



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

PUBLIC HEARING TO CONSIDER THE REGULATION TO
REDUCE EMISSIONS FROM IN-USE, ON-ROAD,
DIESEL-FUELED HEAVY-DUTY DRAYAGE TRUCKS IN
CALIFORNIA PORT AND INTERMODAL RAIL SERVICE

Public Hearing Date: December 6-7, 2007
Agenda Item No.: 7-12-07

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State of California
AIR RESOURCES BOARD

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Public Hearing Dates: December 06-07, 2007
Agenda Item No.: 07-12-7

I. GENERAL DISCUSSION

This Final Statement of Reasons provides an update to the *Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for Drayage Trucks (Staff Report)*, released to the public on October 19, 2007 (ARB, 2007), and is incorporated by reference herein.

I.a Description of Board Action

At its December 7, 2007 public hearing, the Air Resources Board (ARB or Board) adopted Resolution 07-58 approving the adoption of section 2027, title 13, California Code of Regulations (CCR), which establishes requirements designed to reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NOx) from in-use, on-road, diesel-fueled heavy-duty drayage trucks in port and intermodal rail yard service in California (drayage truck regulation). In summary, drayage trucks subject to this regulation must meet the following requirements: 1994 – 2003 model year (MY) engines must be equipped with a level 3 Verified Diesel Emissions Control System (VDECS) for PM emissions control, or upgrade to a model year 2004 or newer truck, or meet 2007 model year California or federal emissions standards by December 31, 2009 (Phase 1 requirements). The regulation further requires all drayage trucks to meet 2007 model year California or federal emissions standards by December 31, 2013 (Phase 2 requirements).

The rulemaking was initiated by the publication of the Notice Of Public Hearing To Consider The Adoption Of Proposed Regulation To Control Emissions From In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks At Ports And Intermodal Rail Yard Facilities (45-Day Notice) on October 19, 2007. Written comments were received during the 45-day public comment period, which closed on December 7, 2007, the date of the public hearing on the regulation. ARB also received written and oral

comments made by concerned citizens, community health organizations, and affected businesses on the day of the public hearing.

In response to comments received after publication of the initial proposed regulation, ARB staff presented to the Board members at the public hearing modifications to the regulation. The Board unanimously approved the regulation with staff's proposed modifications, but requested staff to further evaluate and address concerns of potential circumvention of the regulation's requirements that could occur if drayage operations to intermodal facilities were located just outside the 80 mile radius.

I.b Modifications to the Original Proposed Regulation

The resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate (including modifications specified by the Board at the December 7, 2007 hearing), and to make the modified regulatory language available for a supplemental comment period of 15 days. As directed by the Board, staff investigated drayage truck activities at rail yards outside the 80 mile radius and modified the regulation to include a minimum truck visit limitation for all rail yards that if exceeded would require that such rail yards become subject to the regulation. The Notice of Public Availability of Modified Text for the Drayage Truck Regulation (15-Day Notice), which is incorporated by reference herein, was released for public comment on May 28, 2008 and remained open through the close of business on June 13, 2008.

Summary of Proposed Modifications

In the 15-Day Notice, ARB made the following modifications to the text of the regulation:

1. Modified the labeling and recordkeeping requirements to ensure compatibility with federal law. Specifically, modifications were made to the following sections:
 - Section (d)(3)(A)(3) and section (d)(5)(A)(3) were modified to delete the requirements that the drayage truck owner and motor carrier had responsibility for affixing a Drayage Truck Registry (DTR) compliance label to the truck.
 - Sections (d)(3)(A)(6) and (d)(4)(B) were deleted since the regulation no longer requires a maintenance log be kept on the truck.
 - Section (d)(3)(A)(7) (now section (d)(3)(A)(4)) and section (d)(5)(A)(4) were modified to no longer mandate that dispatching motor carrier information be kept in the truck. However, the truck driver is still required to provide this information to enforcement personnel upon request.
 - Section (d)(6)(A) was modified to no longer require that a terminal or rail yard check for a DTR label to determine a truck's compliance. This section now requires that a terminal or rail yard check to make sure a truck is DTR compliant without specifying the method on how they conduct such checks. Terminals and rail yards are encouraged to use a method to collect truck information

that best suits their needs. Possible methods include: manually noting the license plate or VIN number, using optical license plate readers, having drayage trucks install remote sensors and using infrared readers, and / or requiring drayage trucks to use a compliance label.

- Definition (c)(18) was added to define “DTR Compliant”.
 - Sections (c)(8), (e)(1)(E), (e)(4), and (e)(5) that referenced DTR compliance labels were deleted since the regulation no longer requires compliance labels.
2. Clarified the definition of a ‘port’ (section (c)(32), which is now section (c)(33)) to exclude port property that is neither related to, nor primarily used to engage in, water-borne commerce. If a port authority dedicates port owned or controlled lands to commercial enterprises that neither receive nor transport ship-borne cargo, activities that occur on such lands by the enterprises or others would not be subject to the regulation. Port owned or controlled land could also be dedicated to environmental efforts, such as marine estuaries. Those properties typically are not easily controlled because of the lack of infrastructure, such as fencing and monitored entrances, typically seen at port and terminal entrances. As the regulation is designed to reduce emissions from drayage trucks transporting ocean-borne cargo, the regulation was modified to minimize the burden on businesses and port lands where ocean-borne commerce does not occur.
 3. Modified the regulatory requirements in Phase 1, section (d)(1), to add a compliance option (C) that states that engines meeting the 2007 emission standard will be considered fully compliant. This option was added to clarify that it has always been ARB’s intent that vehicles meeting 2007 emission standards are fully compliant with both Phase 1 and Phase 2 of the regulation.
 4. Modified the regulatory requirements in Phase 2, section (d)(2), to require all drayage truck engines (including model years 2004 through 2006) to meet 2007 California or federal emission standards by December 31, 2013. Initially, 2004 through 2006 MY engines were not required to reduce emissions. However, two concerns were raised during the 45-day public comment period:
 - The need to further reduce emissions from 2004 through 2006 MY engines to alleviate adverse near source health impacts.

- Allowing 2004 through 2006 MY engines as a compliance option could dramatically increase that segment's population and reduce the overall effectiveness of the regulation (i.e. purchasing a 2004 through 2006 truck to avoid Phase 2 regulation requirements).

To address these concerns, ARB modified the regulation to require all drayage truck engines (including model years 2004 through 2006) to meet 2007 California or federal emission standards by December 31, 2013 (Phase 2).

5. Added section (d)(3)(A)(2) in place of sections (d)(3)(A)(4) through (5) to clarify a drayage truck owner's responsibilities when installing a VDECS on a vehicle. These responsibilities include ensuring that the VDECS is properly installed, functions properly, is repaired or replaced promptly when a malfunction occurs, and is not misused or tampered with.
6. Modified section (d)(6)(A) to require port terminals and rail yards to start collecting noncompliant truck data starting September 30, 2009 rather than January 1, 2009. This data is vital to ARB's enforcement efforts as it identifies all the noncompliant trucks accessing California's ports and rail yards. The modified date now coincides with the deadline for which truck owners must register with the DTR, simplifies regulatory requirements, and eliminates unnecessary data collection before September 30, 2009.
7. Modified the definition of "Intermodal Rail Yard" (former section (c)(23), which is now section (c)(24)) to include intermodal rail yards located more than 80 miles from the nearest port, if they have, after January 1, 2008, 100 or more average daily drayage truck visits in any one month. Once a rail yard exceeds the 100 visit threshold, it will be subject to the regulation, regardless of falling below that threshold in any subsequent monthly period. This change was made at the Board's direction to address concerns of potential circumvention of the regulation's requirements by moving drayage operations to intermodal facilities located just outside the 80 mile radius.

