

Ocean-Going Vessel At Berth Regulation

ENFORCEMENT NOTICE

March 30, 2023

CARB's At Berth Program Background

In 2007, the California Air Resources Board (CARB) adopted the Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port (2007 Regulation) (17 California Code of Regulations (CCR) § 93118.3). In 2020, CARB updated its At Berth program by adopting the Control Measure for Ocean-Going Vessels At Berth (2020 Regulation) (17 CCR §§ 93130-93130.22). The United States Environmental Protection Agency (U.S. EPA) is processing CARB's request for authorization pursuant to the Clean Air Act for the 2020 Regulation.

On January 20, 2023, CARB previously issued notice that no vessel visit reporting under the 2020 Regulation would be due to CARB until April 1, 2023. (The January 20, 2023, notice is available at <https://content.govdelivery.com/accounts/CARB/bulletins/343d4ed>.)

This new Enforcement Notice (Notice) supersedes CARB's prior January 20, 2023, notice. With this new Notice, no vessel visit reporting is due until May 1, 2023.

Updates Regarding Enforcement of CARB's At Berth Program

The purpose of this Notice is to update CARB's prior January 20, 2023, notice by providing further guidance on reporting and enforcement during the transition period from January 1, 2023, through thirty (30) days after the date the U.S. EPA publishes its issuance of authorization for the 2020 Regulation in the Federal Register (referred to in this Notice as the "transition period"). As described in more detail below, during the transition period, all vessel operators and terminal operators under the 2020 Regulation may choose one of two enforcement path options and must submit the choice to CARB by May 1, 2023, via email to shorepower@arb.ca.gov. If no enforcement path designation is made by that date, regulated entities will default to Option 1 below.

The two enforcement path options are as follows: (1) achieving the per-visit emission reduction provisions of the 2020 Regulation, or (2) achieving the 80 percent emission or power reduction provisions set forth in the 2007 Regulation. These two options are described in more detail below. Regardless of which enforcement path is selected, all vessel and terminal operators are required to submit reporting information required by the 2020 Regulation, including vessel visit reports. By affirmatively selecting an enforcement path, regulated entities would designate the enforcement approach to be used during the

transition period. To accommodate the transition period, this choice of options would be accomplished through an exercise of CARB's enforcement discretion.

Vessel and terminal operators may elect to comply with either Option 1 or Option 2 during the transition period. As specified above, this election must be communicated to CARB via email at shorepower@arb.ca.gov by May 1, 2023, as described above or will automatically default to Option 1 on May 2, 2023.

Option 1: Achieving the Per-Visit Emission Reduction Provisions of the 2020 Regulation

Vessel and terminal operators may elect to achieve the per-visit emission reduction provisions of the 2020 Regulation during the transition period. As also noted above, this option is also the default enforcement path if the vessel or terminal operator does not affirmatively select an enforcement path option.

Vessel and terminal operators that select this option are required to comply with all aspects of the 2020 Regulation, including use of vessel incident events (VIE) and terminal incident events (TIE) for the full year (January 1, 2023, through January 31, 2024), and use of the remediation fund option as described in the 2020 Regulation. Vessel operators, terminal operators, ports, or CARB Approved Emission Control Strategy (CAECS) operators must submit any requests to use the remediation fund as described in the 2020 Regulation. Applications for remediation fund participation that are approved by CARB as eligible will qualify for remediation fund participation even if the remediation fund account has not yet been established by the fund administrator. However, within 30 calendar days following the establishment of the remediation fund account by the fund administrator, the eligible applicant must transfer, and the fund administrator must receive, the funds. As of the date of this Notice, CARB staff is in the process of establishing the remediation fund program and updates on the program status will be available at: [Ocean-Going Vessels At Berth Regulation | California Air Resources Board](#).

Option 2: Achieving the 80 Percent Emission or Power Reduction Provisions in the 2007 At Berth Regulation

Vessel and terminal operators may elect to achieve the 80 percent reduction provisions set forth in the 2007 Regulation during the transition period. Vessel fleet operators that select this option must identify the applicable fleet of vessels using the definition of a fleet from the 2007 Regulation (17 CCR § 93118.3(c)(16)) and must provide this information to CARB via email at shorepower@arb.ca.gov when electing which enforcement path to follow.

Specifically, vessel operators that select this option must achieve an average 80 percent power reduction (as described in 17 CCR § 93118.3(d)(1)(C)) for the fleet compared to baseline fleet power generation, or fleets who previously elected to follow the Equivalent Emission Reduction Option (EERO) pathway may continue to average 80 percent oxides of nitrogen (NO_x) and particulate matter (PM) emissions reduction (as described in

17 CCR § 93118.3(d)(2)(A)(5)) compared to the baseline fleet emissions, as averaged over the term of the transition period. The definitions and calculations used for determining these power or emission reductions are set forth in the 2007 Regulation. The 2017 Advisory (available at <https://ww2.arb.ca.gov/berth-regulation-advisories-and-forms>) would remain applicable if enforcement path option 2 is selected. Furthermore, the COVID-19 Emergency Events Reporting Table form may continue to be used through the end of the gubernatorially-declared COVID emergency on February 28, 2023.

Entities that select this Option 2 pathway must submit fleet visit information with documentation for any exemptions or scenario relief to show compliance with the 80 percent reductions provisions referenced above. The fleet visit information must be submitted within 60 days after the last day of the transition period.

Furthermore, under this pathway, beginning on May 1, 2023, and extending through the end of the transition period described above, vessel operators will be required to submit individual vessel visit reports as specified in the 2020 Regulation (Section 93130.7(e)(4)), with the exception of subsections (S) (request for use of Remediation Fund) and (T) (use of VIE).

Terminal operators that select this option are responsible for providing the shore power infrastructure as required by the 2007 Regulation. Terminal operators must submit reports based on the requirements of Section 93130.9(d)(5), with the exception of subsection (N) (request for use of Remediation Fund) and (O) (use of TIE).

For vessels which depart following the end of the transition period, vessel and terminal operators would comply with the 2020 Regulation, including the Regulation's requirements for vessels and terminals to coordinate regarding emissions control strategy at least seven calendar days prior to vessel arrival.

Following the end of the transition period, vessel and terminal operators will be issued VIEs and TIEs by CARB in a quantity that excludes the transition period. The proration adjustment is equal to the number of days from the end of the transition period through February 1, 2024, divided by 396 days.

Further Information

To help ensure regulated entities are aware of the date when the transition period ends, CARB will issue a listserv notice when U.S. EPA publishes notice in the Federal Register regarding its issuance of authorization for the 2020 Regulation. As specified under the 2020 Regulation (and reflecting current, otherwise-applicable law), violations during the transition period under the two enforcement path options described above are subject to penalties under Health and Safety Code sections 38580, 39674, 42400 et seq., 43016, other applicable sections in the Health and Safety Code, and other applicable provisions as provided under California law for each violation. (See 17 CCR § 93130.20.)

More information about the 2020 Regulation can be found in the Frequently Asked Questions (FAQ) document on CARB's webpage at: [Updated FAQ March 2023 \(ca.gov\)](#). CARB will be providing updates to this FAQ document as necessary with additional information to address questions as they arise. For further information, please contact Angela Csondes, angela.csondes@arb.ca.gov, or Debbi Klossing, debbi.klossing@arb.ca.gov.