

UPDATED INFORMATIVE DIGEST

Sections Affected: Amendments 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) sections 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 Air Resource Board (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.

The Regulations Adopted In This Rulemaking

The Airborne Toxic Control Measure Amendments Limiting Onboard Incineration on Cruise Ships and Oceangoing Ships (amended ATCM) incorporates the requirements of SB 771, further limits the definition of “cruise ship” to those calling on California ports or places, refines the recordkeeping and reporting requirements, including requirements for cruise ships, and requires that information be recorded while ships are within three nautical miles of the California coast. The amended ATCM is 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 amended ATCM affects owners or operators of cruise ships and oceangoing ships calling on California ports or places. As defined in HSC section 39631 and the 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.

Under the 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 United States Coast Guard (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 amended ATCM.

- 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).
- Chart 18740, San Diego to Santa Rosa Island (April 2005).

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 nautical miles of the California coast. The amended ATCM modifies this provision to require cruise ship and oceangoing ship owners or operators to record certain information within three nautical miles of the California coast.

The following information must be recorded by the cruise ship and oceangoing ship owner or operator while the incinerator is operating 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.
- 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 must 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 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 amended ATCM.

With the exception of ships owned or operated by a military agency, owners or operators of cruise ships and oceangoing ships are subject to reporting requirements. Specifically, during an onboard inspection or upon written request by ARB personnel or their delegates the following incineration records are required for all incineration occurring within 24 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 signature of officer in charge of the operation.

These incineration records are required under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, and as implemented by the United States Coast Guard regulations title 33, Code of Federal Regulations, section 151.55.

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. sections 1901 *et seq.*). The USCG is responsible for prescribing and enforcing regulations pursuant to MARPOL 73/78. The recordkeeping requirements in the amended ATCM are not substantially different from the recordkeeping requirements of MARPOL 73/78. However, the recordkeeping requirements in the amended ATCM differ from those in

MARPOL 73/78 in that the 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 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 amended ATCM differs from the APHIS regulations in that APHIS allows incineration within territorial waters (within 12 nautical miles of the coast) while the amended ATCM prohibits incineration within three nautical miles of the California coast.