December 7, 2019

Ms. Bonnie Soriano
California Air Resources Board
1001 I Street
Sacramento, California 95812

Transmitted via email

Subject: COMMENTS ON PROPOSED REGULATION ORDER
SECTION 2299.3 AIRBORNE TOXIC CONTROL MEASURE FOR AUXILIARY DIESEL ENGINES OPERATED ON OCEAN-GOING VESSELS AT BERTH IN A CALIFORNIA PORT
FROM CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA)

Dear Ms. Soriano:

Thank you for the opportunity to provide official comments on the proposed At-Berth Draft Regulation and for the additional time to submit the comments. CLIA appreciates the many meetings with you, Richard Corey and your staff to discuss specific issues related to the regulation of concern to the cruise lines and the PMSA industry coalition, as well as the industry coalition alternative emissions reduction proposal still under consideration. CLIA will also be signing on to the PMSA Coalition comment letter on the proposed At-Berth Regulation and agree with their comments. This comment letter outlines the concerns with the proposed At-Berth regulation that are cruise-line specific:

GENERAL COMMENT: 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 the industry alternatives currently being discussed, along with corrections to the existing rule for currently regulated fleets, should be substituted and CARB should allow the next step in the existing rule to be fully implemented for these existing regulated fleets. This rule -- by providing no CARB-approved alternative compliance option for many vessels including cruise lines, eliminating the existing regulation after 2023 for vessels that make very infrequent calls to California, and eliminating the fleet average compliance option used by the currently regulated vessels successfully since 2014 -- leaves no margin for error and sets up vessels for failure in spite of all reasonable efforts to comply.

COMMENTS SPECIFIC TO CRUISE VESSELS:

P. 9 – (52) "Previously Unregulated Vessels" Definition, Loss of Fleet Average System, and Elimination of "Non-frequent Flier Rule": The provision on page 9 in combination with (e) on page 27 will 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 at least those two years. This is because world cruises and transitioning cruises begin to sell these voyages years in advance, so the companies had to make a decision this summer whether to pull these visits from California ports. 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.

CLIA has brought this issue up many times in the last few years with CARB staff when the non-frequent flier exemption was discussed. This exemption in the current rule allows vessels calling on CA ports for five or fewer visits each year to be exempt from the mandate to install shorepower infrastructure. Note that this decision to pull out of CA port calls for the cruise lines only applies to world and transitioning cruises and other infrequent cruise vessels without shorepower, and that the decision is not just based on the cost of installing shorepower infrastructure on these ships alone. Other major factors for this decision include:

- The fact that out of the hundreds of cruise vessels worldwide, only a limited number continually visit California. The more specialized world and transitioning cruises and cruise vessels may visit California once every two to four years

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

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.)

- The required commissioning and maintenance of these systems, particularly if not used regularly.
- Required crew on the ship that are knowledgeable about the systems.
- The inability of cruise vessels to use the only current CARB-approved alternative control strategy, leaving them with a one-shot compliance option.

Finally, without knowing what eventual/potential criteria for non-compliance and violations will eventually be adopted by CARB, cruise lines believe there is just too much uncertainty to keep California ports on their itineraries for these vessels that rarely visit CA. They also have other alternative ports they can use for these itineraries.

It is important for CARB to note that the cruise ships that continually visit California were early adopters of shorepower and have an excellent compliance rate with the existing CA rule – this situation for non-frequent cruises is very specific to those vessels. It is also important to understand, as described above, that the impacts on these vessels of losing the previous exemption involves much more than just the cost of installing the infrastructure on a ship, which currently is about $2 million per vessel. And, each cancellation of a cruise visit is a direct and major financial hit to the ports the cruises used to visit in exchange for very small emission reductions anticipated by the rule. These vessels account for a very low percentage of vessel visits. The cost to the port and city economies for these cruise visit departures from CA are in the millions each year. These cruise visits provide economic and employment benefits in the amount of between $500,000 to $2 million dollars for each single visit.

P. 32-33 – S. 93130.11 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. In (1), it states that CARB, by February 1 of that year, will determine the number of VIEs and TIEs – meaning that almost 10% of the year will have passed before the number of VIEs and TIES available will be known. What happens during January? 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. They are also based on the calls occurring in the previous year, leaving new vessels without any options including scouting voyages for companies pursuing or adding new markets in the state. The VIEs and TIES are then dropped by 2025. 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. On page 34, in (d), the rule states that VIEs and TIEs can't be traded with other fleets, terminals, or any other entity, taking even more flexibility out of this process.

