

§ 2299. Standards for Nonvehicular Diesel Fuel Used in Diesel-Electric Intrastate Locomotives and Harborcraft.

(a) Requirements.

(1) Standards for Nonvehicular Diesel Fuel Used in Harborcraft in the South Coast Air Quality Management District (SCAQMD) Beginning January 1, 2006. Beginning January 1, 2006, California nonvehicular diesel fuel sold, offered for sale, or supplied within the SCAQMD for use in harborcraft is subject to all of the requirements of Title 13 CCR sections 2281 (sulfur content), 2282 (aromatic hydrocarbons content) and 2284 (lubricity) applicable to vehicular diesel fuel, and shall be treated under those sections as if it were vehicular diesel fuel.

(2) Standards for Nonvehicular Diesel Fuel Used in Intrastate Diesel-Electric Locomotives and Harborcraft Beginning January 1, 2007. Beginning January 1, 2007, California nonvehicular diesel fuel sold, offered for sale, or supplied for use in diesel-electric intrastate locomotives or harborcraft is subject to all of the requirements of title 13 CCR sections 2281 (sulfur content), 2282 (aromatic hydrocarbons content) and 2284 (lubricity) applicable to vehicular diesel fuel, and shall be treated under those sections as if it were vehicular diesel fuel.

(3) Exemption for military specification fuel used in military vessels. The requirements of this section do not apply to military specification fuel that is sold, offered for sale, or supplied for use in marine vessels owned or operated by the armed forces of the United States.

(b) Definitions.

(1) "California nonvehicular diesel fuel" means any diesel fuel that is not vehicular diesel fuel as defined respectively in title 13 CCR sections 2281(b), 2282(b), or 2284(b) and that is sold or made available for use in engines in California.

(2) "Diesel-electric locomotive" means a locomotive using electric power provided by a diesel engine that drives a generator or alternator; the electrical power produced then drives the wheels using electric motors.

(3) "Diesel fuel" means any fuel that is commonly or commercially known, sold or represented as diesel fuel, including any mixture of primarily liquid hydrocarbons that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.

(4) "Harborcraft" means any marine vessel that meets all of the following criteria:

(A) The vessel does not carry a "registry" (foreign trade) endorsement on its United States Coast Guard certificate of documentation, and is not registered under the flag of a country other than the United States;

(B) The vessel is less than 400 feet in length overall (LOA) as defined in 50 CFR § 679.2 as adopted June 19, 1996;

(C) The vessel is less than 10,000 gross tons (GT ITC) per the convention measurement (international system) as defined in 46 CFR § 69.51-.61, as adopted September 12, 1989; and

(D) The vessel is propelled by a marine diesel engine with a per-cylinder displacement of less than 30 liters.

(5) "Intrastate diesel-electric locomotive" means:

(A) A diesel-electric locomotive that operates within California for which at least 90 percent of its annual fuel consumption, annual hours of operation, or annual rail miles traveled occur within California. This definition would typically include, but not be limited to, diesel-electric locomotives used in the following operations: passenger intercity and commuter, short haul, short line, switch, industrial, port, and terminal operations;

(B) An intrastate diesel-electric locomotive does not include those diesel-electric locomotives that:

1. Meet the U.S. Environmental Protection Agency Tier II locomotive emission standards, and
2. Primarily move freight into and out of the South Coast Air Quality Management District, and
3. Have been included as a diesel-electric locomotive operating in the South Coast Nonattainment Area under paragraph IV.B. of the Memorandum of Mutual Understandings and Agreements for the South Coast Locomotive Fleet Average Emissions Program, dated July 2, 1998.

(C) (This subsection reserved for consideration of diesel-electric locomotives that meet the U.S. Environmental Protection Agency Tier II locomotive emission standards and primarily move freight within California outside of the South Coast Air Quality Management District.)

(6) "Locomotive" means a piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment.

(7) "Marine vessel" means any ship, boat, watercraft, or other artificial contrivance used as a means of transportation on water.

(c) Alternative Emission Reduction Plan for Intrastate Diesel-Electric Locomotives. For an owner or operator of an intrastate diesel-electric locomotive who has submitted an alternative emission reduction plan (plan) that contains a substitute fuel(s) and/or emission control strategy(s) and has been approved by the Executive Officer, compliance with the alternative emission reduction plan (plan) shall constitute compliance with the requirements of subsection (a)(2). In order to be approved, the plan must do all of the following:

(1) Identify or define the total fuel consumption and total emissions that would be associated with the activities of the diesel-electric locomotives were the owner or operator to comply with subsection (a)(2).

(2) Define a substitute fuel(s) and/or emission control strategy(s) for the plan.

(3) Identify the emission reductions that are attributable to the substitute fuel(s) and/or emission control strategy(s) relative to the emission reductions achieved through compliance with subsection (a)(2).

(4) Demonstrate that the substitute fuel(s) and/or emission control strategy(s) in the plan provide equivalent or better emission benefits than would be achieved through compliance with subsection (a)(2). The emission benefits achieved under the plan shall be targeted towards residents in those parts of the state most impacted by diesel-electric locomotive emissions.

(5) The plan shall contain adequate enforcement provisions.

§ 2299.1. Emission Limits and Requirements for Auxiliary Diesel Engines and Diesel-Electric Engines Operated on Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline.

[NOTE: This section is not presently being enforced by the Air Resources Board because of a court injunction against enforcement of this section. See *Pacific Merchant Shipping Ass'n v. Goldstene* (9th Cir. 2008) 517 F.3d 1108. Consistent with the court's ruling, this section will only be enforced if the Air Resources Board obtains authorization to do so from the United States Environmental Protection Agency.]

(a) Purpose.

The purpose of this section is to reduce emissions of diesel particulate matter (PM), nitrogen oxides, and sulfur oxides from the use of auxiliary diesel engines and diesel-electric engines on ocean-going vessels within any of the waters subject to this regulation ("Regulated California Waters").

(b) Applicability.

(1) Except as provided in subsection (c), this section applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in any of the Regulated California Waters, which include all of the following:

(A) all California internal waters;

(B) all California estuarine waters;

(C) all California ports, roadsteads, and terminal facilities (collectively "ports");

(D) all waters within 3 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(E) all waters within 12 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(F) all waters within 24 nautical miles of the California baseline, starting at the California-Oregon border to 34.43 degrees North, 121.12 degrees West, inclusive; and

(G) all waters within the area, not including islands, between the California baseline and a line starting at 34.43 degrees North, 121.12 degrees West; thence to 33.50 degrees North, 118.58 degrees West; thence to 32.65 degrees North, 117.81 degrees West; and ending at the California-Mexico border at the Pacific Ocean, inclusive.

(2) Except as provided in subsection (c), this section applies to tanker and nontanker ocean-going vessels that are flagged in, registered in, entitled to fly the flag of, or otherwise operating under the authority of the United States ("U.S.-flagged") or any other country ("foreign-flagged").

(3) Nothing in this section shall be construed to amend, repeal, modify, or change in any way any applicable U.S. Coast Guard requirements. Any person subject to this section shall be responsible for ensuring compliance with both U.S. Coast Guard regulations and the requirements of this section, including but not limited to, obtaining any necessary approvals, exemptions, or orders from the U.S. Coast Guard.

(c) Exemptions.

(1) The requirements of this section do not apply to ocean-going vessel voyages that are comprised of continuous and expeditious navigation through any of the Regulated California Waters for the purpose of traversing such bodies of water without entering California internal or estuarine waters or calling at a port, roadstead, or terminal facility. "Continuous and expeditious navigation" includes stopping and anchoring only to the extent such stopping and anchoring are required by the U.S. Coast Guard; rendered necessary by force majeure or distress; or made for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress. This exemption does not apply to the passage of an ocean-going vessel that engages in any of the prejudicial activities specified in United Nations Convention on the Law of the Seas (UNCLOS) 1982, Article 19, subpart 2. Further, notwithstanding any Coast Guard mandated stops or stops due to force majeure or the rendering of assistance, this exemption does not apply to a vessel that was otherwise scheduled or intended to enter California internal or estuarine waters or call at a port, roadstead or terminal facility.

(2) The requirements of this section do not apply to slow-speed two-stroke diesel engines as defined in subsection (d).

(3) The requirements of this section do not apply to auxiliary engines on-board ocean-going vessels owned or operated by any branch of local, state, federal government, or by a foreign government, when such vessels are operated within the Regulated California Waters on government non-commercial service. However, such vessels are encouraged to act in a manner consistent, so far as is reasonable and practicable, with this section.

(4) The requirements of this section do not apply to auxiliary engines while operating on liquefied natural gas or compressed natural gas.

(5) The requirements of this section, including the payment of Noncompliance Fees as provided in subsection (h), do not apply to the master of the vessel ("master") if the master reasonably and actually determines that compliance with this section would endanger the safety of the vessel, its crew, its cargo or its passengers because of severe weather conditions, equipment failure, fuel contamination, or other extraordinary reasons beyond the master's reasonable control. This exemption applies only as long as and to the extent necessary to secure the safety of the vessel, its crew, its cargo, or its passengers and provided that;

(A) the master takes all reasonable precautions after the conditions necessitating the exemption have ended to avoid or minimize repeated claims of exemption under this subsection;

(B) the master notifies the Executive Officer of a safety exemption claim within 24 hours after the end of each such episode (i.e., the period of time during which the emergency conditions exist that necessitate the safety exemption claim, as provided in paragraph (5) above); and

(C) the master submits to the Executive Officer, within 4 working days after the notification in paragraph (B) above, all documentation necessary to establish the conditions necessitating the safety exemption and the date(s), local time, and position of the vessel (longitude and latitude) in Regulated California Waters at the beginning and end of the time period during which a safety exemption is claimed under this subsection. All documentation required under this paragraph shall be provided in English.

