

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

CALEPA HEADQUARTERS
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Ms. Emily Wimberger, Chief Economist

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Bart Croes, P.E., Division Chief, RD

Ms. Shawn Daley, Manager, Retrofit Assessment Section,
Emissions Compliance, Automotive Regulations and Science
Division(ECARS)

Mr. Michael Fitzgibbon, P.E., Chief, Climate, Atmospheric
Science & Economic Studies Branch, RD

Mr. Mark Fuentes, Assistant Division Chief, ECARS

Ms. Annette Hebert, Division Chief, ECARS

Ms. Sharon Lemieux, Chief, In-Use Program Branch, ECARS

Mr. Dongmin Luo, P.E., Manager, Air Quality & Climate
Science Section, RD

Ms. April Molinelli, Senior Attorney, Legal Office

Mr. Kirk Oliver, Senior Attorney, Legal Office

Mr. Winston Potts, P.E., Air Resources Engineer, Air
Quality and Climate Science Section, Research Division(RD)

Mr. Alex Wang, Senior Attorney, Legal Office

ALSO PRESENT:

Mr. Patrick Barge, ESW Group

Mr. Will Barrett, American Lung Association

Dr. Rasto Brezny, Manufacturers of Emission Controls
Association(MECA)

Ms. Teresa Bui, Californians Against Waste

Mr. Cory Bullis, Conservation Strategy Group

Mr. Hank de Carbonel, California Alliance for Businesses

A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT:

Ms. Christine Flowers, California Product Stewardship Council

Mr. Andrew J. Genevese

Mr. Lorin Hutnick, H&H Excavation

Mr. Sean Lindsteelt

Mr. Aaron Lowe, Auto Care Association

Mr. Larry Roudebush

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1 P R O C E E D I N G S

2 VICE CHAIR BERG: Good morning, everyone. First
3 of all, Happy Earth Day. It's wonderful to wake up and
4 see rain. What a great gift for Earth Day. And I would
5 like to call the April 22nd, 2016 public meeting of the
6 Air Resources Board to order. If you'll please stand with
7 me for the Pledge of Allegiance?

8 (Thereupon the Pledge of Allegiance was
9 Recited in unison.)

10 VICE CHAIR BERG: Chairman Nichols will be
11 joining us a little bit later this morning. And so we'll
12 go ahead and get started. If we can have the clerk do the
13 roll, please.

14 BOARD CLERK JENSEN: Dr. Balmes?

15 Mr. De La Torre?

16 Mr. Eisenhut

17 BOARD MEMBER EISENHUT: Here.

18 BOARD CLERK JENSEN: Senator Florez?

19 Supervisor Gioia?

20 BOARD MEMBER GIOIA: Here.

21 BOARD CLERK JENSEN: Ms. Mitchell?

22 BOARD MEMBER MITCHELL: Here.

23 BOARD CLERK JENSEN: Mrs. Riordan?

24 BOARD MEMBER RIORDAN: Here.

25 BOARD CLERK JENSEN: Supervisor Roberts?

1 Supervisor Serna?

2 BOARD MEMBER SERNA: Here.

3 BOARD CLERK JENSEN: Dr. Sherriffs?

4 BOARD MEMBER SHERRIFFS: Here.

5 BOARD CLERK JENSEN: Professor Sperling?

6 Ms. Takvorian?

7 BOARD MEMBER TAKVORIAN: Here.

8 BOARD CLERK JENSEN: Vice Chair Berg?

9 VICE CHAIR BERG: Here.

10 BOARD CLERK JENSEN: Chair Nichols?

11 Madam Chair, we have a quorum.

12 VICE CHAIR BERG: Thank you very much.

13 We have a few announcements before we get
14 started. I'd like to remind anybody who wishes to testify
15 should fill out a request to speak card, which is
16 available in our lobby and outside the Board room. Please
17 turn that speaker card into the board assistant or the
18 Clerk of the Board prior to the commencement of the item.

19 Also, speakers please be aware that we will
20 impose a three minute limit. Please state your first and
21 last name when you come to the podium. And we appreciate
22 if you put your testimony in your own words. If you have
23 printed materials, that will be given to the Board and the
24 staff.

25 For safety reasons, please note that the

1 Emergency exits are at the rear of the room. And in the
2 event of a fire alarm, we are required to evacuate the
3 room immediately, go downstairs, and out of the building.
4 When the all-clear signal is given, we will return to the
5 hearing room and resume the hearing.

6 So with that, I think we are off to our first
7 item. So the first item on our agenda is a proposal to
8 amend ARB's after-market regulation. These amendments
9 would establish a new evaluation procedure for new
10 after-market diesel particulate filters, DPFs for 2007
11 through 2009 model year on-road heavy-duty diesel engines.

12 These heavy-duty diesel engines are equipped with
13 DPF so they can meet a stringent particulate matter
14 certification standard. Currently, there is no path for a
15 legal sale or after-market DPFs as modified parts in
16 California. The only path currently available to
17 consumers who need to replace a worn or broken DPF is to
18 purchase a replacement part offered by the original
19 equipment manufacturer. And we know when we have choice
20 as consumers, that that is something that is very helpful
21 to consumers to manage their fleets.

22 Staff's proposal, which includes robust testing
23 would allow for the installation and sales of these new
24 after-market DPFs in California. Mr. Corey, would you
25 please introduce this item?

1 EXECUTIVE OFFICER COREY: Yes. Thanks, Vice
2 Chair Berg. DPFs are a standard technology used on
3 millions of diesel engines worldwide, and they're primary
4 method of controlling toxic diesel particulate matter
5 emissions from engines and are used to meet California's
6 engine certification requirements and are an option for
7 fleet rule compliance for in-use vehicles.

8 Around 2013, manufacturers of after-market DPFs
9 approached staff to express concerns about potential
10 supply issues, if the original equipment manufacturers, or
11 OEMs, limited the product or support of parts for these
12 older engines. The also recognized the market opportunity
13 if ARB provided a new pathway for after-market DPFs to be
14 approved for sale in California.

15 Such a program is similar in concept to the
16 after-market catalytic converter program and would allow
17 consumers to have options, options in the marketplace.
18 And in response, staff developed a robust procedure to
19 evaluate the unique characteristics of DPFs. Staff
20 presentation will go over the details of the proposed
21 procedures.

22 And participation in this after-market program is
23 voluntary. And since there is no requirement that a
24 company participate, participation is contingent on the
25 company wishing to sell these parts in California.

1 The proposed amendments will also benefit consumers
2 with an increasingly competitive DPF market. Staff
3 anticipates prices to the end user will decrease.

4 I'll now ask Shawn Daley of the Emissions
5 Compliance, Automotive Regulations, and Science Division
6 to provide the staff presentation and recommendations.

7 Shawn.

8 (Thereupon an overhead presentation was
9 presented as follows.)

10 RETROFIT ASSESSMENT SECTION MANAGER DALEY: Thank
11 you. On-road 2007 through 2009 heavy-duty diesel engines
12 were certified equipped with diesel particulate filters,
13 otherwise known as DPFs, and these are now out of
14 warranty. As with any part, these wear and need
15 replacing, but currently the only option for end users is
16 to buy a replacement part from the original equipment
17 manufacturer or OEM, as there is no path to allow for a
18 non-OEM diesel particulate filter.

19 To address this, staff has developed a procedure
20 for evaluating after-market DPFs intended as alternatives
21 to the original OEM DPF. These DPFs are similar to the
22 OEM, but not identical and must be equivalent in function
23 to the original OEM part to ensure the vehicle maintains
24 its certified emissions standard.

25 As with other after-market programs,

1 participation in this program is voluntary and no company
2 is forced to participate.

3 --o0o--

4 RETROFIT ASSESSMENT SECTION MANAGER DALEY: Staff
5 is proposing to establish a new procedure to allow for the
6 evaluation and approval of after-market DPFs. This
7 involves amending the regulation governing after-market
8 parts to incorporate by reference a new evaluation
9 procedure, and to explain the terms underwhich DPFs can be
10 sold, including the clarification that used DPFs cannot be
11 sold in California. The procedure and regulation
12 amendments will help expand the air ARB after-market
13 program and provide market flexibility to end users.

14 --o0o--

15 RETROFIT ASSESSMENT SECTION MANAGER DALEY: The
16 proposed new after-market DPF approval path will allow
17 options for the consumer. It will allow potentially more
18 cost-effective options for consumers who need to replace
19 DPFs on their vehicles. This bill help ARB to continue to
20 realize the emission benefits achieved with the
21 implementation of the 2007 emission standards. It
22 achieves this by establishing a new regulatory path for
23 the approval of after-market DPFs, which includes robust
24 end-user protections, while maintaining economic
25 feasibility for after-market DPF manufacturers.

1 applications. With appropriate cleaning, in-field DPFs
2 have been found to last over 10 years, provided the engine
3 is appropriately maintained.

4 --o0o--

5 RETROFIT ASSESSMENT SECTION MANAGER DALEY: I
6 will now discuss the proposed regulatory amendments.

7 --o0o--

8 RETROFIT ASSESSMENT SECTION MANAGER DALEY: Staff
9 is proposing to amend Title 13, California Code of
10 Regulations, section 2222 to include a new section K to
11 provide explanatory language, which includes clarification
12 that used diesel particulate filters may not be sold in
13 California.

14 Staff is also adding language which incorporates,
15 by reference, the proposed evaluation procedure for
16 after-market DPFs to allow them to obtain an exemption
17 from the anti-tempering provisions of California Vehicle
18 Code Sections 27156 and 38391.

19 --o0o--

20 RETROFIT ASSESSMENT SECTION MANAGER DALEY: I
21 will now discuss the proposed evaluation procedure in more
22 detail.

23 --o0o--

24 RETROFIT ASSESSMENT SECTION MANAGER DALEY: This
25 procedure strictly focuses on new after-market diesel

1 particulate filters intended for 2007 through 2009 model
2 year engines, which are out of warranty. It was not
3 designed or intended to assess DPFs covered by other
4 programs or other types of after-treatment technologies,
5 such as diesel oxidation catalysts or selective catalytic
6 reduction, as these have unique technical considerations,
7 which are not addressed by this procedure.

8 --o0o--

9 RETROFIT ASSESSMENT SECTION MANAGER DALEY: To
10 ensure the after-market DPF is robust, capable of
11 maintaining compliance with the emission standard for the
12 engine, and is compatible with the engine and application,
13 and possesses no safety risks, staff has developed a
14 multi-part evaluation procedure. It includes emission,
15 durability and compatibility assessments, as well as
16 protections for the end users.

17 The process starts when the device manufacturer
18 submits its application. During the application process,
19 the device manufacturer describes the product in detail,
20 identifies target engines, and provides information on how
21 the company plans to conduct testing. All data, testing,
22 and other information will be submitted as well.

23 The basis of an application, in other words, what
24 defines the scope of a product's applicability, is called
25 the emission control group, or ECG. This is a group of

1 like engines and applications from the perspective of how
2 the after-treatment part works with them and how they
3 behave with the device. ARB staff worked with industry to
4 identify seven ECGs. All testing and information must be
5 supportive of the desired ECG

6 --o0o--

7 RETROFIT ASSESSMENT SECTION MANAGER DALEY: The
8 purpose of testing is to ensure that the device is
9 durable, compatible with the engine, and is emission
10 compliant. In order for the part to receive an exemption,
11 it must pass all the testing requirements. The after
12 market DPF must be functionally similar to the OEM DPF as
13 far as emission compliance and compatibility with the
14 engine.

15 --o0o--

16 RETROFIT ASSESSMENT SECTION MANAGER DALEY:
17 Engines and DPFs are routinely tested on
18 heavy-duty engine dynamometers, an example of which can be
19 seen here.

20 --o0o--

21 RETROFIT ASSESSMENT SECTION MANAGER DALEY: This
22 provides a brief overview of the testing structure, which
23 includes comparing the after-market DPF to the OEM DPF,
24 controlled aging of the after-market DPF and field
25 deployment via field-trials of the aged part with

1 chemical aging, both of which can still contribute to DPF
2 failure over time. This part is then emission tested to
3 ensure it is still functioning properly.

4 --o0o--

5 RETROFIT ASSESSMENT SECTION MANAGER DALEY: After
6 the laboratory aging, the after-market DPF is installed
7 and run on a representative infield engine for 500 hours.
8 Finally, this part is again emission tested. To help
9 ensure that the DPF will work on a variety of
10 applications, field testing two additional after-market
11 DPFs on representative infield engines and vehicles for
12 200 hours is required. These units are not emission
13 tested.

14 --o0o--

15 RETROFIT ASSESSMENT SECTION MANAGER DALEY: It is
16 necessary to emissions test the device at various times to
17 ensure it is still properly functioning, and that it is
18 compliant with the emissions standards and Vehicle Code
19 27156 anti-tampering requirements. The only way to ensure
20 this is via certification type emission testing and test
21 cycles. The emissions and parameters to be measured are
22 shown here.

23 In addition, if there is any reason to believe
24 that the use of the particulate -- particular after-market
25 DPF may result in the increase of toxic air contaminants

1 or other harmful compounds, ARB may require exhaust
2 testing for toxic contaminants. There is also a catalytic
3 activity test, which is comprised of either NO2
4 measurement or a soot accumulation test. The purpose of
5 this test is to show that for catalyzed DPFs passive
6 regeneration is being properly performed even after
7 lengthy use, by assessing the soot oxidation rate. The
8 applicant may choose either NO2 measurement or a soot
9 accumulation test.

