

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE PROPOSED ADOPTION OF AIRBORNE TOXIC CONTROL MEASURE AMENDMENTS LIMITING ONBOARD INCINERATION ON CRUISE SHIPS AND OCEANGOING SHIPS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of proposed Airborne Toxic Control Measure (ATCM) amendments regarding onboard incineration on cruise ships and other oceangoing ships at California ports and terminals and along the California coast.

DATE: November 16, 2006

TIME: 9:00 a.m

PLACE: Public Utilities Commission
Auditorium
505 Van Ness Avenue
San Francisco, California 94102

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. on Thursday, November 16, 2006, and may continue at 8:30 a.m., Friday, November 17, 2006. This item may not be considered until November 17, 2006. Please consult the agenda for the meeting, which will be available at least ten days before November 16, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT **OVERVIEW**

Sections Affected: Proposed amendment to title 17, California Code of Regulations (CCR) section 93119.

Background:

In October 2004, Assembly Bill 471 (AB 471) was passed by the California Legislature and codified in Health and Safety Code (HSC) section 39630-39632. AB 471 prohibited cruise ships from conducting onboard incineration while operating within three miles of the California coast. On November 17, 2005, the Board adopted the ATCM for Cruise Ship Onboard Incineration (Cruise Ship ATCM) as title 17, CCR, 93113. The Cruise Ship ATCM implements AB 471 by clarifying the limit for incineration along the

California coast as three nautical miles and establishing recordkeeping and reporting requirements.

In October 2005, the California Legislature enacted Senate Bill 771 (SB 771), which amended HSC sections 39630-39632. SB 771 expands the requirements of AB 471 to include all oceangoing ships of 300 gross registered tons or more. This law became effective January 1, 2006.

Description of the Proposed Regulatory Action:

ARB staff is proposing that the Board amend the Cruise Ship ATCM to incorporate the requirements of SB 771, further limit the definition of “cruise ship” to those calling on California ports or places, refine the recordkeeping requirements, including requirements for cruise ships, require that information be recorded while ships are operating within Regulated California Waters (RCW) as defined, and add alternative requirements for the military for recordkeeping and onboard inspections. The proposed amendments are expected to reduce public exposure to emissions of toxic air contaminants (TACs) for residents and workers living or working in port communities and along the California coast.

The proposed amended ATCM would affect owners or operators of cruise ships and oceangoing ships calling on California ports or places. As defined in HSC section 39631 and the proposed regulatory amendments, an oceangoing ship is a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places, excluding cruise ships.

Cruise ship and oceangoing ship owners and operators would be prohibited from conducting onboard incineration within three nautical miles of the California coast. However, onboard incineration within three nautical miles of the California coast may be permitted when operated under the direction and supervision of the United States Coast Guard (USCG). Under existing USCG policy, during port inspections, USCG personnel may require an owner or operator of a cruise ship or oceangoing ship to operate the incinerator as a means to verify the incinerator is in proper working order.

Under the existing Cruise Ship ATCM, cruise ship owners or operators are required to maintain incineration records for each segment of a voyage, if during any portion of that segment the cruise ship travels within three miles of the California coast. The proposed amendments modify this provision to require cruise ship and oceangoing ship owners or operators to record certain information while operating in RCW. In Northern and Central California, the RCW boundary follows the 24 nautical mile contiguous zone, an internationally recognized boundary. In Southern California, the boundary consists of straight line segments approximately 24 nautical miles offshore of the coastline.

The following information would have to be recorded by the cruise ship and oceangoing ship owner or operator while the incinerator is operating within the RCW:

- The date and time of start and stop of incineration (in local time);
- The position of the ship in latitude and longitude for each start and stop time of incineration;
- The estimated amount incinerated in cubic meters (m³);
- The name or signature of officer in charge of the operation; and
- When operation of the incinerator is required by the USCG, the name, unit, and phone number of USCG personnel who directed that the incinerator be operated.