(d) Definitions.

For purposes of this section, the following definitions apply:

(1) "ASTM" means ASTM International.

(2) "Auxiliary engine" means an engine on an ocean-going vessel designed primarily to provide power for uses other than propulsion, except that all diesel-electric engines shall be considered "auxiliary diesel engines" for purposes of this regulation.

(3) "Baseline" means the mean lower low water line along the California coast, 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 herein by reference:

(A) Chart 18600, Trinidad Head to Cape Blanco (January 2002);

(B) Chart 18620, Point Arena to Trinidad Head (June 2002);

(C) Chart 18640, San Francisco to Point Arena (August 2005);

(D) Chart 18680, Point Sur to San Francisco (June 2005);

(E) Chart 18700, Point Conception to Point Sur (July 2003);

(F) Chart 18720, Point Dume to Purisima Point (January 2005); and

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

(4) "Compliance Period" means the calendar year or other continuous period during which an approved Alternative Control of Emissions (ACE) plan is or will be in effect as specified in subsection (g).

(5) "Diesel Engine" means an internal combustion, compression-ignition (CI) engine with operating characteristics significantly similar to the theoretical diesel combustion cycle. The regulation of power by controlling fuel supply in lieu of a throttle is indicative of a compression ignition engine.

(6) "Diesel Particulate Matter" means the particles found in the exhaust of diesel engines, which may agglomerate and adsorb other species to form structures of complex physical and chemical properties.

(7) "Diesel-electric engine" means a diesel engine connected to a generator that is used as a source of electricity for propulsion or other uses.

(8) "Emission Control Strategy" means any device, system, or strategy employed to reduce emissions from a diesel engine, including, but not limited to, utilization of shore-side electrical power, diesel oxidation catalysts, selective catalytic reduction systems, diesel particulate filters, alternative diesel fuels, water emulsified fuels, lower sulfur fuels, and any combination of the above.

(9) "Estuarine Waters" means an arm of the sea or ocean that extends inland to meet the mouth of a river.

(10) "Executive Officer" means the executive officer of the Air Resources Board (ARB), or his or her designee.

(11) "Hydrocarbon (HC)" means the sum of all hydrocarbon air pollutants.

(12) "Internal Waters" means any navigable river or waterway within the State of California.

(13) "IMO" means the International Maritime Organization.

(14) "ISO" means the International Organization for Standardization.

(15) "Marine Diesel Oil" means any fuel that meets all the specifications for DMB grades as defined in Table I of International Standard ISO 8217, as revised in 2005, which is incorporated herein by reference.

(16) "Marine Gas Oil" means any fuel that meets all the specifications for DMX or DMA grades as defined in Table I of International Standard ISO 8217, as revised in 2005, which is incorporated herein by reference.

(17) "Master" means the person who operates a vessel or is otherwise in charge of the vessel's operations.

(18) "Military Vessel" means any ship, boat, watercraft, or other contrivance used for any purpose on water, and owned or operated by the armed services.

(19) "Nitrogen Oxides (NO_x)" means compounds of nitric oxide (NO), nitrogen dioxide (NO₂), and other oxides of nitrogen, which are typically created during combustion processes and are major contributors to smog formation and acid deposition.

(20) "Non-Methane Hydrocarbons (NMHC)" means the sum of all hydrocarbon air pollutants except methane.

(21) "Ocean-going Vessel" means a commercial, government, or military vessel meeting any one of the following criteria:

(A) a vessel with a "registry" (foreign trade) endorsement on its United States Coast Guard certificate of documentation, or a vessel that is registered under the flag of a country other than the United States;

(B) a vessel greater than or equal to 400 feet in length overall (LOA) as defined in 50 CFR § 679.2, as adopted June 19, 1996;

(C) a vessel greater than or equal to 10,000 gross tons (GT ITC) pursuant to the convention measurement (international system) as defined in 46 CFR 69.51-.61, as adopted September 12, 1989; or

(D) a vessel propelled by a marine compression ignition engine with a per-cylinder displacement of greater than or equal to 30 liters.

(22) "Operate" means steering or otherwise running the vessel or its functions while the vessel is underway, moored, anchored, or at dock.

(23) "Own" means having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; having or being entitled to the possession of a vessel as the purchaser under a conditional sale contract; or being the mortgagor of a vessel.

(24) "Particulate Matter" means any airborne finely divided material, except uncombined water, which exists as a liquid or solid at standard conditions (e.g., dust, smoke, mist, fumes or smog).

(25) "Person" includes all of the following:

(A) any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company;

(B) any state or local governmental agency or public district, or any officer or employee thereof;

(C) the United States or its agencies, to the extent authorized by federal law.

(26) "Regulated California Waters" means all of the following:

(A) all California internal waters;

(B) all California estuarine waters;

(C) all California ports, roadsteads, and terminal facilities (collectively "ports");

(D) all waters within 3 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(E) all waters within 12 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(F) all waters within 24 nautical miles of the California baseline, starting at the California-Oregon border to 34.43 degrees North, 121.12 degrees West, inclusive; and

(G) all waters within the area, not including any islands, between the California baseline and a line starting at 34.43 degrees North, 121.12 degrees West; thence to 33.50 degrees North, 118.58 degrees West; thence to 32.65 degrees North, 117.81 degrees West; and ending at the California-Mexico border at the Pacific Ocean, inclusive.

(27) "Roadstead" means any facility that is used for the loading, unloading, and anchoring of ships.

(28) "Slow Speed Engine" means an engine with a rated speed of 150 revolutions per minute or less.

(29) "Sulfur Oxides" means compounds of sulfur dioxide (SO₂), and other oxides of sulfur, which are typically created during combustion of sulfur containing fuels.

(30) "Tanker" means a self-propelled vessel constructed or adapted primarily to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(31) "Two-stroke Engine" means an internal combustion engine which operates on a two stroke cycle where the cycle of operation completes in one revolution of the crankshaft.

(32) "Vessel" means any tugboat, tanker, freighter, passenger ship, barge, or other boat, ship, or watercraft, except those used primarily for recreation and any of the following:

(A) a seaplane on the water;

(B) a watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(e) Requirements.

(1) Emission Limits.

Except as provided in subsections (c), (g) and (h), no person subject to this section shall operate any auxiliary diesel engine, while the vessel is operating in any of the Regulated California Waters, which emits levels of diesel PM, NO_x, or SO_x in exceedance of the emission rates of those pollutants that would result had the engine used the following fuels:

(A) Beginning January 1, 2007:

1. marine gas oil, as defined in subsection (d); or

2. marine diesel oil, as defined in subsection (d), with a sulfur content of no more than 0.5 percent by weight;

(B) Beginning January 1, 2010: marine gas oil with a sulfur content of no more than 0.1 percent by weight.

(C) Compliance with subsection (e)(1) is presumed if the person operates the regulated engine(s) with the fuels as specified in subsection (e)(1)(A) and (e)(1)(B).

(2) Recordkeeping, Reporting, and Monitoring Requirements.

(A) Recordkeeping.

Beginning January 1, 2007, any person subject to this section shall retain and maintain records in English that contain the following information for at least three years following the date when the records were made:

1. The date, local time, and position (longitude and latitude) of the vessel for each entry into and departure from any of the Regulated California Waters, excluding any voyages exempted from the requirements of this section under subsection (c)(1);

2. The date, local time, and position (longitude and latitude) of the vessel at the initiation and completion of any fuel switching procedures used to comply with subsection (e)(1) prior to entry into any of the Regulated California Waters;

3. The date, local time, and position (longitude and latitude) of the vessel at the initiation and completion of any fuel switching procedures within any of the Regulated California Waters; completion

of fuel switching procedures occurs the moment all engines subject to this section have completely transitioned from operation on one fuel to another fuel;

4. The type of each fuel used (e.g. marine gas oil) in each auxiliary engine operated in any of the Regulated California Waters; and

5. The types, amounts, and the actual percent by weight sulfur content of all fuels purchased for use on the vessel, as reported by the fuel supplier or a fuel testing firm.

(B) Reporting and Monitoring.

1. Any person subject to this section shall provide in writing the information specified in subsection (e)(2)(A) to the Executive Officer upon request, either within 24 hours or by a later date approved by the Executive Officer on a case-by-case basis. To the extent the person already collects the information specified in subsection (e)(2)(A) in English to comply with other regulatory requirements or standard practices, the person may provide the requested information in a format consistent with those other regulatory requirements or standard practices.

2. Any person subject to this section shall provide to the Executive Officer upon request additional information the Executive Officer determines to be necessary to determine compliance with this section, including, but not limited to:

a. the make, model, rated power, and serial numbers of all auxiliary engines subject to subsection (e)(1);

b. the capacity and locations of all fuel tanks on the vessel; and

c. piping diagrams and specifications for mixing tanks or other fuel handling equipment applicable to auxiliary engines.

3. Any person subject to this section shall provide to the Executive Officer access to the vessel for the purpose of determining compliance with this section, including but not limited to, access to and review of records and information required under subsection (e)(2)(A) or (e)(2)(B)2., and for the purpose of collecting fuel samples for testing and analysis.

(f) Violations.

(1) Any person who is subject to this section and commits a violation of any provision, standard, criteria or requirement in this section is subject to the penalties, injunctive relief, and other remedies specified in Health and Safety Code, section 42400 et seq.; other applicable sections in the Health and Safety Code; and other applicable provisions as provided under California law for each violation. Nothing in this section shall be construed to limit or otherwise affect any applicable penalties or other remedies available under federal law.

