State of California
Environment Protection Agency
AIR RESOURCES BOARD

Notice of Decision

Project Title:	Amendments to the Regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Drayage Trucks at Ports and Intermodal Rail Yard Facilities (Drayage Truck regulation)[1]
Project Location:	Statewide
Public Meeting Date:	December 17, 2010; Agenda Item 10-11-3
Project Description:	The project is amendments the Drayage Truck regulation originally approved by ARB in December 2007 to reduce emissions from diesel-fueled heavy duty drayage trucks, which are trucks that predominantly transport containers, bulk, and break-bulk goods to or from ports and intermodal railyards. The amendments improve the enforceability of the regulation by closing two loopholes that allowed circumvention of the regulation. The amendments broaden the regulation to prohibit trucks from engaging in the practice of dray-off, which occurs off port and rail yard property, and to require previously unregulated Class 7 trucks to meet the regulation's emission requirements that formerly applied just to Class 8 trucks. The amendments also formally sunset the Drayage Truck regulation in 2023, at which time drayage trucks will be regulated under the Truck and Bus regulation.
Approved By:	Air Resources Board Executive Order No. R-11-010 Dated: September 19, 2011

This notice is to advise that the Air Resources Board (ARB), as the lead agency, has approved the above described project on September 19, 2011 and has determined that the project will not have a significant adverse impact on the environment (see attached Executive Order No. R-11-010).

[1] The amendments to the Drayage Truck Regulation were noticed as part of the Public Hearing to Consider Proposed Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and other Criteria Pollutants from In-Use On-Road Diesel-Fueled Vehicles, The Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Measure, and the Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks at Ports and Intermodal Rail Yard Facilities. For reasons of administrative efficiency, ARB adopted the amendments to the Drayage Truck regulation independent of the amendments to the other two regulations.

In accordance with California Environmental Quality Act and ARB's certified regulatory program, ARB prepared an environmental analysis as part of the Staff Report Initial Statement of Reasons for the regulation and written responses to comments received on the record that raise environmental issues that was prepared as part of the Final Statement of Reasons for the amendments to the Drayage Truck Regulation (see attached documents). The ARB Executive Officer, as the decision-maker for this project, approved the written responses to comments raising environmental issues.

No mitigation measures, findings, or statement of overriding considerations were adopted for this project because the amendments to the regulation will not have a significant adverse impact on the environment.

The copy of the environmental analysis included in the Staff Report Initial Statement of Reasons and the written responses to comments included in the Final Statement of Reasons are available at the ARB rulemaking webpage at http://www.arb.ca.gov/regact/2010/truckbus10/truckbus10.htm

The rulemaking documents may also be examined at:

California Air Resources Board
Attn: Board Administration and Regulatory Coordination Unit
1001 I Street
Sacramento, CA 95814

Certified: Jeanne Blackler

Date: 9-26-11

Attachments:

- Executive Order No. R-11-010
- Staff Report: Initial Statement of Reasons for the Proposed Rulemaking Proposed Amendments to the Truck and Bus Regulation, the Drayage Truck Regulation and the Tractor-Trailer Greenhouse Gas Regulations
- Final State of Reasons, with responses to comments raising environmental issues

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-11-010

Adoption of Amendments to the Regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Drayage Trucks at Ports and Intermodal Rail Yard Facilities

WHEREAS, on December 17, 2010, the Air Resources Board (Board or ARB) conducted public hearing after issuance of a Notice of Public Hearing (45-Day Notice) to consider the adoption of amendments to the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles (Truck and Bus regulation), title 13, California Code of Regulations (Cal. Code Regs.), section 2025; the Heavy-Duty Vehicle Greenhouse Gas (GHG) Emission Reduction Measure (Tractor-Trailer GHG regulation), title 17, Cal. Code Regs., sections 95301 to 95307, 95309, and 95311; and the regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Drayage Trucks at Ports and Intermodal Rail Yard Facilities (Drayage Truck regulation), title 13, Cal. Code Regs., section 2027;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts, unless specific overriding considerations are identified which outweigh the potential adverse consequences of any unmitigated impacts;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report or negative declaration (i.e., a functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's regulatory program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, ARB's certified regulatory program provides that when an action contemplated by the Board may have a significant effect on the environment, ARB staff shall prepare a staff report that shall contain a description of the proposed action, an assessment of anticipated significant long or short-term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts, which shall include a discussion of feasible mitigation measures and alternatives to the proposed action;

WHEREAS, concurrent with publication of the 45-Day Notice, ARB issued an Initial Statement of Reasons (Staff Report) that included an environmental analysis that addressed the potential long and short-term environmental impacts related to the proposed amendments. The environmental analysis found that the amendments will not have a significant adverse effect on the environment, and that the amendments will achieve significant emission reduction benefits beyond the emission reductions that would have otherwise been achieved if the amendments were not adopted;

WHEREAS, at the December 17, 2010 public hearing, the Board adopted Resolution 10-45 (a copy of which is attached hereto as Attachment 1), which directed the staff to modify the initially proposed amendments that were part of the 45-Day Notice by, among other things, not deleting the requirement that all drayage trucks must meet or exceed the Phase 2 requirements by December 31, 2013, and by requiring all Class 7 drayage trucks operated in the South Coast Air Basin to be equipped with Level 3 VDECS by December 31, 2011;

WHEREAS, Resolution 10-45 further directed the Executive Officer to make the modifications to the initially proposed amendments to the regulation available for public comment for a period of 15 days, that he consider written comments submitted during the 15-day comment period, make such further modifications as may be appropriate in light of the comments received, and that he should return to the Board for further consideration if he determines that this is warranted;

WHEREAS, Resolution 10-45 also directed the Executive Officer to prepare and approve written responses to comments received, including comments raising significant environmental issues, as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and Cal. Code Regs., title 17, section 60007, to determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same time addressing the serious economic recession and its impact on industry and residents of the State, to make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental effects, and to take final action to adopt the proposed amendments to the Drayage Truck regulation, as modified in the publicly noticed 15-day changes;

WHEREAS, on May 19, 2011, Executive Officer issued the modified regulation, reflecting the amendments considered by the Board and other conforming modifications, which were made available for public comment for a period of 15-days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 (15-Day Notice);

WHEREAS, written comments were received during the initial 45-day comment period and after issuance of 15-day comment period and oral comments were received as part of the testimony taken at the December 17, 2010 hearing;

WHEREAS, pursuant to section 11346.9 of the Government Code, ARB staff prepared a Final Statement of Reasons (a copy of which is attached hereto as Attachment 2) that responded to comments received by ARB during this rulemaking and further addressed the effect of the amendments, as modified by the 15-Day Notice, on the environment;

WHEREAS, among the comments received were comments raising significant environmental issues for which responses have been prepared by staff and reviewed by the Executive Officer; and

WHEREAS, the Executive Officer has reviewed the amendments as modified by the 15-Day Notice, considered whether such amendments had a potential significant environmental effect, and, if so, whether such an effect can be reduced or eliminated by adoption of feasible alternatives to the amendments or mitigation measures;

WHEREAS, the Executive Officer has deemed it is necessary to bifurcate the amendments to section 2027, title 13, Cal. Code Regs., from the proposed amendments to sections 2025, title 13, Cal. Code Regs. and sections 95301 to 95307, 95309, and 95311, title 17, Cal. Code Regs. because the Drayage Truck regulation is presently in effect and the amendments, many of which are intended to clarify the rights and responsibilities of stakeholders under the existing regulations, need to be submitted to the Office of Administrative law and become operative as soon as possible.

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 10-45, Attachment 1, are incorporated by reference herein.

IT IS FURTHER ORDERED that I hereby certify that the environmental analysis prepared as part of the Staff Report for the amendments to the Drayage Truck regulation and updated in the Final Statement of Reasons, was prepared in accordance with the requirements of ARB's certified regulatory program under CEQA.

IT IS FURTHER ORDERED that I hereby approve each of the written responses to comments raising significant environmental issues in this rulemaking, as set forth in in Attachment 2.

IT IS FURTHER ORDERED that after fully considering the amendments as modified by the 15-Day Notice, the environmental analysis, and the full record before me, I find that:

> The amendments will not result in any adverse impacts to the environment but will achieve greater air quality benefits by, among other things, maintaining the Phase 2 compliance requirements for all drayage trucks, including Class 7 trucks, which were previously not covered; requiring all Class 7 drayage trucks operated in the South Coast Air Basin to be equipped with Level 3 VDECS by December 31, 2011; and by broadening the definition of drayage trucks covered by the regulation to include trucks

that engage in off-port and intermodal rail yard facilities dray-off operations, effectively closing a loophole in the regulation.

Because no adverse environmental impacts were identified as resulting from implementing the amendments to Drayage Truck regulation, no mitigation measures, findings or statement of overriding considerations are required.

IT IS FURTHER ORDERED, the amendments to title 13, CCR, section 2027, as set forth in the Final Regulation Order, which is attached hereto as Attachment 3, are adopted.

Executed this 15th day of September 2011, at Sacramento, California.

James N. Goldstene
Executive Officer

Attachments

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Resources Agency of California

ATTACHMENT 1

State of California
AIR RESOURCES BOARD

Resolution 10-45

December 17, 2010

Agenda Item No.: 10-11-3

WHEREAS, the Air Resources Board (ARB or Board) adopted the Regulation for In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks (Drayage regulation) title 13, California Code of Regulations (CCR), sections 2027, on December 7, 2007, and amendments thereto on December 11, 2008, pursuant to the authority set forth in Resolutions 07-58 and 08-43, which are respectively incorporated by reference herein;

WHEREAS, the Phase 1 emission standards in the Drayage regulation required drayage truck owners to upgrade their trucks by investing in cleaner technology beginning January 2010, which will reduce diesel particulate matter (PM) emissions from the heaviest (Class 8) diesel drayage trucks operating at California's ports and intermodal rail yards by over 86 percent;

WHEREAS, the current Phase 2 requirement of the Drayage regulation mandates that drayage trucks meet or exceed 2007 model year California or federal emission standards by January 1, 2014, potentially requiring a second truck upgrade and investment within four years;

WHEREAS, in 2009-2010, ARB and local agencies provided over $100 million in state Proposition 1B-funded incentives to drayage truck owners to achieve early or extra emission reductions through the replacement of old trucks with new cleaner models and the installation of diesel PM retrofit devices on existing trucks; the combination of the Drayage regulation and these incentives have significantly reduced the health risk from diesel PM in communities near ports and intermodal rail yards;

WHEREAS, owners of diesel drayage trucks made significant private investments in 2008-2010 to purchase cleaner trucks and diesel PM retrofit devices to comply with the Drayage regulation;

WHEREAS, since the Drayage regulation went into effect, some motor carriers serving ports and intermodal rail yards have employed different types of trucks or new business models to avoid the regulatory compliance costs associated with reducing diesel PM;

WHEREAS, some motor carriers have shifted from use of Class 8 diesel trucks, which are subject to the control requirements in the Drayage regulation, to use of lighter (Class 7) diesel trucks, which are currently exempt from the Drayage regulation;

WHEREAS, some motor carriers have begun using a practice known as "dray-off," which involves a cleaner, complying truck picking up a cargo container at a port and hauling it outside the port property to a nearby street or staging area where a non-complying truck picks up the container intact for transport to its destination, thereby reducing the community health benefits expected from the Drayage regulation;

WHEREAS, the increase in use of Class 7 trucks and the practice of dray-off result in higher diesel PM emissions in communities near ports and intermodal railyards than would be achieved with a fully compliant truck fleet serving these facilities;

WHEREAS, the increase in use of Class 7 trucks and the practice of dray-off that allow motor carriers and truck fleets to avoid investing in cleaner technology and create an unfair business environment for truck owners who did invest in complying trucks to meet the requirements and intent of the Drayage regulation;

WHEREAS, California and the nation have been in an economic recession that is deeper and longer lasting than anticipated when the Board adopted the Regulation to Reduce Emissions of Diesel PM, Oxides of Nitrogen (NOx) and Other Criteria Pollutants from In-Use Heavy Duty Diesel-Fueled Vehicles (Truck and Bus regulation) on December 11, 2008;

WHEREAS, the recession has had a significant impact on overall trucking activities, including companies that operate drayage trucks in the normal course of business;

WHEREAS, ARB staff has undertaken a thorough review and update of its emissions inventory for on-road heavy-duty diesel vehicles used in all vocations and determined that emissions from such vehicles are substantially lower than estimated in December 2008 when the Truck and Bus regulation was initially adopted;

WHEREAS, ARB staff presented the results of the updated emissions inventory to the Board at the November 2010 Board hearing, and the Board took public comment on the staff presentation and findings;

WHEREAS, ARB staff met and worked with affected private industry, federal, state, and local public agencies, and the public in developing proposed amendments to the Truck and Bus regulation, the Drayage regulation, and other regulations, holding numerous meetings with individual affected stakeholders, four public workshops, six community outreach meetings between June 2010 and November 2010, and sending email notifications to over 4,500 addresses;

WHEREAS, with the information and comments received from such meetings, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Amendments to The Truck and Bus Regulation, The Drayage Truck Regulation and The Tractor-Trailer Greenhouse Gas Regulation" and Appendices A-J, all released on October 28, 2010 (collectively referred to hereinafter as "ISOR");

WHEREAS, the ISOR, along with the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for Drayage Trucks" and the "Technical Support Document: Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy Duty Drayage Trucks" that were released on October 19, 2007 (collectively referred to hereinafter as "Staff Report-2007"), and the "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles," adopted by the Board on September 28, 2000, constitute the reports required under Health and Safety Code section 39665;

WHEREAS, the Staff Report-2007 and the ISOR identified and explained the need and appropriate degree of regulation of diesel PM, NOx, and other pollutants from drayage trucks and the feasibility of regulating emissions from diesel engines on drayage trucks that operate at California's ports and intermodal rail yards;

WHEREAS, the ISOR further discussed, to the extent data could reasonably be made available, the factors specified in Health and Safety Code sections 39665(b), 43013, and 43018, including, but not limited to the estimates of emissions; exposure; potential cancer risk and non-cancer health effects associated with the operation of drayage trucks at California's ports and intermodal rail yards; feasible control options; potential environmental impacts; and the necessity, cost of compliance and/or cost savings, and technological feasibility of the proposed amendments to the Drayage regulation;

