

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 COMMERCIAL HARBOR CRAFT OPERATED WITHIN CALIFORNIA WATERS AND 24 NAUTICAL MILES OF THE CALIFORNIA BASELINE

Public Hearing Date: October 26, 2007

Public Continuation Hearing Date: November 15, 2007

Public Availability of Modified Text Date: June 18, 2008

Deadline for Public Comment: July 3, 2008

At its November 15, 2007 public hearing, the Air Resources Board (Board or ARB) approved the adoption of section 2299.5, title 13, California Code of Regulations (CCR), and section 93118.5, title 17, CCR. The approved section 2299.5 is a regulation for commercial harbor craft. Approved section 93118.5 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 the use of diesel engines on commercial harbor craft operating in any port, roadstead or terminal facility or within all California inland waters; all California estuarine waters; and within 24 nautical miles of the California shoreline (baseline), except as otherwise specified in this proposal. The emissions from these diesel engines are transported onshore where they contribute to higher levels of diesel particulate matter (PM) and ozone 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 regulations support 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 Goods Movement Emission Reduction Program (approved by the Board on April 21, 2006).

The Board's Action

At the November 15, 2007 hearing, the Board adopted Resolution 07-47 (Resolution) (appended to this notice as Attachment 1), approving the adoption of the regulations with several modifications. The November 2007 hearing was continued from the October 26, 2007 Board hearing to allow additional time for the Board to consider several issues and for staff to respond to questions raised by the Board. Appended to the Resolution were the initially noticed regulatory text (as Attachment A) and the staff's

suggested modifications to that text (as Attachments B and C), all 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.

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~~.

Modified Text Being Made Available

Board Resolution 07-47 (Attachment 1) and the revised regulatory text (Attachment 2), may be downloaded from ARB's Internet website at the following address: <http://www.arb.ca.gov/regact/2007/chc07/chc07.htm>. If you would like a hardcopy of either or both attachments sent to you through postal mail, please call Mr. Todd Sterling at (916) 445-1034 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 2299.5 and section 93118.5 are to titles 13 and 17, CCR, respectively, unless otherwise noted.

Definitions: Staff clarified the definitions for ferries and excursion vessels to help differentiate between the two vessel types. (Section 2299.5(d) and section 93118.5(d)).

Also, the definition for "ocean-going vessel" was modified to delete reference to a "registry" and foreign-flagged vessels because staff believes the remaining three definitions for "ocean-going vessels" sufficiently describe such vessels.

The definition for "Regulated California Waters" was modified to correct a slight error in the coordinates for the overwater Mexico-California border.

Definitions for "Tier 3 Standards" and "Tier 4 Standards" were added, along with appropriate citations to the federal rulemaking, to reflect the recent EPA adoption of these standards in May 2008. Also, the definitions for "Tier 1 Standards," "Tier 2 Standards," "Tier 3 Standards," and "Tier 4 Standards" were modified to make it clear that in the event of a conflict between a particular standard in the summaries of those standards in this regulation and the actual corresponding EPA standard, the EPA standard will control.

Compliance Schedules and Determination of Engine Model Year: Staff modified the applicability of the determination of the engine model year using the "Engine Model Year +5" method. The modified regulation would restrict the engine model year

determination to those vessel engines with home ports outside the South Coast Air Quality Management District (SCAQMD). This modification prevents any delay in engine replacement emission reductions in the SCAQMD. (Section 2299.5(e)(6)(C) and section 93118.5(e)(6)(C)).

Compliance Schedules and Determination of Engine Model Year: Staff modified the vessels and engine compliance section of the regulations to accelerate the compliance dates for specific ferry vessel (1996-1999) model year engines with home ports outside the SCAQMD. In the originally proposed compliance schedule, 1996-1999 ferries were required to comply in 2015 or 2016, depending on the annual engine hours of operation. The Board directed staff to accelerate the compliance schedule for these ferry engines to 2014. These engines will still be replaced with Tier 3 engines, maintain a 15 year engine life on the original engines, and accelerate the emission reductions by 1 to 2 years. (Section 2299.5 (e)(6)(D) and section 93118.5 (e)(6)(D)).

Compliance Requirements: Staff clarified when the compliance option involving demonstration that the in-use engine meets Tier 2 standards may be used. (Section 2299.5(e)(6)(C) and section 93118.5(e)(6)(C)).

Compliance Extensions: Staff added a compliance extension for owners with multiple vessels who would need to comply in the first two compliance years (2009 and 2010). This extension would allow a phased compliance schedule providing an additional three to four years for compliance while ensuring that all engines are in compliance by the end of 2013 maintaining the early reductions necessary in the SCAQMD and the rest of California. (Section 2299.5(e)(6)(E) and section 93118.5(e)(6)(E)).

Special Provisions for DECS: Staff added a repair requirement for a person to meet when a diesel emission control strategy (DECS) fails. This requirement gives the option to either repair the DECS within 90 days of a failure or, if it cannot be repaired, to replace it with another working DECS or use a different compliance method that meets the requirements of the section. (Section 2299.5(e)(6)(F) and section 93118.5(e)(6)(F)).

Initial and Compliance Plan Reporting Requirements: Staff modified the date when ferry, excursion vessel, tugboat, and towboat owners would be required to report how they will comply with the in-use emission limit requirement from the time of the initial reporting in 2009 to February 28 of the year compliance is required. This would allow vessel owners to develop a plan based on technology available at the time compliance is required and their current economic status. Vessel owners who choose to comply early can report compliance at that time. (Section 2299.5(h) and section 93118.5(h)).

Violations: Staff modified this provision to make it clear that violations are also subject to the penalties prescribed in Health and Safety Code §42402 et seq.

In addition to the modifications detailed in Attachment 2, staff rearranged subsections and paragraphs and 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 that support the proposed action:

- “Assumptions for Estimating Greenhouse Gas Emissions from Commercial Harbor Craft Operating in California” -- This document is appended to this notice as Attachment 3 and serves as new Appendix G to the Technical Support Document: Initial Statement of Reasons for Proposed Rulemaking (Technical Support Document), released in September 7, 2007.
- “Estimated Ticket Price Increase for Ferry/Excursion Businesses” -- This document is appended to this notice as Attachment 4 and serves as new Appendix H to the Technical Support Document.
- “Survey of Ferry Vessel Owner/Operators” -- This document is appended to this notice as Attachment 5 and serves as new Appendix I to the Technical Support Document.

By this notice, the modified regulations 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/2007/chc07/chc07.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 2299.5, title 13, CCR and section 93118.5, 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 he 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.

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral 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. Additionally, this information may become available via Google, Yahoo, and any other search engines.

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.

Attachments (5)