

Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information

Proposed Amendments to the Commercial Harbor Craft Regulation

Public Hearing Date: November 19, 2021; March 24, 2022

Public Availability Date: October 10, 2022

Deadline for Public Comment: October 25, 2022

This notice announces a second supplemental period during which the public may comment on additional proposed modifications to the Proposed Amendments to the Commercial Harbor Craft (CHC) Regulation (Proposed Amendments). The Proposed Amendments include modifications to two sections of the California Code of Regulations (Cal. Code Regs.): title 17, division 3, chapter 1, subchapter 7.5 section 93118.5 and title 13, division 3, chapter 5.1, section 2299.5.

On November 19, 2021, the California Air Resources Board (Board or CARB) held its first public hearing to consider the Proposed Amendments. After considering staff's presentation of the Proposed Amendments and all public comments received, Board members highlighted the need for emission reductions from CHC to meet air quality goals and to protect public health. The Board additionally directed staff to further evaluate the proposal with respect to four areas to maximize the penetration of zero-emission and cleaner combustion technologies in the marine sector, while minimizing the economic impact on CHC owners and operators, especially to small businesses and fleets owning a small number of vessels. These areas included existing and future incentive funding programs available to CHC owners, pathways to streamline and lower the cost of compliance extensions when installing Tier 4 engines or diesel particulate filter aftertreatment is not technically and financially feasible, committing to an ongoing technology review covering the status of zero-emission technology readiness for the marine sector, and considering a future zero-emission contingency measure that could be included as part of a future State Implementation Plan action to require more aggressive zero-emission technology mandates.

In response to the Board's direction, CARB staff carefully reviewed 3,280 written public comments, evaluated the verbal testimony from the November 19 hearing, followed up with stakeholders who submitted information into the rulemaking record, and hosted a public webinar on January 12, 2022, to receive input on staff's proposed response to Board direction.

On March 14, 2022, CARB staff posted written responses to the Draft Environmental Analysis (EA) and the Final EA for public review, and presented the Final EA, Response to Comments, Proposed Resolution 22-6, and recommended changes to the Proposed Amendments to the Board at its second public hearing. At the conclusion of that hearing, the Board adopted Resolution 22-6.

Resolution 22-6 directed the Executive Officer to make the modified regulatory language and any additional conforming modifications available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer was given authority to both (1) either approve or disapprove proposed changes in regulatory language under Government Code section 11346.8, subsection (c), and (2) conduct any appropriate further environmental review associated with such changes, consistent with the Board's Certified Regulatory Program regulations, at Cal. Code Regs., title 17, sections 60000-60008, for those sufficiently related substantial modifications.

On May 19, 2022, CARB issued a "Notice of Public Availability of Modified Text and Availability of Additional Documents and Information." That notice outlined proposed modifications that provided an additional extension pathway option through 2034 for Commercial Passenger Fishing Vessels that have replaced all onboard engines to meet Tier 3 or newer standards by the end of 2024, and to provide clarification of requirements, in areas where provisions were identified as potentially unclear. This Notice was published on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2021/chc2021>. The 15-Day comment period closed on June 3, 2022. Ten written comments were received during the 15-day comment period.

After considering the comments received during the 15-day comment period, the Executive Officer issued Executive Order R-22-003 on July 21, 2022, adopting the modified regulation.

On July 21, 2022, CARB submitted the rulemaking package to the Office of Administrative Law (OAL) for review and released the Final Statement of Reasons (FSOR). The Resolution, FSOR, and all other regulatory documents for this rulemaking are available online at the following CARB website: <https://ww2.arb.ca.gov/rulemaking/2021/chc2021>.

On September 1, 2022, OAL disapproved the rulemaking package. On September 8, 2022, OAL issued a "Decision of Disapproval of Regulatory Action," that identified 17 subsections of the proposed regulatory text that OAL determined did not comply with the clarity standard of Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16. OAL's "Decision of Disapproval of Regulatory Action" is available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/chc_oal_disapproval_decision.pdf.

This notice describes further modifications made to the regulatory language to address the concerns noted by OAL in its Decision of Disapproval of Regulatory Action, and to provide greater clarification and enforceability of the proposed amendments.

The text of the modified regulatory language is shown in Attachment A to this notice. CARB staff has addressed the issues identified in OAL's written Decision of Disapproval in the modifications in the regulatory language in Attachment A to this notice and will timely

resubmit the Proposed Amendments to OAL to ensure that OAL will be able to confirm that the Proposed Amendments comply with the requirements of Government Code section 11349.1 well before January 1, 2023, the first effective date of the Proposed Amendments. The originally proposed language is shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. The proposed changes set forth in the May 19, 2022, 15-day changes are shown in **bold double underline** to indicate additions, and ~~**bold double underline**~~ to indicate deletions. The proposed changes set forth in this notice that are made public with this notice are shown in *italicized double-underline* to indicate additions, and ~~*italicized double-underline*~~ to indicate deletions.

In an addendum to the FSOR, staff will respond to all timely-filed comments received during the noticed comment period. The Administrative Procedure Act requires that staff responds to timely comments received regarding all noticed changes. Therefore, staff will only address comments received during this second 15-day comment period that are responsive to this notice or the changes detailed in Attachment A of this notice.

Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

1. In subsection 93118.5(d), in the definition of "Category 3 Engine," staff replaced the words "of greater than" with "at or above" to reflect that engines with exactly 30 liters per cylinder displacement are defined as Category 3 Engines.
2. In subsection 93118.5(d), staff added a definition for "Commercial Passenger Fishing Logbook (CPFV Logbook)" to mean "the record of fishing activities that California CPFV operators are required to submit to the California Department of Fish and Wildlife (CDFW) as described in CCR, title 14, division 1, subdivision 1, chapter 6.5." This definition clarifies one potential means for vessel owners to comply with the reporting requirements in subsection 93118.5(m)(21)(C).
3. In subsection 93118.5(d), in the definition of "Direct Control," staff deleted the phrase "and being responsible for the majority of commercial activity at a given location," added "the authority" before "to control the affairs of facility operations," and added "and" before "using facility property" to remove ambiguity in the word "responsible" and to add specificity to the definition while not changing its intent. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.16 of its memo.
4. In subsection 93118.5(d), staff added a definition for "Greenhouse Gas (GHG)" to specify which gases are defined as GHGs.
5. In subsection 93118.5(d), in the definition of "Grid-Neutral," staff edited the definition to align with the existing definition in 17 CCR 93130.2(b)(38) for clarity.
6. In subsection 93118.5(d), in the definition of "Rebuild," staff replaced the phrase "using both new and re-conditioned parts" with "using new or re-conditioned parts"

to clarify that a rebuild can include new or reconditioned parts and does not mean that a rebuild must use both new and reconditioned parts.

7. In subsection 93118.5(d), in the definition of "Renewable Diesel," staff added the abbreviated names "R100" and "R99" to the definition, removed the non-specific reference to federal registration requirements, and added a date (May 1982) to the ASTM reference for clarity. Staff also added the sentence "'Renewable Diesel' can mean either a blend of 99 percent 'R99,' or 100 percent 'R100' renewable diesel by volume" for additional clarity.
8. In subsection 93118.5(d), in the definition of "Repower," staff replaced "means replacing a used engine with a brand new or reconditioned engine meeting current emission standards in effect at the time of repower. Repower includes major engine repairs on a damaged engine requiring a new engine block" with "means replacing an existing engine with another engine that meets required emission standards in effect at the time of replacement. Repower includes engine repairs on a damaged engine requiring a different engine block" to provide additional clarify without changing the meaning of the definition.
9. In subsection 93118.5(d), staff added a definition for "Shift or Crew Change" to clarify requirements in subsection (h)(1)(E). These amendments clarify proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.7 of its memo.
10. In subsection 93118.5(e)(2), staff replaced the sentence beginning with "Beginning January 1, 2023, in the event..." with the following: "Beginning January 1, 2023, if an hour meter fails to properly operate in accordance with manufacturer specifications, a person subject to this section must, within 30 days, replace the hour meter that is failing to operate properly and report to CARB the date the hour meter stopped operating properly, the date the hour meter was replaced, and the hour readings of both the hour meter that failed to operate properly and the replacement hour meter as of the date of replacement. Beginning January 1, 2023, if an existing hour meter is replaced, a person subject to this section must, within 30 days, report to CARB the date the existing hour meter was replaced, and the hour readings of both the existing hour meter that was replaced and the replacement hour meter as of the date of replacement." This paragraph was restructured to correct grammatical issues and to clarify that the hour meter readings required to be provided are that of both the meter being replaced and the new meter. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.10 of its memo.
11. In subsection 93118.5(e)(8)(A), staff replaced "or is certified to meet performance standards in Tables 11, 12, or 13" with "or is certified to meet both the most stringent marine standards (Tier 3 or Tier 4) or the Tier 4 Final off-road standards in effect on that date for a new engine with applicable horsepower rating and duty cycle rating and the applicable performance standards specified" to clarify that new and newly acquired in-use engines certified to applicable performance standards must also be

certified to the most stringent marine standards (Tier 3 or Tier 4) or Tier 4 Final off-road standards.

12. In subsection 93118.5(e)(8)(A)3., staff replaced “Tier 3 or Tier 4 emission standards may be acquired for use if Tier 3 or Tier 4 standards are the most stringent” with “Tier 3 or Tier 4 marine standards or Tier 4 Final off-road standards may be acquired for use if the Tier 3 or Tier 4 marine standards or the Tier 4 Final off-road standards are the most stringent” to clarify intent, as expressed in the ISOR, page IV-9, that the rebuild option applies to engines rebuilt to Tier 3 or Tier 4 marine standards or to Tier 4 Final off-road standards.
13. In subsection 93118.5(e)(8)(A)3.e., staff replaced “Emissions test data used to meet the requirements for U.S. EPA certification for systems providing a rebuild to a cleaner standard” with “For marine engines, emissions test data as specified in 40 CFR section 1042.835 (d), as last amended on June 30, 2008, and section 1042.840 (n), as amended on October 25, 2016, which are incorporated by reference herein. For off-road engines, the information specified in 40 CFR section 1068.120 (j), as last amended on October 25, 2016, which is incorporated by reference herein,” to provide specificity on what information and test data applicants will need to provide. The informational requirements align with pre-existing EPA regulations.
14. In subsection 93118.5(e)(9)(A)1., staff replaced “Regulated California Waters unless the tailpipe emissions from each propulsion and auxiliary engine on the vessel meets the applicable performance standards in Table 11, Table 12, or Table 13 set forth in this subsection. Propulsion or auxiliary engines meeting the applicable performance standards in Table 11, Table 12, or Table 13, using Tier 4 Final off-road engines in effect on the date of the vessel acquisition may be sold” with “Regulated California Waters unless each propulsion and auxiliary engine on the vessel is certified to the most stringent marine standards (Tier 3 or Tier 4), or the Tier 4 Final off-road standards in effect on the date of vessel acquisition that are applicable to a new engine with applicable horsepower rating and duty cycle rating, and the applicable performance standards defined in subsection (e)(9). Propulsion or auxiliary engines that are certified to the Tier 4 Final off-road standards in effect on the date of vessel acquisition for a new engine with applicable horsepower rating and duty cycle rating and that meet the applicable performance standards defined in subsection (e)(9) may be sold” to clarify that engines on new vessels must be certified to applicable new engine certification standards and must also comply with performance standards, and all performance standards in subsection (e)(9) apply.
15. In subsection 93118.5(e)(9)(A)2., staff replaced “engines rated less than 600 kW shall meet the tailpipe emission performance standards in Table 11 if Tier 4” with “engines rated less than 600 kW shall meet Tier 4 marine standards and the performance standards in Table 11 of subsection (e)(9) if Tier 4” to clarify that engines less than 600 kW must meet both Tier 4 marine certification standards and performance standards.
16. In subsection 93118.5(e)(9)(A)4., staff replaced “New excursion vessels and short-run ferries must meet performance standards listed in Tables 11, 12, or 13 if acquired” with “Each propulsion and auxiliary engine on new excursion vessels and short-run ferries must be certified to the most stringent marine standards (Tier 3 or Tier 4), or