WHEREAS, the Staff Report-2007 also discussed risk evaluations ARB staff has performed of exposure to diesel PM emissions from drayage trucks, using U.S. Environmental Protection Agency (U.S. EPA)-approved and ARB-recommended air dispersion models, and these evaluations indicate potential cancer risks for off-site receptor locations near California's major ports at levels exceeding 500 chances in a million;

WHEREAS, in addition to discussing the potential cancer risks due to exposure to diesel PM emissions, the Staff Report-2007 discussed non-cancer risk evaluations ARB staff performed of exposure to diesel PM emissions from drayage truck diesel engines, and these evaluations indicate that exposure to these emissions can be associated with premature deaths and numerous other non-cancer health impacts;

WHEREAS, in addition to discussing the effects of exposure to diesel PM emissions, the Staff Report-2007 further determined that the emissions from diesel drayage trucks contribute to levels of ozone and fine particulate matter (PM2.5) that exceed federal and state ambient air quality standards;

WHEREAS, the ISOR presented staff's proposal that the Board adopt the further amendments to the Drayage regulation, as set forth in Appendix B to the ISOR;

WHEREAS, staff has proposed amendments to the Drayage regulation that would:

1. Expand the scope and applicability of the Drayage regulation to include Class 7 trucks with gross vehicle weight ratings of 26,001 pounds through 33,000 pounds and require that these trucks operate with an ARB verified level 3 diesel PM emission control strategy by January 1, 2014;

2. Expand the scope and applicability of the Drayage regulation beyond drayage trucks operating on port and intermodal rail yard properties to also include drayage trucks operating off of port and intermodal rail yards;

3. Clarify that only drayage trucks operating on port or intermodal rail yard properties are required to be registered in the Drayage Truck Registry;

4. Clarify that motor carriers are only required to keep drayage truck dispatch records for drayage trucks that are dispatched to a port or intermodal rail yard;

5. Clarify that drayage trucks with model year 2004-2006 engines are required to be equipped with a level 3 ARB verified diesel emission control strategy based on engine model year by the appropriate deadlines in Phase 1;

6. Eliminate the current Phase 2 requirement that mandates drayage trucks meet or exceed 2007 model year California or federal emission standards by January 1, 2014;

7. Require drayage truck operators to identify and provide documentation on the origin and destination of cargo, chassis, and intermodal equipment to enforcement personnel; and

8. Formally sunset the Drayage regulation on December 31, 2016, after which, starting January 1, 2017, all drayage trucks will be subject to title 13, CCR, section 2025, the Truck and Bus regulation which will provide drayage truck owners with a decade or more before they must make a second upgrade to cleaner technology;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and title 17, CCR, section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the ISOR discussed the emission impacts of the proposed amendments to the Drayage regulation. in which ARB staff determined that there would be no diesel PM emission disbenefits resulting from the proposed amendments to the Drayage regulation;

WHEREAS, the Board has considered the impact of the proposed Drayage regulation on the economy of the state and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, ARB is making over $100 million in new Proposition 1B-funding available to local agencies in January 2011 to provide incentives for cleaner trucks and diesel PM retrofits; owners of eligible non-drayage and drayage trucks can apply for this funding on a competitive basis to reduce their costs for early or extra compliance with ARB truck regulations;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, based on information in the rulemaking record, including the ISOR, updated on-road vehicle emissions inventory, written comments, and testimony provided at the public hearing, the Board finds regarding the staff's proposed amendments to title 13, CCR, section 2027 that:

1. Expanding the scope of the Drayage regulation to include Class 7 drayage trucks and drayage trucks that operate off of port and intermodal rail yard property is necessary to ensure that the diesel PM emission reduction goals of the Drayage regulation are achieved and to eliminate business practices that are jeopardizing those goals and fostering an uncompetitive business environment;

2. While acknowledging the effects of the recession on the trucking industry as described earlier in this resolution, it is necessary and appropriate to retain the Phase 2 requirements of the Drayage regulation to protect residents of impacted communities who continue to suffer adverse health impacts from exposure to diesel PM, PM2.5 and ozone. Further, the Board recognized that the Drayage regulation is already being implemented and that retaining the Phase 2 requirements would provide fairness within the drayage industry to the truck owners who complied early by investing in new trucks with the expectation that their competitors would also be required to do so by 2014;

3. The proposed sunset provision in the Drayage regulation is necessary to align the longer-term requirements for drayage trucks with those for non-drayage trucks under the Truck and Bus regulation and provides for the transition to just one regulation in 2023;

4. In accordance with Health and Safety Code section 39667 and based upon the Board's determinations under Health and Safety Code section 39662, the amendments to the Drayage regulation have been designed to achieve the maximum possible reduction in public exposure to toxic air contaminants utilizing best available control technology;

5. In accordance with Health and Safety Code section 43013(b), the in-use emission standards and other requirements specified in the amendments to the Drayage regulation are necessary, cost-effective, and technologically feasible for drayage truck diesel engines within the time provided for compliance;

6. The reporting requirements of the regulation are necessary for the health, safety, and welfare of the people of the state.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Board's regulations under its certified regulatory program, the Board further finds that:

1. ARB staff has prepared an environmental analysis for the staff's proposed amendments, which is contained in Chapter VI of the Initial Statement of Reasons (ISOR);

2. Staff's environmental analysis determined that the staff's proposed amendments, including the subsequent incorporation of the Drayage regulation into the Truck and Bus regulation, would substantially reduce both PM and NOx emissions, as compared to the environmental conditions that currently exist; and

3. The Executive Officer is the decision maker for the purposes of title 17, California Code of Regulations, section 60007, and no final decision will be made until comments on the environmental analysis are fully considered and addressed by the decision maker.

NOW, THEREFORE, BE IT RESOLVED that the Board directs the Executive Officer to take the following actions:

1. Make the modified regulatory language consistent with the findings herein and as set forth below, with such other conforming modifications as may be appropriate, available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted;

2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare and approve written responses as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and title 17, CCR, section 60007;

3. Determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts;

4. Make findings as required by Public Resources Code § 21081 if the proposed amendments would result in one or more significant adverse environmental effects; and

5. Take final action to adopt the proposed amendments, consistent with the findings and directives herein, and any additional conforming modifications that may be appropriate, and any modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts have been incorporated into the final action, or return the proposed amendments and findings to the Board for further consideration before taking final action, if he determines that this is warranted.

BE IT FURTHER RESOLVED that before making any determination on final adoption of the amendments, the Executive Officer modify and make available for public comment the proposed requirements regarding Class 7 drayage trucks to require that those operating in the South Coast Air Basin be equipped with level 3 Verified Diesel Emission Control Strategy for PM by January 1, 2012.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to aid the drayage industry with compliance by developing user-friendly materials within six months of approval by the Office of Administrative Law of the proposed Drayage regulation amendments, conducting outreach, and making information available on the Internet and through other forms of distribution to affected fleets.

BE IT FURTHER RESOLVED that the Board finds that section 209(a) of the federal Clean Air Act (CAA) does not preempt California from adopting emission standards for non-new on-road motor vehicles and that California is not required to request a waiver from the U.S. EPA pursuant to CAA section 209(b).

I hereby certify that the above is a true and correct copy of Resolution 10-45, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

ATTACHMENT 2

California Environmental Protection Agency

Air Resources Board

Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

FOR AMENDMENTS TO THE DRAYAGE TRUCK REGULATION MADE AS PART OF THE PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATION TO REDUCE EMISSIONS OF DIESEL PARTICULATE MATTER, OXIDES OF NITROGEN AND OTHER CRITERIA POLLUTANTS FROM IN-USE ON-ROAD DIESEL-FUELED VEHICLES, THE HEAVY-DUTY VEHICLE GREENHOUSE GAS EMISSION REDUCTION MEASURE, AND THE REGULATION TO CONTROL EMISSIONS FROM IN-USE ON-ROAD DIESEL-FUELED HEAVY-DUTY DRAYAGE TRUCKS AT PORTS AND INTERMODAL RAIL YARD FACILITIES

Public Hearing Date: December 17, 2010
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FOR AMENDMENTS TO THE DRAYAGE TRUCK REGULATION MADE AS PART OF THE PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATION TO REDUCE EMISSIONS OF DIESEL PARTICULATE MATTER, OXIDES OF NITROGEN AND OTHER CRITERIA POLLUTANTS FROM IN-USE ON-ROAD DIESEL-FUELED VEHICLES, THE HEAVY-DUTY VEHICLE GREENHOUSE GAS EMISSION REDUCTION MEASURE, AND THE REGULATION TO CONTROL EMISSIONS FROM IN-USE ON-ROAD DIESEL-FUELED HEAVY-DUTY DRAYAGE TRUCKS AT PORTS AND INTERMODAL RAIL YARD FACILITIES

Public Hearing Date: December 17, 2010
Agenda Item Number: 10-11-3

I. GENERAL DISCUSSION

On December 17, 2010, the Air Resources Board (ARB or Board) considered the adoption of proposed amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter (PM), Oxides of Nitrogen (NOx), and Other Criteria Pollutants from In-Use On-Road Diesel-Fueled Vehicles (Truck and Bus Regulation), the Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Measure (Tractor-Trailer GHG Regulation), and the Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks at Ports and Intermodal Rail Yard Facilities (Drayage Truck Regulation). The proposed amendments and "Staff Report: Initial Statement of Reasons for Proposed Rulemaking" (Staff Report) were released to the public on October 19, 2010 (ARB, 2010), and are incorporated by reference herein.

This Final Statement of Reasons (FSOR) provides an update on the Drayage Truck Regulation only. Separate FSOR documents will cover the Truck and Bus and Tractor-Trailer GHG Regulations.

A. Description of Board Action

At its December 17, 2010 public hearing, the Board considered amendments to title 13, California Code of Regulations (CCR), section 2027, which establishes the Drayage Truck Regulation. Written comments were received during the 45-day public comment period, which began on November 1, 2010, and continued through December 15, 2010. ARB also received written and oral comments on the day of the public hearing.

At the hearing, the Board considered the proposed amendments to the Drayage Truck Regulation and adopted Resolution 10-45, in which it suggested modifications

discussed at the hearing. ARB's Executive Officer was directed to incorporate the suggested modifications into the proposed regulatory text and make the modified regulatory language available for a supplemental comment period of 15 days. The text of the modifications to the originally proposed Regulation was made available for a supplemental 15-day comment period by issuance of a "Notice of Public Availability of Modified Text and Information and Availability of References, to which Corrections Have Been Made, that Were Listed in the Initial Statement of Reasons" (15-Day Notice). The 15-Day Notice set forth ARB's rationale for the proposed modifications and is hereby incorporated by reference herein. The 15-Day Notice and a copy of the proposed Regulation, with modifications clearly indicated, were posted on May 19, 2011, for a public review and comment period that ended on June 3, 2011. Notification was sent to persons who had expressed an interest in the Regulation during the course of rule development and review. By these actions, the modified Regulation was made available to the public for a supplemental comment period pursuant to Government Code section 11346.8.

Seven written comments were received during the supplemental 15-day comment period that pertained to the Drayage Truck Regulation. Staff did not make additional modifications in response to those comments. After considering the comments, the Executive Officer issued Executive Order R-11-010, adopting the amendments and new regulatory text.

This FSOR updates the Staff Report by identifying and providing the rationale for modifications made to the originally proposed amendments as a result of comments made by the Board at the public hearing, comments received during the 45-day public comment period, and staff analysis after the Staff Report was released. The FSOR also summarizes written and oral comments ARB received on the proposed amendments to the Drayage Truck Regulation during the formal rulemaking process and ARB's responses to those comments.

B. Summary of Modifications to the Originally Proposed Amendments to the Regulation

Several modifications were made to the originally proposed amendments to address comments made by the Board at the public hearing and those received during the 45-day public comment period. The 15-Day Notice and text of the modifications to the originally proposed Regulation were made available for public comment from May 19, 2011 to June 3, 2011. A summary of all the modifications are described below.

Applicability: section 2027(b) and Sunset: section 2027(j)

In response to retaining the Phase 2 requirement, the proposed sunset date was modified to realign the transition between the regulatory requirements for the Drayage Truck Regulation and the Truck and Bus Regulation after December 31, 2022. Extending the sunset date from December 31, 2016 until December 31, 2022 is necessary to ensure that emission and health benefits achieved at ports and rail yards are kept intact during the transition to the Truck and Bus Regulation.

Definitions: section 2027(c)

In response to the proposed modification that requires drayage trucks with a GVWR between 26,001 to 33,000 pounds that operate in the South Coast Air Basin to be equipped with a level 3 diesel particulate filter after December 31, 2011, a definition of the South Coast Air Basin, definition (41), was added to identify its geographical boundaries. In addition, staff inadvertently included "...that pulls a trailer or chassis..." in the proposed definition of a 'Drayage Truck,' subsection (15), during the 45-day comment period. This language was removed to maintain the original intent of the Regulation to include all drayage trucks while on port or intermodal rail yard properties regardless of whether the truck is or is not physically pulling a trailer or chassis.

Requirements and Compliance Deadlines: section 2027(d)

As indicated above, subsection (d)(1)(D) was added to require drayage trucks with a GVWR of 26,001 to 33,000 pounds that operate in the South Coast Air Basin to be equipped with a level 3 diesel particulate filter after December 31, 2011. In addition, the original language in Phase 2 was retained in subsection (2) that requires all drayage trucks, including those with a GVWR between 26,001 and 33,000 pounds, with 1994 or newer model year engines to meet or exceed 2007 model year California or federal emission standards after December 31, 2013. The modifications in this section are necessary to meet diesel PM and NOx reduction goals, and eliminate business practices that are jeopardizing those goals and fostering an uncompetitive environment within the drayage truck industry.

Other Non-Substantive Changes

Minor modifications were made throughout the regulatory text to improve clarity, correct typographical or grammatical errors, and make changes in numbering or formatting. These modifications were included in the strikeout/underline version of the regulatory text that was provided for public comment with the 15-day Notice.

