

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: May 19, 2022

Deadline for Public Comment: June 3, 2022

On September 21, 2021, CARB released the Notice of Public Hearing (45-Day Notice) and Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report), titled "Public Hearing to Consider Proposed Amendments to the Commercial Harbor Craft Regulation," for public review, and made all supporting references available to the public. The Proposed Amendments to the Commercial Harbor Craft (CHC) Regulation include modifications to two sections of the California Code of Regulations: title 17, division 3, chapter 1, subchapter 7.5 section 93118.5 and title 13, division 3, chapter 5.1, section 2299.5.

On October 1, 2021, CARB staff issued an errata document and extended the 45-day comment period end date from November 8, 2021, to November 15, 2021. CARB received 3,264 written comments during the 45-Day Notice comment period.

On November 19, 2021, CARB held its first public hearing to consider the Proposed Amendments. The Board received 16 additional written comments and 95 oral comments from the public. 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 protect public health. Additionally, the Board 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.

The Board directed CARB staff to explore these areas:

- Existing and future incentive funding programs available to CHC owners within the State;
- Pathways to streamline and lower the cost of receiving compliance extensions when installing Tier 4 engines or diesel particulate filter (DPF) 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.

To respond to the Board's direction, CARB staff carefully reviewed the public comments, 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.

In total, since the November 19 hearing and the release of this notice, CARB staff:

- Reviewed 3,280 written comments submitted to the docket;
- Evaluated over three hours of verbal testimony from the November 19 hearing;
- Held over 30 individual meetings with stakeholders;
- Presented to local air district board members to communicate the requirements of the Proposed Amendments, and discuss the intersection of regulatory requirements and incentive funding program guidelines;
- Traveled in-person to meet with the Environmental Health Coalition, an environmental justice organization in San Diego, and multiple vessel operators in the Commercial Passenger Fishing Vessel (CPFV), and ferry vessel categories to better understand operations;
- Dialogued with over 80 other stakeholders by phone and email discussing the impacts of the proposal;
- Hosted and considered feedback from a four and one-half hour public webinar on January 12, 2022; and,
- Reevaluated how the California Maritime Academy (CMA) study could satisfy feasibility evaluations that are required to be performed by a third-party naval architect if vessel owners are requesting a two-year extension as set forth by subsection (e)(12)(E)3 for a vessel constructed with a wood or fiberglass hull.

On March 14, 2022, CARB staff posted written responses to the Draft Environmental Analysis (EA) and the Final EA for public review.

On March 24, 2022, the Final EA, Response to Comments, Proposed Resolution 22-6, and recommended changes to the Proposed Amendments were presented at the second Board Hearing. At 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(c), and (2) conduct any appropriate further environmental review associated with such changes, consistent with the Board's Certified Regulatory Program regulations, at California Code of Regulations, title 17, sections 60000-60008, for those sufficiently related substantial modifications.

These 15-day proposed changes provide 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 provide clarification of requirements, in areas where provisions were identified as potentially unclear.

The Resolution and all other regulatory documents for this rulemaking are available online at the following CARB website: <https://ww2.arb.ca.gov/rulemaking/2021/chc2021>

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~striketrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this notice are shown in ~~**bold double striketrough**~~ and **bold double underline** format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff responds to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice or the changes detailed in Attachment A.

Summary of Proposed Modifications

1. Proposed Modification to Section 93118.5 – Airborne Toxic Control Measure for Commercial Harbor Craft
 - a. Staff proposes to delete the first paragraph starting with “On January 1, 2023, subsection (e)(1), (e)(3) through (e)(6), and subsection (n) of title 13 of the California Code of Regulations...” The deletion is justified because the other proposed amendments clearly specify that the Proposed Amendments only apply to CHC and specified actions occurring on or after 1/1/2023, and consequently there is no need to repeal the provisions of the pre-existing regulation.
2. Proposed Modifications to Subsection 93118.5(b) – Applicability
 - a. In Subsection 93118.5(b)(5), staff removed “including but not limited to, obtaining any necessary approvals, exemptions, or orders from the U.S. Coast Guard” to remove redundant language without changing the intent and meaning of this provision.
3. Proposed Modifications to Subsection 93118.5(c) – Exemptions
 - a. In Subsection 93118.5(c)(3), staff changed “All other provisions in this section, including but not limited to, the compliance dates specified in Table 7, Table 9, and Table 10 of subsection (e)(6)” to “The compliance dates specified in Table 7, table 9, and Table 10 of subsection (e)(6) and all other provisions of this section.” This modification is necessary to remove vague language while keeping the intent of the provision intact.
 - b. In Subsection 93118.5(c)(5), staff added the phrase “or any other alternative fueled vessel that carries 6 or fewer passengers and that is not required to be documented with the U.S. Coast Guard pursuant to 46 CFR 67.7, as last

amended on September 25, 2009, and 46 CFR 67.9 as published on November 15, 1993, which are incorporated by reference herein..." Staff inadvertently omitted this phrase from the initially Proposed Amendments, and the omission of this phrase has resulted in confusion and questions from industry stakeholders. Therefore, this added phrase is necessary to explicitly clarify staff's original intent that the smallest non-diesel vessels that are not required to be documented with the United States Coast Guard are exempted from this section.