the Tier 4 Final off-road standards in effect on that date such vessels are acquired that are applicable to a new engine with applicable horsepower rating and duty cycle rating, and must also meet applicable performance standards listed in subsection (e)(9) if such vessels are acquired” to clarify staff’s original intent that for new ferries and excursion vessels, engines must meet both certification and performance standards, and the more stringent performance standard applies.

17. In subsection 93118.5(e)(9)(A), in Table 11, staff added a column listing the performance standard for HC emissions and a column listing the performance standard for CO emissions to clarify that these pollutants are included in the performance standards in subsection (e)(9). Staff also added a footnote (a) that states “Converted emission standards from 400 CFR part 1042, which are expressed in g/kW-hr, to g/bhp-hr in Table 11 by the following: $g/kW-hr * (0.746) = g/bhp-hr$ ” to clarify that the performance standards align with 40 CFR part 1042.
18. In subsection 93118.5(e)(9)(A), in Table 12, staff replaced the “>30.0” in the last three rows with “≥30.0” to correctly reflect that Category 3 Engines are defined as having displacement greater than or equal to 30 liters per cylinder. Staff also added a column listing the performance standard for CO emissions and added HC emissions to applicable engine categories to clarify that these pollutants are included in the performance standards in subsection (e)(9). Staff also added footnotes (a), (b), and (c) that state “Converted emission standards from 400 CFR part 1042, which are expressed in g/kW-hr, to g/bhp-hr in Table 12 by the following: $g/kW-hr * (0.746) = g/bhp-hr$,” “The C3 Tier 3 standard is for NOx and HC respectively in g/bhp-hr,” and “N is the maximum test speed of the engine in revolutions per minute (rpm),” respectively, to clarify that the performance standards align with 40 CFR part 1042, that the HC performance standard is included in the NOx standard for C3 engines, and that N is the maximum test speed.
19. In subsection 93118.5(e)(9)(A), in Table 13, staff added a column listing the performance standard for CO emissions to clarify that this pollutant is included in the performance standards in subsection (e)(9). Staff also added footnote (b) which states “Converted emission standards from 400 CFR part 1042, which are expressed in g/kW-hr, to g/bhp-hr in Table 13 by the following: $g/kW-hr * (0.746) = g/bhp-hr$ ” to clarify that the performance standards align with 40 CFR part 1042.
20. In subsection 93118.5(e)(11)(A), staff added the phrase “no later than” before “three years prior” to clarify that ZEAT credit eligibility applies to ZEAT adopted at least three years prior to the compliance dates in Table 14. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.3.1 of its memo. Clarifying edits were also made to specify that the additional compliance time resulting from applying a ZEAT credit would apply to all of the in-use engines on a vessel to which the credit is applied.
21. In subsection 93118.5(e)(11)(A), in Table 15, staff deleted the word “Maximum” in the header cell for additional compliance time, added “Note: The ZEAT credits in Table 15 are only issued in three- and seven-year increments, subject to the condition that the length of the additional compliance time may not extend beyond December 31, 2034, pursuant to subsection (e)(11)(B)7” below Table 15, deleted the words “up to” before

“seven additional years” in the example following Table 15, and added “However, the additional compliance time may not extend past December 31, 2034” to the paragraph below Table 15. These edits clarify that the ZEAT credit is granted in increments of 3 or 7 years but may not be used to delay compliance past December 31, 2034. These edits clarify proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.3.2 of its memo.

