

FINAL DRAFT REGULATION ORDER

**PROPOSED AMENDMENTS TO THE AIRBORNE TOXIC CONTROL MEASURE FOR
CRUISE SHIP ONBOARD INCINERATION**

Amend ~~Adopt new~~ section 93119, title 17, California Code of Regulations, to read as follows:

Section 93119. Airborne Toxic Control Measure for Cruise Ship and Oceangoing Ship Onboard Incineration.

(a) Purpose.

The purpose of this control measure is to reduce emissions of toxic air contaminants from the use of incinerators aboard cruise ships and oceangoing ships. Specifically, this regulation prohibits cruise ships and oceangoing ships from conducting onboard incineration while operating within three miles of the California coast. This control measure is expected to reduce exposure to toxic air contaminants for residents living near ports and along the California coast.

(b) Applicability.

~~Except as provided in subsection (c),~~ Ithis section applies to any person who owns or operates a cruise ship, as defined in subsection ~~(c)(4)(2)(2)~~, including foreign flagged cruise ships.

~~This section also applies to any person who owns or operates an oceangoing ship as defined in subsection (c)(6), including foreign flagged oceangoing ships. including foreign flagged cruise ships, which travel within three miles of the California coast or visit California ports or terminals.~~

~~**(c) Exemptions.**~~

~~(1) This section does not apply to vessels without berths or overnight accommodations for passengers.~~

~~(2) This section does not apply to noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the State of California, the United States, or a federal government.~~

~~**(cd) Definitions.**~~ For the purposes of this section, the following definitions apply:

~~(1) "Air Pollution Control Officer" or "APCO" means the air pollution control or executive officer of a district, or his or her delegate.~~

- (1) “Calling on California ports or places” means bound for or leaving a port or terminal located in California.
- (2) “Cruise ship” means a commercial vessel which has berths or overnight accommodations for passengers and that which has the capacity to carry 250 or more passengers for hire, calling on California ports or places. Cruise ship does not include an oceangoing ship, noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the State of California, the United States, or a foreign government.
- ~~(3) “District” means an air pollution control or air quality management district as defined in Health and Safety Code section 39025.~~
- (3) “Estuarine Waters” means an arm of the sea or ocean that extends inland to meet the mouth of a river.
- (4) “Executive Officer of the Air Resources Board” means the executive officer of the California Air Resources Board or his or her delegate.
- (5) “Incinerator” means any device used to conduct onboard incineration.
- (6) “Oceangoing Ship” means a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places. An oceangoing ship does not include a cruise ship.
- ~~(67)~~ “Onboard incineration” means the combustion or burning of any materials or wastes for the purpose of volume reduction, destruction, sanitation, or sterilization, aboard a cruise ship or oceangoing ship. Onboard incineration does not include incinerators which are only burning fuels including, but not limited to, natural gas, gas oil, marine gas oil, marine diesel fuel, fuel oil, or residual fuel oil for the specific purpose of maintaining a minimum temperature in the incinerator to minimize thermal cycling.
- ~~(78)~~ “Owner or Operator” means a person who owns or operates a cruise ship or oceangoing ship.
- ~~(89)~~ “Person” shall have the same meaning as defined in Health and Safety Code section 39047.
- (10) “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 32.48 degrees North, 117.67 degrees West; and ending at the California-Mexico border at the Pacific Ocean, inclusive.

(911) ~~“Segment” means that portion of the cruise ship’s voyage from the last port of call to the next port of call.~~

(4012) “Within three miles of the California coast” means between the California coast and the Three Nautical Mile Line as shown on the following National Oceanic and Atmospheric Administration (NOAA) Nautical Charts as authored by the NOAA Office of Coast Survey, which are incorporated 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).

(de) Requirements.

- (1) Notwithstanding sections 93104 and 93113 of title 17, California Code of Regulations, no cruise ship or oceangoing ship owner or operator, agent, representative, or employee shall conduct onboard incineration within three miles of the California coast, except when required to be operated under the direction or supervision of the United States Coast Guard.
- (2) *Recordkeeping and Reporting Requirements*

(A) *Recordkeeping Requirements*

1. Owners or operators of cruise ships or oceangoing ships subject to the requirements of this section shall ~~maintain record the following records information while operating in Regulated California Waters: for each segment of a voyage if, during any portion of that segment, the cruise ship travels within three miles of the California coast.~~
 - a. The date and time of start and stop of incineration (in local time);
 - b. The position of the ship in latitude and longitude for each start and stop time of incineration;
 - c. The estimated amount incinerated in cubic meters (m³); ~~and~~
 - d. The name or signature of officer in charge of the operation; ~~and~~
 - e. When operation of the incinerator is required by the United States Coast Guard, the name, unit, and phone number of United States Coast Guard personnel who directed that the incinerator be operated.
2. Records shall be maintained in English and shall be kept and maintained onboard the respective cruise ship or oceangoing ship for two years.
3. During an onboard inspection, records shall be made available to Air Resources Board personnel, ~~District personnel~~, or their delegates.
4. Optional Recordkeeping Protocol for Military Vessels.
 - a. The Executive Officer, upon application of any military agency owning or operating an oceangoing ship, may enter into a written protocol with that military agency for the purposes of specifying the information required to be recorded, as long as the Executive Officer reasonably determines that application of the regulatory requirements under the protocol:
 - (i) Provides an equivalent level of verification of compliance with this section, and

(ii) Is necessary to preserve national security and the oceangoing ship is exempted from regulations under the federal national security exemption, 40 CFR, subpart R, sections 85.1702(a)(2), 85.1704(b), 85.1708, and 85.1710.

b. Any such protocol shall include the oceangoing ship owner's or operator's agreement to be bound by the terms of the protocol.

c. The application of any oceangoing ship owner or operator shall state sufficient facts for the Executive Officer to make the determinations listed in subsection (d)(2)(A)4a, identify the information to be recorded by the oceangoing ship owner or operator, list all vessels with sufficient particularity to which the protocol will apply, and commit to be bound by the terms of the protocol.

d. The Executive Officer for just cause may revoke the protocol. The revocation procedures and conditions in subsection (d)(3)(F)-(J) apply to protocols for military records.