- c. In Subsection 93118.5(c)(14), staff removed "and the regulated entity has used best efforts to anticipate and mitigate impacts of non-compliance, including but not limited to excess emissions". This deletion is necessary to remove redundant language without changing the intent of this provision, since "force majeure" is defined below in subsection 93118.5(d).

4. Proposed Modifications to Subsection 93118.5(d) – Definitions

- a. In Subsection 93118.5(d) in the definition of "Alternative Diesel Fuel", staff removed "but are not limited to" to remove vague language without changing the meaning or intent of the definition.
- b. In Subsection 93118.5(d) in the definition of "Barge", staff changed "Barges include but are not limited to deck barges..." to "Examples of barges include deck barges..." This revision is necessary to remove vague language and improve clarity without changing the meaning or intent of the definition.
- c. In Subsection 93118.5(d) in the definition of "Coast Guard Vessel", staff deleted "but not limited to" to remove vague language without changing the meaning or intent of the definition.
- d. In Subsection 93118.5(d) in the definition of "Commercial Passenger Fishing", staff changed "Commercial passenger fishing vessels include but are not limited to operations that provide both day and overnight trips, including those that voyage periodically in and out of Regulated California Waters" to "Commercial passenger fishing vessels include vessels operated on both day and overnight trips, including trips that may traverse in and out of Regulated California Waters" to remove vague language and improve clarity while maintaining the original intent and meaning of the definition.
- e. In Subsection 93118.5(d) in the definition of "Crew and Supply Vessel", staff changed "and/or" to "or", and deleted "but not limited to" to remove vague language without changing the meaning or intent of the definition.
- f. In Subsection 93118.5(d) in the definition of "Dedicated Emergency Use Vessel", staff added the following sentence: "Vessels used to perform channel deepening, levee repair, and debris removal are not considered dedicated emergency use vessels." This addition is necessary to clarify that the exemption for dedicated emergency use vessels in 93118(c)(12) only applies to fire suppression, police response, or emergency rescue, and to that to "protect public safety" as stated in the definition does not apply to other public works projects to build and repair infrastructure. Vessels conducting the activities specified in the newly added sentence are not considered dedicated

- emergency use vessels, and are subject to the requirements of the vessel's primary category as defined in 93118.5(d).
- g. In Subsection 93118.5(d) in the definition of "Direct Control", staff deleted "but is not limited to" to remove vague language without changing the meaning or intent of the definition.
 - h. In Subsection 93118.5(d) in the definition of "Distributed Generation", staff deleted "but not limited to" to remove vague language without changing the meaning or intent of the definition.
 - i. In Subsection 93118.5(d) in the definition of "Dredge", staff deleted "including, but not limited to" and two instances of "but are not limited to" to remove vague language without changing the meaning or intent of the definition.
 - j. In Subsection 93118.5(d) in the definition of "Emission Control Strategy", staff changed "including, but not limited to" to "Examples include." This revision is necessary to remove vague language without changing the meaning or intent of the definition.
 - k. In Subsection 93118.5(d) in the definition of "Excursion Vessel", staff changed "including, but not limited to" to "such as" to remove vague language without changing the meaning or intent of the definition, and "and" was changed to "or" for grammatical correction.
 - l. In Subsection 93118.5(d) in the definition of "Facility", staff deleted "but is not limited to" to remove vague language without changing the meaning or intent of the definition.
 - m. In Subsection 93118.5(d) in the definition of "Facility Owner", staff deleted "including but not limited to port authorities" to remove vague language without changing the meaning or intent of the definition.
 - n. In Subsection 93118.5(d) in the definition of "Ferry", the phrase "Ferry vessels include, but are not limited to" was changed to "Examples of ferry vessels include" to remove vague language without changing the meaning or intent of the definition.
 - o. In Subsection 93118.5(d) in the definition of "Harbor Craft", staff deleted "but not limited to" to remove vague language without changing the meaning or intent of the definition.
 - p. In Subsection 93118.5(d) in the definition of "Pilot Vessel", staff deleted "but not limited to" to remove vague language and added "and utilized for" to add clarity to the definition without changing the meaning or intent of the definition.
 - q. In Subsection 93118.5(d) in the definition of "Port", staff deleted "'Port' includes, but is not limited to, facilities also known as 'marine terminals' and 'roadsteads'" to remove vague language and redundancy. This revision does not change the meaning or intent of the definition, as the word "port" is commonly understood, and the remaining definition is clear.