Records would have to be maintained in English and kept onboard the ship for two years. During an onboard inspection, these records must be made available to ARB personnel, or their delegates. In addition, upon written request by ARB's Executive Officer, the owner or operator of the ship must provide copies of the records within 30 calendar days of the request.

With the exception of the requirement to record the name, unit, and phone number of USCG personnel who directed operation of the incinerator, the recordkeeping requirements in the proposed amended ATCM are also required under Regulation 9 of Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Cruise ships and oceangoing ships of 400 gross registered tons or more currently maintain this information in a garbage record log book. The additional requirement to record the name, unit, and phone number of USCG personnel who directed operation of the incinerator will avoid penalizing the cruise ship or oceangoing ship owner or operator for a permissible activity and will allow ARB a means to verify compliance with the ATCM.

Due to heightened national security and military security concerns, clearance issues could arise for ARB inspectors to board military vessels. Therefore, alternative requirements are proposed for military agencies to address special issues of onboard inspections for military vessels.

As specified in MARPOL 73, Article 3, in certain situations, MARPOL 73 requirements do not apply to military vessels. However, owners or operators of military vessels are required to "...ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with the present Convention." Therefore, alternative requirements are proposed for military agencies to address these special recordkeeping issues.

Under the proposed amended ATCM, cruise ship and oceangoing ship owners or operators are prohibited from conducting onboard incineration within three miles of the California coast, except when required to be operated under the direction or supervision of the USCG. The phrase "within three miles of the California coast" is defined in the existing ATCM as between the California coast and the Three Nautical Mile Line, as

shown on the following National Oceanic and Atmospheric Administration (NOAA) Nautical Charts, as authored by the NOAA Office of Coast Survey, which are incorporated by reference in the proposed amended regulation.

- Chart 18600, Trinidad Head to Cape Blanco (January 2002);
- Chart 18620, Point Arena to Trinidad Head (June 2002);
- Chart 18640, San Francisco to Point Arena (August 2005);
- Chart 18680, Point Sur to San Francisco (June 2005);
- Chart 18700, Point Conception to Point Sur (July 2003);
- Chart 18720, Point Dume to Purisima Point (January 2005); and
- Chart 18740, San Diego to Santa Rosa Island (April 2005)

COMPARABLE FEDERAL REGULATIONS

The International Maritime Organization (IMO) is a specialized agency of the United Nations which is responsible for measures to improve the safety and security of international shipping and to prevent marine pollution from ships. The IMO, along with other maritime nations, has developed standards which are set forth in MARPOL 73/78. MARPOL 73/78 is a combination of two treaties adopted in 1973 and 1978 and has been updated by amendments over the years. MARPOL 73/78 includes six technical annexes which include regulations aimed at preventing and minimizing pollution from ships. Compliance with MARPOL 73/78 is mandatory.

MARPOL 73/78 contains two regulations for onboard cruise ship and oceangoing ship incinerators. Annex V primarily deals with garbage recordkeeping requirements for onboard incineration. Annex VI prohibits the incineration of certain wastes and imposes additional operating requirements for the incinerators. MARPOL 73/78 is implemented in the United States by the Act to Prevent Pollution from Ships (33 U.S.C. section 1901 *et seq.*). The USCG is responsible for prescribing and enforcing regulations pursuant to MARPOL 73/78. The recordkeeping requirements in the proposed amended ATCM are not substantially different from the recordkeeping requirements of MARPOL 73/78. However, the recordkeeping requirements in the proposed amended ATCM differ from those in MARPOL 73/78 in that the proposed amended ATCM recognizes that under USCG policy, the USCG may direct an owner or operator of a cruise ship or oceangoing vessel to operate the incinerator within three nautical miles of the California coast. Therefore, the proposed amended ATCM also requires the cruise ship and oceangoing ship owner or operator to record the name, unit, and phone number of USCG personnel who directed operation of the incinerator.