C. Fiscal Impacts of Proposed Changes on Local and State Agencies and School Districts

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state; costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), division 4, title 2 of the Government Code; or any other nondiscretionary cost or savings to local agencies.

D. Consideration of Alternatives

The proposed amendments were the result of extensive discussions and meetings involving ARB staff, the trucking industry, and other stakeholders. Alternatives to this regulatory action were considered in accordance with Government Code section 11346.9(a)(4), and can be found in Chapter VIII of the Staff Report. These included retaining the existing provisions (make no changes to the Regulation), and delaying the Phase 2 requirements in the current Regulation by two years, until December 31, 2015. For reasons set forth in the Staff Report, the Executive Officer has determined that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

As provided in ARB's rationale in the 15-Day Notice, the Regulation, as amended, does not include staff's proposal to eliminate the Phase 2 in-use emission requirements. These requirements, which were initially adopted by the Board in 2008, require all drayage trucks to be equipped with engines that meet or exceed 2007 model year California or federal emission standards after December 31, 2013. It was determined that the emission and health risk reductions that would be achieved through implementation of the Phase 2 requirements continue to be necessary to protect the health and welfare of persons who live and work in communities in and around ports and intermodal rail yard facilities. It was also determined that equity and fairness dictated that the Phase 2 requirements not be repealed, as some stakeholders had already made business decisions and invested significant capital in Phase 2 compliance, relying on the requirements as they were adopted in 2008 to ensure their competitors would have to make similar investments by 2014 to stay in the drayage business.

E. The Amendments Will Not Adversely Impact the Environment

The Staff Report identified potential adverse environmental impacts based on an increase in emissions that would result from staff's recommendation to eliminate the Phase 2 compliance provision (Title 13, California Code of Regulations, section 2027(d)(2)), which requires all drayage trucks to be equipped with engines that meet or exceed 2007 model-year certification standards by 2014. However, the Regulation, as

finally amended by the Air Resources Board (ARB), did not repeal this provision, finding that the current requirements are necessary to safeguard emission reductions and health benefits for communities near California's ports and intermodal rail yards.

In deciding not to adopt the amendment, ARB recognized that the Regulation was already in place, and that the requirements were needed to provide regulatory consistency within the drayage industry. Specifically, to avoid creating a competitive disadvantage for truck owners who invested early in Phase 2-compliant trucks with the expectation that their competitors would also be required to do so under the Regulation. Therefore, staff does not expect any significant adverse environmental impacts in response to the adopted amendments.

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II. SUMMARY OF COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD AND AGENCY RESPONSES

The Board received written comments during the formal 45-day public comment period, which was open from November 1, 2010 to December 15, 2010. Written and oral comments were also received at the ARB public hearing on December 17, 2010. A list of commenters, including the date and form of all comments received during the 45-day public comment period and public hearing, is provided in Table 1 below. Following the list are summaries of each comment, as well as responses to the objections, concerns, and recommendations made. Each response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

The comments addressed here apply specifically to the Drayage Truck Regulation and/or the combined rulemaking. Public comments received specifically on the Truck and Bus, Tractor-Trailer GHG, Off-Road, and LSI Regulations will be addressed in separate FSOR documents.

Table 1: List of Individuals & Businesses Submitting Comments During the 45-Day Public Comment Period

Abbreviation	Commenter
ACCC	Quilter, John Association of California Car Clubs Written comment: December 14, 2010
ALA	Holmes-Gen, Bonnie American Lung Association of California Oral comment: December 17, 2010
Anonymous	Anonymous Written comment: December 3, 2010
AutoReturn	Scanlan, Dan AutoReturn Written comment: December 10, 2010
Ayala	Ayala, Ruben Written comment: December 13, 2010
BAAQMD1	Broadbent, Jack Bay Area Air Quality Management District Written comment: December 15, 2010
BAAQMD2	Fourniee, Anthony Bay Area Air Quality Management District Oral comment: December 17, 2010
Babich	Babich, Henry Written comment: November 23, 2010
Ballesteros	Ballesteros, John Written comment: December 9, 2010

Barbosa	Barbosa, Eddie Written comment: December 14, 2010
Bengston	Bengston, Wayne Written comment: December 7, 2010
Breathe	Katz, Andy Breathe California Oral comment: December 17, 2010
Browne	Browne, Kelly Written comment: December 14, 2010
BWGI1	Kustin, Camille The Better World Group, Inc. for : American Lung Association Bayview Hunters Point Community Advocates Breathe California Catholic Charities of the Stockton Diocese Center for Environmental Health Center on Race, Poverty, & the Environment Coalition for a Safe Environment Coalition for Clean Air Communities for a Better Environment Communities for Clean Ports East Yard Communities for Environmental Justice Environmental Health Coalition Fresno Metro Ministry Long Beach Coalition for a Safe Environment Medical Advocates for Health Air Natural Resources Defense Council Regional Asthma Management and Prevention Community Action to Fight Asthma Rose Foundation for Communities and the Environment Sierra Club California Union of Concerned Scientists West Oakland Environmental Indicators Project Written comment: December 15, 2010
BWGI2	Kustin, Camille Better World Group, Inc. Written comment: December 17, 2010
BWGI3	Kustin, Camille Better World Group, Inc. Oral comment: December 17, 2010
CAEC1	Edgar, Brad Cleaire Advanced Emission Controls Written comment: December 15, 2010
CAEC2	Edgar, Brad Cleaire Advanced Emission Controls Oral Comment: December 17, 2010

CCA1	Bautista, Nidia Coalition for Clean Air Oral comment: December 17, 2010
CCA2	Jonasson, Elizabeth Coalition for Clean Air Oral comment: December 17, 2010
CCT	Chidester, Dave Central Cal Transportation Oral comment: December 17, 2010
CDTI	Brown, Kevin Clean Diesel Technologies, Inc. Oral Comment: December 17, 2010
CEU	Eisenhamrmer, Eric Coalition of Energy Users December 14, 2010
Charities	Reifsnider, Betsy Catholic Charities Oral comment: December 17, 2010
Chatten	Chatten, Scott Written comment: December 9, 2010
Chung	Chung, Helena Written comment: December 15, 2010
Cloud	Cloud, Jon J. Cloud, Inc. Oral comment: December 17, 2010
CNGVC	Carmichael, Tim California Natural Gas Vehicle Coalition Oral Comment: December 17, 2010
CRPE	Newell, Brent Center on Race, Poverty, and the Environment Oral comment: December 17, 2010
CVAQC	Garoupa, Catherine Central Valley Air Quality Coalition Oral comment: December 17, 2010
Devine1	Coyle, Richard Devine Intermodal Written comment: December 9, 2010
Devine2	Dolk, Carl Devine Intermodal Written comment: December 9, 2010
Devine3	Coyle, Richard Devine Intermodal Written comment: December 21, 2010
Devine4	Coyle, Richard Devine Intermodal Oral comment: December 17, 2010

Devine5	Dolk, Carl Devine Intermodal Oral comment: December 17, 2010
Dietrich1	Dietrich, Robert Written comment: December 9, 2010
Dietrich2	Dietrich, Robert Written comment: December 14, 2010
Districts	Sadredin, Seyed San Joaquin Valley Air Pollution Control District / Barry Wallerstein South Coast Air Quality Management District Written comment: December 17, 2010
Donaldson	Imes, Julian Donaldson Company Oral comment: December 17, 2010
Durkee	Durkee, Kay Written comment: December 9, 2010
Earnshaw	Earnshaw, KC Written comment: December 9, 2010
Earth	Baker, Kami Earth Team Oral comment: December 17, 2010
Eckman	Eckman, Larry Written comment: December 14, 2010
EHC	Williams, Joy Environmental Health Coalition Oral comment: December 17, 2010
Enterprise	Turner, Kathy Enterprise Holdings Oral Comment: December 17, 2010
Erik	K., Erik Written comment: December 8, 2010
EYCEJ1	Ramirez, Isella East Yard Communities for Environmental Justice Oral comment: December 17, 2010
Finch	Finch, Sandra Written comment: December 10, 2010
Findley	Findley, Myrtle Written comment: December 9, 2010
Fleming	Fleming, George Written comment: December 9, 2010
Fosseen	Fosseen, Dwayne Written comment: December 7, 2010
FTSI	Fitzgerald, Kathy Fitzgerald Truck Sales, Inc. Oral comment: December 17, 2010

Gildersleeve	Gildersleeve, Todd Written comment: December 14, 2010
Graves	Graves, Kay Written comment: December 9, 2010
Griffith	Griffith, Jim Written comment: December 9, 2010
Hall	Hall, Steve Written comment: December 15, 2010
Hill	Hill, Gary Written comment: December 14, 2010
HNSSR	Bard, Jenny Health Network Support for Strong Regulations Written comment: December 15, 2010
Holub	Holub, Jacque Written comment: December 8, 2010
HTA	Cherin, Alex Harbor Trucking Association Written comment: December 15, 2010
Hulz	Hulz, Brian Written comment: December 9, 2010
Impact	Cancilla, Ron Impact Transportation Oral comment: December 17, 2010
Jerome	Jerome, Donald Written comment: December 9, 2011
Kellogg	Kellogg, Alan Written comment: December 9, 2010
LaMalfa	LaMalfa, Doug California State Senate Oral Comment: December 17, 2010
Laman	Laman, Ann Written comment: December 9, 2010
Liqtech	Debelak, Donald Liqtech North American Written comment: December 14, 2010
Lynes	Lynes, Steve Written comment: December 14, 2010
Matthey	Lassen, Martin Johnson Matthey Oral comment: December 17, 2010
Marin	Marin, Rudy Written comment: December 9, 2010
MCHS	Nguon, Paul McClymonds High School Oral comment: December 17, 2010

MECA1	Brezny, Rasto Manufacturers of Emission Controls Association Written comment: December 17, 2010
MECA2	Kubsh, Joe Manufacturers of Emission Controls Association Oral comment: December 17, 2010
MHS1	Balogun, Segun Mandela High School Oral comment: December 17, 2010
MHS2	Rogue, Marisol Mandela High School Oral comment: December 17, 2010
MHSLPSA	Matteo, Salvador Mandela High School Law and Public Service Academy Oral comment: December 17, 2010
Morton	Morton, Mark Written comment: December 14, 2010
NAFA	Battersby, Richard NAFA Fleet Management Association Written comment: December 15, 2010
Napier	Napier, Heidi Written comment: December 9, 2010
Nieto	Nieto, Stephen Written comment: December 14, 2010
NRDC	Bailey, Diane Natural Resources Defense Council Oral comment: December 17, 2010
Pay	Pay, Gary Written comment: December 9, 2010
Pinkston	Pinkston, Pam Written comment: December 9, 2010
POLA1	Cannon, Christopher The Port of Los Angeles Written comment: December 15, 2010
POLA2	Cannon, Christopher The Port of Los Angeles Written comment: December 17, 2010
POLA3	Cannon, Christopher The Port of Los Angeles Oral comment: December 17, 2010
POLB	Steinke, Richard The Port of Long Beach Written comment: December 15, 2010
Prime	Ryker, Shaun Prime, Inc. Written comment: December 7, 2010

RAMP	Kitagawa, Brandon Regional Asthma Management and Prevention Community Action to Fight Asthma Oral comment: December 17, 2010
RHS1	Gutierrez, Neli Richmond High School Oral comment: December 17, 2010
RHS2	Orozco, Jessica Richmond High School Oral comment: December 17, 2010
RHS3	Ramirez, Victoria Richmond High School Oral comment: December 17, 2010
Ritchie	Ritchie, Cheryl Written comment: December 11, 2010
RTC	Osofsky, Alan Rodgers Trucking Co. Written comment: December 14, 2010
Rypos	Bransfield, Peter Rypos Oral comment: December 17, 2010
Samardich	Samardich, Barbara Written comment: December 9, 2010
SCAQMD	Hogo, Henry South Coast Air Quality Management District Oral comment: December 17, 2010
Sierra	Lyons, Jim Sierra Research Written comment: November 18, 2010
SJVAPCD	Sadredin, Seyed San Joaquin Valley Air Pollution Control District Oral comment: December 17, 2010
Skinner	Skinner, Warren Written comment: December 11, 2010
Stalzer	Stalzer MD, Susan Written comment: December 10, 2010
Stansberry	Stansberry, Steve Written comment: December 15, 2010
Stratton	Stratton, Cindy Written comment: December 10, 2010
Tomlinson	Tomlinson, Rick Written comment: November 15, 2010
Torres	Torres, Chris Written comment: November 16, 2010
Travers	Travers, Ken Written comment: December 9, 2010

UCLA	Enstrom, James University of California, Los Angeles Written comment: December 15, 2010
UPSD	Merk, David Unified Port of San Diego Written comment: December 2, 2010
VPS	Seivright, Susan Valley Powers Systems, Inc. Oral comment: December 17, 2010
Williamson	Williamson, David Written comment: December 8, 2010
WLI	Bishop, Ralph Western Lime, Inc. Written comment: December 10, 2010
Wright	Wright, Tracey Written comment: December 15, 2010
Young	Young, Justin Written comment: December 14, 2010

A. Health Effects and Emissions

Methodology

A-1 **Comment:** I am writing in regards to the fraudulent study on diesel emissions. You can't enact regulations that will potentially destroy the entire economy of California. Admit your mistakes, and retract these ridiculous studies. (Barbosa)

A-2 **Comment:** I understand that you are basing your actions on fraudulent data from a bogus researcher who purchased a false degree documenting him as a PhD. (Finch)

A-3 **Comment:** I do not understand how a government for the people could impose job killing regulations on the public based on phony statistics by a phony scientist. (Holub)

A-4 **Comment:** Based on the improperly done study by Dr. Tran, I believe it is truly in your best interest to back off the restrictions until a new study can be conducted and affirmed by a separate non-CARB affiliated source. While I fundamentally agree with the green concept, slowing the implementation to a rate that is more in line with the rest of the United States will benefit all Californians. (Hulz)

A-5 **Comment:** Estimates regarding CA and global pollutions data were hugely overstated. As the shipping cost of virtually everything goes up, our cost of living

will go up and more middle and lower class peoples will suffer greater poverty. (Jerome)