As stated, subsequent to the Board hearing, staff performed an analysis of intermodal rail facilities located more than 80 miles from a port to better understand the impact of including these facilities under the regulation. Staff then performed a detailed risk analysis on the largest of these facilities, the Fresno BNSF rail yard, to estimate the worst case impact to nearby communities. The analysis included an assessment of the health risk to local communities and a review of the rail yard's activities, and showed the following:

- The health risk is less than 10 in a million from drayage truck emissions to nearby communities.
 - The rail yard is open seven days a week and has an average of 84 visits per day.
 - The rail yard handles only agricultural products with no port-related containers.
 - 35 percent of the trucks servicing the facility are model year 2004 or newer.
 - A large segment of the trucks that service the Fresno BNSF facility also visit other ports or intermodal rail yards.
 - There are presently less than 100 drayage truck visits per day at the Fresno BNSF rail yard, and, as Fresno BNSF is the largest rail facility, staff believes that no intermodal rail yard located more than 80 miles from a port is subject to regulatory requirements at this time. However, to protect against future growth at these rail yards, potentially reducing the regulation's effectiveness, the regulation will require drayage trucks servicing these facilities to meet all regulation requirements – once the 100 truck limit is reached.
8. Added rail yard authority reporting requirements to section (d)(7)(C). The reporting requirements will provide the ARB with a drayage truck tracking mechanism to determine if and when the smaller rail yards exceed the average 100 daily truck visits and would be required to comply with regulatory requirements.
 9. Added the Average Daily Drayage Truck Visit definition to section (c)(4), which explains how to calculate the Average Daily Truck Visit requirement covered in item 7 above.
 10. Renamed section 2027 title from “Purpose and Definitions of Control Measure” to “In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks”. The title was changed for clarity and to briefly summarize the type of trucks covered by the regulation.
 11. Modified definition of former section (c)(23), which is now (c)(24), “Intermodal Rail Yard”, to clarify that the regulation only applies to rail yards owned or operated by Class I railroads since only these railroads operate intermodal rail yards in California.

12. Modified the definition of former section (c)(34), which is now (c)(35), “Port Property” to clarify that the regulation applies to all properties within a port whether publicly or privately owned. This definition was modified to avoid the possible loophole of land ownership change to avoid complying with the requirements of the regulation.
13. Corrected the numbering hierarchy in (d)(3), (5), (6), and (e)(1).

I.c Nonsubstantive Changes to the Final Regulation Order

In response to comments received during and after the 15-Day notice comment period, ARB has made several nonsubstantive changes to the regulation as summarized below. The changes do not change the original intent of the regulation and are for clarification purposes only.

Summary of Nonsubstantive Changes

1. Renamed Schedule A title from “Terminal Reporting Schedule” to “Terminal and Intermodal Rail Yard Reporting Schedule”. The title was changed to correspond with the schedule’s Board approved applicability and column titles and provide clarity.
2. Modified the following sections, listed below, by inserting the word ‘intermodal’ before the words ‘rail yard’ to clarify the regulation’s intent that certain requirements, definitions, and schedules affect only intermodal rail yards. These minor changes are expected to avoid confusion of operators of non-intermodal rail yards (non-intermodal rail yards have no drayage truck activity).
 - Applicability Section (b)(2)(E)
 - Definition Sections (c)(4), (c)(20), and (c)(37)
 - Requirements and Compliance Deadlines Section (d)(6)(B), (d)(7)(A), and (d)(7)(B)
 - Schedule A Column Title
3. Modified the definition of section (c)(23) “Heavy-Duty” by removing the words ‘or more’ as they are redundant. See italicized reference of section (c)(23) below.

“Heavy-Duty” is a manufacturer’s gross vehicle weight rating of greater than 33,000 ~~or more~~ pounds.
4. Corrected the numbering reference in (d)(3)(A)(2)(f) to reference intended section (d)(3)(A)(2)(c).
5. Modified the ‘drayage truck visit’ data collection start date and the first reporting date in section (d)(7)(C). The relevant language of section (d)(7)(C), as modified, is presented below in italics, with addition to language indicated by underline and deletions by strikeout.

The first quarterly verification report shall include average daily drayage truck visits for each calendar month starting ~~January 2008~~ with the effective date of the regulation and submitted to ARB according to schedules A and B above ~~through July 2008~~ and shall be due to ARB on or before August 15, 2008. Subsequent quarterly verification reports shall include average daily drayage truck visits for the three calendar months prior to each reporting date. Quarterly verification reports shall include, but are not limited to, the following information;

The data collection start date was changed from 'January 2008' to 'the effective date of the regulation' to correspond with the date the regulation becomes effective to avoid a requirement that retroactively predates the regulation. The verification reports are used to determine whether a rail yard reaches the threshold of 100 daily truck visits during a calendar month. If this threshold is met, the rail yard is then required to comply with additional requirements of the regulation. As the earliest additional requirement states truck owners shall register in the DTR by September 31, 2009, the modified start date will leave adequate time for rail yards to comply with regulatory requirements – should the 100 truck trigger be reached.

I.d Fiscal Impacts of Proposed Changes

The Board has determined that although this regulatory action will likely have a fiscal impact on local public agencies such as regional port authorities, district harbor commissions, public terminal operators, rail road commissions, and transit authorities that regulate the operation of port and intermodal rail facilities, the impact will not be a reimbursable mandate pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code. The fiscal costs¹ that will be incurred by these local public agencies are indistinguishable from those that will be incurred by the private sector. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55-57. ARB further believes that these costs are likely to be absorbed by their respective agency budgets, or could be passed on private terminal operators. See Government Code section 17556(d).

Other fiscal impacts include the effect of the proposed modifications on State government. ARB anticipates that an additional six (6) staff members will be required at a total cost of \$840,000 per year (\$140,000 per staff member) to implement and enforce the provisions of the regulation. The increase in State agency expenditure is anticipated to start with the 2008 through 2009 fiscal year. Implementation and enforcement of the regulation will incorporate pre-compliance outreach and training activities for the regulated industry to ensure that they are aware of the regulation and have a full understanding of its requirements. These actions will take place after the regulation has been approved by the Office of Administrative Law (OAL). Subsequent to the first regulatory deadline (September 1, 2009), compliance assessment and enforcement actions, as necessary, will commence.

¹ Staff determined that these local government agencies may incur miscellaneous capital and labor costs associated with implementation of the proposed regulation. Such costs include but are not limited to the following: installation of electronic hardware (OCR and / or RFID systems, video surveillance cameras, and computers) to collect, monitor, and record vehicle license plate data and operator / motor carrier information at the terminal gates, and correspondingly provide ARB with same information, labor costs associated with terminal gate operator vehicular inspection and compliance training, and costs associated with conducting outreach to truck owner-operators and motor carrier firms.

I.e Consideration of Alternatives

Alternatives to this regulatory action were considered in the *Staff Report*, in accordance with Government Code section 11346.2. After responding to the comments received, ARB concludes that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the regulation adopted by the Board.