(2) Any failure to meet any provision, standard, criteria or requirement in this section, including but not limited to the applicable emission limits; recordkeeping requirements; Noncompliance Fee provision; and Alternative Control of Emissions (ACE) provision, including the requirements of any approved ACE plans, shall constitute a single, separate violation of this section for each hour that a person operates an ocean-going vessel within the Regulated California Waters until such provision, standard, criteria or requirement has been met.

(3) Any person who is subject to this section is liable for meeting the requirements of this section, notwithstanding any contractual arrangement that person may have with any third-parties.

(g) Alternative Control of Emissions (ACE) Plan In Lieu of Meeting Subsection (e)(1).

For purposes of this subsection, the terms "ACE" and "ACE plan" shall have the same meaning, unless otherwise noted.

(1) Requirements.

(A) The purpose of this subsection is to allow any person ("person" or "applicant") the option of complying with the requirements of this subsection (g) in lieu of the requirements of subsection (e)(1). Under this subsection (g), alternative emission control strategies can be implemented in lieu of meeting the requirements of subsection (e)(1), provided the alternative strategies result in emissions of diesel PM, NO_x, and SO_x from the auxiliary diesel engines that are no greater than the emissions that would have occurred under subsection (e)(1), over the applicable compliance period.

(B) An applicant wishing to participate in an ACE may include one or more vessels in the ACE, but the applicant shall only include vessels that the person owns or operates under their direct control. For purposes of this subsection, "direct control" shall include, but not be limited to, vessels for which the applicant has a contract, lease, or other arrangement with a third-party for the third-party to operate the vessel.

(C) No vessel shall be included in more than one ACE plan.

(D) No ACE plan shall have a compliance period greater than 1 calendar year or a continuous 12-month period. Except as provided in paragraph (E) below, upon completion of a compliance period, an approved ACE plan shall continue to be in effect for another compliance period of equal length, provided the following are met:

1. the applicant provides updated information for all elements of the approved ACE plan to the Executive Officer at least 30 days prior to the end of the first compliance period; and
2. the updated information demonstrates that compliance with this subsection will continue for the next compliance period.

(E) No ACE plan shall be extended for another compliance period if:

1. the Executive Officer has determined that violations of the ACE provisions have occurred and the Executive Officer revokes the ACE plan as specified in subsection (g)(3);
2. the applicant elects to cancel an approved ACE plan. Applicants who cancel operation under an approved ACE are subject to the emission requirements of subsection (e)(1) and all other requirements of this section upon the effective date of the cancellation. An ACE plan that is cancelled prior to the end of its approved compliance period shall have its compliance period adjusted to end at the effective date of cancellation; or
3. the applicant proposes to substantially change the alternative emission control strategies in their approved ACE plan, as determined by the Executive Officer. Applicants proposing to substantially change the alternative emission control strategies in their ACE plan shall be subject to the application process for new applications, as specified in subsection (g)(2).

(F) In addition to other requirements specified in this subsection (g), no proposed ACE plan shall be approved unless the applicant demonstrates to the satisfaction of the Executive Officer all of the following:

1. the alternative emission control strategies under the proposed ACE plan will result in emissions of diesel PM, NO_x, and SO_x from the auxiliary diesel engines that are no greater than the emissions that would have occurred under subsection (e)(1) over the applicable compliance period; and
2. surplus emission reductions achieved at one port will not result in increased emissions at a second port, relative to the emissions that would have occurred at the second port prior to implementation of this section.

(G) Emission control strategy is as defined in subsection (d)(8).

(H) The ACE plan application demonstrating compliance with this subsection shall contain, at a minimum, the following information:

1. the company name, address, and contact information;
2. the vessel(s) name, country flag, and IMO identification number;
3. the make, model, serial numbers and other information that uniquely identify each engine on the affected vessel(s) subject to the ACE;
4. documentation, calculations, emissions test data, or other information that demonstrates that the emission reductions from the auxiliary engines subject to the ACE will be equivalent to or greater than the emission reductions that would have been achieved upon compliance with subsection (e)(1). The emission reductions shall be calculated for diesel PM, NO_x, and SO_x, and shall be expressed in pounds of each pollutant;
5. information on the California ports expected to be visited by the affected vessel(s) during the compliance period that the ACE will be in effect, the anticipated dates of those visits, and the potential planned oversea routes to and from these ports; and
6. the proposed recordkeeping, reporting, monitoring, and testing procedures that the applicant plans to use to demonstrate continued compliance with the ACE.

(I) Emission reduction calculations used to demonstrate equivalence with the requirements of subsection (e)(1) shall include only diesel PM, NO_x, and SO_x emissions from auxiliary engines operating within any of the Regulated California Waters.

(J) Use of Shore-Side Power.

1. Except as otherwise provided in this subsection (g)(1)(J), vessels in an ACE that utilize shore-side power in lieu of their auxiliary diesel engines while at dockside shall be considered to meet the emission reduction requirements of the ACE during:

- a. all travel within Regulated California Waters from a previous port to the California port terminal where shore-side power is used;
- b. time spent secured ("docked") at the California port terminal where shore-side power is used; and
- c. all travel within Regulated California Waters from the California port where shore-side power is utilized to the next port visited.

2. For the purposes of paragraph 1 above, "utilizing shore-side power" means:

- a. connecting to electricity supplied by a utility company, or another source with emissions per unit of delivered energy equivalent to or lower than the January 1, 2007 levels specified in title 17, CCR, sections 94200-94214, "Distributed Generation Certification Program;" and
- b. shutting down all auxiliary engines subject to this control measure no later than one hour after the vessel is secured at the port terminal, and continuously thereafter until no more than one hour prior to when the vessel leaves the terminal.

3. Except as otherwise provided in paragraph 5 below, if a vessel operating under an approved ACE visits two California ports in succession, and the vessel utilizes shore-side power at the first port but not at the second port visited, the vessel shall not be considered to meet the emission reduction requirements of the ACE during the time it is docked at the second port and any subsequent travel within Regulated California Waters from this port.

4. Except as otherwise provided in paragraph 5 below, if a vessel operating under an approved ACE visits two California ports in succession, and the vessel utilizes shore-side power at the second port

but not at the first port visited, the vessel shall not be considered to meet the emission reduction requirements of the ACE during travel within Regulated California Waters to this first port or during the time the vessel is docked at the first port. Travel from the first port to the second port where shore-side power is utilized shall be deemed to meet the emission reduction requirements of the ACE.

5. The provisions in paragraphs 3 and 4 above notwithstanding, if a passenger cruise vessel operating under an approved ACE visits a California port, utilizes shore-side power at that port, then leaves that port and moors (i.e., drops anchor) at another offshore location away from a port, roadstead or terminal facility (e.g., Catalina Island or off Monterey), the mooring stop shall not be deemed as a second port visit. However, a person subject to this provision shall meet the emission limits in subsection (e)(1) for all auxiliary diesel engines on the passenger cruise vessel (i.e., all diesel-electric engines) during the entire time the vessel is moored.

(K) Any person subject to an approved ACE shall maintain operating records in a manner and form as specified by the Executive Officer in the approved ACE. Required records may include, but are not limited to, information on fuel usage, routes, port calls, maintenance procedures, and emissions test results. Such records and reports shall be retained for a period of not less than three (3) years and shall be submitted to the Executive Officer in the manner specified in the approved ACE and upon request by the Executive Officer, either within 24 hours or by a later date approved by the Executive Officer.

(L) Emission reductions included in an ACE shall not include reductions that are otherwise required by any State, federal or international rule, regulation, or statute.

(M) No person may comply with this section by operating under an ACE unless the applicant has first been notified in writing by the Executive Officer that the ACE application has been approved. Prior to such approval, applicants shall comply with the provisions of this section, including the emission limits in subsection (e)(1).

(N) No person may comply with this section by operating under an ACE that has been revoked as provided in subsections (g)(2)(G) and (g)(3).

(2) Application Process.

(A) Applications for an ACE shall be submitted in writing to the Executive Officer for evaluation.

(B) The Executive Officer shall establish an internet site ("ACE internet site") in which all documents pertaining to an ACE application will be made available for public review. The Executive Officer shall also provide a copy of all such documents to each person who has requested copies of the documents; these persons shall be treated as interested parties. The Executive Officer shall provide two separate public comment periods during the ACE Application process, as specified in this subsection (g)(2).

(C) Completeness Determination.

Within 15 days after receiving an ACE application, the Executive Officer shall notify the applicant whether the application is deemed sufficiently complete to proceed with further evaluation. If the application is deemed incomplete, the notification shall identify the application's deficiencies. The Executive Officer shall have an additional 15-day period for reviewing each set of documents or information submitted in response to an incomplete determination. Nothing in this subsection prohibits the Executive Officer from requesting additional information from the applicant, during any part of the ACE application process, which the Executive Officer determines is necessary to evaluate the application.

(D) Notice of Completeness and 30-Day First Public Comment Period.

After an ACE application has been deemed complete, the Executive Officer shall provide a 30-day public comment period to receive comments on any element of the ACE application and whether the Executive Officer should approve or disapprove the ACE application based on the contents and merits of the application. The Executive Officer shall notify all interested parties of the following:

1. the applicant(s);
2. the start and end dates for the 30-day first comment period; and
3. the address of the ACE internet site where the application is posted.

The Executive Officer shall also make this notification available for public review on the ACE internet site.

(E) Proposed Action and 15-Day Second Public Comment Period.

Within 30 days after the first public comment period ends, the Executive Officer shall notify the applicant and all interested parties of ARB's proposed approval or disapproval. This notification shall propose to approve the application as submitted, disapprove the application, or approve the ACE application with modifications as deemed necessary by the Executive Officer. The notification shall identify the start and end dates for the 15-day second public comment period. During the second public comment period, any person may comment on the Executive Officer's proposed approval or disapproval of the ACE application and any element of the application. The Executive Officer shall also make this notification available for public review on the ACE internet site.

