May 1, 2020

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95812

Transmitted via email
cotb@arb.ca.gov
https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ogvatberth2019&comm_period=A

Subject: COMMENTS ON PROPOSED 15-DAY CHANGES TO THE CONTROL MEASURE FOR OCEAN-GOING VESSELS AT BERTH
FROM CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA)

Dear Clerk:

Thank you for the opportunity to comment. CLIA has appreciated working with CARB staff during the informal and formal process for this At-Berth Regulation. CLIA will also be signing on to the PMSA Coalition comment letter on the proposed At-Berth Regulation and agree with their comments. CLIA also agrees with the World Shipping Council comments. This letter outlines the concerns with the proposed At-Berth Regulation that are cruise-line specific:

GENERAL COMMENTS: It is still the position of the cruise lines and other industry coalition vessel operators that this new proposed regulation should not go forward for the existing regulated fleet. Instead, we believe corrections to the existing rule for currently regulated fleets would still achieve similar emission reductions without requiring the cruise lines and cargo vessels to completely change their reporting and methodologies that took many years to develop in order to be compliant with the regulation. Having to comply with the new regulation while cruise lines are grappling with the severe economic impacts to this industry as a result of COVID-19 will be unnecessarily difficult. Although CLIA appreciates the many changes that staff has included in this latest draft, the cruise lines continue to have major concerns that this regulation will result in non-compliance for vessels that have been complying with shore power technology since 2014. The draft regulations have also already caused the loss of cruise line visits for those vessels that visit California ports only two to four times per year. This is because, unlike other types of vessels, the only option for cruise lines to comply with this regulation currently is the use of shorepower. This pending requirement necessitated that companies with vessels that call infrequently in California that do not have shore power make the decision to yield calling on ports in California.

COMMENTS SPECIFIC TO CRUISE VESSELS:

CLIA provided detailed comments on the previous version of the At-Berth Regulation on December 7th, 2019. Those comments are still relevant to this 15-day version of the regulations and appear in a shortened form below along with comments related specifically to the revisions in the 15-day draft.

"Previously Unregulated Vessels" Definition, Loss of Fleet Average System, and Elimination of "Non-frequent Flier Rule": These regulations still extend the compliance date for non-frequent fliers in currently regulated fleets by two years to 2023, which is appreciated. Unfortunately, this amendment came too late for non-frequent fliers with cruises scheduled in 2020 and 2021, which has already resulted in changed itineraries to avoid calls in California for those two years and beyond. The ISOR and SRIA do not properly analyze the possibility of vessel diversions and their economic impact. These infrequent cruise vessel calls are particularly subject to diversion. This is especially true without the existing fleet average compliance system, which could allow the cruise lines to accommodate these non-frequent fliers. Out of hundreds of cruise vessels worldwide, only a limited number continually visit California and are equipped with shorepower. The more specialized world cruises and relocating cruise vessels may visit

cruising.org
1201 F Street N.W. Ste. 250 | Washington, D.C., 20004 | U.S.A | 202-759-6760

California once every two to four years and only a few ports each visit, using entirely different cruise ships each time. **This means that these vessels would be able to use these $2 million systems only 8 – 16 hours every one or two years.** We agree with the World Shipping Council that the remediation fund should be expanded to allow vessels making infrequent calls to use the fund.

Vessel Incident Events (VIEs) and Terminal Incident Events (TIEs): Rather than using a fleet average to allow the flexibility that vessels need to deal with normal incidents beyond their control, this rule sets up a complicated and limited number of passes each year through VIEs and TIEs. The VIEs and TIEs are also provided for just one port, even if vessels call 3 different terminals - for instance in SD-LA/LB-SF - severely limiting their number, availability or usefulness. The VIEs and TIEs system is most punitive to vessels making fewer calls and those without an option to use alternative compliance options. The VIEs and TIES are then dropped by 2029. As noted, this system is unrealistic and uncertain, leaving ships without knowing if they have incurred a violation or if they are in non-compliance, even if it is the result of something beyond their control.

Limited Exceptions and No Alternative Compliance Option for Cruise Vessels: The fact that there are no existing approved alternative compliance technologies that can be used by the cruise lines leaves cruise vessels at a major disadvantage in attempting to comply with this at berth rule. Without fleet averaging, and without the ability of the vessel itself to determine compliance with many requirements in this regulation because they must rely on CARB to make a separate decision after the ship has left port, the regulation leaves compliance completely uncertain for extended periods of time. This is a major flaw in this regulation.