II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

II.a Written Comments Received During 45-Day Public Comment Period

The Board received several written comments during the formal 45-day comment period. The 45-day public comment period was open from October 19, 2007 to December 7, 2007. Persons submitting written comments during the public comment period are listed in Table 1 below. Following the list are summaries of each comment, as well as responses to the objections, concerns, and recommendations made. Each response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

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

Comment Number	Name & Affiliation	Date of Comment
1	Horton, Eric, Owner A Plus Materials Recycling / Ready Mix California	10-27-07
2	Phillips, Craig Ironman Parts Santa Monica, California	11-07-07
3	Wang, Jeffrey Drayage Company Owner Long Beach, California	11-09-07
4	Altnow, Dennis President, Tiger Lines California	11-21-07
5	Teresi, Anthony Teresi Trucking California	11-21-07
6-1	Torres, Chris F & L Farms Trucking Princeton, California	11-20-07

Comment Number	Name & Affiliation	Date of Comment
6-2	Goliti, Rob J. Midnight Express Trucking Fresno, California	11-27-07
6-3	Vogel, Dick Commerce Truck & Equipment Sales California	11-27-07
6-4	Cummins, Anna California Port Trucking Company Commerce, California	11-27-07
6-5	Ambroziac, Alain California Port Trucking Company Oakland, California	11-27-07
6-6	Contreras, Hector California Trucking Company San Diego, California	11-20-07
6-7	Rankin, Phil, Manager Mountain Valley Express Manteca, California	11-27-07
6-8	Cook, Mike, Fleet Manager A&A Concrete Supply California	11-26-07
6-9	Callier, Randy, Secretary / Treasurer A&A Ready Mixed Concrete Gardena, California	11-28-07
6-10	Caito, Joseph, President Caito Fisheries Fort Bragg, California	11-20-07
6-11	Osofsky, Alan Rodgers Trucking Company California	11-28-07
6-12	Alberti, Robert Mountain Valley Express Manteca, California	11-20-07
7	Mirassou Morehouse , Lindamar, President G & L Supply Morgan Hill, California	11-26-07
8	Arzaga, Angel E, CDS Concerned Citizen San Jose, California	11-26-07
9	Shuemake, Kenneth Shuemake Trucking Firebaugh, California	11-20-07

Comment Number	Name & Affiliation	Date of Comment
10	Murray, Marcia, President Century Truck & Equipment, Fontana, California	11-26-07
11	Wheeler, Robert, Ph.D Private Citizen Murrieta, California	11-27-07
12	Mitchell, Mike, President Redwood Coast Trucking California	11-20-07
13	Dacay, Dominic, Operations Manager InterState Oil Company California	11-27-07
14	Sauer, Eric, VP Policy Development California Trucking Association California	11-23-07
15	Russell, Dean, Tactician MCA Logistics City of Industry, California	11-20-07
16	Edgar, Bradley, Dr., Executive VP Cleaire Advance Emission Controls San Leandro, California	11-30-07
17	Flores, Walter, President ITDA Huntington Park, California	12-02-07
18 Duplicate	Dacay, Dominic, Operations Manager InterState Oil Company California	11-27-07
19	Martin, John Private Citizen San Pedro, California	11-16-07
20	McLaurin, John, President Pacific Merchant Shipping Association California	12-03-07
21-1	Steingrimsdottir, Hrefna Private Citizen New York	12-03-07
21-2	Candice, Kim (on Behalf of Members) Coalition for Clean Air California	12-05-07
22	Anderson, Stephen and Betty Private Citizens Location Unknown	12-03-07

Comment Number	Name & Affiliation	Date of Comment
23	Sloat, Steve, VP Pacific Coast Coffee Association Location Unknown	12-04-07
24	Johnston, Jim, President Owner Operators Independent Drivers Assoc. Location Unknown	12-03-07
25	Wallerstein , Barry R., D. Env., Executive Officer South Coast AQMD Diamond Bar, California	11-30-07
26	Kubsh, Joseph, Executive Director MECA California	12-06-07
27	Bailey, Diane NRDC California	12-05-07
28	Ratner, Jill, President Rose Foundation for Communities & Environment, Location Unknown	12-05-07
29	Faulkner, Ron, President Faulkner Trucking Tulare, California	12-05-07
30	Gusman, Shane Broad & Gusman LLP / California Teamsters California	12-05-07
31	Bailey, Diane, NRDC et al California	12-05-07
32	Pimentel, Michael Private Citizen Location Unknown	12-05-07

Comment No. 1:

A representative of a recycling business questioned the applicability of the regulation to non-port related businesses that operate on contiguous port property at the Port of Stockton. The concern is that some businesses, such as their recycling business with no affiliation to water-borne commerce, cargo, or port activity, may have to comply with the provisions of the regulation because they operate on contiguous port property.

Response to Comment No. 1:

At the December 7, 2007 Board hearing, staff proposed modifications that included changes in the definition of “Port” and “Port Property” to exclude areas with no water-borne based goods movement activities. Therefore, industrial facilities on contiguous port property not engaged in water-borne commerce will not be impacted by the drayage truck regulation.

Comment No. 2:

A California retrofit business owner expressed concern that from their experience with recently adopted diesel PM air toxic control measures, 80 percent of affected entities chose to delay compliance as long as possible (i.e., until a few months before the compliance deadline). This has typically created an unusual demand for installation labor and strained the resources of the firm. The owner believes that ARB should draft a regulation that implements a series of compliance dates or provide tiered incentives for early compliance.

Response to Comment No. 2:

ARB understands the concerns regarding delayed compliance. The availability of incentive funds through the Proposition 1B: Goods Movement Emission Reduction Program (Program) provides the impetus to accelerate early compliance. These funds are only available for projects that are completed earlier than a regulatory compliance date, or that achieve more emissions reductions than would be required once the new regulation became effective. As of May 2008, three local entities (Bay Area and South Coast Air Quality Management Districts and San Diego Air Pollution Control District) have been awarded Proposition 1B funds for the first year of the Program to help offset the cost of retrofit devices for drayage trucks serving the State’s major seaports and intermodal rail facilities.

These local agencies have begun accepting applications from eligible truck owner-operators (and fleet owners) for incentive funding. ARB strongly advises interested parties to refer to their local agency’s website for funding application information, because each local agency will only be accepting applications during specific time periods and not on a continuous basis. Once applicants are approved and contracts are signed, the Program guidelines (ARB, 2008)² require that program funds for installing retrofit devices on drayage trucks (Phase 1 requirements)

² (ARB, Goods Movement Emissions Reduction Program, February 2008).

only be awarded for devices that will be installed and operational by June 30, 2009 (i.e., 6 months prior to the regulation deadline).

ARB also intends to conduct public workshops and public outreach events prior to the first compliance deadline to inform independent owner-operators and motor carrier firms of the regulatory requirements. Local air quality districts and port authorities have also been conducting their own public outreach for disbursement of State Proposition 1B funds. ARB believes that early outreach will ease the last minute demand for retrofit services. Additionally, the Ports of Los Angeles and Long Beach are planning for a significant amount of truck replacements which would ease the demand on retrofit companies.

Comment No. 3:

A drayage firm owner feels that companies who use relatively newer, less polluting equipment are disadvantaged in the marketplace when compared to the existing fleet of lowly maintained, higher polluting vehicles. The owner strongly supports the banning of all trucks older than a 1997 model year truck from drayage operations at the San Pedro Bay Ports immediately, and asked Board members to take action soon.

Response to Comment No. 3:

While compliant pre-1997 model year trucks are permitted to operate with appropriate retrofit devices until the end of 2013, all pre-1994 model year trucks will be restricted from port and intermodal rail service when this regulation goes into effect. ARB determined that most 1994 or newer model year trucks can be cost-effectively retrofitted with a level 3 diesel particulate filter. To achieve additional NOx emissions reductions, all drayage trucks servicing the ports and intermodal rail facilities will be required to meet model year 2007 California and federal emissions standards by the end of 2013.

Comments Nos. 4, 6-1 to 6-12, 7, 9, 10, 12, 13, 15, 18, 20, and 29.

The following concerns were expressed in several comments by various individuals and businesses most of which are affiliated with the California Trucking Association (CTA).

1. The availability (supply) of compliant trucks and retrofit devices.

2. The potential for excessive price increases levied on newer model year engines and trucks, and the lack of competitive pricing for verified diesel emissions control systems (VDECS).
3. The potential impact of retiring pre-2004 model year trucks on the used truck marketplace.
4. The future impact that the requirements of the regulation will have on new port drayage entrants and drayage truck driver demand.
5. Why existing emissions control technology are not being considered for pre-1994 model year engines.
6. The feasibility of consolidating the drayage truck regulation requirements with those of the proposed Statewide truck and bus regulation.
7. The requirements of the regulation could have adverse economic impacts on the California economy. There are concerns that at the macro-economic level, issues such as new engine costs, rate increases to cover the cost of the technology, and the lack of competitive pricing will all adversely impact the California GDP.
8. The ability of ARB to enforce the program.