10 --o0o--

11 RETROFIT ASSESSMENT SECTION MANAGER DALEY:

12 Warranty and record keeping are important to
13 ensure end-user and consumer protections. Staff is
14 proposing a two-year warranty for both the product and
15 installation. This is consistent with other after-market
16 part warranties and considers past feedback and comments
17 from stakeholders. It is critical to maintain these
18 records in the event that a product needs to be found
19 again for a recall or audit, and to ensure appropriate
20 warranty tracking or support.

21 A shorter warranty period will not provide
22 sufficient information to allow ARB to determine if
23 problems may be occurring infield and take appropriate
24 action. If designed and deployed correctly, DPFs can last
25 many years longer than this warranty period.

1 ARB received numerous comments in opposition to
2 longer warranty periods, as they were perceived to be
3 burdensome and out of alignment with OEM warranties for
4 replacement parts. However, in order to be protective of
5 the consumer, ARB maintained a more protective warranty
6 period.

7 --o0o--

8 RETROFIT ASSESSMENT SECTION MANAGER DALEY: The
9 procedure requires that the after-market DPF manufacturer
10 provide a method to authorize those installing their
11 product. This can be done by having a person review an
12 on-line training video or manual. This helps ensure that
13 the after-market DPF is installed on the correct engine,
14 and that the engine is in a proper state of maintenance.
15 Proper assessment of an engine and vehicle prior to
16 installation ensures the device is appropriate for the
17 engine and that the engine is in a proper condition to
18 receive the DPF.

19 DPFs are robust devices, which typically do not
20 need replacing unless there is an engine problem. Engines
21 which have mechanical problems could negatively impact the
22 after-market DPF. And because the engine is the cause,
23 the warranty would not cover the replacement of the DPF.
24 This is an avoidable problem which can be effectively
25 addressed by pre-assessment and authorized installers.

1 All parts must be clearly labeled to demonstrate
2 that they are approved by ARB and do not constitute
3 tampering. The label must be legible, visible, and
4 durable for the lifetime of the device.

5 Additionally, this information is essential for
6 maintaining warranties and for finding the devices for an
7 audit or recall.

8 --o0o--

9 RETROFIT ASSESSMENT SECTION MANAGER DALEY: To
10 protect the end user, if a problem is detected in a
11 device, or if it needs to be modified once deployed to
12 field, a recall provision is included. Additionally,
13 after ARB awards an executive order to a product, ARB can
14 double check the product through audit testing.

15 Swapping means the movement of a diesel
16 particulate filter from one vehicle to another in the same
17 common ownership fleet. This is allowed provided it
18 adheres to certain conditions spelled out in the
19 procedure, including ensuring the device is intact before
20 being moved, and that the engine it is swapped to is
21 appropriate for it and is in proper working order. Device
22 manufacturers must support the policy and must first
23 obtain ARB approval of their swapping policy before they
24 authorize device swapping. Utilizing these paths provides
25 additional flexibility to both ARB and the applicants.

1 result in a cost savings to consumers of approximately
2 \$1,200 per device. This equates to a savings of at least
3 \$15 million over the lifetime of the regulation.

4 The applicability -- excuse me, the availability
5 of lower cost DPFs may encourage compliance and end users
6 to be more proactive should the OEM DPFs suffer damage and
7 need to be replaced.

8 --o0o--

9 RETROFIT ASSESSMENT SECTION MANAGER DALEY: The
10 procedure is voluntary and does not force companies to
11 participate. Only those companies which are interested in
12 selling after-market DPFs in California, and which
13 determine it is in their best interests are expected to
14 participate. Testing costs will vary by company,
15 depending on the ECG choice and other factors, as if they
16 have access to their own test facilities, but it is
17 expected to cost about 1.2 million over the life of the
18 regulation.

19 --o0o--

20 RETROFIT ASSESSMENT SECTION MANAGER DALEY: Staff
21 worked with stakeholders when developing the procedure.
22 Staff held three public workshops, and also did a mailout
23 with updates and information. Staff met with multiple
24 stakeholders from both the after-market and OEM arenas, as
25 well as individual companies, sent drafts to U.S. EPA, and

1 directly contacted several key non-government
2 organizations. Staff incorporated stakeholder input and
3 comments when appropriate.

4 --o0o--

5 RETROFIT ASSESSMENT SECTION MANAGER DALEY: ARB
6 received comments, often diametrically opposed, which fell
7 into three main categories: Testing requirements, such as
8 the aging cycle, criteria for choosing a test engine, fuel
9 testing, emissions testing of the laboratory-aged DPF the,
10 breadth of the ECGs, and the NO2 option for catalytic
11 activity.

12 Staff received comments on the administrative
13 requirements, such as the length of the warranty and
14 record keeping, and also received comments regarding
15 installer requirements, including authorized installers
16 and pre-installation assessment.

17 ARB balanced these opposing viewpoints to develop
18 a procedure protective of end uses while maintaining
19 economic viability for participants.

20 --o0o--

21 RETROFIT ASSESSMENT SECTION MANAGER DALEY: ARB
22 worked with various stakeholders representing very
23 different positions to reach compromises which maintain
24 end-user protections, the overall robustness of the
25 procedure, and a chief cost savings or which incorporated

1 flexibilities into the process.

2 ARB maintained its position in cases where the
3 engineering support was inconclusive or non-persuasive, or
4 where accommodating the request would undermine ARB's
5 ability to enforce the regulation, have effective
6 remedies, such as recall, confound warranty protections,
7 or which could negatively impact the end user. Swapping
8 of a device also benefits fleets by minimizing vehicle
9 down time for DPF routine maintenance by allowing a
10 similar DPF to be installed on the vehicle as needed.

11 --o0o--

12 RETROFIT ASSESSMENT SECTION MANAGER DALEY: This
13 concludes staff's presentation. When vehicles are
14 properly maintained, DPFs can be an effective method of
15 controlling PM emissions, while protecting public health.

16 In closing, staff recommends adopting the
17 procedure -- the proposed amendments to Title 13 CCR,
18 section 2222.

19 VICE CHAIR BERG: Thank you very much, Shawn.

20 We have seven witnesses on this item. But before
21 we turn to them, I want to turn to my fellow Board members
22 and see if there's any clarifying questions?

23 Seeing none.

24 We will see the witness list up here on my left.
25 And so if you will see where you're positioned, then come

1 down, and begin your testimony. We'll start with Patrick
2 Barge.

3 MR. BARGE: Good morning. Can you hear me?

4 CHAIR NICHOLS: You have to press the little
5 button at the base of the --

6 MR. BARGE: Can you hear me?

7 CHAIR NICHOLS: There you go.

8 MR. BARGE: Yeah. Okay. Good.

9 So good morning. My name is Patrick Barge. I am
10 the CEO of ESW Group. I appreciate the opportunity to
11 comment on the proposed regulation. ESW is a U.S.-based
12 company with a strong presence in California. We hold
13 nine CARB retrofit certifications and are very familiar
14 with the California diesel emissions control market.

15 As a DPF manufacturer, we are also participating
16 in the after-market business outside of California. We
17 share ARB's concern that there may be a significant number
18 of model year '07 to '09 and newer heavy-duty vehicles
19 operating with damaged DPFs emitting excessive levels of
20 particulate matter. And we commend ARB's efforts to
21 create a common sense regulatory structure for
22 after-market DPFs. We are convinced that this regulation
23 will help improve California's air quality and protect
24 public health.

25 ESW believes that an appropriately regulated

1 after-market program is timely. It will introduce high
2 quality and competitively priced new diesel particulate
3 filters to a replacement parts market that is often
4 dominated by overly expensive and/or remanufactured
5 components. In addition, certified after-market DPFs may
6 feel a need in application where end users have reported
7 that they cannot get new replacement parts.

8 The testing regimen in the proposed regulation,
9 which encompasses emissions, durability, infield testing
10 will ensure that the after-market DPF have equivalent
11 emissions performance to the OEM and will be durable. In
12 short, the regulation makes sure that the after-market
13 part matches the OEM replacement in form, fit, and
14 function.

15 We had the opportunity to comment on and provide
16 data towards the proposed rule during its making. And in
17 our opinion, the staff has carefully reviewed and
18 considered the industry's and our input, and we believe
19 that the proposed rule is a workable compromise.

20 However, we are concerned that the cost of
21 completing the test protocol will increase the cost of the
22 after-market product, and as a consequence reduce its
23 competitiveness. And we are also concerned whether ARB
24 will be adequately staffed to process all the applications
25 in a timely manner.

1 This concern is based on our retrofit experience
2 in dealing with an overworked and often understaffed CARB
3 team. We believe that a similar scenario will delay the
4 certification process and the much needed after-market
5 product introduction.

6 We think that the proposed after-market
7 regulation is timely. It ensures that the after-markets
8 product match the performance and durability of the OEM
9 parts, and offer ample protection to the end user.
10 Therefore, we urge the Board to consider the after-market
11 regulation for early adoption.

12 Thank you.

13 CHAIR NICHOLS: Thank you.

14 Andrew

15 MR. GENEVESE: Good morning, ladies and
16 gentlemen. Thanks for me -- allowing me to speak on my
17 behalf.

18 I drove with hours to get here. One thing I have
19 to say is a part of a law which says that the law does not
20 apply to certain people and things because of conditions
21 that existed before the law was passed. In light of what
22 we know now, that these DPFs are failing and may or may
23 not be causing fires on the trucks. I'm a single truck
24 owner/operator. My life and my family depend on my
25 income.

1 I am more about clean air and clean water than
2 you'll ever know. I sell ocean water for a living, and I
3 have a horse. I own horses and maintain horses.

4 Until we have a standard that is met and we can
5 ensure that nobody's life is in danger, I'm requesting
6 that we put this -- grandfather clause in place.

7 Also, why is not the '95 to '99 trucks being
8 addressed? I have a perfectly good running truck. In
9 order for me to upgrade, I would go back into debt and
10 start all over again. I would love to go invest in a new
11 truck, new clean air, clean water, everything, but I just
12 cannot do it, and thank you.

13 VICE CHAIR BERG: Thank you for coming.

14 Lorin.

15 MR. HUTNICK: Good morning. I'm a small-time
16 truck driver. Also, I have my finger on the heartbeat of
17 this nation and these trucks. On a daily basis, I get one
18 to five reports of trucks burning down. Now, this is all
19 seems funny, these are all '07 or newer trucks, and prior
20 to that are trucks that had been retrofitted.

21 You know, you guys have created a mess that I
22 don't even know how you guys are going to get out of it.
23 And I have to remind you guys how this came about. This
24 came about because of a bad report by Hien Tran that
25 supposedly still works here.

1 Now, I sat up there in the back of the aisle and
2 listened to the two first speakers, and I can punch holes
3 in both of them. I stood in this office -- in this
4 auditorium on December 4th of 2012, I believe, and you
5 guys said the opacity meter wasn't even good enough to be
6 used as a testing.

7 You guys are creating a mess that is not out
8 there that California don't need. Dr. Enstrom and Dr.
9 Michael Dunn have poked holes in all of your data. The
10 DPF does not work. It creates a problem and a negative
11 industry to California and the rest of the nation. You
12 guys have got to remove this thing, because the engines do
13 not work, period. Throw more ports at it. All you're
14 doing is creating a more problem. You're breaking motors.
15 We cannot be a reliable industry if you guys just keep
16 throwing patches on this thing.

17 I can't go out, buy a truck, and be responsible
18 for a crew because the truck shuts down, because the DPF
19 is plugged up. Ten years, it don't work. I have yet
20 heard of a DPF lasting six months to a year. And then the
21 manufacturer or the company that's fixing them or cleaning
22 them have them piled all up because they won't clean. You
23 guys have got to remove this thing, period.

24 And I'm sorry for the businesses that have gone
25 into business thinking they're going to cut a fat hog on

1 the manufacturing, but it's wrong. It's illegal,
2 unconstitutional. You have violated so many Acts and
3 federal law. Alone, you have damaged the economy of other
4 guys.

5 Do I have to remind you also, there's a lot of
6 companies that are refusing to come to California. And
7 then there's companies that are coming into California,
8 because you guys have mandated these DPFs, they're getting
9 8 to 10 dollars a mile end user. There's no reason I need
10 to be at the grocery store paying \$5 for an artichoke,
11 which prior to you guys mandating this thing, might have
12 been a \$1.99. It's transportation.

13 Now, trucks can be cleaned up, and I'm all for
14 having a clean truck. But the fact is, it could be done
15 in the fuel and maintenance, not a DPF. It needs to be
16 removed from the market. End of story. You guys have got
17 to fix the situation. You've created a mess.

18 Thank you.

19 VICE CHAIR BERG: Thank you for coming.

20 (Applause.)

21 VICE CHAIR BERG: Sean. Good morning.

22 MR. LINDSTEELT: It really doesn't matter about
23 truck drivers. We've been up here 600 times yelling at
24 you guys. You don't care about us. But you probably have
25 kids that go to school. And you don't -- maybe you don't.

1 When one of these DPF filters kill a kid on a school bus,
2 make an amendment to the rule that we can sue him, the guy
3 that's going to make the new DPF filters. Opening up the
4 market just so that you can bring down the price, that's
5 good. That is good, but they're still catching trucks on
6 fire.

7 And you guys don't care about us. I don't blame
8 you. Who cares? You know, we're just truck drivers. But
9 they're on school buses, and school buses are going to
10 catch on fire. And when my kids die on a school bus, it's
11 going to be bad, very bad.

12 Thanks.

13 (Applause.)

14 VICE CHAIR BERG: Our next speaker Bud Caldwell.
15 Okay. Bud is not with us. Hank, Good morning.
16 No, I think Hank is coming down.