22. In subsection 93118.5(e)(11)(B)7., staff replaced the phrase “Any combination of multiple ZEAT credits...” with “Any ZEAT credit or combination of ZEAT credits...” to clarify that a single ZEAT credit may also not extend the compliance date of any engine or vessel past December 31, 2034.
23. In subsection 93118.5(e)(12)(B)1., staff replaced “a person” with “no person,” deleted the phrase “who owns, operates, sells, purchases, offers for sale, leases, rents, imports, or otherwise acquires a regulated in-use vessel with any marine or off-road diesel engines,” and replaced “an in-use vessel” with “a regulated in-use vessel” to clarify that this subsection applies to persons that already own or operate existing in-use vessels on or after January 1, 2023, and to persons that are seeking to operate, acquire, lease, etc. other (i.e., distinct) in-use vessels on or after January 1, 2023. These edits clarify that the requirements specified in the compliance methods in (e)(12)(C) apply to persons that already own or operate existing in-use vessels on or after January 1, 2023. Other minor language edits were also added for clarity. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.8 of its memo.
24. In subsection 93118.5(e)(12)(B)5., staff replaced the word “is” with the phrase “may be” to clarify that a vessel would only be eligible for the low-use exception if it met the engine tier level and operating hour limits as specified in subsection (e)(14).
25. In subsection 93118.5(e)(12)(B)6., staff replaced the word “locking” with “disabling” to clarify that an engine that does not meet performance standards but remains installed on a vessel must be disabled to prevent operation.
26. In subsection 93118.5(e)(12)(C)1., staff replaced “in-use engine at issue that meets the CARB performance standards in either Table 11, Table 12, or Table 13, as applicable, as set forth in subsection 93118.5(e)(9) in its certified condition by U.S. EPA or CARB” with “in-use engine at issue and that meets the applicable performance standards in subsection (e)(9) in its certified condition by U.S. EPA or CARB” to clarify the applicable performance standard requirements.
27. In subsection 93118.5(e)(12)(C)2., staff replaced “If an engine does not meet CARB performance standards in Table 11, Table 12, or Table 13 as set forth in subsection 93118.5(e)(9), a person may” with “If an engine does not meet the most stringent marine standards (Tier 3 or Tier 4), or Tier 4 Final off-road standards applicable to a new engine with the applicable horsepower rating and duty cycle rating as the in-use engine at issue, and the applicable performance standards in subsection (e)(9), a person may” to clarify the applicable performance standard requirements.

28. In subsection 93118.5(e)(12)(C)3., staff replaced “tailpipe emissions otherwise meet the performance standards set forth Page 77 of 120 in Table 11, Table 12, or Table 13 of subsection 93118.5(e)(9) using an Alternative Control of Emissions as outlined in subsection 93118.5(f)” with “tailpipe emissions meet the most stringent marine standards (Tier 3 or Tier 4), or Tier 4 Final off-road standards applicable to a new engine with the applicable horsepower rating and duty cycle rating as the in-use engine at issue, and also the applicable performance standards in subsection (e)(9)” to clarify that engines complying with this method must be certified to applicable engine certification standards and must also comply with performance standards, and all performance standards in subsection (e)(9) apply.
29. In subsection 93118.5(e)(12)(C)4.b., staff replaced “CARB” with “the applicable” and deleted “by U.S. EPA” to clarify that this subsection is referring to engines that meet all applicable performance standards in subsection (e)(9), and to reflect that Tier 4 Final off-road engines also include CARB certified engines.
30. In subsection 93118.5(e)(12)(D)2.b., staff replaced “...work orders evidencing the date and work needed to rebuild the engine to conform with Tier 3 or Tier 4 marine engine standards, and emissions...” with “... work orders evidencing that the engine was rebuilt to conform with Tier 3 or Tier 4 marine engine standards and the date the rebuild was completed, and emissions...” to clarify that the information required must substantiate that the work was actually done and that the compliance deadline was met.
31. In subsection 93118.5(e)(12)(D)2.c., staff added the sentence “An owner or operator electing to use Compliance Method D2 must submit the information specified in subsection (e)(12)(D)2.b. to the E.O.” Staff also replaced “a request” with “that information” and deleted the phrase “submitted by an applicant” in the subsequent sentence. These edits clarify that the information required to be submitted to the E.O. is that in subsection (e)(12)(D)2.b., which clarifies the proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.15 of its memo.
32. In subsection 93118.5(e)(12)(D)2.d., staff replaced the word “applicant” with “information” and deleted the reference to Table 16 as a correction to the language because Table 16, which provides compliance dates for pre-Tier 1 and Tier 1 engines, does not apply to this subsection, which pertains to Tier 3 and 4 rebuilds.
33. In subsection 93118.5(e)(12)(E)2.d.i., staff added the word “standards” after “Tier 4 Final off-road” to clarify that the engines being discussed are certified to the standards corresponding with the engine tier.
34. In subsection 93118.5(e)(12)(E)3.b.vi., staff added “Such actions may include developing new business structures (e.g., forming a new corporation) or restructuring existing accounting practices to pass some or all of the compliance costs associated with this regulation onto the consumers and entities receiving the applicant’s services, replacing existing engines with engines certified to more stringent marine engine or off-road certification standards, and procuring loans to finance anticipated compliance costs” to clarify examples of key actions applicants should include in the application and to match the intent as provided in the ISOR, p. IV-82. This edit clarifies proposed

language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.12 of its memo.

35. In subsection 93118.5(e)(12)(E)3.d.iii., staff modified the sentence to state “Applicants must include documentation demonstrating that vessels have been engaged in commercial passenger fishing vessel activities at least 50 days per calendar year between January 1, 2023 and the date of the application, and a statement that the applicant intends to continue operating such vessels, in commercial passenger fishing vessel activities at least 50 days per calendar year throughout the requested extension period” to clarify that vessel owners and operators must document to CARB their intention to continue to operate their vessels as CPFVs as a condition of receiving the ten-year extension, and that CARB will accept a statement from the applicant to meet this documentation requirement. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.17 of its memo.
36. In subsection 93118.5(e)(12)(E)3.d.iv., staff modified the sentence to state “Applicants must describe and document the precise procurement decisions and actions the vessel owner or operator currently plans to undertake or has taken to demonstrate compliance with subsection (e)(12) by December 31, 2034, including the specific compliance method or methods in subsection (e)(12)(C) the vessel owner or operator expects will be utilized, and proposed schedules to request and receive loans from financial institutions needed to cover the estimated costs associated with the identified compliance method or methods in subsection (e)(12)(C)” to clarify that applicants must provide a good faith estimate of compliance plans, describing the precise procurement decisions the vessel owner or operator plans to undertake to demonstrate compliance, and that submitting the plans does not bind the vessel operator to those specific plans. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.11 of its memo.
37. In subsection 93118.5(e)(12)(E)3.d.vi., staff added “owners and operators of” before “engines” to clarify that the owner or operator of the engine, not the engine itself, must meet the recordkeeping requirements of subsection (m)(21) and reporting requirements of subsection (o).
38. In subsection 93118.5(e)(12)(E)3.d.vii., staff replaced “coordinate with, and contribute to” with “participate in” to clarify CARB’s expectation that CPFV owners and operators will participate in technical working group meetings ahead of the 2028 midterm review.
39. In subsection 93118.5(e)(12)(E)4.b.i., staff changed “should” to “must” to improve enforceability of the provision.
40. In subsection 93118.5(e)(12)(E)5.a., staff deleted the word “not” before “renewable” to allow the scheduling extension E5 to be renewable, in response to recent feedback from industry that supply chain and scheduling issues are extending past one year in some cases.

