption from the requirements of the rule where compliance could endanger the safety of the vessel, its crew, cargo, or passengers due to severe weather conditions, equipment failure, fuel contamination, or other extraordinary reasons beyond the master’s reasonable control. If an exemption is claimed, the master of the vessel must notify the Executive Officer within 24 hours after the episode ceases, provide documentation establishing the conditions necessitating the exemption within 4 working days after the notification to the Executive Officer, and take reasonable precautions to avoid further exemptions. (section 2299.1(c)(5) and section 93118(c)(5)).

Definitions: Staff deleted the definitions for “contiguous zone,” “innocent passage,” and “territorial sea” since these terms are not used in the modified regulations. New definitions were added for “compliance period,” “master,” and “tanker” because these terms were added to the regulations or needed to be defined for clarity. Staff also modified other definitions to improve their clarity. (section 2299.1(d) and section 93118(d)).

Violations: Staff added section (f) to clarify the actions that constitute a violation. As a deterrent to noncompliance, this section also specifies that each hour of noncompliant operation will be treated as a separate violation. (section 2299.1(f) and section 93118(f)).

Alternative Compliance Plan (section 2299.1(g) and 93118(g)): Numerous modifications were made to the Alternative Compliance Plan (ACP) in the original proposal to address the Board’s directive to require the ACP to include provisions for public comment. Under the proposed modifications, all documents pertaining to ACP applications will be made available for public review. In addition, two separate public comment periods will be provided during the application process. The first will be provided after the Executive Officer has deemed the application to be “complete.” The second will be provided after the Executive Officer proposes to approve or disapprove the application. This comment period will allow the public to comment on the proposed

decision by the Executive Officer before final action is taken, as well as a second opportunity to comment on the application.

Other modifications to the ACP incorporated at the direction of the Board include provisions to: (1) ensure that at least equivalent reductions in diesel PM, NO_x and SO_x emissions will be achieved from vessels under an ACP; (2) ensure that in achieving the overall emission reductions required under the ACP, surplus emission reductions achieved at one port will not result in significant excess emissions at other ports; (3) require that the Executive Officer address all relevant comments received in deciding whether to grant an ACP; and (4) require that the Executive Officer issue a written decision on any requested ACP that is available to the public. Staff also included modifications to clarify how the ACP will be implemented, and how an approved plan will be modified or revoked if necessary. Finally, staff changed the name of the Alternative Compliance Plan to “Alternative Control of Emissions” to avoid confusion with other existing maritime “Alternative Compliance Plan” programs. (section 2299.1(g) and section 93118(g)).

Noncompliance Fee in Lieu of Meeting Subsection (e)(1): Staff made several minor modifications to improve the clarity of this section, including: (1) language explaining how the provisions would apply to a vessel subject to an Alternative Control of Emissions Plan; (2) clarification of what constitutes a “port visit” for the purposes of calculating noncompliance fees; and (3) clarification of which air pollutants (diesel PM, SO_x, and NO_x) are to be reduced by the ports that receive the noncompliance fees. (section 2299.1(h) and section 93118(h)).

Test Methods: Staff modified this section to reflect updates to the International Organization for Standardization (ISO) standards and test methods. (section 2299.1(i) and section 93118(i)).

Sunset, Technology Re-evaluation, and Baseline and Test Method Review: Staff modified this section to clarify that the Executive Officer will propose to the Board the termination or modification of the regulations if the International Maritime Organization or the United States Environmental Protection Agency adopts regulations that will achieve equivalent or greater emission reductions from *auxiliary diesel engines and diesel-electric engines* on ocean-going vessels in California. [emphasis added]. This change was made because equivalent emission reductions, on a mass basis, from ocean-going vessel main engines used further out at sea may not achieve the same health benefits to California citizens as the same amount of reductions would from auxiliary and diesel-electric engines closer to the shore. (section 2299.1(j) and section 93118(j)).

In addition to the modifications detailed in Attachment 2, staff made other minor modifications throughout the regulatory text to improve clarity; to correct spelling, typographical errors, and grammar; to make numbering adjustments; and to correct citations and references.

Supporting Documents and Information In accordance with Government Code section 11347.1, staff has added to the rulemaking record the following documents, which are incorporated by reference in the regulation:

- 1) International Standard ISO 8217:2005(E), "Petroleum Products – Fuels (class F) – Specifications of Marine Fuels," Third Edition, 2005-11-01; and
- 2) International Standard ISO 8754:2003(E), "Petroleum Products – Determination of Sulfur Content – Energy-Dispersive X-Ray Fluorescence Spectrometry," Second Edition, 2003-07-15;
- 3) Nautical Chart 18640, San Francisco to Point Arena, National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey, August 2005;
- 4) Nautical Chart 18680, Point Sur to San Francisco, National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey, June 2005;
- 5) Nautical Chart 18740, San Diego to Santa Rosa Island, National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey, April 2005;

Staff has also added the following documents that support the proposed action:

- 6) "Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach," California Air Resources Board, March 2006 (This document is the final version of the draft document included as Appendix G in the Initial Statement of Reasons);
- 7) "West Coast Offshore Vessel Traffic Risk Management Project, Final Project Report and Recommendations," Pacific States/British Columbia Oil Spill Task Force and the United States Coast Guard, July 2002;
- 8) "Distribution and End Use of Natural Gas," Presentation at Intsok LNG Seminar in Singapore, Tor Einar Berg, Marintek, October 29, 2004;
- 9) "Successful tests of dual fuel LNG ship Wartsila engine," MarineLog.com. January 20, 2003;
- 10) "Electric propulsion for LNG Carriers," LNG Journal, Jan Fredrik Hansen and Rune Lysebo, ABB AS Marine Group, September/October 2004;
- 11) "The World's First Gas-Powered Cargo Ship," U.S. Department of Transportation, Maritime Administration, Office of Shipbuilding and Marine Technology, Energy Technologies Newsletter No. 4, Winter 2003-2004;
- 12) Proposed "Emission Reduction Plan for Ports and Goods Movement in California," California Air Resources Board, March 21, 2006;

- 13) "Evaluation of Cold Ironing Vessels in California," California Air Resources Board, March 6, 2006;
- 14) Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901 et seq; and
- 15) "Consideration of Navigational Safety in the Development of the Air Resources Board's Ship Auxiliary Engine Rule," Air Resources Board, April 4, 2006.

By this notice, the modified regulation and additional documents and information are being made available for public comment prior to the final action by the Board's Executive Officer. All of the documents referenced above are available for public inspection at the ARB's Internet website at the following address:

<http://www.arb.ca.gov/regact/marine2005/marine2005.htm>, or from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California, 95814.

Comments and Subsequent Action

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt section 2299.1, title 13, CCR, and section 93118, title 17, CCR, after making the modified regulatory language available to the public for a supplemental written comment period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of comments received, and shall present the regulations to the Board for further consideration if she determines that this is warranted.

Written comments on the modifications approved by the Board must be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

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

Facsimile submissions must be transmitted to the Clerk of the Board at (916) 322-3928.

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only

comments relating to the modifications to the text of the regulation or to the additional documents referenced above shall be considered by the Executive Officer.

If you have special language needs, please contact Alexa Malik, Regulations Coordinator, at (916) 322-4011 or by e-mail at amalik@arb.ca.gov. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

Attachments (2)