Remediation Fund Use: This remediation fund would apply only to vessels that already have complied with the rule by installing on-board shore power technology, or that are using an alternative if a vessel can use an alternative, for circumstances beyond the control of the vessel operator. Vessels won't know for up to 30 days after requested if such request to use the fund is granted by CARB, and ineligible requests to use the remediation fund for a vessel visit will result in that visit being considered non-compliant with this regulation. Why should vessels be in violation of, or non-compliance with, a regulation under the listed scenarios that, as a practical matter, cannot be controlled 100% of the time - particularly if they will not know their compliance status until they have left port? The reality is that companies will not "plan to be non-compliant" as that would surely subject them to a violation. These issues are of concern to cruise vessels because they cannot use the existing approved alternative compliance options. The criteria for vessels to qualify for the remediation fund, like the VIEs and TIEs, should be clearly stated to allow the vessels to know at the time a problem arises that they either can or cannot use the fund.

Remediation Fund Hourly Amount: The regulation continues to require extremely high remediation fees, even though shorepower is already installed on the ships. The fee will be assessed on a per hour rate when many of the scenarios cannot be resolved within hours or days, but rather months. This is extremely punitive for an equipment part that is not available quickly, for instance. It is particularly punishing for large cruise ships which are subject to the highest $12,000 per hour fee since they have no alternative compliance measure identified by CARB that will work on a cruise ship. At $12,000 per hour, if an equipment part takes 3 months to obtain, the fee for cruise ships could be in the millions. The methodology for these charges should be revised to be fairer among various vessel types, and longer-term issues should be assessed at lower rates. Without these changes, the remediation fee acts not like a fair alternative emission control option, but rather a major penalty that is usually reserved for willful or intentional violations.

Compatible Shorepower Berth Definition for Side of Ship Where Connection is Available: CLIA appreciates that the regulation has been amended to clarify that the terminal is responsible for ensuring that shorepower vessels can plug into shorepower in a berth or position that will accommodate the on-board shorepower connection on the side of the ship that the connection is installed.

Terminal and Port Plans and Interim Evaluation: CLIA has no objection to the terminal and port plans specifically, however we still have a major problem with the timing of these plans and the complete lack of compliance dates for the terminals to actually comply with the components of the plan so that vessels can hook up as intended by the

cruising.org
1201 F Street N.W. Ste. 250 | Washington, D.C., 20004 | U.S.A | 202-759-6760

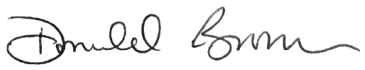
rule. Vessels, however, must actually plug in or use the alternative for each visit to a berth by January 1, 2021. This is a complete disconnect between the timeline for vessels to comply with the rule and the timeline for terminals and ports to provide the infrastructure to the vessels to make sure they can plug in. A set implementation date should be established for the terminals and ports to provide the shorepower infrastructure for each vessel visit and the compliance timeline for the vessels should match that date. Just relying on TIEs if infrastructure at the terminals is not available will not remedy this issue. Do the ports feel confident that they have enough infrastructure to meet the requirements for currently regulated vessels and berth them on the correct side of the ships now and after additional vessel types are added?

Compliance for Low Activity Terminals: This regulation will require low activity ports that receive 20 or more visits per year for two consecutive years to begin compliance with this regulation. Cruise lines visit several of these low activity terminals and are concerned that a small terminal or port will not be able to gear up that quickly to provide power and install shorepower.

Ongoing Timing Concerns: This draft does not include dates by which a number of key requirements either must be approved by CARB or implemented, leaving vessels without the ability to determine compliance for an uncertain amount of time. That is not a fair process for ships that have been in compliance with the previous regulation since 2014. For instance, in addition to no final date by which the port and terminal plans must be implemented and infrastructure in place, there is no date by which CARB is required to review, audit and approve the checklist report or approve a request for a second or subsequent commissioning to qualify for an exemption; there is no guaranteed date by which online reporting will be available; there is no deadline by which CARB must notify entities regarding the opportunity to administer the remediation fund; and the remediation fund administrator may take months to get organized and operational, leaving the use of the fund unavailable for vessels to use as a compliance option in the interim.

Liability: The regulation adds a requirement at the end of the draft that "all responsible parties may be held jointly and severally liable for violating this Control Measure". This should be clarified to be consistent with the liability/responsibility for ports, terminals, vessels and alternative compliance operators laid out in Table 6 and 7. Otherwise, it appears that all parties are liable no matter what the circumstances, which is in conflict with many other sections of the draft regulation.

Sincerely,



Donald Brown - VP, Maritime Policy
Cruise Lines International Association

cruising.org
1201 F Street N.W. Ste. 250 | Washington, D.C., 20004 | U.S.A | 202-759-6760