41. In subsection 93118.5(e)(12)(E)5.b., staff replaced “capacities” with “delays” to clarify language without changing the meaning or intent of the provision.
42. In subsection 93118.5(e)(12)(E)5.b.i., staff added “documentation that” to provide additional clarity and correct grammar. Staff also replaced “excessive difficulties” with “delays” to clarify proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.13 of its memo. Staff also added “delays of inspections that are required to be conducted by local, state, or federal government agencies before the engine or equipment can operate” in response to recent industry feedback regarding possible delays experienced due to inspections required by agencies such as the U.S. Coast Guard.
43. In subsection 93118.5(e)(12)(E)5.b.ii., staff modified language to state “For new build vessel delays due to shipyard delays, a copy of the contract or agreement between the applicant and the shipyard that was executed at least 12 months prior to their compliance dates. The applicant must provide a letter demonstrating the reasons for the delay with documentation from the shipyard” to clarify staff’s intent that the copy of the contract should show that the contract was executed at least 12 months prior to the compliance date, not exactly 12 months prior to the compliance date, and staff made other language edits for clarity.
44. In subsection 93118.5(e)(12)(E)5., staff added a subsection (c) stating “Renewal: The applicant may apply for an additional one-year extension no later than 9 months and no earlier than 12 months before the expiration of the extension” to specify when renewals of the E5 extension must be submitted.
45. In subsection 93118.5(e)(12)(F)1., staff added “VDECS” before “manufacturer’s directions” to clarify which manufacturer’s directions must be followed.
46. In subsection 93118.5(e)(13)(A), staff replaced “may be sold or purchased” with “may be offered for sale, leased, rented, imported, sold, purchased, or acquired” to clarify staff’s intent that vessels can be acquired in other ways in addition to being sold or purchased prior to their compliance dates.
47. In subsection 93118.5(e)(14)(C)2.c., staff deleted “or is newly acquired by a person in the current calendar year” for consistency with (e)(14)(B)4 which does not allow low-use exceptions for newly acquired vessels after January 1, 2023.
48. In subsection 93118.5(f)(1)(A), staff added references to subsections (e)(3), (e)(4), and (e)(5) before the reference to subsection (e)(6) to clarify the baseline for ACE applications.
49. In subsection 93118.5(f)(1)(E)6., staff replaced, “used to generate or received a ZEAT credit” with “used to generate a ZEAT credit or had their compliance date extended by applying a ZEAT credit” to clarify that neither a vessel that generates a ZEAT credit nor a vessel that has its compliance date extended by a ZEAT credit may be used in fleet averaging for an ACE plan.
50. In subsection 93118.5(f)(1)(F), staff moved subsection 93118.5(f)(1)(K) to become subsection 93118.5(f)(1)(F)5. because it is functionally an application requirement. Staff also modified the language to state “Applicants must submit the following information

to demonstrate that their ACE will not result in a higher emissions burden to DACs relative to other communities impacted by the emissions from their vessel operations: the homebase and the information specified in subsection (m)(14)(E) of each harbor craft in an applicant's existing fleet, the proposed homebase and the information specified in subsection (m)(14)(E) describing where the proposed ACE harbor craft vessels will primarily operate in RCW, and the operating hours that each proposed ACE harbor craft vessel will operate in RCW each calendar year" to clarify what information is required to demonstrate that an ACE will not result in higher emissions burden to DACs. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.4 of its memo.

51. In subsection 93118.5(f)(1)(l), staff added "emissions reductions attributed to" before "equipment" to clarify intent.
52. In subsection 93118.5(g), staff added "Beginning January 1, 2024" to the beginning of subsection (g)(1), deleted subsection (g)(2)(A), renumbered the following subsections in (g)(2), and edited any references in the Regulation Order to these subsections to improve clarity without changing the requirements.
53. In subsection 93118.5(g)(2)(A) (previously 93118.5(g)(2)(B), staff made edits to clarify that the UVI will be issued by March 1, 2023, or within 30 calendar days of the owner or operator fulfilling the reporting requirements of subsection (o), and that the timing of issuance of the UVI is not based on recordkeeping requirements in subsection (m).
54. In subsection 93118.5(g)(2)(B) (previously 93118.5(g)(2)(C), staff deleted "in clear view" because it is surplusage to the requirements of (B)1.-4. Staff made other edits to (B) and (B)1.-4. to improve clarity, grammar, and enforceability without changing the requirements.
55. In subsection 93118(g)(C) (previously 93118.5(g)(2)(D), staff edited the language to clarify that it is the owner or operator of a registered historic vessel, not the vessel itself, that may install another UVI format.
56. In subsection 93118.5(h), staff replaced "subsection" with "section" to clarify that this subsection applies to all harbor craft subject to the regulation.
57. In subsection 93118.5(h)(1), staff added "Except as provided in subsections (1)(A)-(E) below," before "beginning on January 1" and added "Quick engine accelerations, restarting the engine while otherwise idling, or other operational maneuvers intended to circumvent the idling limit are still considered continuous idling" to specify that an operator is not allowed to make operational maneuvers to circumvent the idling limit, and to clarify that subsections (1)(A)-(E) allow idling under specified circumstances notwithstanding the requirement in subsection (h)(1). This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.9 of its memo.
58. In subsection 93118.5(h)(1)(B), staff deleted the phrase "while at a dockside location" as surplusage.