(F) Final Action.

Within 15 days after the second public comment period ends, the Executive Officer shall take final action to either approve or deny an ACE application and shall notify the applicant accordingly. If the application is denied or modified, the Executive Officer shall state the reasons for the denial or modification in the notification. The notification to the applicant and approved ACE plan, if applicable, shall be made available to the public on the ACE internet site. In addition, the Executive Officer shall consider and address all comments received during the first and second public comment periods, and provide responses to each comment on the ACE internet site.

(G) Notification to the Executive Officer of Changes to an Approved ACE.

The applicant shall notify the Executive Officer in writing within 30 days upon learning of any information that would alter the emissions estimates submitted during any part of the ACE application process. If the Executive Officer has reason to believe that an approved ACE has been granted to a person that no longer meets the criteria for an ACE, the Executive Officer may, pursuant to subsection (g)(3) below, modify or revoke the ACE as necessary to assure that the applicant and subject vessel(s) will meet the emission reduction requirements in this section.

(3) Revocation or Modification of Approved ACEs.

With 30-days notice to the ACE holder, the Executive Officer may revoke or modify, as needed, an approved ACE if there have been multiple violations of the ACE provisions or the requirements of the approved ACE plan; or if the Executive Officer has reason to believe that an approved ACE has been granted that no longer meets the criteria or requirements for an ACE or the applicant can no longer comply with the requirements of the approved ACE in its current form. Public notification of a revocation or modification of an approved ACE shall be made available on the ACE internet site.

(h) Noncompliance Fee In Lieu of Meeting Subsection (e)(1).

The Executive Officer may permit a person to pay noncompliance fees in lieu of meeting the requirements of subsection (e)(1). Payment of the fees notwithstanding, all other provisions of this section shall continue to apply. No person shall be permitted to pay the fees unless the person meets the notification requirements in subsection (h)(1) and the requirements in either subsections (h)(2), (h)(3), or (h)(4), as specified below:

(1) Notification Requirements.

Before the person's vessel enters Regulated California Waters, the Executive Officer must receive notice that the person will not meet the requirements of subsection (e)(1) while operating within Regulated California Waters, but the person will instead meet the requirements of this subsection (h). If the Executive Officer has not received such notice and the person enters Regulated California Waters, the person will be in violation of this section and will not be permitted to pay the fees in lieu of meeting the requirements of subsection (e)(1).

(2) Noncompliance for Reasons Beyond a Person's Reasonable Control.

Any person wishing to pay the fees under this subsection (h)(2) shall meet the following criteria:

(A) Demonstration of Need.

The person shall, through adequate documentation, demonstrate to the Executive Officer's satisfaction that the person's noncompliance with the requirements of subsection (e)(1) is beyond the person's reasonable control. For the purposes of this paragraph, "beyond the person's reasonable control" applies only when one or more of the following sets of circumstances (1, 2, or 3) applies:

1. Unplanned Redirection.

This provision applies only when all of the following criteria are met:

- a. after leaving the last port of call, the person's vessel was redirected from his/her original, officially logged, non-California destination to a California port, roadstead, or terminal facility ("port"); and
- b. the vessel does not contain a quantity of fuel sufficient for the auxiliary engines to meet the requirements of subsection (e)(1) and cannot comply using the alternative emission control strategies under an approved ACE.

2. Inadequate Fuel Supply.

This provision applies only when all of the following criteria are met:

- a. the person made good faith efforts to acquire a quantity of fuel sufficient for the vessel's auxiliary engines to meet the requirements of subsection (e)(1); and
- b. the person was unable to acquire fuel sufficient for the engines to meet the requirements of subsection (e)(1) and cannot comply using the alternative emission control strategies under an approved ACE.

3. Inadvertent Purchase of Defective Fuel.

This provision applies only when all of the following criteria are met:

- a. based on the fuel supplier's certification of the fuel specifications, the person reasonably believed, and relied on such belief, that the fuel the person purchased on the route from the vessel's home port to California would enable the auxiliary engines to meet the requirements of subsection (e)(1);
- b. the person determined that the vessel's auxiliary engines in fact will not meet the requirements of subsection (e)(1) using any of the fuel purchased under paragraph 3.a. above and the person cannot comply using the alternative emission control strategies under an approved ACE; and
- c. the vessel is already on its way to California, and there are no other ports of call on the vessel's route where fuel can be purchased sufficient to meet the requirements of subsection (e)(1).

(B) Payment of Fees.

Upon meeting the requirements of paragraph (A) in this subsection (h)(2), the person shall pay the fees for every port visit, as specified in subsection (h)(5) below.

(C) Executive Officer Review.

For the purposes of verifying the demonstration of need as specified in paragraph (A) above, the Executive Officer may consider and rely on any facts or circumstances the Executive Officer believes are appropriate, including but not limited to: the fuel supplier's ability or failure to provide adequate fuel ordered by the person; any material misrepresentation by the fuel supplier concerning the fuel specifications; the reasonableness of the person's reliance on fuel suppliers with a history of supplying fuel inadequate for meeting the requirements of subsection (e)(1); and force majeure.

(3) Noncompliance for Vessels to Be Taken Out of Service for Modifications.

If a person cannot meet the requirements of subsection (e)(1) without vessel modifications, and such modifications cannot be completed prior to the effective date of subsection (e)(1), the Executive Officer may permit the person to pay the fees as specified in this subsection. This provision also applies to vessels that will undergo modifications pursuant to an Executive Officer approved Alternative Control of Emissions (ACE) Plan. The vessel must be scheduled to complete the necessary modifications (e.g. during a dry dock operation) as soon as possible, but no later than 5 years after the effective date of this section. For this provision to apply, the person shall meet all of the following criteria:

(A) Demonstration of Need.

The person shall provide the Executive Officer a Compliance Retrofit Report, signed by the Chief Engineer of the person's vessel, which:

1. identifies the specific vessel modifications ("modifications") (e.g. installation of additional fuel tanks) the person plans to use for meeting the requirements of subsection (e)(1) or an ACE Plan;
2. identifies the specific date by which the modifications will be completed (e.g. while the vessel is in dry dock); and
3. demonstrates to the satisfaction of the Executive Officer that the modifications will be made at the earliest possible date (e.g. the vessel has been scheduled for the earliest available dry dock appointment).

(B) Payment of Fees.

Upon meeting the requirements of paragraph (A) in this subsection (h)(3), the person shall pay the fees for every port visit, as specified in subsection (h)(5) below.

(C) Proof of Modifications Actually Performed.

Within ten (10) business days after the scheduled or actual completion of the modifications, whichever occurs first, the person shall provide written certification to the Executive Officer that the modifications specified under this subsection (h)(3) have been completed. If the modifications have not been completed, the person shall certify which modifications have been completed, which have not, and the anticipated completion date for the remaining modifications. The notification requirement specified in this paragraph, the notification requirements in subsection (h)(1) above, and the fee provisions in subsection (h)(5) below shall apply until all the modifications have been completed.

(4) Noncompliance Based on Infrequent Visits and Need for Vessel Modifications.

If a person cannot meet the requirements of subsection (e)(1) without modifications for the vessel at issue, and that vessel will make no more than two California port visits per calendar year, and no more than 4 California port visits after January 1, 2007 during the life of the vessel, the Executive Officer may permit the person to pay the fees as specified in this subsection.

(A) Demonstration of Need.

The person shall demonstrate to the satisfaction of the Executive Officer that modifications to the vessel are necessary to meet the requirements of subsection (e)(1), and that the vessel shall meet the visitation limits specified in this subsection (h)(4).

(B) Payment of Fees.

Upon meeting the requirements of paragraph (A) above, the person shall pay the fees for every port visit up to a maximum of 4 visits, as specified in subsection (h)(5) below.

(5) Calculation and Payment of Fees.

For each port visit, the person who elects to pay the fees pursuant to this subsection (h) shall pay the applicable fees shown in Table 1. For purposes of this provision, "port visit" shall include all stops at a port, roadstead, or terminal facility in Regulated California Waters, as well as all moorings (i.e., the ship drops anchor) at an offshore location in Regulated California Waters away from a port, roadstead or terminal facility (e.g., Catalina Island or off Monterey). For each port visit, the person shall deposit the fees in the port's Noncompliance Fee Settlement and Air Quality Mitigation Fund prior to leaving the California port or by a later date approved by the Executive Officer on a case-by-case basis:

(A) After January 1, 2007, each instance of a vessel stopping or anchoring at a port or offshore in Regulated California Waters shall count as one port visit, and the port visits shall be cumulative.

Table 1: Noncompliance Fee Schedule, Per Vessel

Visit	Fee	
	Diesel-Electric Vessels	Other Vessels
1 st Port Visited	\$32,500	\$13,000
2 nd Port Visited	\$65,000	\$26,000
3 rd Port Visited	\$97,500	\$39,000
4 th Port Visited	\$130,000	\$52,000
5 th or more Port Visited	\$162,500	\$65,000

(B) The fees shown in Table 1 shall be assessed by the Executive Officer at the time of the port visit. However, if for any reason the person is not notified by the Executive Officer of the assessed fee by the end of the port visit, the person shall nevertheless be responsible for payment of the appropriate fee as specified in this subsection (h) prior to leaving the California port or by a later date approved by the Executive Officer on a case-by-case basis.

(C) The Executive Officer shall enter into enforceable agreements with each port that will receive the fees. The agreements shall require that the fees be used by the ports only to fund projects that will substantially reduce emissions of diesel PM, NOx, and SOx from on-site sources, sources within 2 miles of port boundaries, or ocean-going vessels operated within the Regulated California Waters, except that the fees shall not be used to fund projects on vessels from which noncompliance fees were paid. Fees intended for ports that do not have such agreements at the time the fees are paid shall be deposited into the California Air Pollution Control Fund.

