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https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ogvatberth2019&comm_period=2

Subject: Industry Coalition Comments on Second Supplemental 15-Day Notice, Proposed Regulation of Oceangoing Vessels At Berth

Thank you for the opportunity to comment on the proposed At Berth Regulation. This coalition of industry stakeholders appreciates the opportunity to work with California Air Resources Board (CARB) staff during regulatory development on behalf of our maritime industry member companies and stakeholders, including oceangoing vessel operators, marine terminals, and ports.

The second 15-Day Notice provides for changes to the regulatory structure of the proposed At Berth Regulation and addresses some of the concerns that this coalition has raised during rule development. In particular, we believe changes to the effective date for proposed new rules to incorporate the existing regulated fleet from 2021 to 2023 and for restoring the originally proposed Ro/Ro effective date are steps in the right direction. These amendments provide some short-term continuity and an opportunity for future improvements. However, the latest 15-Day changes do not resolve numerous implementing, operational, and feasibility hurdles in this complex rule, and this coalition remains concerned that many of the foundational and technical issues that have been raised over the course of this rulemaking have not yet been addressed or responded to by the time of proposed rule adoption. Given these outstanding issues, if CARB adopts the rule as proposed, we envision that continued heavy lifting and future changes to this regulation will be necessary in order to facilitate a successful implementation.

New Effective Date Provides an Opportunity to Address Challenges for Existing Regulated Fleets

Industry stakeholders appreciate the revised effective date of 2023 for the application of the proposed rule to the existing regulated fleets. This date will allow all stakeholders an opportunity to continue to work with CARB staff to improve the rule structure and to ensure that any final rule will not penalize vessels, terminals and ports which have already committed to a shore power compliance pathway and are currently complying with the existing rule. This industry coalition remains concerned that the proposed rule as currently written and conceived cannot be successfully complied with even by vessels which are currently compliant with and have made required investments in shore power under the current regulation. Resolution of these concerns will only occur with concerted additional efforts to

create a robust fleet-averaging construct or other new avenues for compliance prior to 2023. Given the limited time, the industry stakeholders request that the Board direct staff to continue meetings with stakeholders to address and resolve outstanding issues regarding the current regulated fleet.

CARB Must Still Address Challenges for Expanding Regulation to Additional Fleets

With respect to expansion of the scope of the existing rule, serious concerns remain regarding the feasibility and true cost-effectiveness of controlling tanker and Ro/Ro vessels. The opportunity to address these concerns regarding Ro/Ro vessels will benefit from the proposed 15-Day Changes to reapply the original date of implementation in this sector. However, it is imperative that CARB work with the impacted fleets to address outstanding concerns prior to commencement of the technical review period.

Interim Evaluation

The text of the interim evaluation contained in the proposed regulation presupposes the feasibility of emission control technology for tanker and Ro/Ro vessels. The language should be clear that the interim evaluation will evaluate the feasibility of technology to control emissions successfully and cost-effectively from tankers and Ro/Ro vessels. The ability to package the existing technology to reduce emissions in exhaust streams in a manner that can safely operate on tanker and Ro/Ro vessels is an open question. The technology has a number of technical, safety, and operational constraints it must overcome. At the same time, any proposed system needs to also abide by Coast Guard, OSHA, and other regulatory requirements, while not being prohibitively expensive. The interim evaluation should be clear that it will evaluate all considerations that would impact the success of new control technologies.

With that in mind, the demonstrations proposed by CARB staff will be inadequate to inform the interim evaluation. First there are no proposed demonstrations to address Ro/Ro vessels. The configuration of Ro/Ro vessels make reaching the exhaust challenge an engineering challenge. The height and reach needed for such vessels will result in larger counterweights and increasing system weight. It is not known if such a system can be successfully placed on a barge or existing wharf structures. The only way to answer these questions is with a demonstration that must be completed before the interim evaluation is conducted. The proposed demonstration for tanker vessels will be unable to inform the interim evaluation. With a presentation date of December 2022, it is likely that the demonstration will not even be operating before CARB staff must prepare their evaluation and is not expected to be complete until long after the interim evaluation is complete. An interim evaluation that is not informed by a complete demonstration is mere speculation.