59. In subsection 93118.5(h)(1)(E), staff added "is permitted" after "30 consecutive minutes" to improve grammar. Staff added "after a vessel arrives at a dock at the end of a work period, or prior to initial operation in a new work period after engines are restarted" after "for the initial start-up of a vessel each day," to clarify that the 30-minute allowance is intended to apply to shift or crew changes and after a vessel comes to dock at the end of a work period, and prior to initial operation in a new work period. Staff also added "A new work period is defined as beginning when the main engines have been shut off for four hours or longer," to provide a definition for when a new work period begins. Staff also defined "shift or crew change" in subdivision (d) as "replacing one or more of the vessel's crew member(s) with another crew member(s)." These additions align with staff's intent as provided in the ISOR page III-17. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.7 of its memo.
60. In subsection 93118.5(h)(2), staff added "shore power is" before "selected" and deleted "that are" before "needed." These edits clarify that subsection (h)(2) applies when shore power is used for auxiliary power at dock.
61. In subsection 93118.5(i)(1), staff added "for vessel owners and operators" before "to comply" to clarify that the shore power infrastructure is needed for vessel owners and operators to comply with subsection (h), since subsection (h) applies to vessel owners and operators.
62. In subsection 93118.5(i)(1)(A), staff deleted the word "all" to clarify that the requirements only extend to facilities that meet the criteria of subsection (i)(1)(A).
63. In subsection 93118.5(i)(1)(A)1., staff replaced "any facility that allows more than 50 vessel visits per year" with "any facility at which more than 50 commercial harbor craft vessels visit per calendar year" to remove ambiguous language and to specify that the 50 visits per year threshold is assessed by calendar year.
64. In subsection 93118.5(i)(1)(A)3.a., staff corrected the reference to subsection (i)(1)(A) to (i)(1)(B).
65. In subsection 93118.5(i)(1)(B), staff replaced "shall" with "must," replaced "docking" with "berth," and added "for vessels that require" before "up to 99kW." These edits clarify that facility owners and operators are required to install shore power for vessels that require up to 99kW.
66. In subsection 93118.5(i)(1)(D), staff edited language to clarify that the period of analysis for the vessel visit threshold is per calendar year, and that facilities must have received fewer than 50 vessel visits in each calendar year for the previous two calendar years to receive the exemption for providing shore power infrastructure.
67. In subsection 93118.5(j)(1), staff replaced "and on an annual basis thereafter and shall follow..." with "and every year by July 1 thereafter and must follow..." to clarify that the list of vessel tenants is due every year by July 1.
68. In subsection 93118.5(j)(1)(G), staff replaced, "and the facility allows fewer than 50 visits per year total, the annual number of visits" with "and fewer than 50 vessels visited the facility in the previous calendar year, the number of visits that occurred in

the previous calendar year” to clarify that facilities that are not providing shore power to harbor craft must report the number of vessel visits it received in the previous calendar year.

69. In subsection 93118.5(k)(1), staff made minor language edits to improve grammar for clarity.
70. In subsection 93118.5(k)(1)(C), staff deleted the word “applicable,” included the acronym “(CCDET)” after “California Council on Diesel Education and Technology,” and replaced “specified test procedure” with “Society of Automotive Engineers ‘Surface Vehicle Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles’ (SAE J1667, February 1996), which is incorporated by reference herein.” These edits clarify that individuals conducting opacity tests must have completed the CCDET training that includes instruction in performing the SAE J1667 Snap Acceleration Smoke Test Procedure. As of the date of this 15-Day Notice, CCDET offers two courses: CCDET I and III, that offer instruction on the SAE J1667 method for on-road vehicles and cargo handling equipment, and CARB has contracted with CCDET to develop a training course for CHC, which is under development and expected to be offered in 2023. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.1 of its memo.
71. In subsection 93118.5(k)(1)(D), staff corrected the reference to subsection (k) to subsection (k)(1) for specificity and made grammar edits to clarify that it is the owner or operator that would demonstrate the ability to maintain or repair the aftertreatment control device.
72. In subsection 93118.5(k)(1)(E), staff made edits to clarify how the E.O. will evaluate a letter of attestation as an alternative compliance method and to clarify that the technician providing the letter must be certified by SAE, the OEM engine factory, distributor, or dealership. This certification is necessary because products that are under factory warranty must typically be worked on by certified technicians in order to maintain the warranty.
73. In subsection 93118.5(k)(1)(F), staff replaced “the E.O. can request an engine or emission control system inspection report from a certified dealer/distributor within 30 days” with “the E.O. can request a vessel owner or operator to provide the E.O. an engine or emission control system inspection report from a factory-certified engine or emission control system dealer/distributor within 30 days” to add specificity and clarity to the words “certified dealer/distributor” and to improve grammar of the sentence. Staff also added “The engine or emission control system inspection report must contain all of the information specified in subsection (m)(18) and a summary of an inspection conducted by a factory-certified technician of the make and model of the engines and any emission control devices or systems installed on the vessel, the technician’s assessment whether the engines and emission control devices or systems are within engine and emission control device system mechanical specifications and operational limits, and identification of observable mechanical or operational defects” to clarify that if requested by the E.O., the vessel owner or operator is required to submit a report from a factory-certified engine or emission control system technician

that contains a summary of the technician's inspection of the working condition of the engine and emission controls, and that the vessel owner or operator must also submit a report to CARB containing the information required by subsection (m)(18). This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.6 of its memo.