17 MR. DE CARBONEL: Good morning, everybody. My
18 name is Hank de Carbonel. I represent the Alliance for
19 California Business. We're -- we don't think this new
20 proposal changes anything regarding the fundamental danger
21 of a diesel particulate filter, or a DPF, which also
22 stands for dangerous, pricey, and flawed.

23 On the business of price, you talk about you're
24 going to reduce the price by after-market filters, but I
25 don't know how you're going to guaranty a reduction in the

1 price unless you're planning on fixing the price. If it's
2 a free market, these people could charge whatever they
3 want for that filter. Why would it be \$1,300 dollars, why
4 not \$2,500 less, why not \$2,000 more? What's that --
5 where is that regulation?

6 Second of all, we have testimony from CalFire,
7 from Highway Patrol, Caltrans, over 50 or 60 fires related
8 to, at best, a engine compartment fire. And everybody is
9 ignoring that and pretending it's not there. It's the
10 800-pound gorilla in the room. You're not addressing it.

11 I have a question for maybe the Board, or maybe
12 the staff, or the experts that are here. Does this
13 regulation cover only the filter element or is it the
14 entire DPF?

15 Can't be -- nobody knows?

16 VICE CHAIR BERG: No, people know. I'm sorry.

17 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: No, I'm
18 sorry. We were -- it is the entire DPF. So the component
19 that is -- that houses the DPF and all the bracketry and
20 things like that. That's all covered by this requirement.

21 MR. DE CARBONEL: How about the -- how about the
22 control units, all the electronics, the black boxes?

23 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: No, that
24 is part of the original manufacturer's certified engine.

25 MR. DE CARBONEL: So again, we're only talking

1 about the filter and perhaps the bracketry and some pipes,
2 is that correct?

3 VICE CHAIR BERG: It's only the filter.

4 MR. DE CARBONEL: Only the filter element?

5 VICE CHAIR BERG: Correct.

6 MR. DE CARBONEL: Okay. I want to make that
7 clear, because it's not clear when you start reading all
8 the papers on it.

9 So I don't think this proposal changes the
10 fundamental problems that you have here. And as the
11 people before me have said, we have a number of instances
12 of fires, not just in California. We've -- we reserved
13 ourselves just to California, but they're all across the
14 country. This problem isn't going away and it isn't going
15 to be solved by less expensive DPF, and it isn't going to
16 reduce the burden on industry, because they have to get --
17 they still have to go back and get data logged. They have
18 to go back and get this, that, and the other thing done.

19 And your own documents support our contention
20 from all -- from day one, that these filters damage the
21 engine. It's not the engine that damages the filter.
22 It's the filter that damages the engine. I don't know how
23 it could be more clear. Again, these things are
24 dangerous, they're pricey, and they're flawed. And this
25 does nothing to change that, absolutely nothing.

1 Thank you.

2 VICE CHAIR BERG: Thank you, Hank.

3 (Applause.)

4 VICE CHAIR BERG: Good morning, Rasto.

5 MR. BREZNY: Good morning, Vice Chair Berg and
6 members of the Board, and Happy Earth Day.

7 I'm Rasto Brezny. I'm the Executive Director for
8 the Manufacturers of Emission Controls Association. MECA
9 represents suppliers of emission controls for new
10 vehicles, diesel retrofits, after-market parts, as well as
11 new replacement parts -- replacement service parts.

12 Some MECA members have been supplying
13 after-market DPFs outside of California for over five
14 years. And we support this proposal and we thank ARB for
15 its leadership in setting defined testing and durability
16 protocols for diesel after-market DPFs.

17 I want to thank your staff for their hard work in
18 pulling together a lot of comments from a diverse group of
19 stakeholders. We believe that the testing and field
20 demonstration requirements in this proposal will ensure
21 that after-market DPFs will perform and are compatible
22 with vehicles in the marketplace.

23 And I guess we -- as has been stated earlier, we
24 urge ARB to allocate appropriate staff for this program,
25 so that applications can be reviewed and approved in a

1 timely manner.

2 So I just want to address some of the comments
3 that were made before me around DPF safety and fires. And
4 I want to bring some statistics to this, so that we have
5 something to look at.

6 The U.S. Fire Administration publishes the
7 statistics on roadside vehicle fires that occur all across
8 the country. And since from 2004 to 2006, before DPFs
9 were put on trucks, there were approximately 18,000 truck
10 fires every year across the country. And these fires were
11 attributed to -- primarily to electrical and mechanical
12 failures.

13 Since 2007 to 2012, after DPFs were installed,
14 the number of truck fires actually decreased by 33
15 percent. And they continue to decrease. And that is
16 available on -- in the public literature for anybody to
17 review. In fact, I spent a lot of time reading through
18 this information.

19 And so to my knowledge, of the millions of DPFs
20 that are on the road today, there are only two truck --
21 two fires that were attributed to a DPF, and these were
22 due to a metal filter that was installed on a retrofit.
23 And since that time, these have been recalled and are
24 being replaced with ceramic filters. And it's the ceramic
25 filters that are in all of the OEM installations, as well

1 as these after-market installations, and so forth that
2 we're talking about today.

3 So I guess, you know, finally, I just want to
4 request the staff that they be allowed to begin accepting
5 data and applications as soon as the Board adopts this
6 regulation, so that manufacturers can bring forward these
7 technologies in a timely manner, and help to support ARB's
8 inspection maintenance objectives for heavy-duty trucks.

9 We believe that a robust heavy-duty IM program is
10 going to not only help end users maintain their trucks
11 properly, but it's also going to ensure air quality
12 benefits across the State.

13 Thank you.

14 CHAIR NICHOLS: Thank you.

15 VICE CHAIR BERG: And we have one additional
16 speaker. Larry.

17 MR. ROUDEBUSH: Good morning.

18 VICE CHAIR BERG: Good morning.

19 MR. ROUDEBUSH: I just have a few questions about
20 some of the things that were mentioned earlier. They talk
21 about compatibility with engines, I was wondering who did
22 all the studies to check to see the compatibility for DPF
23 filters with engines?

24 The other thing I'd like to ask about, please, is
25 the NOx and CO gases. The State and federal regulations I

1 believe are different for the NOx and CO gases. And I'd
2 just like to know also if those are compatible with CARB.

3 And then another thing that you talked about was
4 the records for the DPFs. Are the companies going to be
5 the ones that are keeping the records for these businesses
6 or is the business going to have to keep these records?

7 These companies that produce DPFs are going out
8 of business. What's going to happen to those records, and
9 what's going to happen to the owners of those DPFs? What
10 repercussions are they going to have to get compensated to
11 fix these things?

12 I hope I'm making sense. It's very nerve-racking
13 for me to be here.

14 They also said earlier that the engine is the
15 cause of the failure of the DPF. Well, the DP -- an
16 engine is not going to fail if it doesn't have a DPF. The
17 DPFs are what's causing these engines to fail.

18 And then also, I believe it's OOIDA that had a
19 lawsuit about the fair commerce laws. I was just
20 wondering what CARB has done about the fair commerce laws
21 that are going on with OOIDA?

22 Sorry, I know I'm probably very confusing,
23 because I don't know -- I'm just nervous doing this.
24 Anyhow, those are just some of the questions that I have
25 about what was said and put up on the screens earlier.

1 I hope it makes sense.

2 Thank you.

3 VICE CHAIR BERG: Thank you ver much. And it
4 does make sense. I've made a list here. I'm sure other
5 Board members will have some questions and we'll see --
6 refer it back to staff.

7 MR. ROUDEBUSH: Thank you.

8 VICE CHAIR BERG: Thank you. So with no other
9 witnesses, I'm going to close the record and turn back to
10 the Board for questions and clarifications.

11 I do have a couple of questions for staff, and
12 thought it would be really helpful following up actually
13 on some of Larry's questions. First of all, looking at
14 the administrative part of the rule, it isn't clear to me
15 how we are going to implement that, and more importantly
16 I'd really like to see a commitment from staff to continue
17 working with the entire supply chain from manufacturer
18 through distribution and the end user to make sure
19 everybody is very clear on their part.

20 But given that, could we just spend a minute
21 talking about how you see this going forward and where
22 does ARB see the responsibility from the administrative
23 part of keeping the records, of the swapping, and the data
24 that is required to keep these records?

25 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: All right.

1 Thank you very much Chair -- Board member Berg. As far as
2 the administrative requirements, obviously, the testing
3 and the administrative requirements are a package, and we
4 feel that they're absolutely necessary in order to have a
5 successful program.

6 As far as what records need to be kept, there are
7 requirements for the manufacturer to keep records as well
8 as the installer. And that would -- it could obviously be
9 the end user themselves. And the reason why we need to
10 have that is to make sure that in the event that we need
11 to do a corrective action or recall, a field fix,
12 something like that, that we are aware of where those
13 products are in-field.

14 And as far as looking at who's responsible for
15 what, as with any product, it does have several
16 responsibilities to make sure that it's deployed
17 successfully. So the manufacturer must ensure that they
18 put in place protocols such that their product is
19 successfully deployed. So that means that they have to
20 authorize their installers, as we're calling it, and
21 basically that's making sure that they put in place things
22 so that whoever is installing their product knows how to
23 do it successfully.

24 And we do have a lot of experience with
25 retrofits. And we know that retrofits, as well as DPFs,

1 have to be installed on a properly working engine.

2 Does that -- okay, so that's the manufacturer,
3 and then the installer. And then obviously, the end user
4 has to have enough information, so that they know how to
5 operate and clean and make sure that that DPF is working
6 properly.

7 VICE CHAIR BERG: So we're talking over the
8 period of time about 12 to maybe 20 thousand transactions
9 here. And so I think we need to be very mindful, A, that
10 whatever we're requiring of people that they have full
11 control to be able to implement what we're requiring, and
12 it's got to be the easiest way possible.

13 This is not a large market. It -- we really need
14 to be very effective and efficient. So I'd really like to
15 encourage that.

16 Then if you could just address a little bit of
17 the compatibility from the last speaker just to reiterate
18 what we're doing on compatibility.

19 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Yes. With
20 compatibility, we are requiring that the DPF get aged.
21 And then after it's aged, it is emission tested to make
22 sure that it's working correctly, and then it's installed
23 on an engine and operated for 500 hours in-field. And
24 then to make sure that it covers a broad application of
25 vehicles, we are requiring it to be put on two other types

1 of vehicles.

2 And we think that should help address
3 compatibility issues and make sure it's working across a
4 wide range of operating conditions.

5 VICE CHAIR BERG: So to answer this commenter's
6 question, CARB is going to be heavily involved in that
7 compatibility testing, and to make sure these are, in
8 fact, compatible. That's part of the certification
9 process.

10 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Correct.

11 VICE CHAIR BERG: Okay. Great. And then, you
12 know, we heard from several speakers staff resources. And
13 we do know that we have plenty on our plate. This is a
14 short window opportunity. Could you just speak to staff
15 resources and what the plan is, especially up front,
16 because my assumption is you'll get a lot up front and as
17 it goes over the next couple of years, it should be quite
18 manageable.

19 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Yes. That
20 is always a concern to make sure that we have the
21 appropriate staff to implement our regs. The way we
22 envision it is the retrofit market it's actually
23 decreasing, so the same staff that has been approving
24 retrofits are going to be transitioned over to working on
25 the after-market DPF requirements. What we tried to do

1 though is to make sure that the procedure is very
2 prescriptive as much as we could. And when it's black and
3 white, then obviously it's easier to approve something.

4 The retrofit, the way we had those regulations,
5 it was pretty much you could get anything approved, and
6 that included fuel-borne catalysts. You know, you could
7 pretty much approach ARB and try to get any type of
8 emission control system approved.

9 When you have that sort of flexibility in the
10 rule, then it does take a lot more time to go through the
11 approval process.

12 VICE CHAIR BERG: Okay. Thank you very much.
13 I'll look one more time up and down. Board members
14 have -- Ms. Mitchell.

15 BOARD MEMBER MITCHELL: Again, this time as we're
16 addressing the DPF issue, we've heard from a number of
17 truckers about fires being caused by DPFs. I'd just like
18 our staff to respond to that.

19 DEPUTY EXECUTIVE OFFICER AYALA: Let me take a
20 stab at that, Ms. Mitchell. Let me remind the Board that
21 last fall we actually brought to you a summary of an
22 extensive fuel campaign that we deployed, following Board
23 direction when we last brought you amendments to the truck
24 and bus regulation.

25 And what we attempted to do is to deploy a

1 campaign, so that we can understand in-use, in-the-field,
2 in real-world application, how is the DPF technology
3 performing? And one of the key findings from our
4 investigation was that we're not finding any problems with
5 DPFs when they get deployed in a vehicle, in an engine
6 that is well maintained to match up with that DPF.

7 It is the case that an engine that is not well
8 maintained can indeed lead to problems with the DPF. So
9 the DPF really is more of a canary in the mine, as opposed
10 to the cause of a problem. Industry, working in concert
11 with us, gave us access to information. And there's
12 millions of DPFs working properly today. And on all new
13 engines, they are original equipment. They are standard
14 equipment.

15 And so what we want to do as part of our process
16 is to actually work with the installers, work with the end
17 users to get the information out to them and essentially
18 notify folks that it is very important that the engine is
19 well maintained.

20 These are not devices that are install and
21 forget, because they're very complex systems that actually
22 work in concert as a system with the engine, with the
23 fuel, and the after-treatment.

24 So we did not find any evidence of fires. The
25 one instance -- the couple of instances where there was a

1 documented fire, as Dr. Brezny from MECA reported. That
2 was actually due to a different type of DPF technology
3 that is no longer in use.