(i) Test Methods.

The following test methods or alternative test methods that are demonstrated to the written satisfaction of the Executive Officer to be equally or more accurate, shall be used to determine compliance with this section:

(1) Test methods used to determine whether fuels meet the requirements of marine gas oil (DMA or DMX) or marine diesel oil (DMB), as specified in subsection (e)(1), shall be the methods specified in International Standard ISO 8217 (as revised in 2005), which is incorporated herein by reference.

(2) The sulfur content of fuels shall be determined pursuant to International Standard ISO 8754 (as adopted in 2003), which is incorporated herein by reference.

(j) Sunset, Technology Re-evaluation, and Baseline and Test Method Review.

(1) If the Executive Officer determines that the International Maritime Organization or the United States Environmental Protection Agency have adopted regulations for auxiliary diesel engines and diesel-electric engines that will achieve equivalent or greater emission reductions from ocean-going vessels in California compared to the emission reductions resulting from this regulation, the Executive Officer shall propose to the Board for its consideration the termination of the requirements of this section or other modifications to the section as deemed appropriate by the Executive Officer.

(2) On or before July 1, 2008, the Executive Officer shall re-evaluate the feasibility of the emission limits based on using marine gas oil with no greater than 0.1 percent sulfur by weight specified in subsection (e)(1)(B). The re-evaluation shall consider, but not be limited to:

(A) the availability of 0.1 percent sulfur marine gas oil at bunkering ports worldwide;

(B) the ability of petroleum refiners and marine fuel suppliers to deliver 0.1 percent sulfur fuel by January 1, 2010;

(C) fuel lubricity;

(D) compatibility of the 0.1 percent sulfur marine gas oil with heavy fuel oil during fuel transitions; and

(E) the additional cost of 0.1 percent sulfur fuel compared to marine gas oil with other sulfur content levels.

(3) Pursuant to paragraph (2) of this subsection (j), if the Executive Officer determines that modifications to subsection (e)(1)(B) are necessary, the Executive Officer shall propose appropriate changes to the Board prior to January 1, 2009.

(4) The Executive Officer shall periodically review the California baseline determinations by the National Oceanic and Atmospheric Administration (NOAA) to determine if updates to the baseline maps incorporated by reference in this section are necessary. If modifications to the baseline maps are determined to be necessary, the Executive Officer shall conduct a public hearing as soon as practicable to amend this section accordingly.

(5) The Executive Officer shall periodically review the test methods incorporated by reference in this section to determine if updates to the referenced methods are necessary. If updates to the test methods are determined to be necessary, the Executive Officer shall conduct a public hearing as soon as practicable to amend this section accordingly.

(k) Severability.

§ 2299.2. Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline.

(a) Purpose.

The purpose of this section is to require the use of low sulfur marine distillate fuels in order to reduce emissions of particulate matter (PM), diesel particulate matter, nitrogen oxides, and sulfur oxides from the use of auxiliary diesel and diesel-electric engines, main propulsion diesel engines, and auxiliary boilers on ocean-going vessels within any of the waters subject to this regulation ("Regulated California Waters").

(b) Applicability.

(1) Except as provided in subsection (c), this section applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in any of the Regulated California Waters, which include all of the following:

(A) all California internal waters;

(B) all California estuarine waters;

(C) all California ports, roadsteads, and terminal facilities (collectively "ports");

(D) all waters within 3 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(E) all waters within 12 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(F) all waters within 24 nautical miles of the California baseline, starting at the California-Oregon border to 34.43 degrees North, 121.12 degrees West, inclusive; and

(G) all waters within the area, not including islands, between the California baseline and a line starting at 34.43 degrees North, 121.12 degrees West; thence to 33.50 degrees North, 118.58 degrees West; thence to 32.65 degrees North, 117.81 degrees West, and ending at the California-Mexico border at the Pacific Ocean, inclusive.

(2) Except as provided in subsection (c), this section applies to ocean-going vessels that are flagged in, registered in, entitled to fly the flag of, or otherwise operating under the authority of the United States ("U.S.-flagged") or any other country ("foreign-flagged").

(3) Nothing in this section shall be construed to amend, repeal, modify, or change in any way any applicable U.S. Coast Guard requirements. Any person subject to this section shall be responsible for ensuring compliance with both U.S. Coast Guard regulations and the requirements of this section, including but not limited to, obtaining any necessary approvals, exemptions, or orders from the U.S. Coast Guard.

(c) Exemptions.

(1) The requirements of this section do not apply to ocean-going vessel voyages that are comprised of continuous and expeditious navigation through any Regulated California Waters for the purpose of traversing such bodies of water without entering California internal or estuarine waters or calling at a port, roadstead, or terminal facility. "Continuous and expeditious navigation" includes stopping and anchoring only to the extent such stopping and anchoring are required by the U.S. Coast Guard; rendered necessary by force majeure or distress; or made for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress. This exemption does not apply to the passage of an ocean-going vessel that engages in any of the prejudicial activities specified in United Nations Convention on the Law of the Seas (UNCLOS) 1982, Article 19, subpart 2. Further, notwithstanding any Coast Guard mandated stops or stops due to force majeure or the rendering of assistance, this exemption does not apply to a vessel that was otherwise scheduled or intended to enter California internal or estuarine waters or call at a port, roadstead or terminal facility.

(2) The requirements of this section do not apply to emergency generators.

(3) The requirements of this section do not apply to auxiliary engines, main engines or auxiliary boilers onboard ocean-going vessels owned or operated by any branch of local, state, or federal government, or by a foreign government, when such vessels are operated within Regulated California Waters on government non-commercial service. However, such vessels are encouraged to act in a manner consistent, so far as is reasonable and practicable, with this section.

(4) The requirements of this section do not apply to auxiliary engines, main engines, and auxiliary boilers while such engines and boilers are operating on alternative fuel in Regulated California Waters.

(5) The requirements of this section, including the payment of Noncompliance Fees as provided in subsection (h), do not apply if the master reasonably and actually determines that compliance with this section would endanger the safety of the vessel, its crew, its cargo or its passengers because of severe weather conditions, equipment failure, fuel contamination, or other extraordinary reasons beyond the master's reasonable control. This exemption applies only as long as and to the extent necessary to secure the safety of the vessel, its crew, its cargo, or its passengers and provided that;

(A) the master takes all reasonable precautions after the conditions necessitating the exemption have ended to avoid or minimize repeated claims of exemption under this subsection;

(B) the master notifies the Executive Officer of a safety exemption claim within 24 hours after the end of each such episode (i.e., the period of time during which the emergency conditions exist that necessitate the safety exemption claim, as provided in paragraph (5) above); and

(C) the master submits to the Executive Officer, within 4 working days after the notification in paragraph (B) above, all documentation necessary to establish the conditions necessitating the safety exemption and the date(s), local time, and position of the vessel (longitude and latitude) in Regulated California Waters at the beginning and end of the time period during which a safety exemption is claimed under this subsection. All documentation required under this paragraph shall be provided in English.

(6) Temporary Experimental or Research Exemption. As provided in this paragraph, the requirements of this section do not apply to vessels that have been granted a temporary experimental exemption by the Executive Officer for the duration of the approved exemption. A temporary experimental exemption may be granted by the Executive Officer for experimental purposes for up to three years with one extension for up to three additional years. The exemption will be limited in duration as specified by the Executive Officer in the Executive Order granting such an exemption or extension. All documentation and information submitted in support of an application for a temporary experimental exemption or extension shall be deemed non-confidential and available for public review under the Public Records Act.

(A) Pursuant to this paragraph, a person may operate an auxiliary engine, main engine or auxiliary boiler with fuel that does not meet the provisions of (e)(1), provided the person meets all of the following requirements:

1. the person obtains written approval for this exemption or extension, in the form of an Executive Order from the Executive Officer, before the vessel enters Regulated California Waters;

2. the person or master of the vessel takes all measures available to minimize emissions of diesel PM, NO_x, and SO_x to the extent feasible during the period in which the temporary experimental exemption is in effect;

3. the request for an exemption or extension is provided in writing, submitted to the Executive Officer at least 30 days before the vessel enters Regulated California Waters, and contains the following:

a. specifications for the non-compliant fuel that the person is proposing to use pursuant to this paragraph, including but not limited to, sulfur content (expressed to the nearest tenth weight percent); whether the fuel meets ASTM specifications for marine diesel oil (MDO), marine gas oil (MGO), or some other fuel (identify which ASTM specifications the fuel meets, if any); and

b. a clear and convincing demonstration that the use of the proposed non-compliant fuel will generate data as part of research that advances the state of knowledge of exhaust control technology or characterization of emissions. For purposes of this paragraph, the Executive Officer's determination that the person has provided a "clear and convincing demonstration" shall be based on whether the person's use of the proposed noncompliant fuel is an express part of a formal, executed research

contract or project; a doctoral dissertation; or a master's thesis. A demonstration of the "state of knowledge" includes specific citations to scientific, academic, industry or regulatory literature existing or in progress at the time of the request;

c. identification of the purpose, goals, and objectives of the project, measures taken to minimize emission of air contaminants, and testing procedures and testing schedules;

(B) A person with an exemption granted pursuant to this provision shall:

1. bring the vessel into full compliance with the requirements of this section, including subsection (e)(1), prior to the expiration of the temporary experimental exemption as specified; and
2. provide a progress report annually from the date of the executive order, to the Executive Officer providing interim test data or other interim results, description of vessel modifications or retrofitting done as part of the projects or other information generated from the date of the prior progress report.
3. provide all official test data and all other results, data, or other information generated during the exemption period to the Executive Officer, in writing and final form, no more than 90 days after the expiration of the temporary experimental exemption or extension.