Response to Comment Nos. 4, 6-1 to 6-12, 7, 9, 10, 12, 13, 15, 18, 20, and 29.

1. (Response to Concern 1) ARB evaluated the potential demand and supply scenarios for retrofit devices (DPF) in 2009, and for model year 2007 used trucks in 2013, and concluded that for port and intermodal rail drayage, the supply would be adequate.

ARB assessed that despite a drop in the production of new heavy duty diesel engines and class 8 tractors in 2007 and the first half of 2008, ARB expects heavy duty diesel truck production to rebound in late 2008 and beyond. These new trucks are typically used in long-haul service and often wind-up in used truck lots or in drayage after the initial 3-5 year leases expire. Therefore, ARB determined that the nationwide supply of model year 2007 or newer used heavy duty diesel vehicles should exceed 600,000 vehicles in 2013, whereas approximately 30,000 vehicles are scheduled for replacement during Phase 2. ARB believes that in the event shortages of used model year 2007 compliant vehicles in the marketplace causes used truck prices to escalate, the surge in prices should only be temporary.

Similarly, emissions control manufacturers and industry representatives assured ARB that there will be an adequate supply of verified diesel emissions control systems available to meet the expected demand for on-road heavy duty truck retrofits in California (see Comment No. 26 in Section II.a and Comment No. 31 in Section II.c).

ARB further believes that with appropriate outreach, many owner-operators will choose early compliance and avoid potential product shortages. In addition, owner-operators that choose to participate in the Proposition 1B Program will be required to install retrofit devices at least six months prior to the December 31, 2009 deadline. For Phase 2 requirements, participating independent owner-operators will be required to replace trucks up to two years prior to the requirements taking effect, and thereby spread out some of the demand over time.

2. (Response to Concern 2) ARB determined that most truck manufacturers raised new 2007 model year vehicle sale prices between \$7,500 and \$10,000 to reflect the additional cost of an OEM diesel particulate filter (DPF). This price increase was due to the new U.S. EPA standards which went into effect in 2007. Annual new model year truck price increases typically reflect the innovations and cost of technological improvements. Other supply issues that could potentially have an impact on used model year 2007 or newer truck and level 3 VDECS prices are discussed in Response to Concern 1 above.

ARB further determined that the lack of competitive pricing for VDECS is not an issue at this time, as price differentials between competing products and suppliers were observed to be marginal. DPF list prices were found to average \$10,000. See Table 2 - Appendix D of the Technical Support Document (ARB, 2007) for the full range of list prices.

3. (Response to Concern 3) ARB agrees that as a result of the regulation, residual values of pre-2004 model year vehicles retired in 2013 might be impacted. Based on price versus vehicle age models that staff developed in the Technical Support Document – Appendix D (ARB, 2007), staff estimated that there may be a trade-in value of 50 percent of the modeled residual value in 2013. The potential impact of retiring pre-2004 model year trucks was factored into the compliance cost to the owner-operator and the overall cost-effectiveness of the regulation.

4. (Response to Concern 4) ARB expects the demand for new and existing drayage operators to be stable with expectations for modest growth through both phases of the regulation albeit the demand for drayage services is subject to the health of the overall economy, and international trade and import trends, amongst others. ARB believes that with costs pass-through assumptions (which implies that the cost of complying with the requirements is met with corresponding increases in drayage rates and such increases in rates are further passed on along the goods supply chain) and available public financial assistance from programs such as the State approved Proposition 1B bond fund (ARB, 2008), the regulation should not significantly affect the number of drayage operators and drivers.
5. (Response to Concern 5) ARB evaluated the viability of retrofitting pre-1994 model year engines and concluded that even though level 3 VDECS technologies are available, the higher cost and limited options associated with the retrofit make it an unfeasible solution. In addition, the pre-1994 model year trucks are considered to be at the end of their useful or economic life (20 years). Lastly, even with a level 3 VDECS installed on pre-1994 model year engines, they would still emit higher levels of PM emissions compared to retrofitted 1994 and newer model year trucks.
6. (Response to Concern 6) ARB understands the desire to have the drayage truck rule combined with the Statewide truck and bus regulation. However, there is an immediate critical need to reduce exposure to diesel exhaust in communities where port and intermodal rail drayage activity occurs. Therefore, the Board chose to address these two segments of the truck population separately.
7. (Response to Concern 7) ARB agrees that there likely will be economic impacts associated with the regulation. ARB believes that some impacts such as new engine costs will be lessened due to depreciation and public incentives for new truck purchase. ARB also assumed that costs incurred by drayage truck owner-operators would be passed on with corresponding increases in drayage and container shipping freight rates, and that these rates were much less than one percent of the overall overseas shipping costs. Furthermore, with public financial assistance available from sources such as the State approved Proposition 1B bond fund (ARB, 2008) and port matching funds, the economic impacts to small businesses could be substantially reduced and result in a far greater benefits to all California citizens and the environment.
8. (Response to Concern 8) Compliance verification and enforcement are important elements to the success of the drayage truck program.

ARB anticipates that additional staff will be needed to implement and enforce the provisions of the regulation. ARB has budgeted for several positions to enforce recently adopted measures related to diesel emissions and diesel-risk reduction in California. For the drayage truck regulation, ARB field enforcement ARB will continue to inspect heavy duty diesel vehicles equipped with VDECS for compliance, counterfeiting, and tampering at both roadside and fleet locations, and will cite vehicle owners if found to be in violation.

Comment No. 5:

The owner of a California port trucking firm that turns over its trucks every five years expressed concern that the retrofit requirement will decrease demand for trucks without a level 3 VDECS, hence eroding truck residual values. The firm determined that they must retrofit (and at a cost of \$20,000 per vehicle) before selling their vehicles, and feared that if they do not retrofit, the demand for unretrofitted vehicles will diminish and hamper their ability to replace vehicles. The firm also feared that that they may not be able to command a premium price for their late model year vehicles.

The trucking company owner suggests that regulatory requirements be amended to bypass retrofits altogether, and phase up truck replacements so that in 15 years, all California trucks are compliant with 2007 model year standards.

Response to Comment No. 5:

ARB believes that most truck owner operators may face costs (ARB, 2007) of approximately \$10,000 (2006 dollars) for truck DPF retrofits. Secondly, ARB also expects that residual values for older trucks not retrofitted with pollution control equipment will likely erode faster than trucks that are equipped with one. Hence, retrofitting trucks may actually help preserve truck residual value.

ARB further believes that each individual business will determine whether to retrofit their vehicle and then replace, or upgrade to a 2007 model year complaint vehicle. For some business owners, it may make more sense to extend the life of an existing vehicle, or they may have lease commitments, or they may have to wait to recover their investment in the vehicle and therefore choose to retrofit instead of replacing the vehicle. Other firms may find it more economical to replace their trucks with model year 2007 compliant vehicles and become Phase 2 compliant when it is time to turnover their vehicles.

Comment No. 8:

A consultant for port trucking firms requested that ARB not enact / adopt the proposed regulation. He stated that ARB should focus its attention on controlling emissions from other, larger sources such as ships and automobiles in the harbor area.

Response to Comment No. 8:

Controlling emissions from in-use, diesel fueled heavy duty drayage trucks in port and intermodal rail service is just one of many program measures that ARB has adopted or is in the process of adopting to address the mitigation of diesel pollution at the local ports. Other measures are currently being proposed or already have been developed to address emissions from ships, cargo handling, and other port operations. The Staff Report (ARB, 2007) documents that drayage trucks are a significant source of diesel PM, and the emissions reductions that will be achieved by the drayage truck regulation will result in significant health benefits.

Comment No. 11:

A citizen expressed concern that the drayage truck regulation does not go far enough and recommended the replacement of the most polluting trucks with the latest commercially available clean truck technology, requiring model year 2007 trucks in 2013 for all trucks, including all major inland and central valley rail yards in the regulation's applicability, ensuring that the ARB is able to enforce the drayage truck rule, and disclosing sources for funding of the regulation. He further believes that the proposed regulation should be made effective sooner than the 2009 implementation date.