A-6 **Comment:** These new regulations will cost us all money and devastate the trucking and agriculture industries. They are based on phony research by phony Hien Tran. (Napier)

A-7 **Comment:** You are working off of information provided by a bogus "expert." Please just stop. (Pay)

A-8 **Comment:** The original report upon which you base your proposed regulations was later exposed to be written by a total fraud who received his PhD by mail order. Isn't that enough reason to completely throw out his recommendations? (Pinkston)

A-9 **Comment:** It has been discussed that there is faulty data used in making the proposals. Please review all references before you make a decision. (Ritchie)

A-10 **Comment:** I can't believe you guys are going to help further destroy the state's economy by giving credence to a "study" by a fake PhD. We don't need the prices of everything to go up. Your regulations will put mom and pop type truckers out of business, leaving us to deal with the big companies only. (Stalzer)

A-11 **Comment:** I suggest the following regarding PM 2.5: (1) Hire a 3rd party scientific consultant vetted through the public with verifiable credentials to review all existing PM 2.5 data and make conclusions/recommendations; (2) Hire an economist to give a true picture of the economic impact of PM 2.5 regulations on the local and state economy should; and (3) CARB should openly and honestly answer questions regarding this legislation. (Tomlinson)

A-12 All of this from a regulation based on fraud: "Dr." Hien Tran, the researcher with the phony PhD. (Travers)

A-13 **Comment:** Hien Tran was the lead scientist on the study of "Premature Mortalities from the exposure of PM 2.5," which is the basis for the PM 2.5 regulations. He claimed to have a PhD from UC Davis, when in fact, he had a mail-order, fraudulent PhD from a fake university. We demand that CARB suspend the implementation and rule-making processes of all PM 2.5 regulations until a new study can be completed, peer-reviewed, and is made available for public comment. Also, there is discussion whether or not diesel is the largest emitter of PM 2.5. PM 2.5 particles come from many sources, which cannot be identified directly. National studies cannot be applied to California where pollutants and populations differ from states in the nation. (Young)

Agency Response to Comments A-1 through A-13: ARB staff recognizes that businesses will incur some costs due to the amendments to the Drayage Truck Regulation, and that this is challenging, especially in the current economic climate. However, the State is required by the federal Clean Air Act (CAA) to come into attainment with the National Ambient Air Quality Standards (NAAQS) for particulate matter 2.5 microns or less in diameter (PM 2.5) and ozone. Drayage trucks are also a source of NOx emissions, which is a contributor to overall PM 2.5 and is also a precursor to ozone. Additionally, Assembly Bill 1807, The Toxic Air Contaminant Identification and Control Act, requires ARB to reduce health risk from identified toxic air contaminants, including diesel PM. Primary diesel PM emissions are a significant contributor to overall PM 2.5. In 2008, 20,600 tons of diesel PM were emitted in California. The emissions reductions from the Drayage Truck Regulation, as amended, are necessary to protect public health and welfare; attain the federally mandated air quality standards for PM 2.5 and ozone; as well as reduce NOx and diesel PM emissions.

Regarding Mr. Tran, as a result of falsifying his credentials, he has been demoted, disciplined, and removed from all regulatory support work. The Board also directed staff to withdraw the original PM health report and prepare a new version (ARB, 2010a), which was completed in August 2010 and used for this rulemaking. The report can be found at: http://www.arb.ca.gov/research/health/pm-mort/pm-report_2010.pdf.

The new PM health report updates ARB's methods for quantifying premature death associated with long-term public exposure to PM 2.5. The methods rely on a peer-reviewed risk assessment document developed by the United States Environmental Protection Agency (U.S. EPA) as part of its current review of the NAAQS for PM 2.5. The CAA gives U.S. EPA the responsibility to research and assess the health impacts of air pollution at the national level. California law gives ARB similar responsibilities as part of the State's comprehensive program to reduce air pollution. The national studies reviewed by U.S. EPA for the NAAQS assessment also apply to California, and as part of the federal standards review process, U.S. EPA estimated the premature deaths associated with PM 2.5 in two California cities (Los Angeles and Fresno). The new ARB report expands on that work by estimating mortality impacts of PM 2.5 statewide.

A-14 **Comment:** The attached list of study references on the relationship between PM 2.5 and total mortality in California is directly related to the calculation of premature deaths associated with diesel particulate matter in California. These premature deaths provide the primary public health justification for the CARB on-road regulations. (UCLA)

Agency Response to Comment A-14: ARB staff appreciates the extensive research provided regarding the relationship between PM 2.5 and total mortality in California. ARB staff believes the Drayage Truck Regulation is necessary to achieve needed emissions reductions, reduce localized risk from exposure to diesel PM, reduce impacts of diesel engine emissions on mortality and other health effects, and meet State

Implementation Plan (SIP) commitments to meet federal air quality standards in California.

B. Regulatory Provisions

Opposition to Eliminating Phase-2 2007 Model-Year Requirements

B-1 **Comment:** I disagree with this new proposal. I think it's unfair to change the requirements after we have already made decisions and spent time trying to figure out which would be the best decision to make. And now, somebody with a 2006 truck could possibly be driving it until 2020. You need to stick with what you said and everybody will be feeling more secure with the decisions that they made. Otherwise, you can reimburse the drivers for the money they spent that was unnecessary. (Anonymous)

B-2 **Comment:** I don't think amendments should be made to the regulation. You will put those companies that have already made the move to become compliant at a disadvantage to the companies that have not by allowing them to run their junk at reduced operating costs. They have minimal operating costs verses a company that has retrofitted or replaced their units to become compliant. (Babich)

B-3 **Comment:** We strongly urge you to maintain the much needed Phase 2 deadline requiring all drayage trucks to meet EPA 2007 engine standards by 2014. Community health is at risk if this deadline is eliminated. Maintaining the Phase 2 deadline of the regulation ensures that all drayage trucks will meet high clean air standards as originally intended. (BWGI1, BWGI2, BWGI3, RAMP)

B-4 **Comment:** We urge you to deny the amendment eliminating the Phase 2 requirement which mandates that drayage trucks use engines that meet or exceed 2007 or newer emission standards by 2014. Our company made a strategic investment to purchase expensive new and clean trucks. In doing so, we scrapped dirtier trucks that still had significant mechanical life remaining. Changing this regulation now is unfair, and will enable the dirty and under-capitalized and illegitimate truckers to hang on longer, polluting longer, and quite likely could wipe us out. We also believe that the elimination of this requirement will weaken current rules in place designed to protect residents near ports and rail yards from exposure to toxic air contaminants. (Devine1, Devine2, Devine3, Devine4, Devine5)

B-5 **Comment:** We need to get the older dirtier trucks off the road with a second phase for port trucks. I recognize how important jobs are, but at the same time, I really hope that the Board does not back down on protecting our health. (MCHS)

B-6 **Comment:** The diesel problem is affecting us, the citizens. It is affecting our health. I understand that we have to be concerned about the jobs that are going to be affected by this rule. But on the other hand, the percentage of kids

hospitalized is going to decrease by a lot. I know it's not easy finding a job now since the economy has gone bad. But the delay (in Phase 2 requirements) that is being proposed means more kids are going to be affected and get sicker. (RHS3)

B-7 **Comment:** The proposed changes set the stage for requests for additional relief from other industries, and I think this is a slippery slope that could ultimately defer or delay the recovery of the economy of California that many believe will be on the backs of clean tech jobs. We ask that you reconsider the removal of mandatory retrofits. (Rypos)

B-8 **Comment:** By giving older equipment a longer period to comply, CARB will be giving a competitive advantage to those who did not do anything and continue to emit higher emissions. Keeping the rule the same as originally passed by the board would keep the economics even for all involved. (Torres)

Agency Response to Comments B-1 through B-8: Comments noted. The adopted amendments did not include staff's proposal to eliminate the Phase 2 requirements (section 2027(d)(2)), which requires drayage trucks to be equipped with engines that meet or exceed 2007 model year California or federal emission standards) from the Drayage Truck Regulation. ARB determined that the emission reductions achieved through implementation of the Phase 2 requirements are needed to maximize air quality benefits and reduce health risk exposure for communities near California's ports and rail yards. The Board also recognized that the Phase 2 requirements were already being implemented by stakeholders relying on the previously adopted provisions, and that the requirements were needed to provide regulatory consistency and prevent possible competitive disadvantages for truck owners who have already complied. All drayage trucks will continue to be required to operate with engines that meet or exceed 2007 or newer emission standards after December 31, 2013.

<u>Support for Eliminating Phase-2 2007 Model-Year Requirements</u>

B-9 **Comment:** I support the change in the drayage rule to give the useful life to the trucks longer after they retrofit. I ask that the engines that are 2004, 2005, and 2006, that you give one more year for them to get the retrofit. And finally, make a decision. It's very hard to do business when we don't have a decision. (FTSI)

B-10 **Comment:** I support the amendments to the Drayage Truck Rule. Give us some time so we can make proper decisions on where to invest our money going forward. (Impact)

Agency Response to Comments B-9 through B-10: See agency response to comments B-1 through B-8 above.

Class 7 Trucks and Trucks Operating Off of Port and Intermodal Rail Yards

B-11 **Comment:** We applaud the proposed changes to the Drayage Truck Regulation regarding the practice called "dray-off" (the use of non-compliant trucks to shuttle containers to and from staging locations very close to port terminals) and inclusion of Class 7 trucks. Ending "dray-offs" and including Class 7 trucks ensures that all drayage trucks will meet high clean air standards as originally intended. (BWGI1, BWGI2, BWGI3, CCA1, EHC, RAMP)

B-12 **Comment:** We support closing the loopholes in the current regulation that address dray-offs and Class 7 trucks. (Devine1, Devine2, Devine3, Devine4, Devine5)

B-13 **Comment:** The financial commitment made by our membership in new and clean trucks is being threatened by a small group of businesses that are exploiting a small loop hole in the current regulations that allow the use of Class 7 trucks to dray containers from the port terminals. These trucks are avoiding the associated clean truck fees, and thereby gaining an unfair competitive advantage over those in the industry who have complied with the regulations. We ask that ARB move those Class 7 trucks into the same category as Class 8 trucks as it pertains to their phase-out from port and related uses, and effectuate this new regulatory framework immediately. We are also concerned about the increasing use of dray-offs on port property, which allow trucking firms to haul containers using a compliant truck and then switch the container to a non-compliant truck just outside the terminal gates. (HTA)

B-14 **Comment:** My high school is surrounded by truck routes, so I'm very happy that ARB staff is recommending an end to the dray-off loophole and recommending including more trucks in the program. (MCHS)

B-15 **Comment:** All the loopholes need to be closed. (MHSLPSA)

B-16 **Comment:** We're appreciative for the effort in working with communities to address the dray-off problems that were undermining the port drayage truck regulation. (NRDC)

B-17 **Comment:** We support the proposed changes to the Drayage Truck regulation that address dray-off activity. (UPSD)

Agency Response to Comments B-11 through B-17: ARB staff agrees. The Regulation, as amended, expands the Drayage Truck Regulation to include Class 7 and "dray-off" trucks that circumvent the intent of the Regulation. These trucks delay expected emission and health benefits, and foster an uncompetitive environment with complying competitors. ARB staff believes that requiring trucks transporting drayage cargos off port and rail yard properties to meet the same emission standards and

deadlines as trucks operating on port and rail yard properties will eliminate any competitive and cost disadvantages between the two trucking groups.

B-18 **Comment:** Under the proposed amendments, Class 7 trucks would not be subject to any emissions control requirements until January 1, 2014. We believe Class 7 vehicles should be brought into sync with the progressive bans already imposed on Class 8 vehicles by January 1, 2012, allowing for a short transition period in order to allow current Class 7 truck owners to purchase retrofits or order new vehicles. (POLA1, POLA2, POLA3, POLB)

Agency Response to Comment B-18: ARB staff modified the requirements for Class 7 drayage trucks operating in the South Coast Air Basin (where the ports of Los Angeles and Long Beach are located). These trucks will be subject to emission control requirements after December 31, 2011, which require all pre-2007 model year engines to be retrofitted with an ARB verified level 3 diesel particulate filter or to meet or exceed 2007 engine standards. This requirement is consistent with the successful diesel emission reduction efforts already in place at the Ports of Los Angeles and Long Beach and ensures that emission and health benefits are retained.

C. Economic Impacts

Credits and Incentives

C-1 **Comment:** After we complied with the regulation, everybody got an extension (commenter is referring to an ARB issued 4-month extension from January 1, 2010 through April 30, 2010). I had to compete head to head with people that had done nothing for months. Then there's another extension (commenter is referring to a second ARB issued 2-month extension from May 1, 2010 through June 30, 2010 for a very limited number of trucks awaiting new equipment). I'm hoping there is something that can be done to give credit to fleets that have already taken action to comply with the regulations. (CCT)

C-2 **Comment:** CARB should identify and provide preferential incentives to fleets that have already made efforts to comply with CARB regulations. Fleets that committed to early or as scheduled compliance made significant financial investments in vehicles and other capital assets. These fleets will be at a severe competitive disadvantage against other similar businesses with fleets that did not take any compliance actions. (NAFA)

C-3 **Comment:** We appreciate that staff has taken into account the plight of many in these difficult economic times. We are hopeful that with the extra time for meeting the requirements, that the economic future will become brighter. We realize that some companies stepped up to the plate early and invested in newer technologies. We feel it is only fair that they be rewarded for their efforts. Perhaps some State tax benefits can be offered to them to help even out the

competitive playing field over the next 10 years. Please consider some advantage to those carriers that complied ahead of schedule. (RTC)

Agency Response to Comment C-1 through C-3: ARB staff believes it is no longer necessary to consider giving credit or incentives to stakeholders that have already complied with Phase 2 of the Drayage Truck Regulation since the proposed amendment that would have eliminated the current Phase 2 requirements requiring 2007 model-year compliant engines was not approved. The Board recognized that the Regulation was already being implemented, and that the requirements were needed to provide regulatory consistency and prevent possible competitive disadvantages for truck owners who complied early with Phase 2. Therefore, Phase 2 remains unchanged, and all drayage trucks will be required to operate with engines that meet or exceed 2007 or newer emission standards after December 31, 2013.