4 BOARD MEMBER MITCHELL: Let me follow up with
5 that, because then one of the issues will be how can we be
6 assured that when a DPF is installed, the after-market DPF
7 or any other, that the engine is well maintained at the
8 time of installation? We've talked about having
9 authorized installers. Would they have that
10 responsibility? How do we authorize them? Can you just
11 be authorized on-line or how do we monitor this or enforce
12 this?

13 DEPUTY EXECUTIVE OFFICER AYALA: We are going to
14 be working with industry on all of these items, because
15 again, we now understand, thanks to our investigation,
16 that these are critical aspects. Also, this is one of the
17 reasons the Board directed us to look at a new program,
18 where we can do inspection and maintenance. And part of
19 that is actually getting the word out. But ultimately, we
20 need to be working very closely with industry, and the
21 providers and the manufacturers of that technology, right?

22 I mean, they have ultimate responsibility for the
23 products that they bring to the market. We just need to
24 make sure that amplify getting the information out to the
25 users to make sure that we get a good installation of

1 these after-market DPFs.

2 CHAIR NICHOLS: May I follow up on that question?
3 And maybe this isn't the proper analogy, but if I walk
4 into a doctor's office and I ask for some procedure to be
5 done, if that doctor is ethical, he's going to examine me
6 first to make sure that my condition is such that I can
7 withstand whatever it is that I'm asking to have done.

8 I guess the question here is, is there a way that
9 we can assure that the installers know that they are not
10 to put the equipment on if the underlying machine that
11 they're dealing with is not well maintained, because this
12 is not just an ongoing responsibility for the owner or
13 operator of the truck. It's also something that involves
14 a pinch-point, if you will, where somebody comes in and
15 money is changing hands, and you want to make sure that
16 there's a moment there where there's an opportunity to
17 make sure that this thing is actually going to work the
18 way it was intended and not cause problems.

19 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Well, I'd
20 like to mention that the procedure does require that the
21 manufacturer is responsible for making sure that whoever
22 is putting on their DPF has the proper information, so
23 that they can check their engines. And what we did with
24 retrofits is we made it explicit in the rule that the
25 manufacturer is responsible for establishing

1 pre-assessment requirements before they put the retrofit
2 in.

3 So the thought is that's exactly what the
4 after-market DPF manufacturer is going to do. They're
5 going to put in some sort a pre-assessment things that
6 they -- the installers can easily check, such as opacity,
7 oil consumption records, different things, so that whoever
8 is putting on that DPF knows that that engine can receive
9 it. Now, in the case where maybe we have a manufacturer
10 who is not doing their due diligence, maybe they are just
11 selling to the end user to unauthorized repair shops,
12 well, when we find that DPF in the field, we're going
13 to -- and there is a problem, then we can go back to the
14 manufacturer and ask them what protocols did you put in
15 place to make sure that this DPF was installed properly?

16 CHAIR NICHOLS: So we have enforcement ability in
17 that situation if we're notified and/or find out on our
18 own that equipment is getting out there and being
19 installed in a way that's not appropriate to the -- for
20 the equipment?

21 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Correct.

22 CHAIR NICHOLS: Okay. I'm sorry. I interrupted
23 your train of questions there.

24 BOARD MEMBER MITCHELL: And let me ask this to
25 follow up again on your question. The manufacturer is

1 interested in selling his DPF, and so he may not have the
2 interest of the trucker at heart, which is to make sure
3 that it's installed properly on an engine that's well
4 maintained. Is there any way we can place obligations
5 upon the installer with authorization of that installer?
6 That's -- I mean, maybe that should be two-fold,
7 manufacturer plus installer?

8 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Yes.
9 Actually, I should have mentioned that both the
10 manufacturer and the installers have obligations under the
11 regulation. So if the manufacturer has done everything
12 they can to make sure the installer is installing that DPF
13 correctly, the installer decides not to do what the
14 manufacturer has specified, and installs it on an engine
15 that is not properly maintained, then the installer is
16 basically installing that DPF in a non-approved way. And
17 so if you're not following all the requirements, you
18 essentially are avoiding your executive order,
19 the installer is, and they would be subject to corrective
20 action.

21 BOARD MEMBER MITCHELL: Thank you. That answers
22 that.

23 VICE CHAIR BERG: Thank you.

24 Any other questions?

25 Oh, I'm sorry. Barbara first, and then Phil

1 Serna.

2 BOARD MEMBER RIORDAN: It's not necessarily a --
3 pardon me, a question, but a suggestions. We have
4 obviously the ability to place on our website information
5 for the public and the end users. And my understanding is
6 that we do have people who can respond. For instance, if
7 a trucker has experienced problems, and they feel that
8 they're not getting relief from either the installer or
9 the manufacturer, they can access hopefully some part of
10 our website. And do we not have a person that you've
11 designated, is she sitting out here in our audience, and I
12 think that's very important.

13 And I actually told that to Kathleen this
14 morning, because I do think that -- and I've had that
15 experience personally, not on a truck, but on a very large
16 piece of machinery, where it was a failure of the
17 manufacturer, and in this case manufacturer installer,
18 failed to train the end user on the maintenance. And so
19 the whole thing was failing because of lack of training.

20 So sometimes when we get into these things, we
21 learn that there's nothing is failing except just
22 communication. So I'm hopeful that we underscore that
23 opportunity for people to contact the ARB directly, if
24 they're having issues with potential problems.

25 Thank you.

1 DEPUTY EXECUTIVE OFFICER AYALA: If I can just
2 add. Not only do we have our diesel advocate who's here
3 in the front row, we also have our call center, where our
4 staff can tend to calls and often make appropriate
5 references, to the extent that they don't have the answer
6 to the question, and they can come back to our technical
7 program staff as well.

8 BOARD MEMBER RIORDAN: Pardon me. We need to
9 make very clear on -- somehow on the website that this is
10 an opportunity to call us or contact and whatever. Thank
11 you.

12 VICE CHAIR BERG: Supervisor Serna.

13 BOARD MEMBER SERNA: Thank you, Vice Chair Berg.
14 First of all, I appreciate very much the line of
15 questioning over the last few minutes. This is -- hearing
16 the testimony and listening to staff before that, this was
17 really kind of the heart of the matter for me is
18 understanding what the maintenance protocols are for not
19 just the DPF, and what's involved in the installation of
20 the DPF, but as was mentioned earlier, maintenance of the
21 entire system.

22 And so to put a slightly finer point on what
23 Board Member Riordan just mentioned, what are -- what, if
24 anything, are we doing to educate the folks that are going
25 to be maintaining these engines in the long run about

1 any -- any even nuanced subtle changes in maintenance
2 protocols of that entire system moving forward? Maybe
3 there aren't any changes. I don't know. But, I mean, for
4 instance, this is really, you know, it sounds to me an
5 issue about exhaust gas temperatures. And so, for
6 instance, once the DPF is installed, is there a change,
7 for example, in the frequency with which you need to
8 change lubricants? I don't know.

9 But if we aren't making that absolutely clear, it
10 seems to me that we'd want to include that in whatever
11 education campaign we think is going to best result in an
12 understanding that that whole system needs to be
13 maintained a certain way. So I'd like some response to
14 that.

15 IN-USE PROGRAMS BRANCH CHIEF LEMIEUX: Yes.
16 That's an excellent question. And actually, from the DPF
17 survey that Alberto Ayala just mentioned, we did come up
18 with a list of things that we went forward to implement.
19 And one of them is to make sure that the diesel mechanics
20 have proper training. So we are working with the CCDET
21 program, which is a college program that trains diesel
22 mechanics, and also with -- to make sure that they're
23 aware of what needs to be looked at on these new
24 technology engines. So that's not only DPFs, it's making
25 sure that, you know, your injectors, your SCR system, all

1 that is working properly, and that they're aware of what
2 needs to be done to keep that engine working properly.

3 And I just want to follow up on Board Member
4 Riordan's comment on what type of process we have. And it
5 was through the retrofit advocate process where we
6 actually went out and we looked at fleets that were having
7 problems with their retrofits, that we found out a lot of
8 it is training, that people aren't used to having to look
9 at their oil consumption, look at their injectors, their
10 turbo seals, and all these things. Usually, a diesel
11 engine you put fuel in it and it goes. You put fuel, oil,
12 and you're fine for a million miles.

13 So with the advent of advanced technology and
14 after-treatment, now there just has to be a shift in the
15 industry. And I should also mention, we not only have the
16 retrofit advocate, we also do have field reps and a
17 complaint process for the OE, so -- and that's also in my
18 branch.

19 So if any of the end users that spoke here need
20 us to go look at what's going on, there's engine problems,
21 there's retrofit problems, they could certainly contact us
22 and we do have a process for addressing those.

23 DEPUTY EXECUTIVE OFFICER AYALA: One more item
24 that I want to add to that and that is also very
25 important, and I'm glad that we had industry

1 representation here today is again, at the point of sale,
2 we want to work with industry, because that is an
3 important gateway to get the information to the end user,
4 whether it is installer that is doing it for their own
5 fleet or it's a company that is in the business. That is
6 also very important for us, and we need to continue to
7 work with industry to make sure that we get the relevant
8 information out at that point.

9 BOARD MEMBER SERNA: Thank you.

10 VICE CHAIR BERG: Thank you. Great questions.
11 You bring up a great opportunity, Sharon, about industry
12 reaching out to you. But I would like to understand in
13 full transparency that when we do get involved, that if
14 there is noncompliance issues, it does open them up to
15 some corrective action and possible fines. So is there
16 not a mechanism that if somebody really wants to find out
17 what's going on and how they can correct it, that they
18 don't subject themselves to a situation where they came in
19 good faith to figure out what's happening and they leave
20 with a fine? I don't know.

21 CHIEF COUNSEL PETER: This is Ellen Peter. In
22 terms of our enforcement actions, they are in a totally
23 different division than the people that are providing
24 technical assistance.

25 VICE CHAIR BERG: That's true, but the technical

1 people do turnover this stuff to enforcement.

2 CHIEF COUNSEL PETER: So you're suggesting a --
3 sort of an amnesty kind of program, some kind of --

4 VICE CHAIR BERG: I'm just saying that if people
5 really want to figure out what to do, and how to do it,
6 there has to be a program that allows people to figure
7 this out without putting them at risk to something far
8 greater than they anticipated. This has really been a rub
9 in industry for a long time. And I just would like to
10 encourage that maybe you could look into it. That's all.

11 CHIEF COUNSEL PETER: We will definitely look
12 into it. I was not aware that we were doing direct
13 referrals, because typically the way the -- especially in
14 light of the additional work on -- for truck compliance in
15 conjunction with our environmental justice obligations,
16 we're actually turning the whole situation around where
17 we're using available data to look at primarily the larger
18 firms, because obviously they have the capability of doing
19 the repairs. And so we wanted to focus basically on the
20 largest firms and work down.

21 There are people that just get -- you know, will
22 be identified in a roadside talk. But starting about a
23 year -- last summer for sure, it's actually changed the
24 whole focus. That's been reemphasized starting in
25 January, where we're doing a -- trying to target the

1 biggest ones first.

2 So let me check with the Enforcement Division who
3 reports to me and I will -- I will do that, because I was
4 of the impression that -- because I agree with you, you
5 don't want people to come and ask for advice and turn it
6 in to be a referral. So I will definitely look into that
7 and report back to you.

8 VICE CHAIR BERG: Great. Thank you very much,
9 Ms. Peter.

10 BOARD MEMBER EISENHUT: I thought we could hear
11 from La Ronda Bowen with possibly an answer to your
12 question.

13 OMBUDSMAN BOWEN: So thank you, Board Member
14 Eisenhut. We do have the ombudsman. I'm the ombudsman
15 for the Air Resources Board. Businesses that are seeking
16 to get into compliance, they have a question, they just
17 want to ask that question, they can come to us
18 confidentially. We will take their information. We will
19 encourage them to comply. We will tell them we will serve
20 as an intermediary with the staff and find out exactly
21 what they need to comply, and then it's their decision.

22 However, there is no immunity from enforcement
23 when they're with the ombudsman process. But it is a
24 mechanism that's allowed to have the businesses come
25 forward, ask their questions, get them answered, and then

1 they have to make their right decision.

2 VICE CHAIR BERG: And certainly, there is a
3 balance to this. And I'm not suggesting that there isn't
4 a balance, but just really appreciate if -- that we have a
5 process that we're very transparent about, and what it
6 means, so that as Ms. Bowen just indicated, they have the
7 ability to make those decisions.

8 CHIEF COUNSEL PETER: Right. This is a
9 non-trucking example, where somebody realized that they
10 were going to have a problem, and they ran into basically
11 a self-report after it was already identified. So we've
12 had a situation where -- and once again, very
13 sophisticated people try to take advantage of those kind
14 of self-reporting kind of violations after they'd already
15 been notified. I'm saying this is not a trucking
16 situation. It's something totally separate.

17 And so we don't want to encourage sophisticated
18 people to try to end-run on that, but I totally understand
19 the -- you know, the idea is for people who are working so
20 hard they can't get time to sit down and read the webpage
21 or they're driving or whatever. Those single truckers are
22 the ones that we should be directing our effort for. And
23 I -- in my view, they should not be penalized for coming
24 and asking questions. And we'll check into that and try
25 to make sure that that's handled.