Response to Comment No. 11:

At the ARB Board Hearing on December 7, 2007, staff proposed modifications that additionally required model year 2004 through 2006 heavy duty diesel trucks in port and intermodal rail service to also be compliant with California and federal model year 2007 emissions standards by 2013. Staff also proposed modifications that required all intermodal rail facilities in California that averaged 100 or more truck visits per day to be included in the regulation's requirements.

ARB anticipates that additional staff will be needed to implement and enforce the provisions of the regulation. ARB has budgeted for additional positions to enforce the drayage truck regulation.

Public funding for heavy duty diesel retrofits and replacements using Proposition 1B State funds was addressed as a parallel measure. In May 2008, the Board awarded Proposition 1B funds to local entities that lie within three of the State's four primary trade corridors to help offset the cost of retrofit devices and upgrades for drayage trucks servicing the State's major sea ports and intermodal rail yards. The three trade corridors or trade zones are the Los Angeles / Inland Empire, Bay Area, and the San Diego / Border trade corridors; no entities within the Central Valley trade corridor applied for funds for drayage truck projects. However, since the Goods Movement Emission Reduction Program looks at the trade corridors as part of a single goods movement system, local agencies administering bond monies will be required to fund projects based on the total emission reductions expected in all four corridors (not just their local area). Regions like the San Joaquin Valley with high through-truck traffic will benefit from projects administered by entities in other corridors. Other sources of funding from container tariffs, as well as matching funds to the Proposition 1B are also being independently proposed (Port of Los Angeles, 2007)³ and adopted by several port authorities, and being considered by the California State Legislature (SB 974, 2008)⁴.

With regards to expediting the requirements of the regulation prior to the December 31, 2009 effective date, ARB is working closely with port and intermodal railyard staff to expedite the registration process as well as the retrofitting and replacement of trucks.

Comment No. 14:

The California Trucking Association (CTA) recommended that the Board consider the following: delay adoption of the regulation until the Proposition 1B bond funding proposal is considered by the Board, or until an alternate means of funding the regulation has been devised; address the supply of used model year 2007 heavy duty diesel trucks in 2013; consider the potential impacts of the rule if drayage operators are unable to pass through costs, along with the associated impact on labor supply; assess actual costs incurred by small business owner-operators as opposed to life-cycle costs; re-determine cost effectiveness and the feasibility of the proposed measure; and closely assess labor supply conditions in port and intermodal rail drayage and correspondingly specify a contingency plan in the event of negative outcome or container transportation constraint. CTA elaborated on these concerns as follows:

³ (Port of Los Angeles, Press Release, January 2008).

⁴ (SB 974, Lowenthal, Alan, Ports: congestion relief, air pollution mitigation: regulatory fee, July 2008).

1. The unfavorable impact the increased demand for MY 2007 and newer trucks will have on the net cost to drayage operators.
2. The ability of drayage operators to pass through higher costs. CTA contends that as pointed out in the San Pedro Bay Ports Clean Air Action Plan (SPBPCAAP) and in the study authored by Dr. John Husing (Husing et al, 2007), drayage operators have virtually no capacity to pass through costs, and ARB staff have failed to notify the Board about this finding. Furthermore, the lack of barriers to entry into the sector has led to ferocious price competition and left drayage operators with little bargaining power. ARB must also consider the outcome that could result from the inability to pass through costs.
3. The ability of the remaining drayage operators to make up for significant capacity lost due to operators being driven away or out of business.
4. ARB's belief that a loss of drayage operators is an opportunity for those drayage operators who remain in the business and there is no analytical support for the reality or likelihood of this assumption.
5. Truck Worker Identification Card (TWIC) requirements are expected to result in the loss of 15 to 22 percent of drayage operators. In addition, cargo growth at the ports is expected to result in a need for an additional 3,900 to 5,200 drayage operators.
6. New market entrants face significant unsubsidized costs (as a result of the regulation) to become drayage operators.
7. The prospect that the rule will have no impact on the adequacy of the drayage fleet to move cargo through the State's ports. ARB should conduct the appropriate analysis of the potential impacts of the rule on the capacity of the drayage fleet and propose actionable provisions in the rule to ensure that the rule does not disrupt or hinder the flow of cargo.
8. The costs annualized over the residual economic life of the equipment as determined by ARB staff do not realistically portray the actual costs that drayage operators will face.
9. The fundamental validity of the EDRAM model is questionable with the basic tenet that the costs pass-through assumption is made. The EDRAM analysis also understates some costs and excludes others in the determination of the overall costs of the regulation. Furthermore,

annualized costs severely underestimate the actual costs faced by drayage owners since actual costs will be determined by their ability to borrow.

10. Estimated drayage operator incomes are high because ARB staff assumes that a typical port drayage truck travels seven miles to the gallon of fuel, an improbably high level of fuel efficiency considering the age and duty cycle of the typical drayage vehicle (five miles per gallon is a more likely estimate).

CTA also requested that the Board consider delaying the adoption and implementation of the drayage truck regulation until Proposition 1B public financing proposals are considered and funds made available for all phases and provisions of the rule.

Response to Comment No. 14:

1. (Response to Concern 1): ARB has concluded based on staff's assessment that despite a drop in the production of heavy duty diesel engines and class 8 tractors in 2007, it expects the heavy duty diesel truck production market to rebound in 2008 and beyond. Therefore, ARB has determined that the nationwide supply of model year 2007 or newer used heavy duty diesel vehicles should exceed 600,000 vehicles in 2013, whereas approximately 30,000 vehicles are scheduled for replacement. Moreover, truck dealerships have the ability to access and arrange transfer to California of late model year truck inventory listed for sale nationally (ARB, 2006). While ARB acknowledges that some owner-operators may be forced to pay higher prices for replacement vehicles due to increased demand, it expects prices to stabilize when additional used trucks become available on the market. In addition, ARB believes that new and innovative retrofit technologies currently under development will be available prior to 2013 that will allow vehicle engines to meet the 2007 emission standards, which will provide an additional lower cost option for complying with the regulation.
2. (Response to Concern 2): ARB agrees with Dr. Husing's assessment that drayage owner-operators have limited bargaining power and ability to absorb higher compliance costs. This was also documented in the Staff Report and associated Technical Support Document (ARB, 2007). ARB acknowledges that the owner-operator business model for port drayage is a low margin business with annual incomes at or below California per capita means. Consequently, ARB developed the proposed regulation with minimum performance standards and the flexibility for owner-operators to choose either retrofit or early replacement for compliance.

Another concern mentioned was that ARB should consider the outcome that could result from the inability of drayage owner-operators to pass through costs. Since independent drayage owner-operators have limited bargaining power, ARB believes that the cost pass through assumptions are critical. When costs pass through is applied throughout the entire goods movement supply chain, the net cost increases become modest, especially when weighed against the significant benefits to California air quality and public health that will result from the regulation's implementation. ARB is closely monitoring drayage activities at the ports to ensure the regulation does not have a negative impact on California's goods movement. In the event drayage owner-operators are unable to pass through costs, ARB staff may need to propose alternative measures to the Board.

3. (Response to Concerns 3 and 4): Consolidation of the semi-frequent and infrequent drayage operators is an expected and intended consequence of the drayage truck regulation. ARB believes that for the regulation to be cost-effective, a dedicated fleet that services port and intermodal rail drayage will emerge. ARB believes that the concessionaire models endorsed by the ports will facilitate the consolidation of the drayage operators to some extent. Secondly, the incentive programs offered by the ports are generous, so ARB does not believe that compliance costs would be a factor in driving away the drayage operators from the profession.
4. (Response to Concerns 5 and 6): ARB is also aware that TWIC requirements could compound any shortages of drayage operators due to growth or attrition from compliance requirements. Given the long term growth forecasts for the drayage industry, ARB believes that fleet growth should be with newer and cleaner trucks to preserve emissions reduction achieved and protect the health and welfare of those that live near the ports and goods movement corridors.