(C) No modifications to the terms and conditions of an approved temporary experimental exemption shall be valid unless in writing and agreed to by both the Executive Officer and the person. Any variance, deviance, or nonconformance with the terms and conditions of an approved temporary experimental exemption or extension shall be deemed a separate violation of this section.

(d) Definitions.

For purposes of this section, the following definitions apply:

(1) "Alternative fuel" means natural gas, propane, ethanol, methanol, hydrogen, electricity, or fuel cells. Alternative fuel also means any mixture that only contains these fuels.

(2) "ASTM" means ASTM International.

(3) "Auxiliary boiler" means any fuel-fired combustion equipment designed primarily to produce steam for uses other than propulsion, including, but not limited to, heating of residual fuel and liquid cargo, heating of water for crew and passengers, powering steam turbine discharge pumps, freshwater generation, and space heating of cabins. Exhaust gas economizers that exclusively use diesel engine exhaust as a heat source to produce steam are not auxiliary boilers.

(4) "Auxiliary engine" means a diesel engine on an ocean-going vessel designed primarily to provide power for uses other than propulsion or emergencies, except that all diesel-electric engines shall be considered "auxiliary diesel engines" for purposes of this section.

(5) "Baseline" means the mean lower low water line along the California coast, 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 herein by reference:

(A) Chart 18600, Trinidad Head to Cape Blanco (January 2002);

(B) Chart 18620, Point Arena to Trinidad Head (June 2002);

(C) Chart 18640, San Francisco to Point Arena (August 2005);

(D) Chart 18680, Point Sur to San Francisco (June 2005);

(E) Chart 18700, Point Conception to Point Sur (July 2003);

(F) Chart 18720, Point Dume to Purisima Point (August 2008); and

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

(6) "Diesel Engine" means an internal combustion, compression-ignition (CI) engine with operating characteristics significantly similar to the theoretical diesel combustion cycle. The regulation of power by controlling fuel supply in lieu of a throttle is indicative of a compression ignition engine.

(7) "Diesel Particulate Matter" means the particles found in the exhaust of diesel engines, which may agglomerate and adsorb other species to form structures of complex physical and chemical properties.

(8) "Diesel-electric engine" means a diesel engine connected to a generator that is used as a source of electricity for propulsion or other uses.

(9) "Emergency Generator" means a diesel-electric engine operated only during emergencies or to perform maintenance and testing necessary to ensure readiness for emergencies.

(10) "Essential Modification" means the addition of new equipment, or the replacement of existing components with modified components, that can be demonstrated to be necessary to comply with this regulation. Essential modifications do not include: (1) changes that are made for convenience or automation of fuel switching; or (2) replacement of components that would be replaced in the absence of this regulation, based on measured component wear, visual inspection, or expected service life, even if accelerated due to the fuel requirements. Additional tankage is considered essential only if existing available tankage has less than the capacity required for a complete voyage within Regulated California Waters.

(11) "Estuarine Waters" means an arm of the sea or ocean that extends inland to meet the mouth of a river.

(12) "Executive Officer" means the executive officer of the Air Resources Board (ARB), or his or her designee.

(13) "Hydrocarbon (HC)" means the sum of all hydrocarbon air pollutants.

(14) "Internal Waters" means any navigable river or waterway within the State of California.

(15) "IMO" means the International Maritime Organization.

(16) "ISO" means the International Organization for Standardization.

(17) "Main Engine" means a diesel engine on an ocean-going vessel designed primarily to provide propulsion, except that diesel-electric engines shall not be considered "main engines" for purposes of this section.

(18) "Marine Diesel Oil (MDO)" means any fuel that meets all the specifications for DMB grades as defined in Table I of International Standard ISO 8217, as revised in 2005, which is incorporated herein by reference.

(19) "Marine Gas Oil (MGO)" means any fuel that meets all the specifications for DMX or DMA grades as defined in Table I of International Standard ISO 8217, as revised in 2005, which is incorporated herein by reference.

(20) "Master" means the person who operates a vessel or is otherwise in charge of the vessel's operations.

(21) "Military Vessel" means any ship, boat, watercraft, or other contrivance used for any purpose on water, and owned or operated by the armed services.

(22) "Nitrogen Oxides (NOx)" means compounds of nitric oxide (NO), nitrogen dioxide (NO₂), and other oxides of nitrogen, which are typically created during combustion processes and are major contributors to smog formation and acid deposition.

(23) "Non-Methane Hydrocarbons (NMHC)" means the sum of all hydrocarbon air pollutants except methane.

(24) "Ocean-going Vessel (OGV)" means a commercial, government, or military vessel meeting any one of the following criteria:

(A) a non-tanker vessel greater than or equal to 400 feet in length overall (LOA) as defined in 50 CFR § 679.2, as adopted June 19, 1996;

(B) a non-tanker vessel greater than or equal to 10,000 gross tons (GT ITC) per the convention measurement (international system) as defined in 46 CFR 69.51-.61, as adopted September 12, 1989;

(C) a non-tanker vessel propelled by a marine compression ignition engine with a per-cylinder displacement of greater than or equal to 30 liters; or

(D) a tanker that meets any one of the criteria in subsections (A)-(C).

For purposes of this section, "ocean-going vessel" does not include tugboats, towboats, or pushboats.

(25) "Operate" means steering or otherwise running the vessel or its functions while the vessel is underway, moored, anchored, or at dock.

(26) "Own" means having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; having or being entitled to the possession of a vessel as the purchaser under a conditional sale contract; or being the mortgagor of a vessel.

(27) "Particulate Matter" means any airborne finely divided material, except uncombined water, which exists as a liquid or solid at standard conditions (e.g., dust, smoke, mist, fumes or smog).

(28) "Person" includes all of the following:

(A) any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company;

(B) any state or local governmental agency or public district, or any officer or employee thereof;

(C) the United States or its agencies, to the extent authorized by federal law.

(29) "Port Visit" means any of the following:

(A) each separate and distinct entry of a vessel into a port, roadstead, or terminal facility (collectively "port") in Regulated California Waters that results in the vessel stopping, docking, mooring, or otherwise dropping anchor (collectively "stopping") at the port. The "port visit" continues if the vessel moves to a different berth within the same port, but the "port visit" ends when the vessel leaves for or is otherwise moved to another port within the same bay or any other port;

(B) except as provided in paragraph (C) below, each separate and distinct entry of a vessel into an offshore location in Regulated California Waters away from a port that results in the vessel stopping at that offshore location (e.g., Catalina Island or off Monterey). The "port visit" ends when the vessel leaves for or is otherwise moved to a port or another offshore location; or

(C) each separate and distinct entry of a vessel into an offshore location in Regulated California Waters away from a port that results in the vessel stopping, followed by entry into that port, shall constitute one "port visit", provided the offshore stop was conducted solely because the port could not

accept the vessel as scheduled due to reasons beyond the reasonable control of the vessel operator or master.

(30) "Regulated California Waters" means all of the following:

(A) all California internal waters;

(B) all California estuarine waters;

(C) all California ports, roadsteads, and terminal facilities (collectively "ports");

(D) all waters within 3 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(E) all waters within 12 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;

(F) all waters within 24 nautical miles of the California baseline, starting at the California-Oregon border to 34.43 degrees North, 121.12 degrees West, inclusive; and

(G) all waters within the area, not including any islands, between the California baseline and a line starting at 34.43 degrees North, 121.12 degrees West; thence to 33.50 degrees North, 118.58 degrees West; thence to 32.65 degrees North, 117.81 degrees West; and ending at the California-Mexico border at the Pacific Ocean, inclusive.

(31) "Roadstead" means any facility that is used for the loading, unloading, and anchoring of ships.

(32) "Steamship" means a self-propelled vessel in which the primary propulsion and electrical power are provided by steam boilers.

(33) "Slow Speed Engine" means an engine with a rated speed of 150 revolutions per minute or less.

(34) "Sulfur Oxides" means compounds of sulfur dioxide (SO₂), and other oxides of sulfur, which are typically created during combustion of sulfur containing fuels.

(35) "Tanker" means a self-propelled vessel constructed or adapted primarily to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(36) "Two-stroke Engine" means an internal combustion engine which operates on a two stroke cycle where the cycle of operation completes in one revolution of the crankshaft.

(37) "Vessel" means any tugboat, tanker, freighter, passenger ship, barge, or other boat, ship, or watercraft, except those used primarily for recreation and any of the following:

(A) a seaplane on the water;

(B) a watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(38) "Voyage" means each separate and distinct journey that begins when a vessel reaches Regulated California Waters from a point beyond Regulated California Waters, includes at least one port visit, and ends when the vessel departs from Regulated California Waters.

(e) Operational Requirements.

(1) Fuel Sulfur Content Limits.

(A) Auxiliary Diesel Engines:

1. Except as provided in subsections (c) and (h), upon the effective date of this regulation as approved by the Office of Administrative Law, a person subject to this section shall operate any auxiliary diesel engine, while the vessel is operating in Regulated California Waters, with either marine gas oil (MGO), with a maximum of 1.5 percent sulfur by weight, or marine diesel oil (MDO), with a maximum of 0.5 percent sulfur by weight, rounded as specified in subsection (i)(3);

2. Except as provided in subsections (c) and (h), beginning January 1, 2012, a person subject to this section shall operate any auxiliary diesel engine, while the vessel is operating in Regulated California Waters, with marine gas oil (MGO) with a maximum of 0.1% sulfur by weight or marine diesel oil (MDO) with a maximum of 0.1% sulfur by weight, rounded as specified in subsection (i)(3).