Impacts on Businesses

C-4 **Comment:** Your overbearing proposed regulations on diesel engines will drive consumer costs up and drive viable businesses from the state. Allow existing federal air quality rules to achieve their goals. (ACCC)

C-5 **Comment:** As one of the founders of AutoReturn, the current contract holder for all of the municipal towing in San Francisco, I am aware of the (additional) costs the proposed regulations will have. However, I do support the proposed truck and diesel engine emissions regulations. Yes, there will be some increased costs initially; but the long term benefits will show that these regulations like those imposed decades ago for passenger cars were the driving force for the needed change. (AutoReturn)

C-6 **Comment:** I request the Board to reject any amendment that jeopardizes the ability to retain transportation jobs within the state. While I understand the intent of the environmental special interest groups, their tenets are extreme and not business nor job friendly thus reducing the number of potential employees to other states and thereby losing potential tax revenues to the general fund. (Ballesteros)

C-7 **Comment:** I am against any further pollution regulation at this time. As long as businesses are leaving in droves and unemployment is so high, we need to stop increasing costs on businesses. (Bengston)

C-8 **Comment:** These regulations are only going to burden the poor and middle class. You are forcing the working people and businesses out of this state. (Browne)

C-9 **Comment:** The diesel regulations will have a serious impact on our jobs and economy. Please also consider the role of economics on public health. Nations

with the highest poverty rates also have the highest infant mortality rates and lowest life expectancies. (CEU)

C-10 **Comment:** These regulations that are based on bogus information are putting small trucking companies out of business. (Chatten)

C-11 **Comment:** Increasing the tax and/or limiting the use of diesel fuel for truckers and other transportation methods will be a hardship for farmers, truckers, and the common citizen. We will be forced to pay more for farm products and trucking of food and other materials. I am tired of our lives and livelihoods being controlled by extreme environmentalists. Such limitations are based upon faulty and misinterpreted statistics. (Durkee)

C-12 **Comment:** Dump the diesel regulations. These are unnecessary and job killers. They do nothing except destroy business. (Dietrich1, Deitrich2)

C-13 **Comment:** If the new laws take effect, it would literally shut our small business. Please reconsider the small businesses that are struggling to survive in this miserable economy. (Earnshaw)

C-14 **Comment:** I am against the regulations you are trying to push through. They will force small trucking companies out of business and drive up the costs of all goods statewide. (Erik)

C-15 **Comment:** I can't believe you would even consider new regulations on diesel fuel that will put independent truckers and small trucking companies out of business. How can you justify an action of this magnitude that will create a domino effect on commodities, cost of goods, and freight. (Finch)

C-16 **Comment:** Please dump the strict regulations. They will kill my small business. (Findley)

C-17 **Comment:** Dump the job killing diesel regulations now. Vote no on the diesel regulations. (Fleming)

C-18 **Comment:** Unless killing off what little economy left in California is your intention, stop Cap and Trade and stop your diesel proposal. (Graves)

C-19 **Comment:** Before they destroy countless jobs, and price us out of existence. Abolish CARB before it is too late. (Griffith)

C-20 **Comment:** Why make more regulations to choke business and by direct relation cost jobs? It is not governments place to instruct us how to live our lives. (Hall)

C-21 **Comment:** If you impact the cost of trucking, you will impact the cost of everything. Today's engines and diesel fuel are very clean compared to a few years ago. Right now, California needs jobs more than a little cleaner air. (Hill)

C-22 **Comment:** I am against any new regulations on the diesel transportation industry. In this time of economic crisis, any new regulations are just not warranted. Additionally, your studies appear to be flawed. (Kellogg)

C-23 **Comment:** Putting more stringent fuel standards on trucks, buses, etc. will just cause all products we depend on to rise in cost and some will not be available. (Laman)

C-24 **Comment:** I am a small business owner and have lived in California for 49 years. My business has gone from 42 employees to nine, as the current economic conditions have affected business. Our business requires equipment such as trucks, driven locally. I have not made a profit in three years. I keep my trucks in fine running condition. I cannot afford to replace them. It said simply "Pass the cost on to your customers." I don't have enough customers to make this happen. Please help this state recover. Stop over regulating. California cannot afford this. (Lynes)

C-25 **Comment:** The new regulations could probably put me out of business, so I'm hoping for a change or postponement on the rules. (Marin)

C-26 **Comment:** CARB should temper zealous and punitive actions against industry and business. CARB is apparently driven by more than unreasonable clean air goals. (Morton)

C-27 **Comment:** Please do not enact further restrictions on diesel fuel. The enforcement of these new proposals will affect the weak job sector, and we cannot afford any more taxes. (Ritchie)

C-28 **Comment:** Back off we cannot do this until our economy is back to normal. (Skinner)

C-29 **Comment:** Please do not cave in to the environmental extremists and vote no on proposed amendments regarding diesel fuel. Harm has been grossly exaggerated, and businesses are more important. (Stratton)

C-30 **Comment:** Small trucking companies will go out of business because they cannot afford to make costly retrofits. The regulations will hit all of us with more expensive prices on everything brought to us in a truck. (Travers)

C-31 **Comment:** Unless you want this state to fail, don't regulate jobs away. (Wright)

Agency Response to Comments C-4 through C-31: See agency response to comments A-1 through A-17. ARB believes that the Drayage Truck Regulation is necessary to meet California's air quality obligations and goals. The need to reduce emissions from drayage trucks continues to be a significant factor in meeting air quality standards. Solely relying on federal new engine emission standards will not achieve emission reduction goals in the necessary timeframe because of the long lives of diesel trucks. Drayage truck emissions contribute to localized health risks associated with exposure to diesel PM, and premature deaths associated with exposure to PM 2.5 near California's port and intermodal rail yard facilities. Staff believes that the analysis presented in the Staff Report is an accurate estimate of the emissions inventory and economic impacts from the Regulation on California's industries. Additionally, staff believes that most businesses will be able to offset costs because the effect of the Regulation will be similar for businesses that compete with each other in providing the same service. ARB staff will continue to monitor the impacts of the recession on the emissions inventories and industry as the Regulation is implemented.

C-32 **Comment:** We ask the Board to reiterate its support for the diesel retrofit industry and direct senior ARB staff to lead the pursuit of immediate relief measures for the retrofit device manufacturers so that we have some stability in the next year as we ramp up towards complying with the demands in 2012 and 2014. Additionally, we have had reports from our distributors already that when the proposals came out for these rule changes that fleets immediately stopped making purchases. And that's further destabilizing the marketplace that we have to operate in. (CDTI)

C-33 **Comment:** We fully support the MECA recommended changes, which includes the need for economic relief consideration for retrofit manufacturers. We request Board support of near-term reviews with ARB staff and ARB interim policy guidance approaches that would provide economic relief and ensure that verified technologies are available and needed. (Donaldson)

C-34 **Comment:** Just the specter of the changes in the rule has already started to really slow down the number of retrofits being done here in California. Our industry has felt the impact of the recession and such. We ask that the Board consider directing staff to look at some measures for economic relief for our industry as well. Our VDEC products are sold here in California through distribution, through California companies. We market, sell, and install. We essentially maintain these systems through California green jobs. The changes to the rules will impact the number of jobs that can be foreign. (Matthey)

C-35 We think obviously with the changes in the demand for retrofit technology that have occurred because of the changes that are before you, some relief is needed. (MECA1, MECA2)

Agency Response to Comments C-32 through C-35: ARB staff continues to support the option to use retrofit devices to reduce emissions in the Drayage Truck Regulation, and by extension, the retrofit manufacturing and installation industries. At its December 17, 2010 public hearing, the Board directed staff to incorporate several regulatory changes to include Class 7 drayage fleets that provide the option to employ retrofit technologies. ARB staff continues to support research and development of technologies that assist in meeting California's clean air commitments. For drayage trucks, the adopted amendments increase the market for retrofit devices.

Effect on Vehicle Value

C-36 **Comment:** CARB is trying to force companies and individuals to replace or retrofit by 2014. That has caused used diesel trucks to drop in value 40-80 percent. The fleets that run the most miles normally would replace trucks in 5 years. Now they cannot afford to. Now there are thousands upon thousands trucks rotting. Trucks that were once recycled and reused. Now the big fleets that run the most miles can't afford to upgrade to the new less polluting trucks that are available NOW. (Nieto)

Agency Response to Comment C-36: ARB staff recognizes that in California, the value of used trucks that do not meet required engine standards may change as a result of the Regulations. When determining the costs attributable to the Drayage Truck Regulation, staff estimated there would be some loss in value associated with equipment being replaced early. This analysis is reflected in the 2007 staff report. The Regulation is crafted to maximize the availability of used emission compliant trucks in the market to meet demand, while ensuring that emission reduction goals and timelines are met. Typically, trucks cycle from the large long-haul fleets to local fleets within five years of purchase. In addition, trucks that meet the PM emission standards under the Drayage Truck Regulation could be resold as compliant trucks under the Truck and Bus Regulation. By 2014, the 'oldest' compliant truck will be seven years old. Therefore, staff is confident that a sufficient number of 2007 model year and newer trucks will be available in the marketplace to meet future demands.

D. Environmental Impacts

Public Health

D-1 **Comment:** I am concerned that the proposed modifications do not maintain the short and long-term health benefits of the original rule. The health of businesses should not become a priority when the public's health can suffer. (Chung)

D-2 **Comment:** It's not that clear to me that our communities have gotten any reprieve in particulate pollution due to the recession. Looking at levels of PM 2.5 at the air monitor that's located in one of our environmental justice communities, we have not seen any consistent decreases between 2006 and 2009 in the annual average levels. That community has also been working hard to finalize a

new land use community plan which would allow water-front industries and residential communities to exist side-by-side. We need to make sure that every truck traveling through or visiting the port is as clean as possible in its emissions. (EHC)

D-3 **Comment:** We urge you to ensure the regulations are as strong as possible and provide commensurate health protections to the original rules. While we understand that ARB's proposed revisions are designed to address the downturn in the economy and inventory changes, we believe CARB must still move forward as quickly as possible to protect communities and ensure a transition to cleaner vehicles and equipment. Strong state regulations to control harmful emissions from trucks and buses are critical to saving lives and improving health. We support the strongest possible regulations to cut diesel pollution, protect vulnerable and impacted communities, and protect public health from the illnesses and deaths caused by diesel exposure. (HNSSR)

D-4 **Comment:** When the Board adopted California's Diesel Risk Reduction Plan in 2000, it set a goal of reducing diesel pollution by 75 percent by 2010. I understand there have been some changes to help truckers and construction workers in these hard times, but the proposal in front of you won't get us to a 75 percent reduction on diesel pollution until 2023. Please don't wait that long. You need to fix the proposal so that trucks, old or new, have diesel filters by 2017. And old equipment needs to be retired faster. (MHSLPSA)

D-5 **Comment:** The current proposal will significantly delay diesel cleanup over the next few years. Demographic data shows a very striking disparity that supports the fact that the poorest, the lowest income communities, and those that are more likely to be minority are also the most like fully to live in the highest traffic areas. We wanted to bring these disparities to your attention, and we're asking you to consider some amendments that would offer some relief to these impacted communities and move up some of the cleanup for the very oldest trucks that tend to operate in these communities the most. (NRDC)

D-6 **Comment:** I'm concerned in how diesel exhaust is becoming harmful to children's health. As you all probably know, Richmond's asthma hospitalization rate is three times the state average. I, myself, suffered of asthma as a child. My seven-year-old sister has asthma now. I have two cousins who also live in Richmond and also suffer of asthma. In your mission, you mention that you want to promote and protect the public health. All of us who are suffering this diesel impact want to see you do as you say. (RHS1)

D-7 **Comment:** I want to talk to you about diesel exhaust and how it is affecting everyone around us. As you know, diesel exhaust is a problem because it contains more than 40 toxic air contaminants. Imagine trucks passing by your house every day leaving particles and gases in the air that are just waiting for the moment so you breathe them in. At that moment, they may not affect you. but

sooner or later they make you sick when you least expect it. One truck route runs right in front of my school. Around my school there are two more trucks routes. And around Richmond, there are many more. Wouldn't you be worried if you and your family were breathing toxins that could be killing you slowly? I would like to ask you to not wait any longer to make the changes that we have known for so long that we need to make. Nothing should stop us from pursuing just this. (RHS2)

D-8 **Comment:** The diesel filters should be mandatory on all trucks. I believe my community will benefit greatly from the diesel filter. (Earth)

Agency Response to Comments D-1 through D-8: ARB staff agrees. While acknowledging the effects of the recession on the overall trucking industry, the Regulation includes Phase 1 requirements for diesel PM reductions from 2010-2012 and, as amended, retains the even more effective Phase 2 requirements, which will ensure continued protection of residents in impacted communities who suffer adverse health impacts from exposure to diesel PM and NOx emissions. Air quality improvement began in 2010 with the ban on the oldest trucks, and the installation of PM filters on a majority of drayage trucks.

Environmental Justice

D-9 **Comment:** Policies should be made that benefit all people, and I believe that re-routing of trucks will help lower the asthma-related hospital visits and low-incomes families that reside in those areas. (Earth)

D-10 **Comment:** It's not fair how we have to live under environmental racism and how other people, often rich people don't have to. I understand all the people that don't support this amendment, but I think they should stop being selfish and also care about the people that live under this environmental racism. The world is not all about money. It's also about the health of other people. (MHS2)

Agency response to Comment D-9 through D-10: Comments noted. ARB staff is committed to integrating environmental justice in all of its activities. The amended Drayage Truck Regulation requires cleaner fleets of in-use on-road diesel vehicles to be used throughout the State with accelerated requirements for highly impacted communities near port, rail yards, warehouses, and high traffic freeways. This will reduce emissions in communities statewide, including those with environmental justice concerns. Additionally, the requirements facilitate fleet turnover for all drayage trucks hauling port or rail cargos, regardless of truck owner's fleet size. The suggested alternative to re-routing truck traffic is outside the scope of ARB's authority. The commenter should seek assistance from local municipal government.