ARB further believes that with public financial assistance for compliance assistance combined with the costs pass-through assumptions, the impact on drayage worker supply will be minimal.

With limited resources to fund truck retrofits and replacements, ARB can only stretch public dollars to mitigate existing sources of port related pollution. New entrants to the drayage market must find alternate resources to work as compliant operators.

The issue of drayage truck operator shortages has also been discussed in Response to Concerns 3 and 4 above.

5. (Response to Concern 7): ARB has disclosed all possible known risks and believes that the regulation's benefits outweigh the costs and potential impacts on drayage operators. ARB believes that requirements of the regulation alone will not cause shortages in labor supply, and that bond money will minimize drayage worker shortages that may result due to financial concerns. With the Board's February 28, 2008 resolution clarifying that 40 percent of the \$1 billion dollars (\$400 million) in Proposition 1B funding will be targeted for projects upgrading heavy duty diesel trucks serving the State's largest seaports and intermodal rail yards. With the first \$250 million awarded to local agencies this year, ARB is one step closer to assuring a smooth transition into 2010. In addition, the Ports of Los Angeles and Long Beach are imposing a container fee to be used to further subsidize clean trucks in both ports, if necessary. ARB is aware that there has been a tremendous response to the ports Clean Truck Programs, and that the ports are offering generous incentives to drayage truckers to replace trucks with model year 2007 compliant vehicles.

ARB will closely monitor the effects of the rule and will recommend appropriate action to prevent any disruptions in goods movement. Such disruptions could be caused by any extended strikes by drayage operators, or buildup in unmoved containerized cargo, or extraordinary bottlenecks at the gates of terminal entry. ARB would be advised of any such events by the Enforcement Division personnel who will be actively monitoring compliance at the ports. Under the regulation, the Executive Officer has authority to issue an emergency decree to exempt drayage trucks from the provisions of the regulation if there are major or catastrophic disruptions in goods movement or in the supply of drayage operators.

6. (Response to Concern 8): Staff made the disclaimer in the Staff Report (ARB, 2007) that actual costs may be higher than annualized costs. This is mainly due to the difference in the life of the term over which the asset is amortized. Most heavy duty diesel truck purchases are financed by banks for a period of 6 to 8 years, whereas staff amortized the truck purchase over the remaining economic life of the asset (14 years). Staff computed that actual annual loan payments made by drayage owner-operators for Phase 2 replacements could be 20-33 percent higher (depending upon the life term over which the asset is financed) than the annualized payments estimated over the economic life of the asset. This translates into estimated actual monthly loan payments exceeding average monthly amortized values by \$125 - \$230 per month. Amortizing costs over the economic or remaining useful life (life-cycle analysis) of the asset enabled staff to compute the differential cost of the regulation, and

determine its cost-effectiveness. This analysis does not undermine the total present value costs of the regulation to drayage truck owner-operators.

ARB admits that the monthly payments made by drayage owner-operators has significance in both macroeconomic (i.e., impact on the overall California economy) and microeconomic (i.e., impact on the individual drayage owner-operator) business models. Staff assessed that amortizing the asset over six to eight years or fourteen years produced the same end result in the analysis; that the drayage owner-operator gross income is below California per capita mean income levels. Furthermore, the period over which the asset is amortized must correspond to the period over which the emissions reduction benefits are estimated. Staff therefore chose to annualize costs over the economic life of the asset as opposed to considering actual annual loan payments made by drayage owner-operators.

7. (Response to Concern 9): ARB believes that drayage operators will pass the compliance costs through the goods movement supply chain, and eventually to the consumer. Therefore, the EDRAM model was used, and staff determined that the magnitude of the increase of regulatory compliance costs for a drayage owner-operator is less than one percent of the standard overseas shipping freight rates. If this was a larger number, staff may have considered options to the EDRAM model. In response to the second comment, ARB does not believe that annualized costs utilized in the EDRAM model are understated or exclude potential actual costs. The annualized cost presented for the EDRAM model is a worst case scenario obtained by combining 2013 and 2014 retrofit and replacement annualized costs into a single year. This scenario stems from Phase 1 and Phase 2 regulatory requirements in the year 2013. In addition, the economic loss from the disposal of the pre-2004 model year replacement was also added to the total annualized costs.
8. (Response to Concern 10): At the time staff assessed the impact of the regulation on the gross income of a port drayage operator, staff utilized the accepted average diesel-fueled heavy duty truck fuel economy of 7 miles per gallon. This fuel economy estimate was based on staff survey and is consistent with usage in other ARB regulations. Staff utilized this fuel economy estimate along with an average annual business commute of 26,000 – 45,000 VMT derived from the 2002 Port of Los Angeles emissions inventory to determine the gross income for drayage operators. Staff also acknowledged in the Technical Support Document (ARB, 2007) that drayage operator actual fuel expense may be higher based on a lower fuel economy

attributed to older trucks operating in port drayage. Staff found the drayage operator income model results corroborate well with survey data.

Since staff conducted the initial analysis, staff has been advised of refined lower VMT assumptions for port and intermodal rail drayage, along with lowered estimates for heavy duty diesel truck fuel economy. Staff found that the lower VMT estimates cancelled any possible effect of higher fuel economy estimates initially used to arrive at the same conclusion.

With regards to CTA's recommendation to delay adoption and implementation of the drayage truck regulation until public financing issues have been addressed and funds made available for all phases and provisions of the rule, ARB notes that while public funding for fiscal year 2007/2008 has been addressed, it expects the California Legislature to appropriate the remaining Proposition 1B funds in future years, thereby guaranteeing the availability of the funds for all aspects of the regulation.

Comment Nos. 16 and 26:

An executive of a California retrofit products manufacturer suggested that the ARB consider two specific improvements to the regulation and expand the scope to which the regulation is applicable. First, all 2004 through 2006 model year trucks should be included in the class of trucks subject to Phase 1 requirements. These trucks, if left uncontrolled, will emit ten times the particulate matter of a 2007 model year compliant truck. He further mentioned that level 3 VDECS for model year 2004 through 2006 trucks are currently available today. Second, ARB should amend the regulation to allow pre-1994 model year trucks to operate with a level 3 VDECS during Phase 1 of the regulation (2009 through 2013). The retrofit company contends that pre-1994 model year trucks could be retrofitted with a level 3 VDECS at a cost of \$10,000 to \$20,000, and that replacing these vehicles could be an even more expensive proposition. The executive concludes by saying that ARB should only set the performance standards, and let the market forces come up with a solution, whether in the form of a truck replacement or as a retrofit solution to an existing one.

A representative from the Manufacturers of Emissions Controls Association (MECA) reiterated the comments above. MECA also stated that members engaged in the diesel retrofit business in California are in the process of putting resources in place to ensure that there will be an adequate supply of verified retrofit hardware to meet the expected large

demand in California for on-road diesel-fueled heavy duty truck retrofits by the proposed compliance dates.

MECA further stated that manufacturers are committed to verifying retrofit technologies that combine level 3 PM control with high efficiency NOx reduction technologies like selective catalytic reduction (SCR) for existing on-road truck applications that could be available for Phase 2 compliance for existing port and intermodal rail drayage trucks. SCR is also being given serious consideration by engine manufacturers for complying with future on-road heavy duty diesel engine emissions standards (2010 EPA requirements).

MECA then commented that “ARB’s retrofit verification program is severely under-resourced to facilitate the efficient transfer of verified technologies to the marketplace. Additional qualified resources are necessary with a working knowledge of the latest NOx reduction technologies, like SCR, to handle the diversity of applications and complexity of technologies required to achieve the goals of this and future in-use regulations.”