74. In subsection 93118.5(k)(3)(A), staff added "the test results" after "perform opacity testing and report" to clarify that it is the test results that are required to be reported to CARB biennially. Staff also deleted the phrases "along with the other reporting requirements outlined in subsection (o)" and "for all engines" in the subsequent sentence because it is surplusage. Staff also replaced "opacity testing must be performed once every two year period ending, and reported to CARB by March 31" with "Opacity testing must be performed on each main propulsion engine, and results reported to CARB, once every two-year period engine March 31" to clarify which engines must be tested and reported.
75. In subsection 93118.5(k)(3)(D), staff added "or other emission control system" after "DPF" and added "and retested" after "shall be repaired" to reflect staff's intent that the requirement applies to other emission control systems, not only DPFs, and the repaired equipment must be retested within 30 days. Staff replaced the word "information" with "records of opacity testing and emission control repair" and the word "shall" with "must" to clarify what information must be recorded as specified in subsection (m)(18). The sentence, "Before being put back into service the engine, DPF, or other emission control systems shall be repaired such that it meets the opacity requirements before being returned to service," was deleted and staff added, "The engine may be returned to service if the post-repair opacity meets the opacity limits in subsection (k)(2)," to correct grammar issues with the original language and clarify the requirement.
76. In subsection 93118.5(k)(3)(E), staff made minor language edits to improve grammar, and clarified that records of opacity testing and emission control repair must be maintained pursuant to subsection (m)(18).
77. In subsection 93118.5(k)(4)(B), staff added "of the repair and subsequent testing results" after "notify CARB" to clarify that the owner or operator must notify CARB of the repair and subsequent testing results. Staff also added "Opacity of exhaust from auxiliary engines must be measured using the test Method 9 – Visual Determination of the Opacity of Emissions from Stationary Sources as described in 40 CFR, Chapter I, subchapter C, Part 60 Appendix A-4 as it existed on September 26, 2022, which is incorporated herein by reference" to provide a test method for auxiliary engines, which was previously missing from the regulation text.
78. In subsection 93118.5(l)(4), staff deleted "except in circumstances as determined by the E.O." to remove ambiguity. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.2 of its memo.
79. In subsection 93118.5(l)(5), staff replaced "A late fee is any payment received after September 1st that must be..." with "A late fee is required to be paid if CARB does

not receive the annual fee payment by September 1. The late annual fees and late fee must be..." This language clarifies that if fees are not paid by September 1, late fees must be paid, and both the annual fees and late fees are due by December 31.

80. In subsection 93118.5(m), staff added "except as provided in subsection (m)(21)(C) after "approved by the E.O." to clarify that CPFV activity data submitted pursuant to (m)(21)(C) needs to be submitted in the specified electronic format.
81. In subsection 93118.5(m)(18)(M), staff deleted the word "current" and added the phrase "at the time the engine was returned to service" to clarify that the hour meter reading that must be recorded is that at the time the engine was returned to service.
82. In subsection 93118.5(m)(19)(D), staff made edits to clarify metrics and units required for reporting hours of operation and fuel and electricity usage for vessels adopting ZEAT.
83. In subsection 93118.5(m)(19)(E), staff made edits to clarify that the 20-hour limit applies to the combustion engine, and a clarifying text edit to align with the definition of zero-emission capable hybrid.
84. In subsection 93118.5(m)(19)(G), staff added the word "hourly" before "activity data" to clarify the frequency that the activity data must be recorded and replaced "shall" with "must" for improved enforceability. Staff also added "within 30 days of the initial operation of the temporary replacement vessel" after "reported separately from annual reporting" to specify that the activity data of subsections (m)(19)(C) and (D) are required to be reported within 30 days of the initial operation of the temporary replacement vessel, in alignment with staff's intent as previously stated on page IV-131 of the ISOR. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.5 of its memo.
85. In subsection 93118.5(m)(20)(A) and (B), staff made edits to clarify the information required to be reported for each vessel adopting ZEAT.
86. In subsection 93118.5(m)(21), staff replaced "and (e)(12)(E)3.d. the following information shall be kept" with "and (e)(12)(E)3.d., the information in subsection (a), subsection (B), and either subsection (C) or subsection (D), shall be kept" to clarify that either subsection (C) or (D) will apply, not both.
87. In subsection 93118.5(m)(21), staff renamed subsection (C) to subsection (D), added new text for subsection (C), and deleted the word "and" in subsection (B).
88. In subsection 93118.5(m)(21)(C), staff added "Commercial passenger fishing activity data that contains all of the information in subsections 1. through 8. below. Vessel owners or operators may maintain a Commercial Passenger Fishing Logbook to fulfill this requirement. If the activity data is requested by an agent or employee of CARB, the vessel owner or operator must submit the activity data to CARB in .xlsx or .csv format." This language, added in response to recent CPFV industry feedback, provides an option for CPFV owners and operators to fulfill CARB's recordkeeping requirements by keeping specified activity data instead of maintaining the calculation of passenger-days described in subsection (m)(21)(D), and provides that CPFV owners and operators can fulfill the activity data requirement using the CPFV Logbook that

they are already required to maintain pursuant to CDFW regulations as described in the newly added "CPFV Logbook" definition in subsection (d). The added language in subsection (m)(21)(C) also specifies that if CARB requests the activity data, the owner or operator must provide CARB the activity data in .xlsx or .csv format. This provision is added to ensure that CARB staff receives the activity data in an electronic format that staff can use for data analysis. Staff also added subsections (m)(21)(C)1.-8., which list the specific activity data information required to be kept pursuant to subsection (m)(21)(C).