(B) Main Engines and Auxiliary Boilers:

1. Except as provided in subsections (c) and (h), beginning July 1, 2009, a person subject to this section shall operate any main engine or auxiliary boiler, while the vessel is operating in Regulated California Waters, with either marine gas oil (MGO), with a maximum of 1.5 percent sulfur by weight, or marine diesel oil (MDO), with a maximum of 0.5 percent sulfur by weight, rounded as specified in subsection (i)(3);

2. Except as provided in subsections (c) and (h), beginning January 1, 2012, a person subject to this section shall operate any main engine or auxiliary boiler, while the vessel is operating in Regulated California Waters, with marine gas oil (MGO) with a maximum of 0.1% sulfur by weight or marine diesel oil (MDO) with a maximum of 0.1% sulfur by weight, rounded as specified in subsection (i)(3).

(2) Recordkeeping, Reporting, and Monitoring Requirements.

(A) Recordkeeping.

Upon the effective date of this regulation, any person subject to this section shall retain and maintain records in English that contain the following information for at least three years following the date when the records were made:

1. The date, local time, and position (longitude and latitude) of the vessel for each entry into Regulated California Waters from waters outside Regulated California Waters, and each departure from Regulated California Waters to waters outside Regulated California Waters;

2. The date, local time, and position (longitude and latitude) of the vessel at the initiation and completion of any fuel switching procedures used to comply with subsection (e)(1) prior to entry into Regulated California Waters from waters outside Regulated California Waters;

3. The date, local time, and position (longitude and latitude) of the vessel at the initiation and completion of any fuel switching procedures within Regulated California Waters; completion of fuel switching procedures occurs the moment all engines subject to this section have completely transitioned from operation on one fuel to another fuel;

4. The type of fuel used (e.g., marine gas oil, marine diesel oil or heavy fuel oil) in each auxiliary engine, main engine, and auxiliary boiler operated in Regulated California Waters; and

5. The types, amounts, and the actual percent by weight sulfur content of all fuels purchased for use on the vessel, as reported by the fuel supplier or a fuel testing firm.

(B) Documentation of Fuel Switch Over Procedures.

Any person subject to this section that complies with the fuel sulfur content limits by switching fuels shall retain and maintain records in English on-board ship that contain the following information for auxiliary engines, main engines and auxiliary boilers:

1. A fuel system diagram that shows all storage, service, and mixing tanks, fuel handling, pumping, and processing equipment, valves, and associated piping. The diagram or other documentation shall list the fuel tank capacities and locations, and the nominal fuel consumption rate of the machinery at rated power;
2. Description of the fuel switch over procedure with detailed instructions and clear identification of responsibilities; and
3. The make, model, rated power, and serial numbers of all main engines, and auxiliary engines and make, model, rated output, and serial numbers of all auxiliary boilers subject to subsection (e)(1).

(C) Reporting and Monitoring.

1. Any person subject to this section shall provide in writing the information specified in subsection (e)(2)(A) and (e)(2)(B) to the Executive Officer upon request, either within 24 hours or by a later date approved by the Executive Officer. To the extent the person already collects the information specified in subsections (e)(2)(A) and (e)(2)(B) in English to comply with other regulatory requirements or standard practices, the person may provide the requested information in a format consistent with those other regulatory requirements or standard practices.
2. Any person subject to this section shall provide to the Executive Officer upon request additional information the Executive Officer determines to be necessary to determine compliance with this section.
3. Any person subject to this section shall provide to the Executive Officer access to the vessel for the purpose of determining compliance with this section, including but not limited to, access to and review of records and information required under subsections (e)(2)(A) and (e)(2)(B), and for the purpose of collecting fuel samples for testing and analysis.

(f) Violations.

- (1) Any person who is subject to this section and commits a violation of any provision, criteria or requirement in this section is subject to the penalties, injunctive relief, and other remedies specified in Health and Safety Code, sections 39674-39675 and 42400 et seq.; other applicable sections in the Health and Safety Code; and other applicable provisions as provided under California law for each violation. Nothing in this section shall be construed to limit or otherwise affect any applicable penalties or other remedies available under Federal law.
- (2) Any failure to meet any provision, criteria or requirement in this section, including but not limited to the applicable fuel sulfur content limits; recordkeeping requirements; and Noncompliance Fee provision shall constitute a single, separate violation of this section for each hour that a person operates an ocean-going vessel in Regulated California Waters until such provision, criteria or requirement has been met.
- (3) Any person who is subject to this section is liable for meeting the requirements of this section, notwithstanding any contractual arrangement that person may have with any third-parties.

(g) Noncompliance for Vessels Based on the Need for Essential Modifications.

If a person cannot meet the requirements of subsection (e)(1) without essential modifications, as defined in subsection (d), the Executive Officer will grant the person an exemption in whole or in part to subsection (e)(1). For this provision to apply, the person shall meet all of the following criteria:

(1) Notification Requirements.

For each voyage before the person's vessel enters Regulated California Waters from waters outside Regulated California Waters, a person who has demonstrated need under subsection (g)(2) must notify the Executive Officer that the person will not meet the requirements of subsection (e)(1) while operating within Regulated California Waters, but the person will instead meet the requirements of

this subsection (g). If the Executive Officer has not received such notice and the person enters Regulated California Waters, the person will be in violation of this section.

(2) Demonstration of Need.

At least 45 days prior to a vessel's first reliance on subsection (g) when entering Regulated California Waters, or at the earliest practicable date prior to entry into Regulated California Waters if first reliance on subsection (g) is less than 45 days after the effective date of this section, the person shall provide, in writing, the Executive Officer with an Essential Modification Report attested to under the penalty of perjury by the Chief Engineer of the person's vessel. The Executive Officer has 30 days to act on the Essential Modification Report. Additional information may be provided by the applicant or requested by the Executive officer after submittal of the original Essential Modification Report. The Executive Officer will have an additional 15 days to review the additional submittal and act on the amended Essential Modification Report. The Essential Modification Report shall, to the satisfaction of the Executive Officer:

(A) identify the specific essential vessel modifications ("essential modifications" as defined in subsection (d)) required to meet the requirements of subsection (e)(1);

(B) demonstrate that modifications to the vessel are necessary to meet the requirements of subsection (e)(1); and

(C) identify the maximum extent, with respect to trip distance or regulated equipment type, to which the vessel can meet the requirements of (e)(1) without essential modifications where feasible and safe for each of the auxiliary engines, main engines, and auxiliary boilers.

(3) While the vessel is operating in Regulated California Waters, a person subject to this subsection shall:

(A) operate each main engine meeting the requirements of (e)(1) to the extent identified in (g)(2)(C);

(B) operate each auxiliary boiler meeting the requirements of (e)(1) to the extent identified in (g)(2)(C); and

(C) operate each auxiliary engine meeting the requirements of (e)(1) to the extent identified in (g)(2)(C).

(h) Noncompliance Fee in Lieu of Meeting Subsection (e)(1).

The Executive Officer may permit a person ("person") to pay noncompliance fees ("fees") in lieu of meeting the requirements of subsection (e)(1). Payment of the fees notwithstanding, all other provisions of this section shall continue to apply. No person shall be permitted to pay the fees unless the person meets the notification requirements in subsection (h)(1) and the requirements in either subsections (h)(2), (h)(3), or (h)(4), as specified below:

(1) Notification Requirements.

Before the person's vessel enters Regulated California Waters from waters outside Regulated California Waters, the Executive Officer must receive notice that the person will not meet the requirements of subsection (e)(1) while operating within Regulated California Waters, but the person will instead meet the requirements of this subsection (h). If the Executive Officer has not received such notice and the person enters Regulated California Waters, the person will be in violation of this section and will not be permitted to pay the fees in lieu of meeting the requirements of subsection (e)(1).

(2) Noncompliance for Reasons Beyond a Person's Reasonable Control.

Any person wishing to pay the fees under this subsection (h)(2) shall meet the following criteria:

(A) Demonstration of Need.

The person shall, through adequate documentation, demonstrate to the Executive Officer's satisfaction that the person's noncompliance with the requirements of subsection (e)(1) is beyond the person's reasonable control. For the purposes of this paragraph, "beyond the person's reasonable control" applies only when one or more of the following sets of circumstances (1, 2, or 3) applies:

1. Unplanned Redirection.

This provision applies only when all of the following criteria are met:

a. after leaving the last port of call, the person's vessel was redirected from his/her original, officially logged, non-California destination to a California port, roadstead, or terminal facility (collectively "port"); and

b. the vessel does not contain a quantity of fuel sufficient for the auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1).

2. Inadequate Fuel Supply.

This provision applies only when all of the following criteria are met:

a. the person made good faith efforts to acquire a quantity of fuel sufficient for the auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1); and

b. the person was unable to acquire fuel sufficient for auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1).

3. Inadvertent Purchase of Defective Fuel.

This provision applies only when all of the following criteria are met:

a. based on the fuel supplier's certification of the fuel specifications, the person reasonably believed, and relied on such belief, that the fuel the person purchased on the route from the vessel's home port to California would enable the auxiliary engines, main engines, and auxiliary boilers to meet the requirements of subsection (e)(1);

b. the person determined that the auxiliary engines, main engines, and auxiliary boilers in fact will not meet the requirements of subsection (e)(1) using any of the fuel purchased under paragraph 3.a; and

c. the vessel is already on its way to California, and there are no other ports of call on the vessel's route where fuel can be purchased sufficient to meet the requirements of subsection (e)(1).

(B) Payment of Fees.

Upon meeting the requirements of paragraph (A) in this subsection (h)(2), the person shall pay the fees for every port visit, as specified in subsection (h)(5) below.

(C) Executive Officer Review.