Response to Comment Nos. 16 and 26:

ARB evaluated the viability of retrofitting pre-1994 model year engines and concluded that even though verified level 3 VDECS technology is available for the trucks, the higher cost and limited options associated with the retrofit make it an unfeasible solution. In addition, ARB believes that the pre-1994 model year trucks are near the end of their intended useful or economic life of 20 years. Furthermore, with a level 3 VDECS installed on a pre-1994 model year truck, the vehicle would still contribute to higher levels of PM emissions as compared to a retrofitted 1994 and newer model year truck. Lastly, model year 1994 and newer truck engines have a critical technological component that boosts vehicle fuel efficiency and thus results in lower green house gas emissions. Therefore, all pre-1994 model year trucks are restricted from port and intermodal rail yard service.

ARB also assessed the level 3 VDECS technologies to limit particulate matter emissions from 2004 through 2006 model year diesel-fueled heavy duty trucks, but there are limitations to its acceptance in port and intermodal rail drayage with its potential constrained access to electrical power and outlets for regeneration of the active DPFs. There is also an additional cost of developing the infrastructure to support electrically regenerated DPFs. Therefore, ARB determined that no feasible emissions control technology for model year 2004 through 2006 drayage trucks exists to meet the Phase 1 December 31, 2009 requirements of the drayage truck regulation.

The drayage truck regulation does require 2004 through 2006 model year trucks to comply with Phase 2 provisions of the regulation by the end of 2013. These changes were presented on the day of the Board hearing as staff proposed modifications to which the Board unanimously consented.

ARB is pleased with MECA's assurance that there will be an adequate supply of verified retrofit hardware to meet the expected large demand in California for on-road heavy duty diesel truck retrofits by the proposed compliance dates.

In regards to combining level 3 PM control with high efficiency NOx reduction technologies like SCR, the NOx reduction technology has yet to be verified by ARB. Therefore, ARB cannot depend on unverified technologies (even if they have tremendous potential or widespread acceptance elsewhere) to formulate their policy.

In recognition of the significant numbers of retrofits that will be needed, ARB has already begun to augment its verification staff. In late 2007, ARB hired two new staff to support the verification program, and ARB plans, pending approval of positions, to hire additional verification staff in the next budget cycle.

Comment No. 17:

This comment letter, written on behalf of truck owner-operators in the International Truck Drivers Association (ITDA) was addressed to all authorities in the coalition that support the San Pedro Bay Ports Clean Air Action Plan (CAAP). These members felt that they were excluded from discussions in the formulation of the Clean and Safe Ports Plan and the Clean Air Action Plan, and presented their views to the ARB that specifically included renouncing the CAAP due to its narrow focus on trucks and seclusion from other sources in the entire industry. The organization members also voiced their concern on the projected compliance cost, and were skeptical of retrofit control technological claims that emissions reductions could be achieved with fuel efficiency gains. They believe that there is no scientific or technological basis for this claim, and offered that their organization members could work as monitors to find a plausible solution that limits investment and supports emissions reduction at the same time.

Response to Comment No. 17:

ARB notes that the comments are directed to the San Pedro Bay port and harbor commissioners. Ever since the elements of the drayage truck regulation were conceptualized (ARB, 2006), ARB has always maintained an open door policy and encouraged the participation of drayage owner-operators, industry groups and trade associations (such as the CTA), public interest and community groups (such as the NRDC), concerned citizens, and any other public or private entities impacted by drayage trucking operations or public health in and around port communities, in discussion and formulation of the proposed regulation. Numerous outreach events were conducted, including several regulatory workshops, at various locations in California to encourage dialogue between ARB and those impacted by the requirements of the regulation. A complete list of ARB outreach activities is presented in Appendix E of the Technical Support Document accompanying the Initial Statement of Reasons for Proposed Rulemaking (ARB, 2007).

In regards to imposing unproven or expensive retrofit technologies on affected entities, ARB notes that emissions control retrofit technologies are subject to rigorous verification procedures at ARB, and all devices must be verified before they can be selected for a retrofit application. It must also be proven that the technology endorsed for a retrofit application is widely available. ARB would welcome any efforts to proactively monitor the performance of in-use retrofit devices and provide feedback to ARB on an on-going basis.

Comment No. 19:

A private citizen with experience working on diesel engines expressed concern that diesel engines do not run clean at idle or low speeds, a condition that is typically found in port and intermodal rail drayage. He believes that the pollution from the drayage trucks can be reduced by filtration equipment, and reducing this pollution would benefit residents in communities where diesel trucks operate. He concluded by stating that he was in support of this measure.

Response to Comment No. 19:

ARB noted the comments and appreciates the support. The adopted regulation provides that drayage truck owners may use filtration filters among other technologies to achieve the required emission reductions.

Comment Nos. 21-1 and 21-2, and 22:

Various groups expressed support for both the port truck and shoreside power (ARB, 2007)⁵ related emissions reduction measures being considered by the Board on December 7, 2007, claiming that these emissions reductions are very much needed. They also claimed that the measures however, are not enough and that more pollution control measures will be needed in the future to remedy community health problems in and around ports.

Response to Comment Nos. 21-1 and 21-2, and 22:

ARB notes and appreciates the support for the drayage truck regulation which is one of the many proposed diesel risk reduction program (DRRP) measures that aim at reducing the pollution from diesel sources, including sources in and around port and intermodal rail facilities.

Comment No. 23:

A private citizen expressed concern that the economic impact of the drayage trucks measure would be devastating on the owner-operators, forcing them out-of-business as they cannot afford to retrofit or replace their vehicles. As an alternative, he suggested that terminals could open night gates which would alleviate long lines, excessive idling, and congestion on the streets; all measures that would reduce emissions from trucks.

Response to Comment No. 23:

Extended hours of operation (including weekends) are currently offered to drayage operators at the Ports of Los Angeles and Long Beach and has been determined to be insufficient in achieving the emission reductions that will address diesel PM exposure and associated health risks. As far as the economic impact, ARB agrees that there will be impacts; however, with public financial assistance from sources such as the State Proposition 1B funds, and costs pass-through assumptions in the goods movement supply chain, ARB believes that the impact to drayage owner-operators will be minimal. The economic impact of the drayage truck regulation has been discussed in greater detail in the ARB responses provided for Comment Nos. 4 and 14 in this section.

⁵ (ARB, Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Regulations to Reduce Emissions from Diesel Auxiliary Engines on Ocean-Going Vessels While At-Berth at a California Port, October 2007).

Comment No. 24:

The Owner Operator Independent Drivers Association (OOIDA) expressed concern that the drayage truck regulation will have a negative impact on their members, many of whom operate as infrequent visitors to the California ports and intermodal rail yards. Specifically, OOIDA raised the following concerns:

1. The proposed drayage trucks regulation will have a negative impact on OOIDA's members, many of whom operate as infrequent visitors to the California ports and intermodal rail yards. The "drayage truck" definition is overly broad and violates section 4306 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and the Interstate Commerce Clause of the U.S. Constitution. The environmental goals that ARB seeks can be achieved through less restrictive measures and efforts that will not be in violation of any federal law.
2. ARB has proposed language that effectively captures all heavy-duty trucks regardless of their operation (drayage or long-haul), or the frequency (frequent, semi-frequent, or infrequent operation) of their travel into ports and intermodal rail facilities, or how much (or little) they contribute to air quality concerns. It cites two studies acknowledging that heavy-duty drayage trucks which exclusively service ports and rail yards are statistically much older and more polluting than trucks engaged in long-haul operations. These heavy polluting vehicles travel in and around the ports and rail yards and with great frequency. However, under the proposed definition the distinction between the newer less polluting long-haul trucks that service the ports and rail yards with much less frequency, and the heavy polluting trucks that primarily service these facilities daily is completely lost. This unfairly impacts those truckers engaged in nationwide trucking operations, and need to access the ports and intermodal rail facilities on an infrequent basis. The consequence of imposing regulatory requirements on long-haul, infrequent operators will result in operators choosing not to service California ports and intermodal rail facilities.
3. ARB is in the process of promulgating a statewide regulation under the "Diesel On-Road Private Fleets Control Measures" initiative. Therefore, long-haul trucks will be required to comply with this regulation when they cross the geographic borders of California. Like specialized auto-haulers, long-haul trucks should be exempt from the drayage truck regulation and be covered by the general-in-use on-road fleet regulation.