89. In subsection 93118.5(m)(21)(D), previously 93118.5(m)(21)(C), in the definition of "passenger-day," staff added "single" before "person" and "eight-hour" between "full" and "day" to specify that a full day is eight hours, and that a passenger-day is per single person sportfishing. Staff added "Trip lengths must be calculated to the nearest one-hour increment, and passenger-days must be recorded to the nearest tenth of a day. For example, a trip including 11 anglers lasting 4 hours and 20 minutes would be $11 \times 4 \text{ hours} / 8 \text{ hours} = 5.5$ passenger-days. Standard rounding convention must be used in calculating and recording passenger days (i.e., fractional passenger days less than $x.x5$ are not increased (so 1.54 is rounded to 1.5), fractional passenger days equal to or greater than $x.x6$ are rounded to the next fraction (so 1.56 is rounded to 1.6), and fractional passenger days exactly equal to $x.x5$ are rounded up or down to make the fraction even (so 1.55 rounds to 1.6 but 1.85 rounds to 1.8)" to specify that trip lengths must be calculated to the nearest hour, and passenger-days must be recorded to the nearest tenth of a day. These modifications are to clarify the recordkeeping requirement for CPFVs receiving the ten-year extension to record passenger-days annually. This edit clarifies proposed language that was disapproved by OAL as not meeting the clarity standard in Government Code section 11349, subdivision (c), and Cal. Code Regs., title 1, section 16, as stated in section 1.14 of its memo.
90. In subsection 93118.5(o), staff added "Vessel Owner/Operator" to the header to clarify that the subsection applied to vessel owners and operators.
91. In subsection 93118.5(o)(1), staff added "during the reporting year" before "under the person's direct control" to clarify that the information is required to be reported for vessels that operated in RCW during the reporting year.
92. In subsection 93118.5(o)(2), staff replaced the original language with "Other Reporting" for clarity and to remove surplusage and potential inconsistencies between items included in (o)(2) and its subsections.
93. In subsection 93118.5(o)(2)(A), staff made edits to remove ambiguous language and clarify under what circumstances the required information must be reported and other minor text edits for grammar and clarity.
94. In subsection 93118.5(o)(2)(B), staff added "records required by subsections" before "(m)(14)" to correct grammar issues with the original language.
95. In subsection 93118.5(o)(2)(C), staff edited language to correct grammar issues and to clarify that the required information must be submitted within 30 days of transferring a vessel from California to a location outside of California or to a new homebase within California.

96. In subsection 93118.5(u)(1), staff made edits to improve readability and clarify that these submittal instructions apply to documentation and reports only, not fees.

97. In subsection 93118.5(u)(2), staff replaced “information” with “documentation and reports” and replaced “shall” with “must” to remove the ambiguous term “information” and specify that the requirement applies to documentation and reports submitted to CARB.

In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

These modifications do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis included in the Staff Report because the modifications consist primarily of definition and provision clarifications that do not alter the compliance responses, so no additional environmental analysis or recirculation of the analysis is required.

Additional Incorporated Documents Added to the Record

In the interest of completeness and in accordance with Government Code section 11347.1, subdivision (a), staff has also added to the rulemaking record and invites comments on the following additional documents:

- 40 CFR section 1068.120 (j), as it existed on September 28, 2022, incorporated by reference in Subsection 93118.5(e)(8)(A)3.e.
- 40 CFR, Chapter I, subchapter C, Part 60 Appendix A-4, as it existed on September 26, 2022, incorporated by reference in Subsection 93118.5(k)(4)(B).
- 40 CFR section 1042.835 (d), as last amended on June 30, 2008, incorporated by reference in Subsection 93118.5(e)(8)(A)3.e.
- 40 CFR section 1042.840 (n), as amended on October 25, 2016, incorporated by reference in Subsection 93118.5(e)(8)(A)3.e.

These documents are available for inspection at the California Air Resources Board, 1001 I Street, Sacramento, California, 95814, between the hours of 9:00am to 4:00pm, Monday through Friday (excluding holidays). To inspect these documents please contact Chris Hopkins, Regulations Coordinator, at chris.hopkins@arb.ca.gov or (279) 208-7347. Because of current travel, facility, and staffing restrictions, the California Air Resources Board’s offices may have limited public access. Please contact Chris Hopkins if you need physical copies of the documents.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Melissa Houchin, Air Resources Engineer by e-mail at Melissa.Houchin@arb.ca.gov or by phone at (279) 208-7952 or (designated backup) Tracy Haynes, Staff Air Pollution Specialist by e-mail at Tracy.Haynes@arb.ca.gov or by phone at (279) 842-9874.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

Postal mail: Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <https://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and verbal comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB no later than the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerks' Office at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

California Air Resources Board



Steven S. Cliff, Ph.D.
Executive Officer

Date: October 10, 2022

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see [CARB's website](http://www.arb.ca.gov) (www.arb.ca.gov).