1 VICE CHAIR BERG: Great. Thank you very much.
2 Mr. De La Torre.

3 BOARD MEMBER DE LA TORRE: Thank you. First of
4 all, just in general terms, we've gone from the truck
5 needing to be as clean as it can be, and therefore, if you
6 needed to have a cleaner truck, you needed a new truck.
7 We went from that to retrofitting, to going in and
8 installing a device on trucks that didn't previously have
9 them to make them cleaner.

10 This is the third tier of a strategy to make it
11 easier than having to buy a new truck, than having to
12 retrofit, to be able to swap out one piece of the truck,
13 like you would on any other maintenance of your vehicle.

14 I just changed my tires this last week end,
15 just -- we're used to that concept. And so this is the
16 third step in making it easier. And hopefully -- well, it
17 is less expensive than getting a new truck. It is less
18 expensive than doing a retrofit. So this is a part of a
19 process that we are trying to be more responsive to the
20 concerns that have been expressed here today.

21 That doesn't mean we've figured everything out,
22 as this conversation has shown, but I think we're heading
23 down the right path.

24 And along those lines, I wanted to make two
25 points. One -- and these are for staff. Some of the

1 concerns that I heard were about the process by which we
2 approve these devices, that we -- many of our procedures
3 are grafted from retrofits, and these are not retrofits.
4 It's a -- it's just a swap, one device for another.

5 So to have redundant monitoring et cetera, there
6 was already monitoring for the device before. You swap
7 out the device, the monitoring should be working. So
8 things like that we should be very careful that we're not
9 carrying over legacy obligations for the installation of
10 these devices. It is just a clean swap. There was a
11 filter before, there's going to be a filter now. So
12 that's one concern.

13 The other is somebody mentioned it from the
14 podium about staffing. As we ratchet up, there's going to
15 be a peak. And so if we need to borrow staff from
16 somewhere to help these folks look over these
17 applications, make sure they're good, et cetera, we need
18 to anticipate that, and then it will peter out, I assume,
19 after that point, but we need to be ready administratively
20 to handle that.

21 Thank you.

22 VICE CHAIR BERG: So seeing no other -- oh, I'm
23 sorry. Go ahead, Diane.

24 BOARD MEMBER TAKVORIAN: Thank you very much.
25 Thanks to the staff for a great presentation and all the

1 work that you've done. I appreciate it. And thanks to
2 those who came today to testify. I think it's really
3 critically important that -- the work that you're doing,
4 because we've seen huge improvements in our communities,
5 those that have a lot of trucking activity, especially
6 those that are near the ports. And we have seen a great
7 improvement. So it's really important to us that this
8 process, as Board member De La Torre has said, takes --
9 continues to evolve and continues to improve, because our
10 communities are seeing an improvement, so we appreciate
11 that, and I know that the kids who suffer from asthma
12 appreciate it very much.

13 I have two questions. One is are there, or could
14 there be, any incentives available for lower income
15 truckers that might make the cost of doing this --
16 installing these new filters available. That would be one
17 question.

18 And the second is what's the plan for outreach to
19 truckers, so that they will know about it, and they can
20 take the proper steps to install these new filters?

21 Thank you.

22 DEPUTY EXECUTIVE OFFICER AYALA: I guess to
23 address the first question, I think the incentive will be
24 that if the Board approves what the staff is proposing to
25 you, we are going to generate a market of functionally

1 equivalent after-market DPFs that are going to be lower
2 cost than the current alternative, which is basically to
3 go to the original equipment manufacturer and buy a brand
4 new DPF.

5 So the incentive for the end user is going to be
6 that we are creating a new market. We don't necessarily
7 have any of our traditional incentive programs, I think,
8 that you're thinking about, because again, as Board Member
9 De La Torre said, this is really meant very -- to be very
10 focused on engines that came originally equipped with the
11 DPF. And because they've been in use for so long, they
12 may need a replacement. We're providing a lower cost
13 alternative that is still functionally equivalent.

14 BOARD MEMBER TAKVORIAN: Thank you.

15 VICE CHAIR BERG: Dr. Sherriffs.

16 BOARD MEMBER SHERRIFFS: As a health care person,
17 I just wanted to remind everybody and thank everybody for
18 their diligence in this. And by everybody, I mean -- I
19 mean everybody, I mean staff, I mean the trucking industry
20 for the pain that they've been through, and people
21 stepping up and working on this, thanking people for
22 driving as far as they drove to testify, because although
23 many of the issues that were brought up are really a
24 little off topic the narrow thing we're trying to do here,
25 they're still very important issues that we need to

1 continue to work through.

2 But this has been, from a health standpoint,
3 hugely powerful. You know, the calculations before truck
4 and bus rule increased cancer risk of a thousand per
5 million. You know, do the zeros. Staff can do the zeros
6 better than I can. Is that 1 in 10,000?

7 It's a big number. It's a big number. And when
8 you multiply by the number of people in the State, it's a
9 huge number. And, you know, remember the agony we had
10 over reassessing toxic risk. And we were worrying about
11 numbers like two in a million, you know, the chance of
12 being struck by lightning as you are drowning.

13 (Laughter.)

14 BOARD MEMBER SHERRIFFS: You know, a thousand per
15 million is a much bigger number, and we have cranked this
16 down a hundred fold through this process.

17 So it's important to remember. It's been very
18 painful on all sides, but it has made a big difference.
19 And we still have a lot of work to do, but we've
20 accomplished a lot. And it's been because of people's
21 engagement, cooperation, willingness to dig in on this.

22 Thank you.

23 VICE CHAIR BERG: Thank you, Dr. Sherriffs. I
24 think that's a good way to wrap this item up. I do have
25 an interesting position on the Board, because I do have 17

1 trucks, and it has not gone totally smoothly, as some of
2 the testimony has indicated.

3 But as the benefits that Dr. Sherriffs have
4 outlined, struggling through this is something that is
5 what we need to do. We want to stay opened. I do want
6 to -- I do feel compelled to say that this Board does care
7 about safety, and we do care about the truck drivers. I
8 care about my drivers. I care about my business. And I
9 do care about health, as all of you do too.

10 And so I do appreciate you coming, and we'll
11 continue to try to proactively work towards this issue.

12 So with that, we are looking at resolution
13 16-4-2. And do I hear a motion?

14 BOARD MEMBER SERNA: So moved.

15 BOARD MEMBER EISENHUT: Second.

16 VICE CHAIR BERG: All those in favor?

17 (Unanimous aye vote.)

18 (One abstention.)

19 VICE CHAIR BERG: Any opposed?

20 Any abstentions?

21 CHAIR NICHOLS: I'm going to abstain, because I
22 missed the oral testimony, but I'm familiar with the
23 record, and I would have voted, but I think it's better
24 not to.

25 VICE CHAIR BERG: Great. Can we show the record

1 that Chairman Nichols will abstain.

2 And the motion passes. Thank you very much.

3 CHAIR NICHOLS: Okay. We'll be shifting now to
4 the next item, which is 16-4-3. And it's another
5 amendment to an existing regulation that also reaches a
6 lot of individuals and small businesses. This is the
7 regulation for small containers of automotive refrigerant.
8 It's used in the do-it-yourself recharging of motor
9 vehicle air conditioners.

10 This product is sold over the counter, and
11 contains R-134a, a refrigerant with a very high global
12 warming potential, about 1300 times that of carbon
13 dioxide. This is one of the first regulations that I was
14 involved with when I came to the Board for the second
15 time. This is back in January 2009 that we actually
16 adopted this item, and I believe Mr. Corey worked on it,
17 at some point, as well before he ascended to his current
18 position.

19 So it's been with us for a long time. We've --
20 relatively long time. We've had an opportunity to see how
21 it works in practice, and it needs some fine-tuning. But
22 it's an important regulation, because as I just indicated,
23 this is a very potent greenhouse gas that we're dealing
24 with here. So without further ado, I will turn it over to
25 the staff.

1 EXECUTIVE OFFICER COREY: Thanks, Chair Nichols.
2 Staff developed regulatory amendments to address
3 implementation issues that have arisen since the
4 regulation was first adopted, as you noted. The
5 regulation is intended to reduce emissions associated with
6 do-it-yourselfer air conditioning recharging through the
7 use of a self-sealing valve on product cans, plus a
8 container return program where the refrigerant remaining
9 in the containers would be removed and recycled.

10 The self-sealing valve has been very effective,
11 very effective in reducing emissions. However, unclaimed
12 deposit money has been accruing with retailers, instead of
13 going to consumer enhanced education programs administered
14 by manufacturers as intended. These programs educate
15 consumers about proper recharging techniques, as well as
16 informing them of the global warming potential associated
17 with the refrigerant.

18 Staff's proposed amendments are designed to
19 address the disposition of future unclaimed deposits.
20 Winston Potts from the Research Division will provide the
21 Board with details of the staff's proposed amendments to
22 the regulation.

23 Winston.

24 (Thereupon an overhead presentation was
25 presented as follows.)

1 AIR RESOURCES ENGINEER POTTS: Thank you, Mr.
2 Corey. Good morning, Chair Nichols and members of the
3 Board. The regulation we are proposing to amend today
4 deals with small containers of refrigerant used in do it
5 yourself recharging of motor vehicle air conditioners.

6 I will begin with a brief introduction to
7 greenhouses gas emissions from motor vehicle air
8 conditioners.

9 --o0o--

10 AIR RESOURCES ENGINEER POTTS: The Board has
11 adopted a comprehensive program to reduce greenhouse
12 emissions of automotive refrigerants, which is driving
13 this entire sector to zero emissions. The main program
14 elements are new low-global warming potential refrigerants
15 that are being introduced by car manufacturers into
16 low-leak more fuel efficient air conditioning systems.

17 The Board's refrigerant servicing and end-of-life
18 requirements including the regulation being discussed
19 today, address emissions from the existing fleet. Similar
20 program elements have been adopted or have been proposed
21 for adoption by U.S. EPA as national requirements.

22 --o0o--

23 AIR RESOURCES ENGINEER POTTS: The figure on the
24 left shows a typical air conditioning system. These
25 systems naturally leak refrigerants to the point that they

1 AIR RESOURCES ENGINEER POTTS: The Board's
2 existing regulation for these small containers of
3 automotive refrigerant has been a successful program.
4 Greater-than-anticipated emission reductions have been
5 achieved, and U.S. EPA has proposed a nationwide
6 requirement for the same self-sealing valve technology.
7 However, amendments are needed to refine the deposit and
8 recycling provisions.

9 --o0o--

10 AIR RESOURCES ENGINEER POTTS: The measure was
11 identified by the Board as an AB 32 discrete early action
12 and was adopted in January of 2009 with the purpose of
13 reducing HFC-134a emissions from do-it-yourself motor
14 vehicle air conditioner servicing. The principal goal of
15 this regulation is to reduce the venting of the
16 refrigerant and to recover the residual refrigerant
17 remaining in the container after recharging the air
18 conditioning unit.

19 It should also be noted that this regulation
20 works in concert with tighter vehicle air conditioning
21 systems, which are attributable to advances in sealing
22 technologies and lower permeability hoses.

23 --o0o--

24 AIR RESOURCES ENGINEER POTTS: The existing
25 regulatory requirements consist of:

1 The installation of a self-sealing valve on each
2 container; a manufacturer-administered recycling program,
3 which includes a \$10 refundable deposit upon the return of
4 the used container to the retailer. Unclaimed deposits
5 are to be sent to the manufacturer for recovery of the
6 residual refrigerant and for a consumer education program.

7 Manufacturers submittal of a certificate
8 application to ARB to sell small containers of auto
9 refrigerant in California. The application includes
10 information on the self-sealing valve and container
11 labeling text in both English and Spanish.

12 An annual reporting requirement for manufacturers
13 and retailers on containers -- excuse me, on container
14 sales and return rates.

15 --o0o--

16 AIR RESOURCES ENGINEER POTTS: The regulation has
17 been successful in reducing greenhouse gas emissions as
18 the self-sealing valve allows the product container to be
19 used for multiple recharges. This is reflected in a drop
20 of sales from 1.9 million containers in 2006 down to 1 to
21 1.3 million after 2010.

22 Car owners are purchasing fewer containers and
23 thus saving money. The avoided purchases total about \$8
24 million per year. This lower demand is a result of the
25 use of all the contents of the can plus the lower

1 refrigerant leak rates in today's cars. The emission
2 reductions achieved is about one million tons of carbon
3 dioxide equivalents per year, a 34 percent greater
4 reduction than was originally projected.

5 --o0o--

6 AIR RESOURCES ENGINEER POTTS: I will now turn to
7 the principal issues that we have encountered in the
8 implementation of this regulation. Container return rates
9 have been about 70 percent less than our target return
10 rate of 95 percent. However, the 70 percent is in line
11 with the similar programs for beverage containers. The 70
12 percent achieved rate has resulted in unclaimed deposits
13 amounting to approximately \$3.5 million per year and the
14 total accumulation of about \$18 million.

15 These unclaimed deposits have been accruing with
16 the retailers and are not being used by the manufacturers
17 for the benefit of consumers in supporting enhanced
18 consumer awareness efforts, as was intended.

19 The purpose of this amendment is to reemphasize
20 that the retailers need to immediately transfer this money
21 to the manufacturers going forward. Transfer of funds
22 held by the retailers now is a separate effort.

23 Because of the effectiveness of the self-sealing
24 valve, the return containers average two to four percent
25 of refrigerant recovery rates, far less than the 20

1 percent from the one -- from one-use containers measured
2 by our research studies before the regulation was adopted.
3 ARB has conducted multiple studies to determine if this
4 lower than anticipated amount of refrigerant is because of
5 leaking valves or multiple uses of the can. These studies
6 have confirmed that the valves are working properly.