- r. In Subsection 93118.5(d) in the definition of "Portable CI Engine", staff deleted "but are not limited to" to remove vague language without changing the meaning or intent of the definition.
- s. In Subsection 93118.5(d) the definition of "Recreational Vessel" was revised to remove redundant language stating that recreational vessels are those operated for personal use, and to clarify that commercial use of diesel-powered vessels are specifically excluded from the definition of "Recreational Vessel." This modification clarifies that CPFVs and other uninspected vessels that are permitted to carry 6 or fewer passengers (commonly known as "6-packs") and that are diesel-powered are not recreational vessels, and are subject to the requirements of the Proposed Amendments.
- t. In Subsection 93118.5(d) in the definition of "Repower", staff changed "including but not limited to" to "Repower includes" to remove vague language while keeping the intent and meaning of the definition intact.
- u. In Subsection 93118.5(d) in the definition of "Short-Run Ferry", staff added a phrase clarifying that the distance threshold of 3 nautical miles between two points is straight line distance. This addition is necessary to avoid confusion on how to measure the distance between two points, and to ensure that route distance, which can be changed by a vessel operator, cannot be used to determine the distance between two points to circumvent the 3 nautical mile threshold. Staff also added the phrase "to load or unload passengers" for vessels making multiple stops in a single round-trip. This addition is necessary to clarify that only stops for loading or unloading passengers are considered ferry stops, other stops such as stops for exchanging crews are not considered ferry stops for the purposes of this definition.
- v. In Subsection 93118.5(d) in the definition of "Supply Vessel", staff deleted "but not limited to" to remove vague language without changing the intent or meaning of the definition.
- w. In Subsection 93118.5(d) in the definition of "Temporary Emergency Rescue/Recovery Vessel", staff deleted "but not limited to" to remove vague language without changing the intent or meaning of the definition.
- x. In Subsection 93118.5(d) in the definition of "Workboat", staff deleted "including but not limited to duties such as hydrographic surveys, spill/response, school training, marketing (such as advertising), and construction (including drilling). Workboat can include vessels owned by public, private, and not-for-profit organizations." to remove redundant language as the definition is clear enough and the examples of specific duties are not needed. Staff also changed "WorkBoat" to "Workboat" for consistency with other instances of the term in the proposed regulation order.
- y. In Subsection 93118.5(d) in the definition of "Zero-Emission", "and/or" was changed to "or" to remove vague language without changing the meaning or intent of the definition.

5. Proposed Modifications to Subsection 93118.5(e) - Fuel Use and Engine Emission Requirements

- a. In Subsection 93118.5(e)(6)(A)2.b., "January 2, 2009" was changed back to the original text of the Current Regulation stating "July 1, 2011" because staff inadvertently modified the text in the 45-Day package, and the inadvertent change was also not indicated in strikeout/underline format.
- b. In Subsection 93118.5(e)(6)(A)2.c., 93118.5(e)(6)(A)3.c, and 93118.5(e)(8)(A)3., "including but not limited to, any of the following" was changed to "The E.O. will base their determination on the following information." This revision is necessary to remove vague language and clearly specify what information the Executive Officer (E.O.) will use to determine whether the vessel owner or operator's demonstration confirms that an in-use engine meets the applicable engine standards.
- c. In Subsections 93118.5(e)(6)(C)2.c.i., 93118.5(e)(6)(C)3.c.i., and 93118.5(e)(6)(D)2.b., the reference to subsection "j" was changed to subsection "q" to correspond to the emission testing requirements that are modified and contained within a separate subsection number.
- d. In Subsections 93118.5(e)(6)(E), staff deleted "including but not limited to, subsection (e)(6)(C)" to remove vague and redundant language without changing the intent or meaning of the provision.
- e. In Subsections 93118.5(e)(6)(E)2.b., staff changed "including but not limited to, information related to" to "regarding" to remove redundant language.
- f. In Subsection 93118.5(e)(8), staff deleted the word "Diesel" from this subsection title because the proposed requirements apply to internal combustion engines fueled with other fuel types as well. This correction is consistent with the applicability provision in Subsection 93118(b)(1).
- g. In Subsections 93118.5(e)(8), 93118.5(e)(9)(A)1., and 93118.5(e)(9)(B), staff deleted the phrase "enter into a contract to" to remove redundant language since selling and purchasing include entering a contract to sell or purchase.
- h. In subsection 93118.5(e)(8), the word "scenario" was replaced with "criteria" for clarity and consistency with the rest of the proposed regulation language.
- i. In subsection 93118.5(e)(8), "A through D" was replaced with "A through E", to indicate the addition of another allowable criterion that a person who acquires a new or in-use engine after January 1, 2023 may meet to satisfy the requirement of the subsection. That new criterion is set forth in proposed new subsection 93118.5(e)(8)(E), which specifies that acquiring an engine for installation into a vessel receiving the one-time ten-year extension for CPFVs is one of the allowable criteria.
- j. In Subsections 93118.5(e)(8)(A), 93118.5(e)(10)(B)1., 93118.5(e)(12)(C)1., 93118.5(e)(12)(C)2., and 93118.5(e)(13)(B), staff revised the original text for engines requiring the most stringent emission standards to clarify that an engine is required to meet either the most stringent marine standards (Tier 3 or Tier 4) or the Tier 4 Final off-road standards. This clarification is consistent with