The Animal and Plant Health Inspection Service (APHIS) in the U.S. Department of Agriculture is responsible for regulations and policies governing the handling and disposal of regulated garbage to prevent the introduction of foreign animal and plant disease and pests. These regulations are contained in title 7, Code of Federal Regulations (CFR), section 330.400 and title 9, CFR section 94.5. "Regulated garbage," as defined in the CFR, is derived in whole or in part from fruits, vegetables, meats, or other plants or animal material, and other refuse associated with the material

onboard including food scraps, table refuse, galley refuse, food wrappers or packing materials and other waste material from stores, food preparation areas, passenger or crew quarters, dining rooms and other areas. Most of the regulated garbage onboard cruise ships and oceangoing ships are subject to APHIS regulations.

Under APHIS regulations, regulated garbage within the territorial waters or the territory of the United States is required to be destroyed by incineration to an ash or sterilization by cooking to an internal temperature of 212 degrees Fahrenheit for 30 minutes. Regulated garbage may also be ground and disposed of in an APHIS approved sewer system.

The proposed amended ATCM differs from the APHIS regulations in that APHIS allows incineration within territorial waters (within 12 nautical miles of the coast) while the proposed amended ATCM prohibits incineration within three nautical miles of the California coast.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Adoption of Airborne Toxic Control Measure Amendments Limiting Onboard Incineration on Cruise Ships and Oceangoing Ships."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (November 16, 2006).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Robert Krieger, Manager of the Emissions Evaluation Section, Emissions Assessment Branch, Stationary Source Division at (916) 323-1202 and Michelle Komlenic, Air Pollution Specialist, Stationary Source Division at (916) 322-3926.

Further, the agency representative and designated back-up contact person to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/csoi06/csoi06.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Executive Officer of the ARB concerning the cost or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

The ARB's Executive Officer has determined that the proposed regulatory action will not create costs, as defined in Government Code section 11346.5(a)(6), to state agencies. Any such costs should be minimal, and affected state agencies should be able to absorb these costs within existing budgets and resources. Pursuant to Government Code section 11346.5(a)(5), the Executive Officer has also determined that the proposed regulatory action will not create costs or savings in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This is because HSC section 39632, enacted by AB 471 and SB 771, already prohibits onboard incineration on cruise ships and oceangoing ships (of 300 gross registered tons or more) while operating within three miles of the California Coast, and MARPOL 73/78 already requires maintenance of most records proposed to be required. The only additional recordkeeping requirement imposed by the proposed action is the additional information if the USCG directs the owner or operator of a cruise ship or oceangoing ship to operate the incinerator within Regulated California Waters. Therefore, recordkeeping costs from this regulation would be negligible.

Ships between 300 and 400 gross tons are not required to maintain records under MARPOL 73/78. However, as specified in HSC sections 39631-39632, the proposed amended Cruise Ship ATCM will apply to oceangoing vessels 300 gross registered tons or more. Although ARB staff did not identify any oceangoing vessels between 300 and 400 gross registered tons which conduct onboard incineration, under the proposed amendments, ships between 300 and 400 gross tons conducting onboard incineration could incur negligible costs for recordkeeping during the time the oceangoing ship is traveling in RCW.

Although in certain situations MARPOL 73 requirements do not apply to government agencies such as the military, they must still adopt appropriate measures that are

consistent with MARPOL. For some agencies it is not clear whether or not records are kept for onboard incineration. In the proposed amended Cruise Ship ATCM, alternative recordkeeping requirements are proposed for military agencies to track compliance. It is expected that costs would be negligible for recordkeeping.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because the affected industry is composed of only large businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the ATCM which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, November 15, 2006**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

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

Facsimile submittal: (916) 322-3928

The Board requests but does not require 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in the HSC sections 39516, 39600, 39601, 39631, 39632, 39650, 39656, 39658, 39659, 39666, and 41510. This action is proposed to implement, interpret, and make specific HSC sections 39630, 39631, 39632, 39650, 39656, 39659, 39666, 41700, and 41806.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990. The document will also be posted on the website listed above.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: September 19, 2006