The interim evaluation should also address issues regarding rule implementation raised by stakeholders over the next two years. As work on implementation continues, it will be critical to resolve issues, including the sufficiency of TIEs/VIEs, incorporation of fleet averaging under Innovative Concepts or CARB Approved Emission Control Systems (CAECS), sufficient compliance pathways for non-frequent fliers, and other issues identified in this letter.

Innovative Concepts

This coalition appreciates proposed changes to the Innovative Concepts (IC) of the proposed regulation but believes that these changes remain insufficient. While increasing the term to five years does provide some additional certainty for select regulated parties to propose an innovative concept, it still fails to provide the long-term assurance necessary to make it a viable compliance pathway. A number of other changes should be considered to make the concept viable.

- A fleet averaging concept should be a defined path within the IC section. Fleet averaging, as a program whose parameters are known, should not be subject to unnecessary restrictions for new concepts. Given the known success of fleet averaging to reduce emissions, it is not necessary to create uncertainty by having a five-year term with extension subject to uncertain approval. In addition, concerns remain that at this time it is unknown how fleet averaging would be handled under the IC provisions and that CARB staff cannot describe or even assure that fleet averaging is consistent with all the requirements of the IC provisions.
- While IC must be “surplus” at the time of creation, CARB could revoke or decline to renew approval if the emission reduction became subject to regulation at a future date, or by any CARB-approved AB 617 Community Emission Reduction Plan. The IC section should be modified to allow IC reductions without this limitation.
- Limiting the location of IC emissions reductions only to “adjacent” communities and distances no greater than 3 nautical miles may have unintended consequences. Neither “adjacent” nor “community” are defined in the Proposed Regulation, so it is unclear how close an area would need to be in order to be deemed “adjacent,” and where the boundaries of that area would end. The IC section should be modified to encourage any project (adjacent or not) that would benefit the port and terminal communities.
- The IC section sets a single, one-time deadline for submitting a proposal. This implies that ICs will not be considered after December 1, 2021. The deadline should be removed and replaced with a process for IC plan review at any date such plans are submitted in the future. In addition, if IC will be used to facilitate fleet averaging, the ability to use fleet averaging should be available beyond 2021. Fleets will encounter different circumstances over the life of this regulation that may allow them to comply with the proposed regulation versus making use of a fleet average approach. New fleets may want to enter the California market after the 2021 deadline and this ensures they will be forever precluded from using fleet averaging. The original rule contained a similar fixed date requirement for alternative technologies, CARB staff eventually were forced to revise that through the use of an “Advisory”. As a result, we strongly recommend that IC applications be accepted continuously with the understanding that CARB needs a minimum lead time before an approved application becomes effective.
- The prohibition on public funding for ICs is too broad. Funding may come from different sources, including federal, other states, or other nations. In addition, such a prohibition would exclude demonstration projects. Fleets that are likely to engage in ICs, including fleet averaging,

are also likely to participate in demonstration projects sought by CARB or other air quality agencies. Being innovative should not prohibit technology advancement.

- Revocation of the IC plan provides for a 30-day notice. This is likely to be inadequate for an ocean carrier to transition to original provisions of the rule. The risk of a 30-day transition at the uncertain end of a five-year program is enough to prevent an ocean carrier opting to implement an IC. The IC section should include a nine-month transition period upon revocation of an IC plan.