- staff's intent that operators can elect to use marine certified or off-road certified engines, and must use the most stringent tier level available within the certification category (marine or off-road).
- k. In Subsections 93118.5(e)(8), 93118.5(e)(9)(A)1., 93118.5(e)(9)(B), staff removed "enter into a contract to" to avoid redundancy since selling, purchasing includes entering a contract to sell or purchase.
 - l. In Subsections 93118.5(e)(9)(A)4., and 93118.5(e)(12)(C)3., "and" was changed to "or" to clarify that the requirement in the applicable subsection establishes three separate and distinct performance standards, not three jointly applicable performance standards.
 - m. In Subsection 93118.5(e)(9)(A)5., staff added the phrase "if the information submitted in the request and the exercise of good engineering judgement indicates the applicable performance standards cannot be met" to specify the information and criteria that the Executive Officer (E.O.) will rely upon in determining whether to approve a request under this subsection.
 - n. In Subsection 93118.5(e)(9)(A)5., staff added a sentence "Notwithstanding the definition of 'new harbor craft' in subsection (d), a new harbor craft whose keel was laid before January 1, 2023 is subject to the requirements of (e)(12) and not of this subsection (e)(9)." This addition is necessary to clarify which subsection is applicable to a vessel that is under construction as of 1/1/2023.
 - o. In Subsection 93118.5(e)(9)(B)4., the word "are" was added as a grammatical edit.
 - p. In Subsection 93118.5(e)(10)(A)2., staff deleted "which include but is not limited to reporting requirements set forth in subsection (m)" to remove redundant language while keeping the intent of the provision intact.
 - q. In Subsection 93118.5(e)(10)(C)1.c.i., staff deleted "but not limited to" and added "or other power sources with zero tailpipe emissions." These revisions are necessary to remove redundant language and to provide additional clarification of zero-emission power sources, while keeping the intent and meaning of the provision intact.
 - r. In Subsection 93118.5(e)(10)(C)1.d. on fueling infrastructure, the phrase "and/or" was changed to "or" to remove vague language while keeping the intent of the provision intact.
 - s. In Subsection 93118.5(e)(12)(B)1., staff deleted two instances of the word "diesel" because the proposed requirements apply to internal combustion engines fueled with other fuel types as well. This correction is consistent with the applicability provision in Subsection 93118(b)(1).
 - t. In Subsection 93118.5(e)(12)(B)4. staff added language specifying that engines above 600 kW meeting the Tier 4 + DPF performance standards must be available for purchase "12 months prior to" the compliance date for that system to be considered available. Subsection (e)(12)(B)3. already requires this for systems under 600 kW, so this change is necessary to clearly state that the same timeline for determining availability applies to systems above 600 kW.

- u. In Subsection 93118.5(e)(12)(B)4. staff added the phrase “provided that all criteria in subsection (e)(12)(E)2 are satisfied” to clarify that for engines over 600 kW, if no DPF is available to meet the Tier 4 + DPF performance standards, vessel operators are still required to meet Tier 4 standards if an engine of the applicable power and duty cycle ratings is available. This change is consistent with the existing language in Subsection (e)(12)(E)2.d.i. that describes the “cleanest engine requirement.”
- v. In Subsection 93118.5(e)(12)(B)6., staff deleted “but are not limited to” to remove vague language while keeping the intent of the provision intact.
- w. In Subsection 93118.5(e)(12)(B)7. staff revised the list of approval exceptions to operating non-compliant engines in Regulated California Waters (RCW) to state “Vessel owners or operators who need to continue to operate engines after applicable compliance dates of this subsection to: perform emissions testing to support verification of a DECS; perform emissions testing to demonstrate compliance of their engines or vessel with requirements of subsection (e); collect data to support an ACE plan; sell a CHC that is only intended to operate beyond Regulated California Waters but will perform sea trials in RCW.” This revision clarifies that activities allowable by the Proposed Amendments in other subsections are also eligible to receive the exceptions for compliance for engines intended to be sold out of State and for the other approved purposes. The subsection maintains its original intent, including the requirement that all planned operation of non-compliant engines for the listed purposes must be pre-approved by CARB’s Executive Officer.
- x. In Subsection 93118.5(e)(12)(B)7. staff deleted the phrase “will need to” as it is no longer grammatically appropriate given the preceding edit to the same subsection.
- y. In subsection 93118.5(e)(12)(C)2, the word “replacing” was changed to “repowering or rebuilding” to be consistent with the language in the subsection title.
- z. In subsection 93118.5(e)(12)(C)3, the word “and” was changed to “or” to clarify that the requirement in this subsection applies to three separate and distinct performance standards, not three jointly applicable performance standards.
- aa. In Subsections 93118.5(e)(12)(D), staff deleted “which include but are not limited to workboats, research vessels, pilot vessels, tank barges, and commercial passenger fishing vessels” to remove vague and redundant language while keeping the intent of the provision intact.
- bb. In Subsections 93118.5(e)(12)(D)1.b. and 93118.5(e)(12)(D)2.e., staff added the sentence “For in-use vessels that are in the process of an engine replacement so that there is no engine installed in the vessel on December 31, 2022, the compliance date is determined by the model year of the next engine that is installed in the vessel.” Staff added this sentence to clarify how to determine compliance dates for vessels that do not have an engine installed on December 31, 2022, due to an in-progress repower or engine replacement.