(B) *Reporting Requirements*

1. Owners or operators of cruise ships and oceangoing ships that are subject to this section, shall, upon written request by the Executive Officer of the Air Resources Board ~~or the Air Pollution Control Officer from a District~~, provide copies of the records as specified in subsection ~~(d)(e)~~(2)(A) within 30 calendar days of the request.

(3) Optional Inspection Protocol for Military Vessels.

(A) The Executive Officer, upon application of any military agency owning or operating an oceangoing ship, may enter into a written protocol with that military agency for the purposes of specifying whether and/or when an onboard inspection by Air Resources Board personnel shall be performed, as long as the Executive Officer reasonably determines that application of the regulatory requirements under the protocol:

- (1) Provides an equivalent level of verification of compliance with this section when compared to an onboard inspection,

- (2) Provides a reasonably timely verification of compliance with this section, and
- (3) Is necessary to preserve national security and the oceangoing ship is exempted from regulations under the federal national security exemption, 40 CFR, subpart R, sections 85.1702(a)(2), 85.1704(b), 85.1708, and 85.1710.
- (B) Any such protocol shall include the oceangoing ship owner's or operator's agreement to be bound by the terms of the protocol.
- (C) The application of any oceangoing ship owner or operator shall state sufficient facts for the Executive Officer to make the determinations listed in subsection (d)(3)(A)(1)-(3), identify a reasonable alternative to onboard inspections, list all vessels with sufficient particularity to which the protocol will apply, and commit to be bound by the terms of the protocol.
- (D) The absence of such a written protocol shall not impair, prevent, or in any way alter the right of ARB to perform onboard inspections of cruise ships or oceangoing ships for the purposes of determining compliance with this section.
- (E) The Executive Officer for just cause may revoke the protocol in any of the following circumstances:

 - (1) The holder of the protocol has materially misrepresented the meaning, findings, effect or any other material aspect of the application for a protocol, including submitting false, misleading, or incomplete information in its application for a protocol regardless of the holder's personal knowledge of the falsity or incompleteness of the information,
 - (2) Any of the requirements listed in subsection (d)(3)(A)(1)-(3) are no longer true,
 - (3) There is cause to believe that violations of this section have occurred aboard the oceangoing ship, which is the subject of the protocol,
 - (4) The holder of the protocol has violated one or more terms or conditions of the protocol or has refused to comply with any of the requirements of this section,

- (5) Enforcement officers of the Air Resources Board, after presentation of proper credentials, have been denied access to any records required by this regulation for the purpose of inspection and/or duplication, or
- (6) The holder of the protocol has failed to take requested corrective action as set forth in a Notice of Violation or Notice to Comply within the time period set forth in such notice.
- (F) The holder of the protocol may be subject to revocation action pursuant to this section based upon actions of an agent, employee, licensee, contractor, or other authorized representative.
- (G) After the Executive Officer revokes a protocol pursuant to this section and prior to the commencement of a hearing, if the protocol holder demonstrates to the Executive Officer's satisfaction that the decision to revoke the Executive Order was based on erroneous information, the Executive Officer shall reinstate the protocol.
- (H) The Executive Officer shall notify the holder of a protocol by certified mail, fax, or personal delivery of any action taken by the Executive Officer to revoke any protocol granted under this section. The notice shall set forth the reasons for, and evidence supporting, the action(s) taken. A revocation is effective upon receipt of the notification.
- (I) A party having received a notice to revoke a protocol may request that the action be stayed pending a hearing in accordance with title 17, California Code of Regulations, division 3, chapter 1, subchapter 1.25, article 2 (commencing with section 60055.1). In determining whether to grant the stay, the Executive Officer shall consider the reasonable likelihood that the protocol holder will prevail on the merits of the appeal and the harm the protocol holder will likely suffer if the stay is not granted. The Executive Officer shall deny the stay if the adverse effects of the stay on the public health, safety, and welfare outweigh the harm to the protocol holder if the stay is not granted.
- (J) Nothing in this section shall prohibit the Executive Officer from taking any other action provided for by law for violations of the Health and Safety Code.

(ef) Updates to NOAA Charts.

The Executive Officer shall publish in the California Regulatory Notice Register, send an electronic notice out to all subscribers of the oceangoing ship incineration list serve and cruise ship incineration list serve, post to the oceangoing ship incineration website at www.arb.ca.gov/toxics/shipincin/shipincin.htm, and notify potentially affected cruise ship owners or operators, regarding revisions to subsection (c)(d)(1012) with regard to Nautical Charts updated by NOAA, at least 30 days before the updates take effect in the following situations:

- (1) The Executive Officer may revise subsection (c)(d)(1012) when there is a change in the chart number or name; or
- (2) The Executive Officer may revise subsection (c)(d)(1012) when NOAA revises the Three Nautical Mile Line, as shown on the respective charts.

(fg) 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.

NOTE: Authority cited: Sections 39516, 39600, 39601, 39631, 39650, 39656, 39658, 39659 and 39666 Health and Safety Code. Reference: Sections 39630, 39631, 39632, 39650, 39656, 39659, 39666 and 41700 Health and Safety Code.