Industry Grappling with the Effects of COVID-19

The scale of the current crisis is unprecedented. The World Trade Organization (WTO) has estimated that global trade could decline up to 32% this year.¹ As a result of this crisis, the analyses on which this rule is based are out of date and no longer valid. The ISOR analysis is predicated on strong growth assumptions based on a number of forecasts. Questions about those assumptions were raised prior to the current crisis. For example, the ISOR analysis assumes that from 2016 (the inventory base year) through 2020 container cargo at the ports of Long Beach and Los Angeles would grow 4.5% per year. Last year (before the current crisis), the two ports declined 3.3%. Since the crisis, the decline has accelerated, with year-over-year declines in January (-5.1%), February (-16.9%), March (-19.7%), April (-11.4%), May (-13.7%), and June (-10.3%). For the first six months of the year, the two ports are down 12.5% over the same period last year. Before even considering the rest of the year, the current crisis means the emissions inventory contained in the ISOR is wrong. That gap only grows if the rest of 2020 is forecast based on WTO projections. By the end of this year, the baseline forecast used in the ISOR will overestimate cargo volumes by between 26% and 62%.

The economic impact of COVID-19 on the cruise industry is substantial. The suspension of operations will have a pronounced detrimental impact on families and communities globally. Of the 421,000 industry supported jobs in the United States, 12% are in California, yielding 49,369 jobs in The Golden State and generating \$3.26 billion in total wages and salaries.

In a similar fashion, fuel consumption has precipitously declined as a result of the crisis. With an unprecedented number of people filing jobless claims that need and demand for fuel has plummeted. Refinery demand will directly impact demand for liquid bulk vessels calling California ports. It is clear that the forecasts contained in the ISOR no longer represent a reasonable expectation of future activity of tankers in California.

The crisis is also forecast to impact auto sales in this country and globally. Decreased auto sales will translate into reduced Ro/Ro activity. The base case scenario has volumes declining from 2019 by 14%. In a worst-case scenario, volume declines would plunge 28% from 2019 levels. The Automotive from Ultima Media forecast auto sales slightly growing by the end of the decade, the proposed rule is based on a growth rate that would see Ro/Ro activity 83.5% higher than 2016 levels in the ports of Los Angeles

¹ https://www.wto.org/english/news_e/spra_e/spra303_e.htm

and Long Beach by 2030 and 31.9% higher at the Port of Hueneme². These numbers are not realistic or a reasonably foreseeable outcome of the current economic climate.

The estimates of benefits, emissions estimates, costs, cost-effectiveness, and health impacts, which presume the rate of growth contained in the ISOR, are now no longer valid. Even if growth were to immediately resume at levels assumed in the ISOR, cargo volumes and resulting activity will likely be millions of containers off from the cargo volume estimate.

Projections and Analyses Must Be Revised

During the June 25th hearing, CARB staff acknowledged that the COVID-19 crisis has impacted existing and future cargo volumes in California ports. Staff also stated that the current crisis will have disparate effects across the maritime industry, with the timeline to recovery being long. Even before the current crisis, this coalition submitted data demonstrating that the cargo and resulting emissions estimates were wrong. The crisis has amplified those errors. The derived data from the cargo forecasts has led to unreliable information presented in the updated emissions forecast. As stated in the letter on the first 15-Day Notice³, cargo volumes in 2020 for the ports of Los Angeles and Long Beach will be at least 26% below the values contained CARB's data set. CARB staff has not addressed any of forecast issues raised in the prior letter. As a result, all dependent analyses, including rule emissions benefits, health benefits, CEQA review including the Statement of Overriding Considerations, and cost-effectiveness, will all be based on flawed data. CARB should re-evaluate baseline emissions, proposed emission reductions, health benefits, costs, and cost-effectiveness based on a revised forecast and assumptions.