- cc. In Subsections 93118.5(e)(12)(D)2.b., staff deleted the phrase “including but not limited to” and added the phrase “the following” to remove vague language and clearly specify what information is required for demonstrating that an engine was rebuilt to conform with U.S. EPA Tier 3 or Tier 4 marine standards.
- dd. In Subsection 93118.5(e)(12)(D), within Table 16, staff changed one engine model year field from “2002-2007” to “2002 and later” to clarify that this compliance date also applies to Tier 1 engines with model years later than 2007. It came to staff’s attention that some model year 2008 and newer engines are still certified to the Tier 1 standards. Without this clarification, some Tier 1 engines would be excluded from meeting the requirements for in-use engines as set forth in subsection (e)(12).
- ee. In Subsection 93118.5(e)(12)(E)1.b.iii., staff replaced “such as but not limited to” with “including” to remove vague language while keeping the intent of the provision intact.
- ff. In Subsection 93118.5(e)(12)(E)2.b.iii., staff deleted “but not limited to” to remove vague language while keeping the intent of the provision intact.
- gg. In Subsection 93118.5(e)(12)(E)2.d.i., staff added the phrase “by applicable compliance dates to receive an extension for DPFs” to emphasize that the cleanest engine requirement must be met by applicable compliance dates in order to receive an extension for DPFs.
- hh. In Subsection 93118.5(e)(12)(E)2.d.ii., staff deleted the words “need to” as a grammatical correction.
- ii. In Subsection 93118.5(e)(12)(E)3.a., staff added a new proposed provision for a one-time ten-year feasibility extension for CPFVs that meet Tier 3 or more stringent emission standards by December 31, 2024. Staff also added the word “either” to clarify that either this new proposed ten-year extension option or the originally proposed two-year extension option (up to four extensions of two years each totaling up to eight years), but not both, can be used for CPFVs. Staff also added the phrase “for any regulated in-use vessel category” to clarify that the two-year extension option applies to any of the regulated in-use vessel categories.
- jj. In Subsection 93118.5(e)(12)(E)3.b., staff added a phrase clarifying that the application requirements to demonstrate technical and financial infeasibility for the two-year extension option do not apply to the proposed one-time, ten-year compliance extension option for CPFVs. The application requirements of the one-time ten-year compliance extension for CPFVs are described separately in (e)(12)(E)3.d.
- kk. In Subsection 93118.5(e)(12)(E)3.b., staff changed the phrase “and/or” to “or” to remove vague language while keeping the intent of the provision intact.
- ll. In Subsection 93118.5(e)(12)(E)3.b., staff added “or stability” to clarify staff’s intent that vessel stability is considered a factor when demonstrating the feasibility of installing engines or DPFs, as vessel stability is a key safety requirement assessed by the U.S. Coast Guard for vessel modifications.

- mm. In Subsection 93118.5(e)(12)(E)3.b., staff added the phrase “or no later than 9 months before the December 31, 2023 compliance dates” to clarify that in the single case of a 12/31/2023 compliance date, the E3 feasibility extension’s application deadline is 9 months in advance, instead of 18 months. This change is necessary because staff do not anticipate the Proposed Amendments to take effect until 1/1/2023, so staff cannot accept applications 18 months in advance in this case. CARB staff will prepare to process these initial applications in early 2023.
- nn. In Subsection 93118.5(e)(12)(E)3.b.iii., staff inserted the phrase “vessel-specific” to differentiate vessel-specific technical feasibility analyses from non-vessel-specific analyses. Staff also added the sentence, “Non vessel-specific third-party naval architect analyses for vessels with hull materials of wood, fiberglass, or fiberglass-reinforced plastic can only satisfy this requirement for the initial two-year extension.” This addition is made to clarify that third-party feasibility analyses, such as the CMA study, can be used to demonstrate a lack of technical feasibility for vessel repowers for wood, fiberglass, or fiberglass-reinforced plastic vessels only for the first two-year extension application.
- oo. In Subsection 93118.5(e)(12)(E)3.b.iv., staff revised the language to clarify that if vessel owners or operators are able to demonstrate that reducing 25 or more percent passenger capacity would increase emissions (such as by increasing the number of vessel trips), then passenger capacity reductions of 25 percent or more resulting from vessel modifications to accommodate engines and DPFs would be considered not feasible for the purpose of receiving extensions. This revision provides additional clarity while maintaining the original intent and purpose of the provision.
- pp. In Subsection 93118.5(e)(12)(E)3.c., staff added the phrase “If an applicant receives a two-year extension” to clarify that a renewal under this subsection is only applicable for a two-year feasibility extension, and is not applicable for the one-time, ten-year extension option for CPFVs.
- qq. Staff added a new subsection 93118.5(e)(12)(E)3.d. to add seven specific proposed provisions containing application criteria and other provisions for the one-time, ten-year extension option for CPFVs.
- i. New Subsection 93118.5(e)(12)(E)3.d.i. states “Applications are due to CARB no later than July 1, 2024 and must include information requested in subsections (e)(12)(E)3.d.ii, iii, and iv below.” This subsection establishes the deadline for submitting the application for the ten-year extension option and specifies what information must be included in the application package.
 - ii. New Subsection 93118.5(e)(12)(E)3.d.ii. states “Applications must include a demonstration that engines meet either Tier 3 marine or Tier 3 off-road standards, or more stringent marine or off-road standards by December 31, 2024, or a purchase order including the engine manufacturer, rated horsepower, purchase date, sales price, and anticipated date of delivery, that confirms engines meeting Tier 3 marine or Tier 3 off-road standards, or more stringent marine or off-road standards have been ordered by