P. 14 – S. 93130.4 Limited Exceptions and No Alternative Compliance Option for Cruise Vessels: This section discusses circumstances when the rule would not apply. This section should also explicitly exempt specific scenarios so vessels would not be in violation or non-compliance of the rule under circumstances that, as a practical matter, cannot be controlled 100% of the time. 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.

P. 41-44 – S. 93130.15 Remediation Fund Use: This remediation fund would apply only to vessels that already have complied with the rule by installing on-board shorepower technology, or that are using an alternative if a vessel can use an alternative, for instances beyond the control of the vessel operator. The remediation request must be made and submitted to CARB electronically within 7 calendar days of a vessel's departure, long after the vessel has left the port. Vessels won't know for up to 30 days if such request to use the fund is granted, 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 or non-compliance of 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 noncompliant" as that would surely subject them to a violation. These issues are of particular concern to cruise vessels because they cannot use the existing approved alternative compliance options.

P. 43 – Table 4: Remediation Fund Hourly Amount: This Table outlines the hourly remediation payment beginning in 2021. This table requires extremely high 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 just isn't available quickly for instance. Duration of a scenario matters. It is particularly punishing

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

for cruise lines at $5,300 per hour for small lines and $12,000 per hour for larger lines 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.

P. 22-23 – S. 93130.7 (a) Compatible Shorepower Berth Definition for Side of Ship Where Connection is Available: This section requires vessel operators with commissioned shorepower vessels to plug in to shorepower on each and every visit to a compatible shorepower berth. This section should definitively define a "compatible shore power berth" to mean one that will accommodate the on-board shorepower connection on the side of the ship that the connection is available.

P. 23 (b) Start Date for Vessel Auxiliary Engine Compliance vs No Timeline for Terminal Shorepower Infrastructure: This section requires compliance start dates for container and passenger vessels to begin January 1, 2021. However, as explained below, the terminals will not be required to install the infrastructure necessary to be able to accommodate every container and passenger vessel by that specific date, and actually not until years later.

P. 28 – (b) Visits to Terminals without Shorepower When Alternative Isn't Feasible: This section requires that if neither the vessel nor the terminal has shore power, then it is the shared responsibility of both parties to arrange a CARB-approved emission control strategy for this visit. This section should clarify what happens if an alternative doesn't exist, which is the case for cruise ships, or the alternative is not available, or not feasible. (See also P. 30 discussion below.)

P. 28 – (c) Visits by Vessels with On-Board Control Strategies: It isn't clear what on-board strategies are envisioned. Does this text contemplate exhaust gas cleaning systems? How would the terminal operator assess these on-board options?

P. 30 – (f) Lack of Alternative for Cruise Vessels During Terminal Shorepower Construction or Repair: Again, this rule requires the terminal operator to provide an alternative CARB approved emission control strategy for a berth that is unavailable due to construction or repair. What will happen to ships that can't use alternative control strategies, particularly if TIE's or VIE's are not available? If the cruise ships will be charged a very costly remediation fee for each of these instances, it places a significant burden on cruise vessels not faced by other vessel types.

P. 38-39 – S. 93130.14 Terminal and Port Plans and Interim Evaluation: This section requires terminal and port plans discussing how the terminal will comply with the requirements for ocean-going vessels visiting each berth. Although CLIA has no objection to these plans specifically, we 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 rule. Here is what this section contemplates:

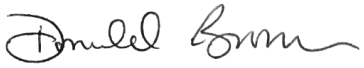
1. Terminal and Port Plans for container and passenger terminals are due July 1, 2021 that will identify how the terminals and ports will provide the electricity and infrastructure to allow vessels to hook up to shorepower or an alternative to meet the requirements of the rule.
2. Although the list of terminal and port plan information includes a "Schedule for implementing equipment" for the terminals and a "schedule for installing equipment and/or any necessary construction projects" for the port plans, there is absolutely no deadline by which that equipment must actually be installed.
3. CARB then has another 90 days after the plans are due to determine any deficiencies in the contents of the plans or making good faith efforts to facilitate the use of a CARB-approved control strategy at each berth, to October 1 of 2021.
4. If CARB does not notify the applicable terminal operator or port of any deficiencies, the plan shall be deemed acceptable on the 90th day following submittal, or October 1st of 2021, but there is still no actual date by which implementation must be completed. If the plan, however, does have deficiencies, there is no timeline at all for completion of the plan or actual implementation of the plan.
5. 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 actually provide the infrastructure to the vessels to make sure they can plug in.

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

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 isn't available will not remedy this issue.

Again, thank you for your consideration of these comments.

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