7 When the containers are not empty, they are
8 classified as a household hazardous waste by California
9 agencies. And the current program ensures that they go
10 through proper recycling and product stewardship of the
11 refrigerant and the container itself. There is an overall
12 greenhouse gas benefit of 28,000 metric tons per year,
13 equivalent to removing 6,000 cars from the road.

14 --o0o--

15 AIR RESOURCES ENGINEER POTTS: The goals of the
16 proposed amendments are to:

17 Preserve the greenhouse gas reductions realized
18 in the implementation of the regulation; maximize the
19 refundable deposit return rate to the consumer; ensure
20 that the unclaimed consumer deposits are being spent in
21 ways that benefit the consumers and the environment, and
22 that maximizing the container return rate so that more
23 refund money will be returned to the do-it-yourselfers;
24 Finally, by maximizing the return rate, we can divert more
25 containers with their residual refrigerant from the

1 household waste stream and get these back to the retailers
2 and into the recycling program.

3 --o0o--

4 AIR RESOURCES ENGINEER POTTS: This slide
5 summarizes amendments that we are prosing for your
6 approval. First is to add details to the existing
7 requirement that retailers must transfer future unclaimed
8 deposits they've collected from the consumer to the
9 manufacturers. The new amendment adds recordkeeping and
10 reporting requirements, which ensure the retailers'
11 compliance with this provision.

12 Because of the relatively large potential amount
13 of these funds, this amendment also proposes to provide
14 manufacturers a wider range of programs and projects
15 related to the reduction of greenhouse gases, in addition
16 to the enhanced education programs to improve consume
17 awareness and increase the return rate.

18 In all cases, the manufacturers will need
19 Executive Officer approval before expending funds on any
20 program. In addition, the proposed amendments will fix
21 the refundable deposit at \$10 and eliminate the adjustable
22 deposit provision that allows the deposit amount to
23 increase in the future. We think education is a better
24 approach to increase the return rates, rather than
25 preserving the option to increase the unclaimed deposit in

1 the future.

2 Finally, the certification procedures are being
3 amended to require additional language on the product
4 container. This additional language will warrant
5 consumers to not intentionally vent the contents of the
6 product container to the atmosphere before returning it to
7 the retailer.

8 --o0o--

9 AIR RESOURCES ENGINEER POTTS: The new costs
10 associated with these amendments are one-time cost to the
11 manufacturers of a little over \$200,000 for the additional
12 labeling on the product container. If passed on fully to
13 the consumer, this would result in an estimated cost
14 increase of \$0.04 per container.

15 --o0o--

16 AIR RESOURCES ENGINEER POTTS: The public input
17 we received was valuable during the development of this
18 regulation. We held one public workshop and numerous
19 meetings with stakeholders during the course of amendment
20 development. We worked with other agencies, such as
21 CalRecycle, the Department of Toxic Substances Control,
22 the Bureau of Automotive Repair, and the U.S. EPA.

23 We also worked with stakeholders such as
24 manufacturers and retailers of this product, associations
25 such as the Auto Care Association, the Automotive

1 Refrigerant Products Institute, and the California Product
2 Stewardship Council.

3 --o0o--

4 AIR RESOURCES ENGINEER POTTS: In discussions
5 with stakeholders, several comments were received that
6 staff is proposing 15-day changes to address.

7 The first is to simplify the changes to the
8 label, focusing on encouraging consumers to not
9 intentionally vent the refrigerant. The second is to
10 eliminate the one-year sell-through period requirement.
11 We propose instead to require the manufacturers to begin
12 shipping product containers with the new labeling after
13 December 31st of 2017. Retailers would be allowed to sell
14 all cans with the old labels they and the manufacturers
15 have in stock.

16 The last 15-day change we are proposing is to
17 simplify the transfer of the unclaimed deposits from the
18 retailers to the manufacturers. We are proposing to
19 reduce the frequency from quarterly to semiannual. This
20 will also apply to the reporting and recordkeeping
21 requirements associated with this proposal.

22 --o0o--

23 AIR RESOURCES ENGINEER POTTS: It is our
24 intention to continue working with the stakeholders
25 regarding two main issues of concern.

1 For the short term, we intend to convene a work
2 group with the stakeholders, including the container
3 manufacturers, retailers, and community representatives to
4 establish specific requirements regarding the management
5 and spending of the unclaimed deposits. This includes
6 consumer awareness and education, and projects to reduce
7 refrigerant loss and the associated greenhouse gas
8 emissions.

9 Our primary goals will be to focus these monies
10 on improving container and deposit return rates, and
11 otherwise benefit the low-income consumers and communities
12 that purchase these containers.

13 In addition, we will also be working with our
14 sister agencies, CalRecycle and the Department of Toxic
15 Substances Control, and the industry, and public
16 stakeholders to see if there are improvements that can be
17 made that would be more efficient than the current
18 program, but maintain the environmental benefits or
19 alternatives to the container and deposit recycling
20 program.

21 --o0o--

22 AIR RESOURCES ENGINEER POTTS: In summary, the
23 proposed amendments to the regulation will preserve the
24 greenhouse gas reductions associated with the air
25 conditioner use in vehicles. This will ensure that the

1 unclaimed deposits are transferred to the manufacturers
2 where the funds will be spent for the benefit of the
3 consumers and the environment.

4 With consumer deposits being spent on consumer
5 outreach, the container return rate will be maximized
6 resulting in more consumers returning the used containers
7 and collecting the refundable deposits.

8 Staff therefore recommends that the Board adopt
9 the amendments with the 15-day changes.

10 That concludes my presentation.

11 Thank you for your attention.

12 CHAIR NICHOLS: Thank you. We have a list of
13 five witnesses who have asked to speak on this item. So
14 why don't we turn directly to them, beginning with Aaron
15 Lowe from the Auto Care Association.

16 The list is up on the board, so you can see where
17 you are.

18 Good morning.

19 MR. LOWE: Thank you. Good morning. I'm Aaron
20 Lowe -- my name is Aaron Lowe and I'm testifying on behalf
21 of the Auto Care Association, and also the Coalition for
22 Auto Repair Equality, and the California Automotive
23 Wholesalers' Association.

24 First, I want to congratulate the Board. This
25 program, as the staff has said, has been a major success.

1 It has resulted in cans that are now on the market that
2 have reduced emissions. EPA is now considering a proposal
3 to institute it nationwide. So this certainly is a great
4 success for the Board and for the industry that worked
5 with the Board to put this together, and we're real
6 proud -- we're very proud of the effort that Auto Care and
7 the other groups were involved in putting this together.

8 As it was stated, the deposit program was put in
9 place to make sure that the deposit of the cans, which
10 were originally considered to have a large heel in them,
11 went back to the manufacturer and all the refrigerant was
12 sucked out of them, and then the can was recycled. The
13 \$10 deposit fee was instituted to make sure consumers
14 brought this back.

15 What's resulted, as the staff has also stated, is
16 that there is very, very little refrigerant actually left
17 in those cans because of the self-sealing valve. So
18 therefore, a large amount of these cans are being
19 transported all the way back, currently to Texas, to be
20 recycled and have practically minimal refrigerant taken
21 out of them. This is a very inefficient and ineffective
22 program in how we handle and reduce it. I think it
23 results in a huge amount of energy that's expended that
24 could be reduced.

25 So we're happy to work with the Board in the

1 future to try to reduce or to change this recycling
2 program. I think the \$10 deposit results in higher costs
3 that really aren't necessary to be charged. But we look
4 forward to working with the staff to try to find an
5 alternative that will result in reduced waste into the
6 stream, but also replaces a very inefficient program
7 that's been put in place.

8 I also have to take issue with some of the
9 statements that have been made by the Board staff,
10 however, regarding the unreturned deposits that are
11 currently being held. There is an implication from the
12 staff that the retailers were not complying with the law.

13 And, in fact, the law, as it was written, the
14 regulation as it was written, all educational
15 documentation pointed to the fact that retailers were
16 setting up two -- I should say, they set up two deposit
17 programs, one for the manufacturer to the retailer, and
18 one for the retailer to the consumer.

19 The retailer to consumer was set at \$10. The
20 manufacturer to retailer deposit was not set and not
21 specified. And it was done that deliberately to make sure
22 to provide incentives to the retailer to participate in
23 the program. And, in fact, the retailers had been great
24 participants in the program. And I think the staff will
25 recognize that they have been sending those cans back to

1 the manufacturer.

2 However, the unreturned -- the deposits that came
3 back to the retailer is -- it is totally silent in the
4 regulation regarding how those deposits are to be handled.
5 As far as we can read, there was a provision originally
6 put in there that the deposit was supposed to be to the
7 manufacturer's benefit. That was taken out before this
8 regulation was finalized. And therefore, in all our
9 guidance, as far as we can see in the regulation, the
10 retailers were supposed to hold on to that deposit -- the
11 unreturned deposits. And retailers have been giving those
12 deposits back no matter when those cans come back to the
13 retailer, not the 90-days that's in the regulation. So it
14 could be a year. Even then, they were returning those
15 deposits.

16 Also, I want to comment quickly on the fact that
17 retailers -- the deposit program that's being established
18 by this new regulation, we think it would be much
19 better -- because the retailers are on the ground in
20 California and have the best connection with the consumer,
21 that the retailers retain those deposits and expend those
22 unreturned deposits in a way -- in an education program
23 that's -- to benefit or in cooperation with the Air
24 Resources Board and other groups that might be involved in
25 this.

1 We would see -- we would -- I think the most
2 effective way for this to happen would be for one fund to
3 be developed that was given by the retailers. And that
4 is -- the destination for those funds is agreed to by the
5 work group that's established. I think that would be a
6 more effective program, a more efficient program than
7 sending the money back to the manufacturers.

8 It also should be recognized that some of these
9 manufacturers could be overseas, which makes enforcement
10 even more difficult for the Board. The retailers are here
11 in California, they operate in California, and do a lot of
12 take-back programs, batteries, used oil, and I think
13 they're in the best place to educate consumers.

14 So we'd like to see that program instead of
15 requiring all that money to go back to manufacturers, and
16 then manufacturers spending the money here in California,
17 that the retailers hold the deposits and work with a -- in
18 a -- to have a fund, so that that money goes to the -- to
19 improve the recycling program, which is in everybody's
20 best interests to have as many cans come back as possible,
21 until we come up with a alternative.

22 And also, I want to just finally express some
23 concern with the way the rule has been written regarding
24 some of the --

25 CHAIR NICHOLS: Sorry. Your time is up.

1 MR. LOWE: I know. Can I just -- one last point.

2 CHAIR NICHOLS: All right.

3 MR. LOWE: I'm sorry.

4 CHAIR NICHOLS: That's all right.

5 MR. LOWE: We have done a lot of work on this the
6 Board staff --

7 CHAIR NICHOLS: I didn't cut you off. Yes, I
8 hear you.

9 MR. LOWE: -- so we have a lot to go over. I'll
10 just say that we would like -- the actual final regulation
11 has got a lot of problems logistically on how the funds
12 are going to be returned to the manufacturer but stays the
13 way it is. It could, the way it's written we think,
14 provide a disincentive to retailers to return those
15 deposits to the consumer after the 90 days expires. And I
16 think retailers keep their consumers happy, want to
17 continue to return those deposits when the can goes back.
18 So we want to be able to work with the Board to try to
19 clarify some of those issues.

20 CHAIR NICHOLS: Okay. Thanks. Thanks.

21 MR. LOWE: Thank you very much.

22 CHAIR NICHOLS: Can I -- I'm going to actually
23 extend your time for a second, because I -- there was
24 something that you said at the very outset, which implied
25 that you had a better solution for what to do with the

1 left over refrigerant, which in each can may be rather
2 small, but collectively, and given the potency of the
3 refrigerant, it's still a very big deal. So is there some
4 alternative that you are proposing?

5 MR. LOWE: No. I guess what I was saying is we
6 would prefer that this deposit program, as it was
7 originally going to be eliminated, that it be eliminated.
8 And I understand that we need to find a way to mitigate
9 the problem. And what we were saying is we'd like to work
10 with the staff, the Board over the -- or the staff over
11 the next year to try to see if we can come up with an
12 alternative procedure, because currently we're shipping
13 those cans to the midwest --

14 CHAIR NICHOLS: I understand that.

15 MR. LOWE: -- and it doesn't seem energy
16 efficient to us.

17 CHAIR NICHOLS: Got it. Okay. Thank you.

18 MR. LOWE: Thank you.

19 CHAIR NICHOLS: All right. Will Barrett.

20 MR. BARRETT: Good morning. I'm Will Barrett
21 with the American Lung Association in California. First
22 off, I just wanted to thank staff for your work to move
23 this forward to ensure that this early action measure
24 under AB 32 the benefits are maintained that there's a
25 robust consumer education program going forward, and that

1 the recycling that we need to see goes forward as well.

2 I'd like to note that the American Lung
3 Association released our Annual State of the Air Report
4 this year -- or this week. We found that our federal,
5 State and local air district programs are really providing
6 relief to Californians in driving major pollution
7 reductions. So just as a broad statement, I wanted to
8 thank this Board and the staff for your role in improving
9 public health through all the rules and programs you have
10 going.

11 While there's a lot of progress to celebrate in
12 our report, we know that there's still an enormous
13 challenge facing Californians as far as air pollution.
14 And our report really this year highlights the growing
15 challenges we face from climate change.

16 Of particular concern are the -- some of the
17 programs you're talking about today, this program related
18 to refrigerants, the black carbon diesel reduction program
19 you discussed earlier.