State Implementation Plan Commitments

D-11 **Comment:** While we acknowledge a need for some modification to these rules with the downturn of the economy, we are concerned by the level of the modifications both in terms of the fact that we are trading off some of the near-term benefits that we would otherwise have experienced, particularly in localized communities, as well as our level of comfort with the SIP margin is just not at a place where we'd like to be. We would really appreciate having a 20 percent margin there. And though I know that the staff is committed to reviewing this rule, if the economy changes down the line, I'm concerned that's going to be too late to really make any fundamental changes we might need to do to shore up that SIP. (CCA1)

D-12 **Comment:** We are particularly concerned about how these amendments will affect our home in the short and long term, as these sources represent a considerable amount of PM and NOx emissions. Even though we are sensitive to the economic situation and the current times that we are living in, the localized impacts will continue. These rules also play a significant role in our SIP attainment. The economy is a very difficult thing to predict, and I know staff has spent tireless hours working on that. However, in terms of health, a slightly faster economic recovery would put us out of SIP compliance. And since we have no margin of error, this is a serious concern. We respectfully ask some changes be made to these amendments to minimize the localized impacts and give us at least a 20 percent SIP margin. (CCA2)

D-13 **Comment:** Regarding the SIP, the current proposal leaves the San Joaquin Valley little or no margin for error to reach the federally mandated standards before 2015. We're aware of the economic crisis in the Central Valley, but diesel pollution is costly. I ask that you please pass a strong diesel rule with a greater SIP margin. (Charities)

D-14 **Comment:** I'm here today to support these proposed changes. The amendment to this rule is really not backsliding on any of the health benefits. The reason being for those on the environmental side, is the health benefits that were discussed six months ago, let alone two years ago, were pure fantasy. They weren't based off any real actual numbers. Today, we have a far better baseline to deal with. And the proposed health benefits are going forward from that baseline. (Cloud)

D-15 **Comment:** Don't adopt these amendments. The San Joaquin Valley and the South Coast need these reductions, these extra reductions that you're going to backslide on to meet the one-hour standard. You still have to meet the one-hour standard. We've been talking about the PM 2.5 standard and the eight-hour ozone standard. You still need to meet the one-hour standard. The environmental justice screen method demonstrates the adverse and disparate impacts that will occur as a result of these amendments. The current rule

requires a significant amount of reductions to occur earlier. This amendment reduces the reductions and pushes them off. Near-highway communities that are predominantly low income and communities of color will bear an adverse and disparate impact. Title 6 of the Civil Rights Act says a federally funded agency like yours may not discriminate on the basis of race. Therefore, there will be a Title 6 complaint in your future. (CRPE)

D-16 **Comment:** My concern on the rule proposed today is that it does not safeguard with enough margin of certainty for those most affected by PM and NOx pollution, especially those in the San Joaquin Valley and in the corridors of highway 101, I-5, 99, and 880. I urge the Board to include an early 2012 emission review to see if the tons of pollution reduced are on target and build in the 20 percent 2014 SIP margin on the emission reductions. (CVAQC)

D-17 **Comment:** Given that the proposed amendments rely heavily on ARB's new emissions estimates leaving no margin for error in the San Joaquin Valley and a small margin for error in the South Coast Air Basin, we urge your Board to consider the following in adopting the proposed relaxations to the existing regulation: (1) Reaffirm ARB's commitment that mitigating any shortfall in emission reductions will be the responsibility of ARB from sources under the State's jurisdiction; (2) Accept a commitment by ARB to regularly monitor and report on the actual emissions and related trends for the affected source categories, and take timely regulatory action to remedy any shortfalls; (3) Partner with SCAQMD and SJVAPCD to do additional work to improve the statewide and regional emissions inventory estimates for affected source categories. We have prepared draft resolution language containing commitments and dates for actions by ARB to implement these recommendations, and urge your Board to add it to the adopted resolution for the proposed amendments. (Districts, SCAQMD, SJVAPCD)

D-18 **Comment:** There is a real impact in our communities because of the place that where they live and work is a diesel hot spot. With major freeways, major arterial roads, and rail yards, they are suffering from asthma, cancer and other respiratory illnesses due to the cumulative impacts from all of these sources. These rules are important because they will cut down on costs, medications, and also health risk for the families that are heavily impacted. Our impacted communities need near-term relief now. We ask that staff provide near-term benefits through upgrades on the oldest dirtiest trucks beginning in 2014, including a higher SIP margin and a monitoring program. (EYCEJ1)

D-19 **Comment:** Due to the absence of updated air quality monitoring and modeling and specific reasons for uncertainty, these proposed amendments risk missing the mark and falling short on SIP requirements and public health goals to prevent cancer, asthma, and other health effects due to diesel pollution. I hope that ARB will follow through and make sure when the SIP occurs in April 2011 that there will be an adequate margin or contingency measures. I encourage the Board to

have a 20 percent margin to make sure that there will not be falling short of the SIP commitments and there will be a compliance with the Clean Air Act. (Breathe)

Agency Response to Comments D-11 through D-19: Recognizing the health risks posed by drayage truck emissions on communities located near to ports and intermodal rail yards, the Drayage Truck Regulation, as amended, was strengthened - not relaxed. The Phase 2 requirements have been retained as initially adopted, and the loopholes in the existing Regulation regarding use of Class 7 drayage trucks and dray-off have been closed. The Regulation, as amended, will result in greater NOx and PM emission reductions which will assist the South Coast and San Joaquin Valley air districts in achieving attainment of the federal ambient air quality standards, as originally set forth in the 2007 SIP.

Emissions Inventory and Monitoring

D-20 **Comment:** We understand that ARB needs to provide some additional flexibility due to the economy and inventory changes. We are asking that you do everything possible to maximize the public health protections and maintain the strongest possible regulations. We are particularly concerned about the most vulnerable and disadvantaged communities and urge you to pay special attention to pollution reduction in impacted areas and to consider measures to strengthen requirements in areas near ports and rail yards. We also believe it's extremely important to continue to monitor emission levels that are consistent with production we are looking at today to make sure we are reaching the emissions levels that we're expecting and achieving all benefits we're expecting today and to also monitor the pace of the economy. (ALA)

D-21 **Comment:** CARB's on-road diesel inventory cannot be reasonably or thoroughly reviewed based on the information currently available and that, where a review is possible, there are substantial issues that need to be addressed. Given this, Sierra strongly recommends that the inventory, as well as all data sources and methodologies, be subjected to an independent "peer" review by an experienced third party or parties before it is used as the basis for regulatory decision making, including the assessment of potential modifications to the In-Use On-Road Diesel Regulation. (Sierra)

Agency Response to Comments D-20 through D-21: Please see agency responses to comments D-1 through D-19. With regard to monitoring emissions levels and the pace of the economy, ARB staff routinely reviews emission levels and monitors air quality throughout California to measure the effectiveness of its air quality programs and will continue to do so in the future. This active monitoring is independent of the pace of the economy. However, as the economy improves with a significant increase in volume of truck emissions, ARB's monitoring will quickly identify any significant emissions increases and take appropriate actions to meet its SIP commitments.

The drayage truck emissions inventory was developed using a step-wise approach. Container lift data and other information was used to estimate the number of truck trips to various destinations, origin and destination data was used to estimate trip lengths, survey data was used to estimate truck population and age distribution, and future growth trends were estimated using container vessel growth rates and other information.

E. Definitions

E-1 **Comment:** We ask ARB staff to work with us and others in the trucking community to develop a definition of "dray-off" for regulatory and enforcement purposes to avoid over-reaching. There are a number of legitimate business practices, all ARB compliant, that involve the use of two or more trucks for the move of a single container. While we support a ban on the activities involving switching of vehicles to avoid regulation, we would encourage ARB to speak with trucking companies to garner a better understanding of the legitimate practices in use in order to avoid an overly-broad regulatory scheme. (HTA)

Agency Response to Comment E-1: ARB staff did not include a definition for "dray-off" in the proposed amendments to the Drayage Truck Regulation. Instead, staff worked closely with the trucking industry and other stakeholders to expand the original definition of a "drayage truck" to include trucks hauling cargos, containers, or chassis that are either bound from or destined for a port or rail yard. By expanding the definition of 'drayage truck,' staff avoided the possible pitfalls of defining a new activity. The amended Regulation has been vetted through industry, and staff is confident that it will properly address and eliminate "dray-off" activities intended to circumvent the intent of the Regulation. ARB staff is committed to continue to work with industry throughout the Regulation's implementation to address any unforeseen circumstances not consistent with the intent of the Regulation.

F. Funding

General

F-1 **Comment:** It will be important to do everything possible to use incentive funds to get early reductions in health impacted communities so we can all work together on that as we move forward. There should be an earmark to the amendment that, like tax breaks for people who comply with the filter, they should be guaranteed grants, like mom and pop truck companies. And there should be just an earmark that helps the economy as well. (ALA, Earth)

F-2 **Comment:** Let's get the money into the hands of these people. Whatever you can do to facilitate getting the money out on the street, the industry is going to appreciate it. (FTSI)

F-3 **Comment:** I commend ARB on its willingness to revisit the requirements of the Drayage Truck regulation based on updated inventory information and the present economic downturn. However, we believe that the health risk in its impacted communities and along Bay Area highways remains at the same or increased levels. We request that ARB consider the following recommendations, should they decide to proceed with the proposed amendments to the Drayage Truck regulation: (1) Implement recommendations from the advisory committee to streamline State grants programs; (2) Support air districts in efforts to seek streamlined legislation and extension of State grants programs; (3) Allow increased participation by medium sized fleets in State grants programs; and (4) Provide additional funding and larger percentages to loan guarantee programs to increase grant program participation. (BAAQMD1, BAAQMD2).

F-4 **Comment:** In adopting the proposed relaxations to the existing regulation, we urge your Board to consider taking actions to facilitate more rapid and effective use of incentive grants in generating earlier reductions from the affected source categories to minimize potential shortfalls. We also recommend the following actions with respect to necessary enhancement to the incentive grant programs: (1) Adopt uniform program guidelines and funding caps across various incentive programs with a particular focus in encouraging emissions reductions as early as possible by increasing program participation; (2) streamline and simplify application processes that encourage participation, especially from small fleet owners and owner operators; (3) Maximize flexibility with respect to the definition of "surplus" as allowed under federal law, with an emphasis on maximizing the availability of projects and cost-effectiveness; and (4) Increase opportunities for small businesses by adjusting the definition of small fleets to include small businesses with more than three vehicles. (Districts, SJVAPCD, SCAQMD)

F-5 **Comment:** If the companies that make money from shipping and selling the products that come into the port of Oakland could pay a little bit of money for every container that comes to the port, then that could help my community and they could clean up the diesel trucks. I think this should be recommended as an idea to the Governor and the Legislature. Also, I think it should be on the ballot for the 2012 election. Suppose that for every container that came through the Port of Oakland, the shipping company could pay $30. That money could be used to clean up the trucks. (MHS1)

Agency Response to Comments F-1 through Comment F-5: ARB staff is committed to working with local districts to continue helping truck owners (including drayage truck owners) identify available assistance options as well as creating programs, when possible, to aid in this effort.

ARB has been active in providing incentive funding opportunities to drayage truck owners and operators to finance the purchase of retrofits or cleaner trucks prior to any applicable compliance deadlines. The Proposition 1B: Goods Movement Emission Reduction Program (Prop: 1B) is a partnership between ARB and local agencies to

provide grants to equipment owners regardless of fleet size. Drayage truck owner-operators and owners of small and medium size fleets can participate in ARB's Providing Loan Assistance for California Equipment (PLACE) program that provides loan guarantees and will shortly provide loans. In February 2011, modifications to PLACE expanded eligibility criteria to allow more trucking fleets to participate in the program.

The Prop. 1B program has awarded $105 million for equipment owners to replace or upgrade drayage trucks. Additionally, the Board approved March 2010 Prop. 1B Guidelines includes a provision for a priority reserve fund for owners and operators of drayage trucks who installed PM filters prior to June 30, 2010 and will need to replace those trucks by 2014. ARB or the air districts will contact the owner of record of these trucks when such funds are available which are dependent upon ARB receiving upfront proceeds from future bond sales.

Additionally, the Incentive Program Advisory Group, led by ARB Board Member Sandra Berg, provides a forum for discussing policy level issues relating to the development and ongoing implementation of the ARB incentive programs. In recent years, California's portfolio of incentive programs has expanded to include the Goods Movement Emission Reduction Program, the AB 118 programs, the PLACE program, and other locally run air district programs, among others. We anticipate that the group will continue to provide a useful venue for policy level coordination among agencies and programs. All interested stakeholders are invited and encouraged to participate. ARB's funding program staff will continue to work together to implement near term and long term solutions.

Public Outreach

F-6 **Comment:** I request that staff continue their endeavors to implement outreach regarding compliance schedules, credits, and grant funding opportunities. Taking advantage of credits and funding opportunities will get reductions ahead of schedule. Additionally, I'd like to request that your staff dedicate ample time to re-evaluate the effectiveness of the Cal Cap Program, which provides a tremendous amount of relief to fleets that are affected by these rules as well that may have already missed their window to qualify for grant programs. (VPS)

Agency Response to Comment F-6: ARB staff has developed an outreach plan to help increase awareness of the regulatory requirements and financial assistance programs. To implement the plan, ARB has launched a series of outreach tools including the new Truck Stop website at www.arb.ca.gov/msprog/truckstop/truckstop.htm; the diesel hotline at 1-866-6DIESEL, or by email at 8666diesel@arb.ca.gov. Interested truck owners can use any of these resources to obtain information regarding on-road regulations and available financial assistance.

Additionally, ARB staff will implement a drayage specific outreach effort once the proposed changes become effective. This effort will include updated information for drayage owners and operators, motor carriers, and port and rail authorities on any regulatory changes. Staff will also inform fleets of new or expanded incentive funding opportunities as they become available. Education efforts will include training seminars, public workshops, and individual meetings with stakeholders throughout the State, continuation of the toll free Drayage Truck Hotline at 1-888-247-4821, email communication at drayage@arb.ca.gov, and ongoing electronic communication via ARB's Port Truck list-serve. Staff will also continue to work with industry representatives and associations on additional ways to educate stakeholders on the amendments to the Regulations.