For the purposes of verifying the demonstration of need as specified in paragraph (A) above, the Executive Officer may consider and rely on any facts or circumstances the Executive Officer believes are appropriate, including but not limited to: the fuel supplier's ability or failure to provide adequate fuel ordered by the person; any material misrepresentation by the fuel supplier concerning the fuel specifications; the reasonableness of the person's reliance on fuel suppliers with a history of supplying fuel inadequate for meeting the requirements of subsection (e)(1); and force majeure.

(3) Noncompliance for Vessels to Be Taken Out of Service for Modifications.

If a person cannot meet the requirements of subsection (e)(1) without vessel modifications, and elects not to comply under section (g), and such modifications cannot be completed prior to the effective date of subsection (e)(1), the Executive Officer may permit the person to pay the fees as specified in this subsection. The vessel must be scheduled to complete the necessary modifications (e.g. during a dry dock operation) as soon as possible, but no later than December 31, 2014. For this provision to apply, the person shall meet all of the following criteria:

(A) Demonstration of Need.

The person shall provide the Executive Officer a Compliance Report, signed by the Chief Engineer of the person's vessel, which:

1. identifies the specific vessel modifications ("modifications") (e.g., installation of additional fuel tanks, fuel cooling systems) the person plans to use for meeting the requirements of subsection (e)(1);
2. identifies the specific date by which the modifications will be completed (i.e., while the vessel is in dry dock); and
3. demonstrates to the satisfaction of the Executive Officer that the modifications will be made at the earliest possible date (e.g., the vessel has been scheduled for the earliest available dry dock appointment).

(B) Payment of Fees.

Upon meeting the requirements of paragraph (A) in this subsection (h)(3), the person shall pay the fees for every port visit, as specified in subsection (h)(5) below.

(C) Proof of Modifications Actually Performed.

Within ten (10) business days after the scheduled or actual completion of the modifications, whichever occurs first, the person shall provide written certification to the Executive Officer that the modifications specified under this subsection (h)(3) have been completed. If the modifications have not been completed, the person shall certify which modifications have been completed, which have not, and the anticipated completion date for the remaining modifications. The notification requirement specified in this paragraph, the notification requirements in subsection (h)(1) above, and the fee provisions in subsection (h)(5) below shall apply until all the modifications have been completed.

(4) Noncompliance Based on Infrequent Visits and Need for Vessel Modifications.

If a person cannot meet the requirements of subsection (e)(1) without modifications for the vessel at issue, and elects not to comply under section (g), and that vessel will make no more than two California voyages per calendar year, and no more than 4 California voyages after the effective date of the regulation, during the life of the vessel, the Executive Officer may permit the person to pay the fees as specified in this subsection. This provision terminates on December 31, 2014.

(A) Demonstration of Need.

The person shall demonstrate to the satisfaction of the Executive Officer that modifications to the vessel are necessary to meet the requirements of subsection (e)(1), and that the vessel shall meet the visitation limits specified in this subsection (h)(4).

(B) Payment of Fees.

Upon meeting the requirements of paragraph (A) above, the person shall pay the fees for every port visit as specified in subsection (h)(5) below.

(5) Calculation and Payment of Fees.

For each port visit, the person who elects to pay the fees pursuant to this subsection (h) shall pay the applicable fees shown in Table 1 prior to leaving the California port or by a later date approved by the Executive Officer. The person shall deposit the fees in the port's Noncompliance Fee Settlement and Air Quality Mitigation Fund. If no such port fund exists, the person shall deposit the fees into the California Air Pollution Control Fund, as directed by the Executive Officer. Port visits shall be cumulative for all non-compliant port visits over the life of the vessel. For the purposes of this paragraph, any port visit where the non-compliance fee is waived shall not be included in the cumulative total.

(A) Noncompliance Fee Schedule.

Table 1: Noncompliance Fee Schedule, Per Vessel

Port Visit	Per-Port Visit Fee
1st Port Visited	\$45,500
2nd Port Visited	\$91,000
3rd Port Visited	\$136,500
4th Port Visited	\$182,000
5th or more Port Visited	\$227,500

(B) The fees shown in Table 1 shall be assessed by the Executive Officer at the time of the port visit.

(C) For subsection (h)(2), beginning January 1, 2012, the fee will be waived once per vessel during each calendar year until December 31, 2014, when all of the following are met:

1. a person acquires fuel and meets the requirements of subsection (e)(1) prior to leaving the first port visited during the voyage and meets the requirements of (e)(1) for the remainder of the voyage; and
2. during any non-compliant portion of the voyage, a person operates each auxiliary engine, main engine, and auxiliary boiler with either marine gas oil (MGO), with a maximum of 1.5 percent sulfur by weight, or marine diesel oil (MDO), with a maximum of 0.5 percent sulfur by weight, rounded as specified in subsection (i)(3).

(D) The Executive Officer may enter into enforceable agreements with each port that will receive the fees. The agreements shall require that the fees be used by the ports only to fund projects that will substantially reduce emissions of diesel PM, NOx, and SOx from on-site sources, sources within 2 miles of port boundaries, or ocean-going vessels operated within the Regulated California Waters, except that the fees shall not be used to fund projects on vessels from which noncompliance fees were paid. Fees intended for ports that do not have such agreements at the time the fees are paid shall be deposited into the California Air Pollution Control Fund.

(E) If for any reason the person is not notified by the Executive Officer of the assessed fee by the end of the port visit, the person shall nevertheless be responsible for payment of the appropriate fee as specified in this subsection (h) prior to leaving the California port or by a later date approved by the Executive Officer.

(i) Test Methods.

The following test methods or alternative test methods that are demonstrated to the written satisfaction of the Executive Officer to be equally or more accurate, shall be used to determine compliance with this section:

- (1) Test methods used to determine whether fuels meets the requirements of marine gas oil (DMA or DMX) or marine diesel oil (DMB), as specified in subsection (e)(1), shall be the methods specified in International Standard ISO 8217 (as revised in 2005), which is incorporated herein by reference.

(2) The sulfur content of fuels shall be determined pursuant to International Standard ISO 8754 (as adopted in 2003), which is incorporated herein by reference.

(3) For purposes of determining compliance with the specifications in (e)(1)(A), an observed value or a calculated value shall be rounded "to the nearest unit" in the last right-hand digit used in expressing the specification limit, in accordance with the rounding method of ASTM E 29-93a Standard Practice for Using Significant Digits in Test Data to Determine Conformance Specifications (published May 1993), which is incorporated herein by reference.

(j) Sunset, Baseline, and Test Method Review.

(1) The requirements specified in subsection (e) shall cease to apply if the United States adopts and enforces requirements that will achieve emissions reductions within the Regulated California Waters that are equivalent to those achieved by this section. Equivalent requirements may be from IMO regulations that are adopted and enforced by the United States or may be contained in regulations that are initiated by the U.S. Environmental Protection Agency. Subsection (e) shall remain in effect under this subsection until the Executive Officer issues written findings that federal requirements are in place that will achieve equivalent emissions reductions within the Regulated California Waters and are being enforced within the Regulated California Waters.

(2) The Executive Officer shall periodically review the California baseline determinations by the National Oceanic and Atmospheric Administration (NOAA) to determine if updates to the baseline charts incorporated by reference in this section are necessary. If modifications to the baseline charts are determined to be necessary, the Executive Officer shall conduct a public hearing as soon as practicable to amend this section accordingly.

(3) The Executive Officer shall periodically review the test methods incorporated by reference in this section to determine if updates to the referenced methods are necessary. If updates to the test methods are determined to be necessary, the Executive Officer shall conduct a public hearing as soon as practicable to amend this section accordingly.

(k) Severability.

Each part of this section shall be deemed severable, and in the event that any part of this section is held to be invalid, the remainder of this section shall continue in full force and effect.

➡ § 2299.3. Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port.

(a) Any person who owns, operates, charters, rents, or leases any U.S. or foreign-flagged container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port, as defined in section 93118.3(c), title 17, California Code of Regulations (CCR), must comply with section 93118.3 (subject to the exemptions therein), relating to the operation of auxiliary diesel engines on ocean-going vessels at-berth in a California port. In addition, this section also applies to any person who owns or operates a port or terminal located at a California port, as defined in section 93118.3(c)(6), where container, passenger, or refrigerated cargo vessels visit.

(b) This section shall not be construed as expanding or limiting either the application or requirements of section 93118.3, title 17, CCR, but is intended to alert affected persons of the requirements regarding the operation of auxiliary diesel engines on ocean-going vessels at-berth in a California port and other provisions in that section.

§ 2299.5. Low Sulfur Fuel Requirement, Emission Limits and Other Requirements for Commercial Harbor Craft.

Any person who sells, supplies, offers for sale, purchases, owns, operates, leases, charters, or rents any new or in-use diesel fueled Harbor Craft, as defined in section 93118.5(d)(36), title 17, California Code of Regulations (CCR), must comply with the low sulfur fuel use requirement in section 93118.5(e)(1) and other requirements in section 93118.5, title 17, CCR when operating the craft within Regulated California Waters, as defined in section 93118.5(d)(65), title 17, CCR, except as provided in section 93118.5(b) and (c), title 17, CCR. Notwithstanding the definition of Harborcraft in section 2299(b)(4), title 13, CCR, and in section 93117(b)(4), title 17, CCR, the low sulfur fuel requirement in section 93118.5(e)(1), title 17, CCR applies to an ocean-going tugboat or towboat that has a "registry" (foreign trade) endorsement on its United States Coast Guard certificate of documentation or that is registered under the flag of a country other than the United States, except when on voyages comprised of "continuous and expeditious navigation" through Regulated California Waters, as provided in section 93118.5(c)(1), title 17, CCR. This section shall not be construed as expanding or limiting either the application or requirements of section 93118.5, title 17, CCR, but is intended to alert affected persons of the Harbor Craft fuel use requirement and other provisions in that section.