

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AIRBORNE TOXIC CONTROL MEASURE FOR CRUISE SHIP ONBOARD INCINERATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation to reduce the public exposure to toxic air contaminants emitted from cruise ship onboard incineration at California ports and terminals and along the California coast.

DATE: November 17, 2005

TIME: 9:00 a.m

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m. on Thursday, November 17, 2005, and may continue at 8:30 a.m., Friday, November 18, 2005. This item may not be considered until November 18, 2005. Please consult the agenda for the meeting, which will be available at least ten days before November 17, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to www.arb.ca.gov/html/ada/ada.htm for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of title 17, California Code of Regulations (CCR) section 93119. Adoption of the National Oceanic and Atmospheric Administration (NOAA) Nautical Charts: Chart Number 18600 - *Trinidad Head to Cape Blanco* [January 2002], Chart Number 18620 - *Point Arena to Trinidad Head* [June 2002], Chart Number 18640 - *San Francisco to Point Arena* [July 2000], Chart Number 18680 - *Point Sur to San Francisco* [March 2001], Chart Number 18700 - *Point Conception to Point Sur* [July 2003], Chart Number 18720 - *Point Dume to Purisima Point* [January 2005], and Chart Number 18740 - *San Diego to Santa Rosa Island* [August 2003], incorporated by reference in title 17, CCR section 93119(d)(10).

Background:

In 2004, Assembly Bill 471 (AB 471) was passed by the California Legislature, signed by the Governor, and codified in Health and Safety Code (HSC) section 39630 *et seq.* AB 471 prohibits cruise ships from conducting onboard incineration while operating within three miles of the California coast, but does not specifically say how the three-mile limit is to be applied. This law became effective January 1, 2005. By prohibiting incineration within three miles of the California coast, the potential for adverse public health impacts will be reduced for residents and off-site workers who live or work near ports and along the coast. AB 471 is expected to reduce exposure to emissions of toxic air contaminants, such as polychlorinated dibenzodioxins (dioxins), polychlorinated dibenzofurans (furans), and toxic metals. The ARB staff is proposing this airborne toxic control measure (ATCM) to implement AB 471, clarify where the three-mile limit is, and help ensure that AB 471 is adequately enforced. There are currently no local air district or State regulations for cruise ship onboard incinerators.

Description of the Proposed Regulatory Action:

The proposed ATCM would affect owners or operators of cruise ships that travel within three miles of the California coast, including while at California ports or terminals. Based on 2004 data, 11 cruise ship lines had approximately 45 vessels that entered one or more California ports. To meet the definition of a cruise ship, the vessel must have the capacity to carry 250 or more passengers and must have berths or overnight accommodations for passengers.

Under the proposed ATCM, cruise ship owners or operators are prohibited from conducting onboard incineration within three miles of the California coast. The phrase “within three miles of the California coast” is defined in the ATCM as between the California coast and the Three Nautical Mile Line, as shown on the following National Oceanic and Atmospheric Administration Nautical Charts, as authored by the NOAA Office of Coast Survey, which are incorporated by reference in the proposed 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 (July 2000).
- Chart 18680, Point Sur to San Francisco (March 2001).
- Chart 18700, Point Conception to Point Sur (July 2003).
- Chart 18720, Point Dume to Purisima Point (January 2005).
- Chart 18740, San Diego to Santa Rosa Island (August 2003).

In addition, the proposed ATCM requires cruise ship owners or operators to maintain records containing the following information for each segment of a voyage if, during any portion of that segment, the cruise ship travels within three nautical miles of the California coast.

- 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.

Records shall be maintained in English and kept onboard the cruise ship for two years. During an onboard inspection, these records shall be made available to ARB personnel, district personnel, or their delegates. In addition, upon written request by the Executive Officer of the ARB or Air Pollution Control Officer from a district, the owner or operator of the cruise ship shall provide copies of the records within 30 calendar days of the request.

The recordkeeping requirements in the proposed 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 currently maintain this information in a garbage record log book.

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 that are set forth in the International Convention for the Prevention of Pollution from Ships (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 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 United States Coast Guard is responsible for prescribing and enforcing regulations pursuant to MARPOL 73/78. The proposed ATCM does not differ substantially from the incinerator and recordkeeping requirements of MARPOL 73/78.

The U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), 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 by 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 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 ATCM differs from the APHIS regulations in that APHIS allows incineration within territorial waters (within 12 nautical miles of the coast), while the proposed ATCM prohibits incineration within 3 nautical miles of the 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 Airborne Toxic Control Measure for Cruise Ship Onboard Incineration."

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 17, 2005).

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, Richard Boyd, Manager of the Emissions Evaluation Section, Emissions Assessment Branch, Stationary Source Division at (916) 322-8285 and Michelle Komlenic, Air Pollution Specialist, Stationary Source Division at (916) 322-3926.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or 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/csoi/csoi.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 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. 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, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This is because Health and Safety Code section 39632, enacted by AB 471, already prohibits onboard incineration on cruise ships while operating within three miles of the California Coast, and MARPOL 73/78 already requires maintenance of the records proposed to be required.

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, the 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 e-mail before the hearing. To be considered by the Board, written submissions must be received **no later than 12:00 noon, November 16, 2005**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: csoi@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, November 16, 2005**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the **ARB no later than 12:00 noon, November 16, 2005**.

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 the ARB in the Health and Safety Code sections 39516, 39600, 39601, 39631, 39632, 39650, 39656, 39658, 39659, 39666, 40000, 41700, and 41510. This action references Health and Safety Code 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.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: September 20, 2005