July 1, 2024. If such engines are not installed by March 31, 2025, the owner or operator must submit documentation to CARB demonstrating a continued engine manufacturer or shipyard delay by April 30, 2025 and every six months until Tier 3 engines are installed." This language describes what vessel owners or operators must do to receive the ten-year extension, and by when. Specifically, the engine purchase order date can be used to satisfy requirements for the ten-year extension if Tier 3+ engines are not installed by December 31, 2024, but if using this pathway and engine(s) have not been installed by March 31, 2025, operators would be required to report to CARB by April 30, 2025 to document why Tier 3 engines have not yet been installed, and every 6 months thereafter.

- iii. New Subsection 93118.5(e)(12)(E)3.d.iii., states "Applications must include a demonstration that vessels have engaged, and will continue to engage, in commercial passenger fishing vessel activities at least 50 days per calendar year between January 1, 2023 and December 31, 2034." This language is intended to prevent vessels which are capable of operating as CPFVs, but only do so on a limited time basis, from receiving the one-time ten-year extension intended only for vessels which are primarily CPFVs.
- iv. New Subsection 93118.5(e)(12)(E)3.d.iv., states "Applications must describe how owners and operators are preparing and planning financially to meet requirements of subsection (e)(12) by December 31, 2034." This addition is necessary for vessel owners or operators to demonstrate their intentions toward, and means of, meeting emission requirements by December 31, 2024, and to provide information for CARB staff to evaluate when performing the Midterm Review of requirements for CPFVs that is scheduled to be provided to the Board by 2028.
- v. New Subsection 93118.5(e)(12)(E)3.d.v., states "Engines must meet the applicable requirements, including either Tier 3 or 4 + DPF as outlined in Table 11-13 or qualify for low-use exemptions as contained within subsection (e)(14) by December 31, 2034." This language describes the compliance obligation by December 31, 2034 when the ten-year extension ends for the vessel owners or operators receiving this extension.
- vi. New Subsection 93118.5(e)(12)(E)3.d.vi., states "Engines on commercial passenger fishing vessels receiving a ten-year extension shall meet the additional recordkeeping requirements in subsection (m)(21) and report to CARB according to subsection (o). Owners and operators can maintain that data and information required by this subdivision is confidential pursuant to 17 CCR sections 91000 through 91022." This language describes the additional recordkeeping requirements for vessels receiving the ten-year extension and provides the basis for maintaining confidentiality of reported data that contains confidential business information.

- vii. New Subsection 93118.5(e)(12)(E)3.d.vii. states “Owners or operators receiving a ten-year extension shall endeavor to coordinate with, and contribute to, technical working group meetings overseen by CARB that serve to assess the commercial availability of zero-emission technology, technical feasibility of repowering vessels to meet Tier 4 + DPF standards, and financial feasibility of emission reduction strategies for the commercial passenger fishing vessel fleet. The E.O. will consider recommendations from the technical working group when conducting biennial technology reviews and for the Midterm Review that will be conducted by 2028. The Midterm Review will focus on requirements affecting the commercial passenger fishing vessel fleet and will be considered by the Board to direct staff to develop potential regulatory amendments.” This language is necessary to secure engagement with CPFV operators to ensure that the biennial technology and implementation reviews, and the 2028 Midterm Review on the requirements for CPFVs, consider best available data from the CPFV owners, operators, and industry representatives.
- rr. In Subsection 93118.5(e)(12)(E)5.a. staff added the word “single” and the phrase “if one or more criteria as set forth in subsection (e)(12)(E)5.b. below are met” to clarify that although there are four ways to qualify for the one-time, one-year scheduling extension, that only one scheduling extension may be granted for a single engine.
- ss. In Subsection 93118.5(e)(12)(E)5.b.i. staff added word “of” as a grammatical edit and added the language that applicants must “provide a copy of the purchase order or contract for the new equipment” to clarify that this form of documentation is required to be included in applications for this extension.
- tt. In Subsections 93118.5(e)(12)(E)5.b.iii. and 93118.5(e)(12)(E)5.b.iv, staff added language to clarify that scheduling extensions cannot be granted outside the intent of minimizing downtime for the fleet. These changes clarify that this extension was only established to minimize downtime for repowering fleets with multiple engines or vessels, and not delay compliance. Staff made additional grammatical modifications to these two subsections for clarity and accuracy.
- uu. In Subsection 93118.5(e)(13)(A), staff added the sentence “Commercial fishing vessels with Pre-Tier 1, or Tier 1 engines may be sold or purchased prior to their compliance dates.” This addition is necessary to clarify that commercial fishing vessels with engines that do not meet Tier 2 or newer emission standards can still be bought or sold in-state until their compliance dates.
- vv. In Subsection 93118.5(e)(13)(B), the words “and Newly Acquired” were removed from this subsection title, as the subsection text only refers to newly built vessels, not newly acquired in-use vessels. Staff inadvertently included this language in the original 45-day package, which contradicts the requirements of Subsection 93118.5(e)(13)(A).