G. Retrofit Technology

Installation Feasibility and Operational Difficulties

G-1 Truckers can't afford to put on technology that does not work for them. We are even seeing it with the newer rigs. Brand-new ones are having to get major repairs because the retrofit equipment or the new equipment they're putting on is not working for them. In that same situation, you're seeing an additional three to four to even eleven percent lower fuel mileage. We have major engine manufacturers that are dropping out of the California market. We need to allow them time to catch up. So let's take a little longer term look at this and find practical solutions. (LaMalfa)

Agency response to Comment G-1: Over the past decade, heavy-duty diesel vehicle technology has rapidly evolved to meet new engine standards promulgated by ARB and U.S. EPA. New engine certification is designed to ensure that new equipment meets minimum thresholds. To be certified, a vehicle must demonstrate to ARB and U.S. EPA that its emission control systems are durable and comply with the emission standards for the vehicle's useful life. This is done through durability and certification testing of the prototype certification vehicles. Compliance with on-board diagnostics, anti-tampering, vehicular emissions, etc., as applicable, must also be demonstrated.

Production vehicles must be identical in all material respects to those of the certification vehicles for which the certification was granted. All emissions-related production running changes and field fixes must be approved by ARB. Production vehicles must be properly labeled and their emission control systems warranted. New and customer-owned production vehicles are subject to compliance testing (by either the manufacturers or ARB) and warranty repairs reporting by the manufacturers, either of which can result in remedial actions.

In regards to new vehicle reliability and durability, originally equipped PM filters on 2007 or newer vehicles are under warranty for 150,000 miles. Any failures occurring during this period would be reconciled by the manufacturer. In addition, recent industry evidence suggests that newer 2010 model year engine technology is proving durable with performance above expectations.

Approved PM retrofit devices are thoroughly evaluated and approved by ARB's Diesel Emission Control Strategies Verification Program and have been found to be effective in collecting diesel PM contaminants. These retrofit devices are designed and verified for specific engine families, operating conditions, and applications. Engines that do not meet the verified system requirements are not qualified for the retrofit installations. There are currently over 2,200 PM retrofits operating on drayage trucks statewide. Only a small number (less than 15) have been reported to ARB as having malfunction problems. Staff agrees that suitability is very important when selecting a verified PM retrofit, and issues involving retrofit system malfunctions should be promptly reported to the installer or other professionals authorized by the retrofit manufacturers. ARB staff also notes that there are a greater number of retrofits operating for longer periods of time on other types of diesel equipment in the U.S. and Europe.

Verification of Retrofits

G-2 **Comment:** We believe that more can be done to increase ARB cooperative efforts to harmonize the verification process with EPA, and better achieve true reciprocity between EPA and ARB. We also believe that a more streamlined cost effective ARB verification procedure and end use testing procedures are desired and possible. We urge the Board to consider the changes that we have identified and request these near-term policy guidance adjustments. (Donaldson)

G-3 **Comment:** We have found it is possible to maintain engine combustion over an entire engine life. We have found Caterpillar dealers learning how to measure combustion as a diagnostic tool and then tuning the diesel engine for maximum fuel savings. This results in vehicle owner savings and the Caterpillar professional service centers are taking the engine combustion responsibility same as an aircraft mechanic signing of an airworthy engine log. (Fosseen)

G-4 **Comment:** We think there are pathways for improving the verification end use testing program that can provide relief for the diesel retrofit industry. And we would ask the Board to direct staff to work with us on making those changes happen. (MECA1, MECA2)

Agency Response to Comments G-2 through G-4: ARB staff appreciates the manufacturer's efforts in developing technologies and diesel particulate filter devices for customers to comply with the Regulation. However, the commenters are referring to the Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines Regulation, which outlines the requirements for verification of DECS. The purpose of this regulation is to reduce emissions of diesel PM, NOx, and other criteria pollutants from in-use on-road diesel-fueled heavy-duty drayage trucks at ports and intermodal rail yard facilities. This rulemaking is not an appropriate venue for addressing possible improvements and/or streamlining the verification process or in-use compliance testing requirements. We

encourage manufacturers to continue to work closely with ARB verification staff to address the concerns raised in the comments.

H. Miscellaneous

H-1 **Comment:** We are supportive of the current rule and urge you and your Board to adopt a rule without further delay. As one of many stakeholders in this process, we need the certainty provided by a rule in order to continue to operate our business. (CAEC1, CAEC2)

H-2 **Comment:** Over the last few weeks we have seen a drop in business due to ARB changing and delaying its diesel rules and not having any new rules, or funding in place. Potential buyers are waiting until rules are in place or funding guidelines are clear. I can't help feel that our industry is the only one being left out on a limb to fend for itself. (Liqtech)

H-3 **Comment:** I support the proposed truck and diesel engine emissions regulations. There will be some increased costs initially, but the long term benefits will show that these regulations like those imposed decades ago for passenger cars were the driving force for the needed change. (AutoReturn)

H-4 **Comment:** We believe it's critical that the regulatory standards be fixed and predictable so our purchasing and re-selling decisions can be made with some degree of certainty. We support the proposed revisions, and we commit to working with you in any manner possible to fully integrate our company's practices with your clean air and the greenhouse gas reduction rules. (Enterprise)

Agency response to Comments H-1 through H-4: The Drayage Truck Regulation, as amended, will help ensure that companies can make short and long term business plans that comply with the regulatory schedules. The proposal to eliminate Phase 2 requirements for compliance with 2007 model-year standards was not adopted in recognition of public health concerns and the fact that some stakeholders have relied on the existing requirements in making business decisions and investments towards compliance and that changes to the requirements would potentially place these companies at a competitive disadvantage with competitors who have not yet taken action to comply with the later year requirements.

H-5 **Comment:** You may think that the current proposed requirements are a way to gradually phase in new standards, but they are not. You guys are changing the standards, making our current fleet non-compliant. The findings presented were based on a false study. Start by conducting a real study with real numbers, in our area. Changes in the design and performance of diesel engines should be incorporated at the manufacturing level. (Ayala)

Agency response to Comment H-5: With respect to the Drayage Truck Regulation, staff's proposed changes are intended to close loopholes related to Class 7 and dray-off trucks that have emerged since the implementation of the Regulation. With the retention of the Phase 2 2007 model-year engine requirements, staff's proposed changes do not alter the standards in the existing Regulation. The Regulation's in-use emission performance requirements, which entail use of verified diesel PM filters and/or federal and California certified engines are based on the design and performance of diesel engines.

ARB staff assumes that the 'study' mentioned by the commenter refers to the PM premature mortality study performed by ARB in 2008. Please see agency response to comments A-1 through A-17 above.

H-6 **Comment:** You still have one unaddressed dirty little secret out there, and that's exempt trucks operating in the ports. The exemption status was supposed to be for people that had PTOs that ran in bottom dumps and tanker units. If you're hooked onto an ocean container or rail container, there's no reason that you ought to be exempt. If you're pulling an ocean container, you ought to comply. (CCT)

Agency Response to Comments H-6: ARB staff believes that a majority of exempt trucks operating in the ports are Class 7 trucks. The Regulation, as amended, expands the Drayage Truck Regulation to include Class 7 trucks that circumvent the intent of the Regulation.

H-7 **Comment:** These heavy-duty rules don't reduce our dependence on petroleum. And they don't really do much for reducing greenhouse gases. I request that starting now with every regulation that this staff brings to you, including amendments to regulations that you've already adopted, not only should they report on the economic impacts, not only should they report on the health/SIP/criteria pollutant impacts, but also be reporting to you on what are the greenhouse gas impacts of these changes or this new regulation, as well as how does this play into our petroleum reduction goals that we've adopted as a state? Also, we've done so much work as a state in clarifying and developing our strategy for the light-duty vehicle sector. We have not done the work with the heavy-duty sector. My request is that the Board direct staff to accomplish this in 2011. Work with interested parties and develop that equivalent plan for the heavy-duty sector in California. (CNGVC)

H-8 **Comment:** We should look at what vehicles are not required to meet any standards. Government (state and local), utilities, emergency vehicles, transit vehicles, solid, etc. are all exempt from diesel regulations at this time. California should start at the top and include all these vehicles too. (Eckman)

H-9 **Comment:** The current format for large companies to register tractors in a group is through an XML upload. I would like to see a system that is easier for

uploading. I suggest an Excel upload. Most large companies use Excel to track their equipment and several states we do business with already use Excel for uploading. (Prime).

H-10 **Comment:** If this is enacted with all of the new regulations regarding diesel-fueled farm equipment and trucks, will the last person leaving this state please turn out the lights. (Samardich)

H-11 **Comment:** Your infringement in all areas of the automotive world is far too wide. (Stansberry)

H-12 **Comment:** I am astonished that nobody at your board or SCAQMD is able to figure out and convey to the public that the reason the inland empire has poor air quality and high amounts of particulate matter is because of the hydrologic cycle. You need to explain this to the public. They are under the impression that they have more trucks than the south bay and Los Angeles area and that is why the poorer air quality. (Williamson)

H-13 **Comment:** My company participated in the VIP program and received funds for turning in a 1993 truck towards the purchase of a 2009 truck. We would like CARB to review the requirement that the purchased truck cannot enter the ports in California for 3 years from date of purchase. (WLI)

Agency Response to Comments H-7 through H-13: Comments noted. However, ARB staff did not respond to these comments because they did not pertain to the proposed modifications to the Drayage Truck Regulation. Per Government Code section 11346.9(a)(3), a comment is "irrelevant" if it is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, and may be dismissed.

III. SUMMARY OF COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD AND AGENCY RESPONSES

Written comments were also received during the 15-day open public comment period following the issuance of the 15-Day Notice. The modified Regulation was released for public comment on May 19, 2011. The public comment period remained open until the close of business on June 3, 2011. Persons that commented on the modified Drayage Truck Regulation by submitting written comments are listed in Table 2 below. Following the list are summaries of each comment, as well as responses to the objections, concerns, and recommendations made. Each response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

The comments addressed here apply to the Drayage Truck Regulation only. As specified in the 15-Day Notice, comments not specifically identified for the Drayage Truck Regulation within the subject or body of the comment were assumed to be directed to the Truck and Bus Regulation. Public comments received on the Truck and Bus Regulation will be addressed in a separate FSOR document.

Table 2: List of Individuals & Businesses Submitting Comments During the 15-Day Public Comment Period

Abbreviation	Commenter
CCT	Chidester, David Central Cal Transportation Written comment: May 24, 2011
Coapstick	Coapstick, Dave Written comment: June 1, 2011
COO	Kaplan, Rebecca City of Oakland Written comment: June 3, 2011
NRDC	Bailey, Diane Natural Resources Defense Council Written comment: June 3, 2011
OPL	Gillon, Rupinder Oakland Port Logistics Written comment: May 19, 2011
RTC	Osofsky, Alan Rodgers Trucking Co. Written comment: May 27, 2011
WSA	Light, Ronald West State Alliance Written comment: May 20, 2011

A. Regulatory Provisions

Retention of Phase 2 Requirements – Impacts on Business

A-1 **Comment:** Delay the Phase 2 requirements to mirror the compliance timeframe for non-port trucks. It is morally and legally indefensible to disparately place the entire financial burden for reducing truck emissions in California exclusively on one small group of truck drivers. Focused, targeted, economic devastation is aimed discriminatorily and unfairly exclusively on one low-income community, and is racially disparate treatment and is not justified by any rational relationship to any legitimate goal. The small minority of port truckers would be obligated to make upgrades not being expected of others, and would be obligated to fund these upgrades themselves. (COO)

A-2 **Comment:** I oppose the elimination of the delay of the 2007 standards for the Drayage Truck rule. The burden of a truck payment and a DPF install would have a devastating financial consequence for small trucking companies. Our company installed 23 DPF's on trucks 1996 to 2001. I request that ARB reconsider its cancelation of the 1/1/17 compliance date for 2007 compliant engines. (RTC)

A-3 **Comment:** We submit the following arguments in response to the decision not to delay requirements for Phase 2 compliance of drayage trucks until January 1, 2020: (1) Current volumes are up 15 percent over this time last year and expected to continue on a growth curve throughout 2011. A large percentage of trucks run the risk of obsolescence which will have a significant impact on cargo movements at the Port. ARB runs the risk of removing a sizable portion of the Port's truck fleet from daily cargo transport and the vital commerce it supports; (2) The City of Oakland cannot afford the loss of jobs resulting from trucks being prematurely mothballed due to the high cost of another emissions upgrade. Additional job loss will have significant social and health impacts on an already economically disadvantaged community; (3) Using "fairness" to support a rationale for not enacting a Phase 2 rule delay neglects the hardship realities of independent owner operators and small businesses with respect to out-of-pocket equipment and maintenance costs while rejecting CARB's own admission that California's deep and long-lasting recession has had a significant impact on all truckers. The lobbying of big companies who willingly made large equipment investments with $50,000 per truck State subsidies yet cite fairness as the underlying principle to force compliance with Phase 2 scheduling, appears an attempt to attain unfair competitive advantages by purging the market of independent operators. (WSA)

Agency Response to Comments A-1 through A-3: Comments noted. ARB staff does not believe the Regulation discriminates against any specific community. The Drayage Truck Regulation is applicable statewide to 14 ports and 11 railroads, in over 19 cities. California communities most impacted by diesel pollution and benefitting from

the Regulation are often the low-income and minority communities around ports and rail yards.

ARB staff is routinely in contact with the ports covered by the Drayage Truck Regulation to understand the impact on the flow of cargo and confirm that sufficient trucking capacity exists to meet the demand. Both ARB and Port staff believe that California motor carriers will continue to expand the number of Phase 2-compliant trucks to meet the Port's current and future cargo needs. Mechanisms include fleets expanding their own fleets, and working in partnership with current owner-operator drivers to help them move into cleaner trucks. In the last 12 months, owners introduced over 630 additional Phase 2-compliant trucks in Northern California after the major transition in early 2010. The Drayage Truck Registry includes another 39,000 Class 8 trucks that are compliant with Phase 2 and registered out-of-state that can supplement the California based fleet if needed. The numbers for current and expected truck volumes only increase the importance of the Phase 2 Drayage requirements to ensure that all of the critical air quality benefits are achieved while activity at the Port grows.