20 These and other super pollutants like methane
21 accelerate the health impacts of climate change. And we
22 see that this proposal before you now is really a common
23 sense way to keep more of these pollutants out of the
24 atmosphere through the recycling program and through
25 consumer education.

1 So just generally in closing, we support your
2 effort here. We think that we can increase and maintain
3 the program benefits, ensure ongoing consumer education
4 and awareness and continue the commitment that the Board
5 has always followed to review programs as they go forward
6 and make sure that they're working properly or take the
7 appropriate actions to make sure that we're getting all
8 the benefits we need.

9 So thank you again. I just wanted to make a
10 brief statement in support and thank you again.

11 CHAIR NICHOLS: Thank you.

12 Christine Flowers.

13 MS. FLOWERS: Chair Nichols and the other Board
14 members, my name is Christine Flowers and I'm the
15 Assistant Director for the California Product Stewardship
16 Council. California Product Stewardship Council is a
17 non-profit which formed in 2006 to educate and support
18 implementation of extended producer responsibility.

19 CPSC is the thought leader and expert in
20 California for these policies where producers share
21 responsibility for end-of-life management of their
22 products. Our board is comprised of both public and
23 private sector members working towards this goal.

24 I'm here on behalf of my organization and the
25 other co-signers of the letter submitted to the Board who

1 couldn't be here today: COALITION for Clean Air, Alameda
2 Stop Waste, and San Francisco Department for the
3 Environment.

4 We are in support of the proposed amendments to
5 the regulation for small containers of automotive
6 refrigerant. The ARB staff have been thorough in the
7 report and rationale for the proposed changes, and we
8 support the ARB adoption of the proposed amendments.

9 The modifications would include:

10 Clarification that unclaimed consumer deposits
11 are to be transferred to the manufacturers for enhanced
12 consumer education, expand the scope of the programs and
13 projects for these funds, fixing the deposit at \$10
14 dollars, and additional containers label language.

15 Based on the reports between 2011 and 2014,
16 nearly \$14 million in unclaimed deposits have accumulated
17 at the annual rate of approximately 3.5 million. The
18 majority, more than 95 percent of the small container
19 automotive refrigerant is sold by nine retailers in
20 California.

21 The proposed changes will clarify that the
22 retailers must transfer the funds and report to the ARB
23 and make the transfer to manufacturers and ensure the
24 unclaimed deposits are utilized to educate the consumers.
25 We urge the ARB to ensure the transfer of the previous

1 unclaimed deposits and that they are used for their
2 intended person -- or purpose in a timely fashion.

3 We look forward to seeing the proposed changes
4 implemented. We encourage the ARB to engage with a broad
5 stakeholder group, including local governments, industry,
6 and NGOs to provide input on how these funds are used in
7 the development of consumer education by the
8 manufacturers.

9 Thank you.

10 CHAIR NICHOLS: Thank you.

11 Teresa Bui

12 MS. BUI: Good morning. And Happy rainy Earth
13 Day. My name is Teresa Bui with environmental nonprofit
14 group called Californians Against Waste. I just want to
15 concur with the comments made by my colleague from
16 California Product Stewardship Council. And I want to
17 thank the Air Board for your leadership on this issue. We
18 are supportive of the proposed amendments by staff.

19 Automakers are already recognizing the damaging
20 effects of HFC-134a and they're trying to phase-out the
21 refrigerants. In the meantime, we need to continue an
22 aggressive recycling program to capture the auto
23 refrigerants. And we think the proposed amendments will
24 help do so.

25 So thank you.

1 CHAIR NICHOLS: Thank you. Cory Bullis.

2 MR. BULLIS: Good morning, Chair and Board
3 Members. Corey Bullis on behalf of Environmental Defense
4 Fund. Back in 2008 and 2009 EDF stood in front of this
5 body in support of development of regulations that would
6 reduce pollution from high GWP compounds commonly used in
7 refrigerants. This included the Refrigerant Management
8 Program pertaining to stationary air conditioning and
9 refrigerant equipment and do it yourself small container
10 automotive refrigerants.

11 Once again, we support the Agency's full
12 pursuit -- or pursuit of the full realization of this
13 nation-leading program, which has made great strides in
14 cutting the emissions of high GWP refrigerants. As
15 demonstrated by the lower than expected return rates for
16 refillable containers, nearly 25 percent lower than
17 expected, there is much work to be done to ensure
18 consumers and technicians are aware of the requirements
19 and incentives that apply to small containers of
20 automotive refrigerants.

21 Money collected from the consumers associated
22 with these refrigerants can and should be recycled back to
23 consumers to ensure that they know the requirements of the
24 law and the opportunities associated with canister
25 exchange. By ensuring that California consumers are

1 beneficiaries of the money brought in from the program, as
2 opposed to refrigeration retailers, California can double
3 down on emission reductions while reducing overall program
4 costs on society.

5 This is no doubt what was intended in the
6 original design of the regulation back in 2009, and it
7 remains the proper application of the original design
8 today.

9 Thank you so much.

10 CHAIR NICHOLS: Thank you. That concludes the
11 list of witnesses that have signed up, so we will close
12 the record at this point, and return to the Board members'
13 questions or comments.

14 I'll start with you, Ms. Riordan.

15 BOARD MEMBER RIORDAN: I have a question for
16 staff. How many manufacturers are there currently that
17 manufacture this product approximately?

18 RESEARCH DIVISION CHIEF CROES: There are two
19 main manufacturers.

20 AIR RESOURCES ENGINEER POTTS: There's four that
21 are certified.

22 RESEARCH DIVISION CHIEF CROES: Four that are
23 certified, but one represents 95 percent of the market.

24 BOARD MEMBER RIORDAN: The reason I ask that
25 question, it seemed to me that the request to have the

1 sellers of this project retain the money and then use it
2 for education, I just think that's very difficult, because
3 you -- there's -- if there's nine, as was testified, there
4 are probably maybe more. And it seems to me, if you're
5 working with a nucleus of folks that are required to, you
6 know, meet a verification for the product, that's going to
7 be much simpler to work with them in terms of refund, and
8 then asking them to do then a program of education.

9 So while it might seem like it might be easy to,
10 you know, contact all these retailers, I just don't see
11 it, and I would not support that suggestion. I think just
12 keep it with -- very simple with your manufacturing
13 community.

14 Thank you.

15 CHAIR NICHOLS: Okay. Dr. Sherriffs was next, I
16 believe.

17 BOARD MEMBER SHERRIFFS: Yes. A couple of
18 questions. But first, you know, really congratulations
19 for a very successful program. It seems to have been very
20 well crafted, involve stakeholders, actually has come in,
21 in many ways, above target, and certainly has come in
22 above target a 34 percent greater reduction than estimated
23 at the time of regulation. Well, congratulations. Good
24 job. So now we're trying to work to make it even better.

25 You know, another statistic that I wonder. Well,

1 I was very concerned first reading this in terms of the
2 recycling rate. And now I'm really, well, maybe I don't
3 need to be so worried, because, you know, only two to four
4 percent refrigerant recovery, expected 20 percent. Yeah,
5 but wait a minute, there's a 70 percent container return,
6 and we expected 95 percent.

7 You know, in fact, when you look at those
8 percents and those numbers, as one of the testimony,
9 there's not a lot of refrigerant to recover. These small
10 containers it's good. It's working, assuming people
11 aren't just releasing refrigerant, which, you know, the
12 question, and maybe staff has some insight, where is the
13 most greenhouse warming potential? Is it in the leakage
14 as our do-it-ourselves are doing this or is it in the
15 lost recycling? Where is it we really ought to be
16 focusing our efforts?

17 And as somebody who does things themselves, I
18 know if there are threads, I'll get it wrong the first
19 time.

20 (Laughter.)

21 BOARD MEMBER SHERRIFFS: And I don't know how
22 many chances I have to replace the refrigerant in my car.
23 It's a steep learning curve. But I'd appreciate your
24 comment. Where is the most greenhouse warming potential,
25 is it in the leakage when people are doing this, so we

1 need more education, or more education that -- or programs
2 that somehow discourage people from doing this that
3 supports them to get it done professionally by people who
4 have done this before and are more likely to get the
5 threads right.

6 DEPUTY EXECUTIVE OFFICER KAPEROS: Dr.
7 Sherriffs, thank you for that question. To get directly
8 to the point, the potential for the most leakage is not
9 appropriate care and repair of the vehicle itself. If you
10 are habitually buying these cans because your vehicle is
11 leaking, that's the place we need to address it.

12 Now, we have programs to tighten up those
13 vehicles over time, but in the interim, we want to be
14 dealing with this business model and this use of the cans.

15 The self-sealing valve has been very, very
16 effective in terms of keeping emissions out of the air,
17 and, quite frankly, saving the consumers some money,
18 because they can now put that can on the shelf. It still
19 has some value in it, rather than just that value going up
20 into the air.

21 But nevertheless, there is -- there does remain a
22 heel in that can and two to four percent, while much
23 smaller than we were looking at before, when you multiply
24 it times all the cans, it still needs to be dealt with in
25 some fashion.

1 In terms of the recycling rates, as we have been
2 talking to folks that implement recycling programs, 70
3 percent is actually something to be admired. Recycling
4 programs are tough -- efficient recycling programs are
5 tough to implement. And some of the people who we're
6 talking about have essentially said we're envious that
7 you're able to achieve that rate. And so we should
8 compliment, quite frankly, the retailers and the
9 manufacturers and the consumers for achieving that. And
10 what we're looking for here is just improving that system
11 even more.

12 BOARD MEMBER SHERRIFFS: You know, a simple
13 rebate. What if this is sold in a box that's got the
14 return address, and you send it in, and whoever gets it,
15 sends you \$10? Is that feasible or too simple --
16 simple-minded?

17 (Laughter.)

18 DEPUTY EXECUTIVE OFFICER KARPEROS: I'm not going
19 to suggest you have an idea that's simple minded.

20 (Laughter.)

21 DEPUTY EXECUTIVE OFFICER KARPEROS: It's a
22 very --

23 (Laughter.)

24 DEPUTY EXECUTIVE OFFICER KARPEROS: It's a very
25 good idea.

1 (Laughter.)

2 DEPUTY EXECUTIVE OFFICER KARPEROS: The
3 representative from the Auto Care Association talked
4 about, and we had in our slides that we're going to put
5 together a work group to talk through some potential
6 alternatives. They had suggested the program that could
7 be administered more directly by the retailers. This
8 would be another approach, and we can put that one on the
9 table to talk through.

10 BOARD MEMBER SHERRIFFS: It doesn't require a
11 seat or -- you know, the box is the receipt and done.
12 Good idea.

13 (Laughter.)

14 CHAIR NICHOLS: Because you weren't there. All
15 right. You can jump in and then we'll move on down the
16 line there.

17 BOARD MEMBER DE LA TORRE: Let me interject one
18 of my favorite quote is a Mencken quote. "For every
19 problem there's a solution that's neat, simple, and
20 wrong".

21 (Laughter.)

22 CHAIR NICHOLS: Always goods to remember.

23 (Laughter.)

24 CHAIR NICHOLS: All right. Mr. Serna.

25 BOARD MEMBER SERNA: Thank you, Chair.

1 So I understand that what's in front of us today
2 is an attempt to make much more clear the process of
3 dealing with the deposits and putting more detail on what
4 the deposits, the use for that. But I do have a concern
5 or a question, I guess. And it was touched on briefly by
6 Mr. Lowe, and I did bring this up with staff during my
7 briefing on this subject, and that is are we -- are we
8 doing any kind of lifecycle analysis on a regulation like
9 this?

10 In other words, this is an effort that is
11 intended to keep this extremely potent greenhouse gas from
12 being released into the atmosphere, but in the process of
13 having deposits and having to return cans, the consumer
14 presumably going back and forth to a retailer, has anyone
15 done any analysis in terms of how much transportation is
16 actually involved here, and whether or not that itself has
17 some impact on greenhouse gas emissions.

18 RESEARCH DIVISION CHIEF CROES: This is Bart
19 Croes with the Research Division. Yes, we have done that
20 full lifecycle analysis that considers all the
21 transportation related emissions and the recovery rates of
22 the refrigerant, and we still see a net greenhouse benefit
23 of about 28,000 metric tons of CO2 equivalents, which is
24 equivalent to about 6,000 cars being taken off the road.

25 BOARD MEMBER SERNA: Is the -- is the deposit

1 does it actually have to be acquired back by the consumer
2 at the retailer? Does the consumer have to physically be
3 there?

4 RESEARCH DIVISION CHIEF CROES: The requirement
5 is that -- this is on the can -- that within 90 days the
6 consumer returns the can, plus the receipt. What is
7 happening in practice is in trying to keep good customer
8 relationships, a lot of retailers are refunding that \$10
9 deposit even if they're past the 90 days.

10 BOARD MEMBER SERNA: I guess it goes to Dr.
11 Sherriff's idea about the box. But it seems like if
12 there's any opportunity to take a trip or two out of the
13 whole process, we ought to explore that.

14 VICE CHAIR BERG: So if I could just do a point
15 of clarification. One of the things that this container,
16 if we did not have this recycling program, would be
17 household hazardous waste.

18 CHAIR NICHOLS: Right.

19 VICE CHAIR BERG: And therefore, it has shipping
20 limitations. And so what we're doing is having an
21 opportunity for it to all come into one area and then ship
22 it. If we were not to do that, the consumer would be
23 responsible for getting it to the right place, and
24 it -- it isn't landfillable.

25 CHAIR NICHOLS: And it's not a practical

1 solution, because we know how poorly hazardous waste is
2 actually handled at the local level, I mean, by individual
3 households. It's just -- many people are responsible, but
4 others are not.