6. Proposed Modifications to Subsection 93118.5 (f) - Alternative Control of Emissions (ACE)

- a. In Subsections 93118.5(f), 93118.5(f)(1)(G), and 93118.5(f)(1)(J), staff added "(e)(7)" to the list of requirements that could fall within the scope of an ACE plan. This change is necessary to clarify that operators can consider a deviation from the (e)(7) renewable diesel requirements if this is part of their ACE plan which demonstrates lower or equal emission reductions compared with nominal compliance while meeting the requirements of subsection (e)(7).
- b. In Subsection 93118.5(f)(1)(A), staff added the sentence "All engines receiving extensions as part of an ACE plan must meet the applicable compliance requirements of subsections of (e)(7), (e)(10), (e)(12), and (e)(13) by December 31, 2034" to clarify that even if engines are permitted to operate past their compliance dates due to an approved ACE plan, engines must still meet emission requirements no later than 12/31/2034. This clarification is critical to ensure that after an ACE plan is developed, approved, and expired, that in 2035 and ongoing emissions will continue to meet the intended reductions of the Proposed Amendments.
- c. In Subsection 93118.5(f)(1)(E), staff deleted "but are not limited to" to remove vague and redundant language while keeping the intent of the provision intact.
- d. In Subsections 93118.5(f)(1)(F)3., 93118.5(f)(1)(H)1., and 93118.5(f)(1)(J), and 93118.5(f)(2), staff removed the requirements for ACE applications prior to January 1, 2023 because the baseline for ACE applications under the Proposed Amendments starts on January 1, 2023.
- e. In Subsection 93118.5(f)(1)(I), staff changed the proposed added sentence specifying that the ACE application must not use equipment acquired by funds or grants that prohibit use of funds to comply with State regulations, laws or mandates. In the sentence, staff changed the originally proposed phrase "cannot be used" to "prohibit use of funds" to improve clarity of intent and readability of the language in response to stakeholder feedback that the originally proposed language was confusing.
- f. In Subsection 93118.5(f)(2)(A), staff added the phrase "on and" to clarify that the stated application deadline for ACE applies on and after January 1, 2023.

7. Proposed Modifications to Subsection 93118.5(i) – Facility Infrastructure Requirements

- a. In Subsection 93118.5(i)(1)(B), staff added a sentence "Idling and auxiliary operation limits set forth in subsection (h)(1) do not apply to auxiliary engines above 99 kW." This sentence clarifies that facility owners or operators are not responsible for installing shore power for auxiliary engines greater than 99 kW.
- b. In Subsection 93118.5(i)(1)(C), staff replaced the word "defined" with the phrase "associated with the definition of 'distributed generation'" to clarify that the emissions standards that must be met are defined in subsection (d).
- c. In Subsection 93118.5(i)(1)(D), staff added the word "year" as a correction because it was missing in the paragraph.

