

**PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED 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**

Staff's Suggested Modifications to the Original Proposal

TO BE PRESENTED AT THE DECEMBER 8, 2005 HEARING
OF THE AIR RESOURCES BOARD

Shown below are the staff's suggested modifications to the originally proposed regulatory text set forth in Appendix A to the Staff Report: Initial Statement of Reasons released October 21, 2005. Only those portions containing the suggested modifications are included. All proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

Safety Exemption

It has been suggested that an exemption from the requirements of the proposed regulation be provided for overriding safety considerations. Staff agrees and proposes a modification to the original proposal to add an exemption that would provide the master of the vessel with a temporary exemption from the emission limits for extraordinary reasons beyond his reasonable control, such as extreme weather conditions, to the extent that compliance with the emission limits under these extreme or extraordinary conditions presents an immediate danger to the vessel, crew, or passengers. (section 2299.1(c), title 13, California Code of Regulations (CCR); section 93118(c), title 17, CCR).

Clarification of the Over-water Zones within the 24 Nautical Mile (nm) Boundary

There are three traditional jurisdictional zones within the 24 nm boundary under which ship emissions will be regulated in this proposal: the 3 nm zone, the 12 nm Territorial Seas, and the 24 nm Contiguous Zone. Staff proposes a clarification that the proposed regulation applies to ship emissions within each of these zones. (section 2299.1(b), title 13, CCR; section 93118(b), title 17, CCR).

Clarification of a Violation

Under the proposed regulation, penalties would be assessed for violations of the regulatory requirements. Staff suggests a clarification of the definition of a violation such that each hour of noncompliant operation at dockside or otherwise anchored at a port, roadstead, or terminal facility, and each mile traveled within the Regulated California Waters while in noncompliance, represents a separate violation. (section 2299.1(f), title 13, CCR; section 93118(f), title 17, CCR).

Innocent Passage

It has been suggested that the definition of “innocent passage” in the proposed regulation is inconsistent with the definition used in international law. Staff agrees and proposes either a modification of the definition in the original proposal or elimination of the term and incorporation of the concept of innocent passage into the original proposal’s exemption provisions to reflect this. (section 2299.1(c)(1), title 13, CCR; section 93118(c)(1), title 17, CCR).

Modification of Military Exemption

It has been suggested that the original proposal’s military vessel exemption be modified to exempt other government operated vessels (e.g., deep sea research vessels) and exempt other foreign government vessels operating for government noncommercial purposes in recognition of international reciprocity agreements the U.S. has with foreign governments (e.g., foreign government vessels conducting joint exercises with the U.S. Navy or Coast Guard in California waters). Staff agrees and proposes modifying the military vessel exemption in the original proposal to reflect this. (section 2299.1(c)(3), title 13, CCR; section 93118(c)(3), title 17, CCR).

Alternative Compliance Plan (ACP) Equity

The ACP provision in the original proposal allows ship operators to comply with the emission limits through the use of emission control strategies that achieve equivalent emission reductions as the emission limits. It has been suggested that the original proposal needs to be clarified to prevent the use of the ACP to achieve emission reductions at one community at the expense of another community. Staff agrees and proposes modifying the ACP provision in the original proposal to reflect this. (section 2299.1(g), title 13, CCR; section 93118(g), title 17, CCR).

Pollutants Covered Under Port Projects Funded by Noncompliance Fees

The original proposal contains a noncompliance fee provision that allows vessel operators, under certain circumstances, to pay a fee in lieu of direct compliance with the proposal’s emission limits. The funds collected under this provision would be used for port air quality projects, but the original proposal does not specify whether the fees are to be used to reduce all three of the pollutants regulated by the proposal or whether the fees can be used to reduce the pollutants in any combination. It has been suggested that this noncompliance fee provision be clarified to require that the port projects funded by the fees be used to reduce all of the pollutants subject to the proposed regulation. Staff agrees that this suggestion has merit and proposes to work with stakeholders to develop appropriate modifications to the language in the original proposal to reflect this. (section 2299.1(h)(5)(C), title 13, CCR; section 93118(h)(5)(C), title 17, CCR).