Data from the Port of Oakland shows 2010 cargo activity had nearly returned to pre-recession levels. This welcome recovery provides the work that the drayage industry needs to support new investments in truck upgrades, consistent with the statewide regulatory requirements established in 2007. Owners of trucks needing upgrades to stay in drayage service can use private financing, support from motor carriers, access to State supported loans and loan guarantees, and limited State-funded grants to bring their trucks into compliance.

The Drayage Truck Regulation is neutral regarding the size of the fleet or trucking company. The Regulation establishes the same requirements for large drayage fleets and independent owner-operators alike. Drayage trucks already meeting the Phase 2 requirements and those still requiring replacement by 2014 include a mix of owner-operators, small and large fleets. State subsidies through the Proposition 1B funding program are also size-neutral. The program requires each individual truck to compete for grant funding on the same objective criteria, whether that truck is in a fleet of one or 50. Please also see agency responses to comments A-4 through A-7.

Retention of Phase 2 Requirements – Emission / Health Impacts

A-4 **Comment:** Delay the Phase 2 requirements to mirror the compliance timeframe for non-port trucks. As the balance of emissions has changed (NOx and PM reductions from Phase 1), there is no justification for the disparity between truck rules (Drayage and Truck and Bus). It would be inappropriate and unlawful to proceed to implement these policy proposals at this time, without mitigating, or even looking at, the serious, harmful impacts of the now-pending proposal. Harms specifically caused by the ARB action (to loosen rules on trucks throughout our communities while strengthening rules only on Port/drayage trucks): (1) The more polluting vehicles will be moved off the Port, but will still be in use driving through our communities working in other non-Port areas, where

they often do travel adjacent to homes and schools; and (2) The disparate rules have created an entirely new dangerous hazard to the environment and human health by motivating people to swap vehicle loads on the streets of West Oakland (dray-offs). (COO)

A-5 **Comment:** We strongly support retaining the Phase 2 clean-up provisions for drayage trucks and providing relief from excessive truck emissions in port communities. We believe that these changes protect children's health, and provide greater health benefits to disproportionately impacted communities near ports and major trucking thoroughfares. We appreciate the efforts of staff and board members to maintain most of the health benefits of the regulation, particularly for vulnerable populations. (NRDC)

A-6 **Comment:** I oppose the elimination of the delay of the 2007 standards for the Drayage Truck rule. Per a study of emissions at the Port of Oakland, it was learned that PM emissions had been reduced by 50 percent and NOx was reduced by 40 percent. We feel that these trucks are much cleaner than before and have helped to achieve a huge reduction in PM and NOx, as stated above. (RTC)

A-7 **Comment:** We submit the following arguments in response to the decision not to delay requirements for Phase 2 compliance of drayage trucks until January 1, 2020: Limiting NOx emissions to only port trucks will have no discernable health or environment benefits for communities. Port of Oakland trucks are well on their way to significant reductions in NOx emissions without need of preserving the 2014 deadline for technically stringent and financially punishing Phase 2 compliance requirements. (WSA)

Agency Response to Comments A-4 through A-7: Comments noted. While acknowledging the effects of the recession on the overall trucking industry, the Board found it was necessary to retain the existing Phase 2 requirements of the Drayage Truck Regulation to protect residents of impacted communities from exposure to diesel PM and PM 2.5 and ozone, both of which are formed, in part, from NOx emissions. Relative to a current Phase 1 compliant truck, a Phase 2 compliant truck will cut NOx emissions by 60-90 percent. Nowhere is this more critical than in communities near ports, rail yards, and distribution centers that are exposed to a higher risk of premature death, cancer, and respiratory diseases due to diesel-related air pollution. The Board also concluded that retaining the existing Phase 2 requirements would provide fairness within the drayage industry to the truck owners and operators who have made the greater investment in new and modified trucks. Delaying the Phase 2 requirements would have favored truck owners and operators who have not yet invested in pollution controls to meet Phase 2 standards and penalized those driving the cleanest trucks with the greatest air quality benefits.

With respect to older, higher polluting trucks simply moving from operating at the ports to operating nearby, and negatively affecting nearby communities, staff disagrees with

this assessment. At the December 2010 hearing, the Board supported staff's proposal to expand the Regulation to capture Class 7 and "dray-off" trucks circumventing the intent of the Regulation and undercutting complying competitors. These amendments will expand the definition of 'drayage truck' to include "dray-off" trucks that transport drayage cargos while operating off port or rail property and make 'swapping vehicle loads on the streets of West Oakland' a citable offense. Progress that has been made at the Port of Oakland is notable, but not yet at the level of emission reductions expected with full implementation of the Regulation. Additionally, trucks leaving drayage services will be required to meet standards set by the Truck and Bus Regulation.

Retention of Phase 2 Requirements – Availability of Technologies

A-8 **Comment:** Delay the Phase 2 requirements to mirror the compliance timeframe for non-port trucks. I urge you to commit to resolving the issue of the non-existence of the required NOx filter, by a time well before the deadline for the next phase of implementation. The NOx filter that drayage trucks would be required to purchase does not exist. Since you have now shrunk the number of truckers who will be required to purchase the NOx device to a small fraction of the trucks in California, you make it far less likely that any business would consider it worthwhile to produce and sell it, and you are not taking any action yourselves to make sure the required device will exist. If only a small number are produced, they will be much more expensive than if they had been mass-produced, as would have taken place had you not given a time extension to statewide trucks. Thus, the burden of the requirement is much heavier making it even more inappropriate and wrongful to place 100 percent of California's NOx reduction costs exclusively on this small group of low-income people. (COO)

A-9 **Comment:** We submit the following argument in response to the decision not to delay requirements for Phase 2 compliance of drayage trucks until January 1, 2020: (1) CARB failed to gauge the true cost of NOx compliance for 1994-2006 engine model trucks. There are no commercially available CARB certified filters or retrofit devices that meet the emissions reduction requirement of Phase 2 rules. Truck replacement is now a certain outcome of this rule. (WSA)

Agency Response to Comment A-8 through A-9: The Drayage Truck Regulation adopted in 2007 allowed for the possible development of technologies that could help older truck engines meet 2007 or newer emission standards (Phase 2). This approach is routinely used to give industry room to develop technologies that offer a less expensive and/or better functioning alternative to what currently exists. As no retrofit technology existed at the time of the initial rulemaking, ARB staff's economic analysis assumed that drayage fleets would modernize by replacing their older trucks with those that meet Phase 2 emission standards (engines that meet or exceed 2007 or newer emission standards).

Retention of Phase 2 Requirements – Credits and Incentives

A-10 **Comment:** Delay the Phase 2 requirements to mirror the compliance timeframe for non-port trucks. Prior funding for trucks was inadequate. ARB could offer incentives for taking a non-compliant vehicle out of service. For the Phase 2 now under discussion, there is no evidence whatsoever to ensure that funding will actually be provided. (COO)

A-11 **Comment:** I oppose the elimination of the delay of the 2007 standards for the Drayage Truck rule. Perhaps ARB should offer a credits package to those who have already invested in new trucks would help offset the anticipated competitive edge they feel older trucks would pose to them. (RTC)

A-12 **Comment:** We submit the following arguments in response to the decision not to delay requirements for Phase 2 compliance of drayage trucks until January 1, 2020: (1) Past experience suggests that State subsidies will be overly limited in number and/or result in dollar amounts too small to serve the needs of Port truckers. Due to the limited number of available grants and the high cost of retrofits, over 600 local truckers with legitimate grant requests were forced out of business. Thus, commitments to the welfare of truckers during future equipment purchasing cycles ring hollow. Some form of compliance relief for all of California's truckers is vital to the trucking industry due to the State's unprecedented slumping economy. (2) Unlike with the Truck and Bus Regulation, ARB neglected to put in place a credit system compensating drayage truck owners who complied early with purchase of new trucks. In choosing not to reward early compliance, ARB created an inequity within drayage trucking. The decision not to delay implementation of Phase 2 was a flawed attempt to address this inequity with punitive consequences for owners of 1994-2006 engine model trucks. (WSA)

Agency Response to Comments A-10 through A-12: The Drayage Truck Regulation adopted in 2007 was intentionally structured with simple, across-the-board requirements to reflect the fact that the competitive drayage industry was dominated by owner-operators. The Statewide Truck and Bus Regulation offers fleet averaging and fleet credits for early implementation, which provides substantial flexibility for larger fleets but does not benefit individual owner-operators. ARB staff considered introducing similar approaches via amendments to the Drayage Truck Regulation, but concluded that this would advantage only large drayage fleets.

In regards to past incentive funding, truckers who acted early had access to full funding for retrofit devices and partial funding for truck replacements. Combined funding was made available from the Bay Area Air Quality Management District (District) that included State Proposition 1B, Port of Oakland, District, and U.S. EPA funds. These funds were equally available to owner-operators and small and large fleets. Truckers who delayed action and didn't seek funding until a few months before the compliance deadline were limited to a smaller pot of monies in early 2010 when ARB extended the

regulatory transition period specifically to allow use of supplemental Proposition 1B funds. The District provided the same level of Proposition 1B funding on a per-truck basis for both early and late applicants. Roughly 1,300 trucks serving the Port were replaced with Phase 2-compliant models with no grant funding. Fleets funded their own upgrades and a number of motor carriers assisted their owner-operator drivers with financing to make this possible.

Class 7 Trucks and Trucks Operating Off of Port and Intermodal Rail Yards

A-13 **Comment:** Thank you for tightening up this regulation to effectively include dray-offs or equipment swaps that have been occurring in our industry. I think that holding everyone accountable for this practice is very fair as the intent of the regulations was to clear our air, not to provide a loophole to be gotten through. We need a level playing field and until this takes effect, it is unfair and gives a marketing advantage to truckers operating in this manner. I believe this will go a long way in leveling the playing field for us all. (CCT)

Agency Response to Comment A-13: ARB staff agrees. The Regulation, as amended, requires "dray-off" trucks, which have been circumventing the intent of the Regulation and fostering an uncompetitive business environment with complying competitors, to come into immediate compliance.

B. Economic Impacts

Credits and Incentives

B-1 **Comment:** I would like to know if owners and operators of 2006 model year trucks are getting any compensation (engine 2005). (OPL)

Agency Response to Comment B-1: The Regulation allows drayage trucks with 2005-2006 model year engines to continue port and rail operations without a filter until December 31, 2012. Owners have the option to retrofit the engine with a Level 3 VDECS to continue operating through December 31, 2013. After December 31, 2013, all trucks must be equipped with engines that meet 2007 or newer emission standards to stay in drayage service. The Regulation does not have provisions mandating compensation, nor did staff propose amendments for this purpose. However, a general discussion of possible funding opportunities is provided in the agency's response to comments A-10 through A-12 above.

Impacts to Businesses

B-2 **Comment:** I believe the serious negative impacts of the now-pending decision have not been mitigated, analyzed, or even fully understood. In particular, in addition to the need to study the impacts of each of the two policy actions – to extend the deadline for reduction of emissions from diesel vehicles on our local streets, roads, and highways, while making more strict the emission regulations

on vehicles that operate on ports and rail yards. ARB must analyze the impact of the two actions when looked at together, and the disparity should be eliminated or a very good reason given to justify it. (COO)

B-3 **Comment:** WSA also takes issue with the implication that the cost of new truck purchases put a disproportionate burden on fleet owners while those who kept older rigs skated by with inexpensive installation of diesel particulate filters. We beg the Board to recognize that many Port trucks received no State subsidies and others mere $5,000 grants on filter purchases of up to $20,000, necessitating sizable debt and $500 monthly loan repayments. These trucks continue to incur costly filter maintenance, they bear increased costs and frequency of engine maintenance, and experience financially punitive down days for all too frequent filter cleaning and engine repair. Thus, those who purchased emissions equipment upgrades already bear an extensive financial burden for which no immediate upturn in container movements will compensate. (WSA)

Agency Response to Comments B-2 through B-3: Staff performed the required economic analysis of the impacts to drayage businesses for compliance with the Phase 2 requirements as part of the rulemaking decision in 2007 (ARB, 2007). At the 2010 Board hearing, the Board decided to retain the Phase 2 requirements. Therefore, a new economic analysis is not required.

C. **Miscellaneous**

C-1 **Comment:** I understand that we need to get the dirty old trucks out of the ports and rails, but I am a single truck owner and cannot afford to spend up to $10,000 for an upgrade. I go to the ports for military equipment deliveries and pick-ups. Can we get an exception for deliveries and pick-ups for the military? (Coapstick)

Agency Response to Comment C-1: Military Tactical Support Vehicles, defined in title 13, CCR, section 1905, are not subject to the requirements of the Regulation. However, privately owned vehicles that transport military cargo are subject to the requirements of the Regulation. Regulation of vehicles that transport cargo to and from California's ports and rail yards is necessary to safeguard emission reductions and health benefits for impacted communities.

REFERENCES

ARB, 2007.. California Air Resources Board. *Initial Statement of Reasons for Proposed Rulemaking:* Regulation to Reduce Emissions from Heavy-Duty On-Road Drayage Trucks in California Port and Intermodal Rail Service. October 2007. http://www.arb.ca.gov/regact/2007/dravage07/dravisor.pdf

ARB, 2010a. California Air Resources Board. *Estimate of Premature Deaths Associated with Fine Particle Pollution (PM2.5) in California Using a U.S. Environmental Protection Agency Methodology.* August 2010. http://www.arb.ca.gov/research/health/pm-mort/pm-report_2010.pdf

ARB, 2010. California Air Resources Board. *Initial Statement of Reasons for Proposed Rulemaking: Proposed Amendments to the Truck and Bus Regulation, the Drayage Truck Regulation and the Tractor-Trailer Greenhouse Gas Regulation.* October 2010. http://www.arb.ca.gov/regact/2010/truckbus10/truckbus10isor.pdf