5 BOARD MEMBER SERNA: As a county supervisor, I
6 really appreciate that.

7 CHAIR NICHOLS: Okay. Ms. Takvorian, we're going
8 to take you next, and then go to the other side here.

9 BOARD MEMBER TAKVORIAN: Okay. Thank you, Chair.
10 Well, I'm very interested in your last comment having been
11 part of creating the first household hazardous waste
12 program in the early 1980s. So I would love to hear more
13 data about that, because one of my questions was going to
14 be why not coordinate more with the household hazardous
15 waste programs, because they are doing education. And I'm
16 a little concerned about the manufacturer doing the
17 education frankly. And so that's the piece of this that I
18 would be most concerned about and want to learn more about
19 it from the staff.

20 We -- I'm assuming that these refrigerants are
21 often used in lower income communities by do it
22 yourselves. So I appreciate the fact that the
23 information is available in both English and Spanish. I
24 would suggest that we need to expand the languages and
25 move into some of the Asian languages as well to reach out

1 to some of those populations. And I would suggest that if
2 the ARB has control of the funds, then they may want to be
3 disbursed utilizing a different formula. So perhaps we're
4 using CalEnviroScreen and looking at those communities
5 that are most impacted as those that should have the most
6 education. And I don't know enough about the program to
7 offer a better, simpler solution. That would probably be
8 wrong, but I'd be happy to think more about that.

9 So I think this program is excellent. I want to
10 add my congratulations, and I think that we can go deeper
11 with some of the communities and do-it-yourselfers that
12 clearly are the target of the education.

13 CHAIR NICHOLS: Just to be clear, no funds come
14 to ARB. We don't collect or disburse any funds under this
15 program. It's all with the retailers and the
16 manufacturers. And I think if we had tried to do it in
17 any other way, we would have run into some problems in
18 terms of our authority to do something like that. So we
19 are dealing with a situation where we can have some
20 ability to direct how the funds are dealt with. And I
21 think certainly your point about who uses these cans is
22 well taken.

23 I'd also like to say I didn't mean to "dis"
24 household hazardous waste programs. I'm aware that
25 there's a lot that goes on at the local level, but I just

1 also see that there's a lot of stuff that still winds up
2 in landfills and eventually in the ocean, in many cases in
3 the area where I live.

4 So let's turn to the other side here.

5 BOARD MEMBER TAKVORIAN: Can I just -- can I just
6 get clarification though, Chair -- sorry -- about -- I
7 understood that they -- that the executive officer does
8 have authority over approval of the use of the funds.

9 CHAIR NICHOLS: Yes, that's correct. That's
10 correct. Yeah, so we can definitely do some things to try
11 to urge them to spend them in ways that --

12 BOARD MEMBER TAKVORIAN: And I guess what's
13 the -- what's the basis of that approval versus control in
14 having it come back to ARB and is -- I don't know whether
15 that's a good idea, but has that been evaluated and maybe
16 you could speak to that as well as to how you're thinking
17 about the disbursement of the funds and what the focus
18 should be, because those are my questions.

19 Thank you.

20 CHAIR NICHOLS: You want to respond to that?

21 EXECUTIVE OFFICER COREY: I will. And I may want
22 a little support on this. But the regulation did identify
23 and does identify areas of qualifying expenditure. So
24 it's not just an open -- a blank check and really the
25 objective of those expenditures was in this broad

1 characterization and to the benefit of consumers. And
2 that really came under the category of consumer education
3 in terms of proper vehicle repair, treatment of the air
4 conditioning system, and participation in the deposit
5 return program. That there's good information out there
6 so we have a high return rate. So we define those
7 parameters.

8 But even with that characterization, the
9 structure was set up for -- before those expenditures
10 occur, that they clearly identify here is our game plan
11 to -- really to confirm that it is consistent with what
12 was envisioned in the regulation.

13 But with that, and, Ms. Takvorian, the comments
14 that you made, even during as we move forward on the
15 15-day process, I'd be interested in having the
16 conversation with you and others in terms of some of those
17 qualifying expenditures.

18 CHAIR NICHOLS: All right. Thanks.

19 Any questions on this side? Are you all, at the
20 moment, content with the -- yes, Ms. Berg.

21 VICE CHAIR BERG: So I think our intent here is
22 very well thought out. I am not getting the sense that we
23 really have the details well lined out. And so, Mr.
24 Corey, could you kind of walk us through the 15-day
25 change. I am concerned about the detail of returning the

1 funds, specifically having the funds with -- the
2 regulatory aspect of it, either a suggested forum -- how
3 are they going to be in compliance, how is the retailer
4 going to be in compliance with this new amendment and the
5 returning of funds?

6 So I am concerned about that. And like my fellow
7 Board members, I am also concerned about once the funds go
8 back and it appears 95 percent is going to go back to one
9 manufacturer, I'm concerned that we have no comments from
10 them. They haven't been here to testify. I'm seeing a
11 little bit -- and I might be jumping to that conclusion.
12 Maybe they have been involved with staff. But from a
13 Board member perspective, I have no idea what they're
14 thinking.

15 And so it seems that our intention is very good,
16 but that the details are a little bit fuzzy. And so could
17 you help us on the 15-day change, how you see that
18 working?

19 EXECUTIVE OFFICER COREY: Sure, Ms. Berg. So the
20 15-day -- and you really -- you are noting a recognition
21 of the fact that there are few comments here about the
22 path that those dollars take -- those unclaimed deposits.
23 The staff recommendation was to the manufacturer. You
24 just noted a few issues with that. You also heard a
25 recommendation that they stay with retailers. There's a

1 fundamental principle here, which was -- and it goes back
2 to my point that those expenditures be consistent with the
3 identified consumer benefits, that they be fully
4 documented, that they be reported.

5 And the reason we called out the 15-day is
6 because I would say we, too -- we have some details to
7 work through in terms of the tracking, the documentation,
8 and the reporting of those expenditures. And even in this
9 conversation in some of the observations from the Board, I
10 did hear some suggestions from the retailer side that I
11 think they're worth exploring. I think it's worth having
12 that conversation.

13 The manufacturers have been engaged. They've
14 been engaged since the development of the regulation. So
15 the fact that they're not here, I wouldn't take that as a
16 lack of engagement. They have been.

17 So what I see playing out over the 15-day process
18 with respect to the treatment and the tracking of the
19 dollars, we're going to have fundamental -- I have
20 fundamental questions that are going to go through that
21 public process, stakeholder process. And it really gets
22 to the point that I just described, it's tracking, it's
23 documentation, it's reporting, and it's providing us and
24 you the confidence that those dollars were fully spent to
25 the benefit of the consumers.

1 And I don't have and I don't think staff has the
2 full answers on that approach. I've got to work that
3 process some, but I know the outcome that we're looking
4 for and I know there's some models that have achieved that
5 goal before.

6 The one thing though that I wanted to add to, and
7 you touched on it, and I think it's an important point,
8 the comments that I was just making are really the
9 prospective, they're really what is in front of the Board,
10 in terms of the amendments. You heard comments about the
11 retrospective, the unclaimed deposits. And there
12 clearly -- you heard from the manufacturers or from the
13 association, there clearly is a difference of perspective
14 here with staff and what the reg said and the intent.
15 We're having that conversation. We're having that
16 conversation.

17 I believe there's options, but I'm crystal clear
18 on what the outcome here is, that those dollars be spent
19 to the benefit of consumers. We have a few options. And
20 based on the conversations I've had -- very preliminary
21 conversations with the associations and its members, and
22 our historical relationship, I'm pretty confident that
23 we're going to get to a workable outcome that achieves
24 that objective. But if not, we will -- we're going to
25 explore other options.

1 VICE CHAIR BERG: So within the resolution, do
2 you feel that you have the authority, based on the 15-day
3 changes that you have identified, to be able to do
4 everything you just outlined?

5 EXECUTIVE OFFICER COREY: For the prospective
6 characterization, yes, and the retrospective is outside of
7 the amendments of the regulation.

8 VICE CHAIR BERG: No, I understand that.

9 EXECUTIVE OFFICER COREY: So, yes, I do.

10 VICE CHAIR BERG: And then secondly, you know,
11 all this takes time. And so the small little thing of
12 labeling it seems like it's a long time away. But when it
13 takes us six months to go through the process, or nine
14 months, then that is not enough time as a manufacturer
15 going through the globalization harmonization act for
16 labeling, I can tell you that this is not a small deal.
17 So we need to give them time.

18 And having a hard date here, I'm concerned about
19 that, because it isn't like we can say we can get through
20 these 15-day changes and have everybody on board in 90
21 days. So if we need to take a look at that, I'd like a
22 suggestion on that.

23 And then finally, we need to come back to the
24 Board at some point and let us know if we're continuing to
25 build this reserve, because then we should be looking at

1 reducing the deposit.

2 EXECUTIVE OFFICER COREY: You have a commitment
3 that there will be a report back. I would give it
4 probably on the order of a year. We'll see how EPA's
5 program plays itself out, and that would be enough time to
6 have it played through the 15-day process and have a
7 little execution.

8 VICE CHAIR BERG: And it might -- and it really
9 might be 18 months, because it is a balance here. But at
10 the end of the day, we really struggled over what was the
11 right amount on this deposit. And so in another year to
12 18 months, we really should be able to say is it \$10 or is
13 it less?

14 Thank you.

15 CHAIR NICHOLS: Although, in another year to 18
16 months, this is going to be a declining problem, because
17 again we're phasing out this refrigerant, and as cars
18 turnover in the fleet, there are fewer of them with
19 leaking air conditioners. Thanks be to God.

20 You know, so let's -- let's look at this as
21 something that we have to deal with, but not overplay what
22 its impact is going to be.

23 Yeah. Exactly.

24 So -- sorry, one more comment. Yes. Or a
25 question, whatever.

1 BOARD MEMBER SHERRIFFS: I'm sorry.

2 CHAIR NICHOLS: No, no. We all need to be
3 comfortable.

4 BOARD MEMBER SHERRIFFS: But exactly following up
5 on that, in the long term, this takes care of itself,
6 because these are being phased out. But, in fact, these
7 will be the most resistant vehicles to phase out. This is
8 an extraordinary opportunity --

9 CHAIR NICHOLS: Yes.

10 BOARD MEMBER SHERRIFFS: -- to coordinate,
11 cooperate, get information into the environmental justice
12 communities, into the CalEnviroScreen communities. The
13 can is the canary. The can is the canary. And as Mr.
14 Ayala pointed out, you know, as we think about one can
15 representing three barrels of gasoline in terms of
16 greenhouse gas warming potentials, that's a lot of
17 potential mitigation.

18 And the problem isn't that somebody is plugging
19 this and replacing it, the problem is that it disappeared,
20 that it went into the environment. So that -- we need to
21 be sure that we're thinking about the programs that are
22 going to help stop that.

23 Thank you.

24 CHAIR NICHOLS: Sure. You know, at the time this
25 regulation was first adopted, this was a totally new type

1 of program for the Air Resources Board. I don't believe
2 we'd ever done anything like this before, interfering to
3 this extent in the consumer market, and dealing with the
4 individual customers and retailers. This is a whole
5 new -- a whole new venture that we launched as part of the
6 climate change program.

7 And as has been said many times, the impact
8 clearly has been very positive. But as it turned out,
9 there were some weaknesses in the program, as it was first
10 put together. And we do have an opportunity to make it
11 work better. So I am pleased that we've gotten this far,
12 but we've got a little more work to do in the 15-day
13 period, and I'm counting on Mr. Corey and his persuasive
14 skills to work through what happens to the money that is
15 being held, because this is an important piece of getting
16 this right.

17 So without further ado, do we have a motion to
18 approve?

19 VICE CHAIR BERG: So moved.

20 BOARD MEMBER RIORDAN: Second.

21 CHAIR NICHOLS: Motion and second.

22 All those in favor, please say aye?

23 (Ayes.)

24 (Unanimous aye vote.)

25 CHAIR NICHOLS: Any opposed?

1 Any abstaining?

2 Okay.

3 Seeing none, it is adopted.

4 And that concludes our business for today. But
5 we have a time for public comment. Has anyone signed up?

6 BOARD CLERK JENSEN: (Shakes head.)

7 CHAIR NICHOLS: No. No one who simply wanted to
8 stand up and speak to the Board today.

9 So at that -- in that case, we do have a closed
10 session for a report from our counsel on pending
11 litigation. And so we'll adjourn for that. And when it's
12 over, if any action has been taken, as a result, we will
13 come back and recess the meeting and announce what the
14 results were.

15 Okay. Thanks very much, everybody.

16 (Off record: 11:24 AM)

17 (Thereupon the meeting recessed
18 into closed session.)

19 (Thereupon the meeting reconvened
20 open session.)

21 (On record: 12:59 PM)

22 CHAIR NICHOLS: Okay. Great. So we are back
23 from our closed session, where we discussed pending
24 litigation. The Board heard reports from our Chief
25 Counsel and was able to ask questions, but no decisions

1 were made.

2 So with that, we will adjourn the meeting.

3 Thanks, everybody.

4 (Thereupon the Air Resources Board

5 adjourned at 1:00 PM)

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1 C E R T I F I C A T E O F R E P O R T E R

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing California Air Resources Board meeting was
6 reported in shorthand by me, James F. Peters, a Certified
7 Shorthand Reporter of the State of California, and was
8 thereafter transcribed, under my direction, by
9 computer-assisted transcription;

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 4th day of May, 2016.

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22 JAMES F. PETERS, CSR
23 Certified Shorthand Reporter
24 License No. 10063
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