8. Proposed Modifications to Subsection 93118.5(m) - Recordkeeping Requirements

- a. In Subsection 93118.5(m)(3), staff added the phrase “prior to January 1, 2023, and for all engines on and after January 1, 2023” to clarify that this subsection also applies to internal combustion engines fueled with non-diesel fuel types starting when the Proposed Amendments take effect on January 1, 2023.
- b. In Subsection 93118.5(m)(15), the word “diesel” was removed from this subsection because the subsection applies to internal combustion engines fueled with other fuel types as well. This correction is consistent with the applicability provision in Subsection 93118(b)(1).
- c. New Subsection 93118.5(m)(21) states “For commercial passenger fishing vessels receiving a one-time, ten-year extension as set forth in subsections (e)(12)(E)3.a. and (e)(12)(E)3.d., the following information shall be kept for each vessel:” to add three specific recordkeeping requirements for CPFVs receiving a ten-year feasibility extension as set forth in subsection 93118.5(e)(12)(E)3.
 - i. New Subsection 93118.5 (m)(21)(A) states “An annual profit and loss report”. This addition is necessary so that records of revenue are available for both CPFV operators and CARB staff to jointly evaluate operator preparations to meet emission requirements later, and calculate historical average ticket prices for a passenger-day of sportfishing.
 - ii. New Subsection 93118.5 (m)(21)(B) states “Total service days by calendar year.” This addition is necessary so that the number of days the vessel is operated each year is recorded. This information is necessary to evaluate the activity of vessels to verify continued eligibility annually during the ten-year extension period, refine the emission inventory, and evaluate financial impacts.
 - iii. New Subsection 93118.5 (m)(21)(C) states “Number of passenger-days by calendar year. A passenger-day is considered a person sportfishing for a full day or multiple people sportfishing for shorter periods summing to a full day. For example, an owner offering: a 4-hour trip to 20 anglers would be 10 passenger-days; a 6-hour trip to 20 anglers would be 15 passenger-days, and a 3-day trip to 20 anglers would be 60 passenger-days.” This addition is necessary to quantify the time passenger sportfishing occurred and standardize the reporting basis in units of passenger-days. This information will be necessary when longitudinally evaluating the demand and activity of sportfishing at various ticket prices.

9. Proposed Modifications to Subsection 93118.5(o) – Reporting Requirements

- a. Four references to the recordkeeping requirements which were previously phrased as “(m)(14) through (m)(20)” were changed to “(m)(14) through (m)(21)” in response to the addition of the (m)(21) subsection for additional recordkeeping. This requirement is necessary so that in addition to the

recordkeeping conducted by CPFV owners and operators, CARB staff receive records annually for vessels receiving the one-time ten-year extension.

10. Proposed Modifications to Subsection 93118.5(p) – Violations

- a. In Subsection 93118.5(p)(2), staff deleted the phrase “but not limited to” to remove vague language while keeping the intent of the provision intact.

11. Proposed Modifications to Subsection 93118.5(q) – Methods to Demonstrate Compliance with Engine and Fuel Standards

- a. In Subsection 93118.5(q)(1), staff added the following sentence: “When conducting testing procedures, engines may be fueled using CARB diesel, or U.S. EPA nonroad diesel fuel meeting the specifications contained in 40 CFR 80.29 as it existed on April 27, 2010, and 69 FR 38958 (June 29, 2004).” This addition is necessary to clarify that engines are not required to use renewable diesel if engines are operated within Regulated California Waters to perform dedicated emissions testing to demonstrate compliance with the performance standards.

Update to Staff Report: Initial Statement of Reasons (ISOR) (Date of Release: September 21, 2021)

The following is an addendum to the Initial Statement of Reasons released to the public on September 21, 2021.

Staff identified a typographical error on Page III-3 of the ISOR in the paragraph that currently reads:

“The Proposed Amendments require engines rated less than or equal to 60 kW to meet a performance standard equivalent to meeting U.S. EPA:

- Tier 3 engine standards plus a DPF; or
- Tier 4 engine standards plus a DPF if there is an available engine model certified to Tier 4 standards.”

In the above paragraph, “60 kW” should read “600 kW.” This correction is consistent with the information provided in Table III-8. Major Compliance Requirements of Existing and Proposed Requirements on page III-16 of the ISOR and corresponds to the existing proposed requirement of subsection 93118.5(e)(12)(B)2. that “In-use engines rated below 600 kW shall not be repowered with engines meeting Tier 3 marine standards if an engine with the applicable horsepower and duty cycle rating is certified to the Tier 4 marine standards is available.”

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 added to the rulemaking record and invites comments on the following additional documents:

- 46 CFR Part 67.7 as last amended on September 25, 2009, and 46 CFR 67.9 as published on November 15, 1993, incorporated by reference in Subsection 93118.5(c)(5).

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.

Environmental Analysis

These 15-day changes do not change implementation of the Proposed Amendments in any way that affects the conclusions of the Final EA certified by the Board on March 24, 2022. Many of the modifications consist primarily of clarifications of staff's original intent as analyzed in the Final EA. As described in more detail above, the 15-day changes do establish a new compliance extension option that would potentially extend final compliance dates for CPFVs that have replaced all onboard engines to meet Tier 3 or more stringent standards by the end of 2024 by up to three years beyond the maximum time under the original proposal (from 2031 to 2034). Staff has determined that the project description in the Final EA provided adequate information for evaluation and review of the environmental impacts of the Proposed Amendments and 15-day changes. These proposed changes will not result in any new or significantly modified compliance responses and thus would not result in any new reasonably foreseeable significant environmental impacts or substantially increase the severity of an already identified environmental impact. Therefore, no additional environmental analysis is required for these proposed 15-day changes.

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



Edie Chang
Deputy Executive Officer

Date: May 19, 2022

Attachment

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).