Fundamental Problems with Emissions Inventory Unresolved

Even before addressing the changes brought about by the COVID-19 crisis, the emissions inventory has not addressed known problems as described in previous industry stakeholder comment letters. The inventory overestimates growth, resulting in a significant overestimation of the proposed rule's emissions benefit. The inventory does not consider the emission reductions associated with Proposition 1B funding, requiring emission reductions of 90% under the existing rule – 10% more than the proposed rule. This results in the inappropriate attribution of emission reductions from existing requirements to the proposed rule. The emissions inventory also inappropriately caps emission reductions under the existing rule at 80%. Every vessel with a call greater than 15 hours will result in emission reductions greater than 80%. In San Pedro Bay, where calls greater than 100 hours are typical, emission reductions can exceed 97%. Section 93118.3(e)(4)(A) of the current regulation explicitly states that any vessel using grid power is assumed to reduce emissions 90%. Yet, no explanation or reason is given in the emissions inventory for capping emission reductions at 80%. The inventory must be updated to correct these issues.

CARB inventory staff have acknowledged these issues in a variety of phone calls and emails with stakeholders and have indicated that these issues will be resolved sometime this summer. That delay does a disservice to both the public and decisionmakers in understanding the benefits of the proposed rule changes.

² <https://ww3.arb.ca.gov/regact/2019/ogvatberth2019/apph.pdf>

³ <https://www.arb.ca.gov/lists/com-attach/137-ogvatberth2019-UzpXP1w5UnQCd1lm.pdf>

Timed Connection Requirement

CARB staff has revised the one-hour limit on the connect and disconnect times for shore power to a two-hour connect time limit and one-hour disconnect time limit. While it is appreciated that the infeasibility of the one-hour requirement was acknowledged, a two-hour requirement is still arbitrary and not based on any evidence that it is safe or feasible. As we have said in previous letters, the existing rule permits multiple connection strategies, some of which will require more than one hour. More importantly, the shore power connection process requires individual people to manhandle heavy, high-voltage equipment and energize that equipment – sometimes in adverse weather conditions. Under no circumstances should that work be performed under a stopwatch. The two-hour requirement would likely be ineffective because any exceedance of the one-hour requirement would likely result in a safety exemption being sought, as having labor move faster handling high voltage equipment would be fundamentally unsafe.

CARB staff has still provided no basis on which it can be assumed that connection times can be consistently and safely accelerated. In fact, no data is available from CARB justifying the previous one-hour connection window or the new two-hour connection window.

VIEs/TIEs

This industry coalition remains concerned that the number of Vessel Incident Events (VIEs) and Terminal Incident Events (TIEs) are insufficient to ensure rule compliance. An analysis prepared by Starcrest Consulting Group previously submitted, demonstrated that there are insufficient VIEs/TIEs available to ensure compliance for known issues identified by CARB. As discussed earlier, VIEs/TIEs will be needed for unknown and unexpected changes in trade, vessel deployments or equipment failures and maintenance. If VIEs/TIEs are not increased, CARB will penalize ocean carriers and terminals for already known and unavoidable circumstances.

Previous Comments Continue to Be Unaddressed

Over the course of the rule development, this coalition, individually and collectively have submitted numerous comment letters⁴ and all of those previous comments are incorporated herein by reference and they reserve all rights thereto. No direct responses have yet been provided. This coalition, again, renews its request that CARB staff review and respond to all substantive industry comments prior to Board consideration of the proposed regulation. Hundreds of pages of technical comments, data, and information have been provided to CARB during the entirety of this process. None of which has been agreed to, refuted, or rebutted. An iterative rulemaking process can only exist if CARB staff directly *responds* to the data submitted by stakeholders during the process, and the earlier in the process, the better the outcome for all.

Conclusion

The industry coalition looks forward to the opportunity to continue to improve the proposed rule and ensure successful and full compliance can be achieved. The rule in its current form remains problematic with a number of issues that will make full compliance unachievable at times, but these 15-Day Changes

⁴ <https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=ogvatberth2019>

to move the effective date of the proposed rule to 2023 for the existing regulated fleet will allow stakeholders to continue to work with CARB staff to address these issues.

Sincerely,

***California Association of Port Authorities
Pacific Merchant Shipping Association
World Shipping Council***

***Cruise Lines International Association
Western States Petroleum Association***