4. Requiring heavy-duty trucks engaged in interstate commerce to comply with the Drayage Truck Registry (“DTR”) component of the Proposed Regulation violates federal law. According to Section 4306 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) states may not require trucks to display any form of identification beyond basic registration of the vehicle. The proposed DTR would place the requirement of long-haul trucks to register and affix a label in violation of the above provision. Additionally, long-haul operators would be required to “maintain and keep VDECS⁶ maintenance logs” in the truck which are to be available upon request. OOIDA views these requirements as a violation of Section 4306.

5. The proposed regulation unfairly burdens interstate commerce because (i) it impacts those engaged in long-haul operations although, as noted above, research indicates that local drayage trucks are typically the polluting vehicles and not the long-haul trucks, and (ii) long-haul truckers would suffer an unfair burden because other ports will likely follow suit and create similar restrictions, requirements, fees, and penalties thus achieving a restraint on the free flow of commerce. The ports of Seattle, Tacoma and Vancouver, British Columbia have issued a joint draft, the “Northwest Ports Clean Air Strategy.” On page 14 of that draft they reference a *West Coast* model for addressing port-related truck emissions. Clearly, California is the model others are seeking to emulate when dealing with diesel emissions from trucks. The Commerce Clause of the United States Constitution acts as an implicit restraint on state authority even in the absence of a federal statute. Furthermore, it significantly limits the ability of states and localities to regulate or otherwise burden the flow of interstate commerce. The United States Supreme Court has determined that where a state or local statute even-handedly regulates a local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the local benefits. The extent the burden is tolerated depends on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

⁶ VDECS. Verified Diesel Emission Control Strategy which is an emission control strategy that has been verified pursuant to the “Verification Procedure, Warrantee and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines” in Title 13, California Code of Regulations, commencing with section 2700, and incorporated by reference.

Response to Comment No. 24:

1. (Response to Concern 1) ARB does not believe that the adopted regulation will have any greater impact on members of OOIDA than any other affected truck owners. The regulation is intended to apply, with very few exceptions, across the board, to all trucks that visit and operate at California ports and intermodal rail yards statewide. ARB adopted the regulation to address serious health risks caused by diesel PM and NOx emissions that affect the ports and surrounding communities. For the reasons set forth in the responses to OOIDA's other concerns, ARB does not believe that the adopted regulation violates federal law.
2. (Response to Concern 2) Studies conducted by ARB and others indicate that California ports and intermodal rail yards are subject to exceedingly high levels of diesel PM and NOx emissions and that such emissions have deleterious health effects on those who work and live in those communities. Heavy-duty vehicles with a gross vehicle weight rating exceeding 33,000 pounds are one of the primary sources of these emissions. Both federal and State law direct ARB to address these high levels of emissions through rulemakings such as these. ARB has determined that approximately 100,000 heavy-duty trucks visit California ports and intermodal rail yards annually. More than 20,000 of these trucks make frequent and semi-frequent visits, while the other remaining 80,000 trucks make fewer visits. Some of the trucks in the latter group may be members of OOIDA, of which more than 5,500 reside and operate in California. ARB has determined that the cumulative emissions from the less frequent visitors is significant and cannot be ignored. Consequently, for reasons of public health and welfare all trucks, with a few limited exceptions, that visit the ports and intermodal rail facilities are covered by the regulation.

To the extent that the commenter raises Interstate Commerce Clause questions, see responses below. But it should be noted here that ARB does not believe that the regulation will significantly burden long-haul operators, including members of OOIDA. First, the first phase of the regulation does not take effect until January 1, 2010. OOIDA has indicated that its members, because of the nature of long-haul operations, typically operate their vehicles for no more than seven years. Accepting that turnover rate, by 2010, most vehicles operated by OOIDA members will have been turned over or be at the tail end of their long-haul operational life. To the extent that most OOIDA operators own 2004 model year vehicles, they will not be required to do anything more to their vehicles under this regulation until January 1, 2014 when phase two of the regulation is

implemented. For those operators having vehicles at the end of their seven-year operational life, they may need to purchase a newer vehicle one-year early, but to the extent that they purchase a 2007 or later model year vehicle, they will not have to do additional change-over to their vehicles for phase two of the regulation.

Second, the DTR registration requirements should not significantly affect OOIDA members. As set forth below, the DTR labeling requirements have been deleted from the regulation. Moreover, enforcement of the regulation will not result in any vehicle being denied entrance to any port or intermodal yard. Finally ARB intends to put significant effort and resources into public outreach to ensure that all operators that visit ports and intermodal facilities are aware of the regulations and that enforcement discretion will be used during the first months of implementation to ensure that those who have not been made aware of the regulation are not penalized.

3. (Response to Concern 3) As stated above, ARB has identified that emissions from long-haul trucks that visit California ports and intermodal rail yards significantly contribute to the pollution in and around these facilities and exacerbate the risk exposure to the affected community. Accordingly, ARB has determined based upon the full record that all trucks, with limited exceptions, that visit those facilities should be covered by the regulation. Only those vehicles having unique cab and trailer designs, for which compliance costs would be significantly greater than compliance for drayage and long-haul trucks, in general, are exempted from the proposed regulation. As stated, compliance costs for most long-haul operators, the vast majority of which do not operate dedicated, unibody vehicles, should be minimized because of normal turnover.
4. (Response to Concern 4) In response to concerns regarding the DTR compliance sticker, ARB notes that Section (d)(6)(A) of the proposed drayage truck regulation was modified to no longer require that a terminal or rail yard check for a DTR label to determine a truck's compliance.
5. (Response to Concern 5) Regarding OOIDA's claims that the regulation places unfair burdens on its members because they are different from local drayage trucks, see Response to Concern 2 and Response to Concern 3 above. The Commerce Clause (U.S. Const., Art. I, §8, cl. 3) grants Congress the power "to regulate Commerce with foreign Nations, and among the several States. . . ." The Supreme Court has recognized that the Commerce Clause in addition to granting Congress an affirmative grant of authority "also encompasses an implicit or 'dormant' limitation on the authority of the

States to enact legislation affecting interstate commerce. “....(*Healy v. The Beer Institute* (1989) 491 U.S. 324, 326, fn.1.) [Citations omitted.] The responsibility for interpreting this implied limitation has been left largely to the courts. The Supreme Court has interpreted the limitation on the states to mean that the “states cannot impede substantially the free flow of commerce from state to state. The Court has allowed the states to regulate matters of local state concern, even though such regulations may have an effect on interstate commerce.

As OOIDA’s concern recognizes, the adopted regulation does not discriminate against interstate commerce, but applies its provisions even-handedly to both in-state and out-of state trucks. Both California registered long-haul vehicles and out-of-state registered long-haul vehicles are equally subject to the regulations requirements. While both in-state and out-of-state long-haul vehicles may not frequent the ports to the extent that local drayage trucks do, for the reasons outlined in Response to Concerns 2 and 3 above, the ARB has determined, contrary to OOIDA, that the emissions from these infrequent visitors are such that they should be regulated and comply with the requirements of the regulation.

OOIDA’s contentions that the regulation creates a burden because of the possibility that other ports may adopt similar regulations and create potential state to state conflicts is speculative. First, no state or local port outside of California has adopted similar in-use regulations. Second, while OOIDA refers to the Northwest Ports Clean Air Strategy, it acknowledges that no regulation has been adopted and, indeed, concedes that the strategy, to this point in time, contemplates using the ARB adopted regulation as a model. In such a case, if regulations were adopted, the regulations would not be inconsistent with California’s and no additional burden would be imposed on trucks that visit those ports.

The regulation also does not have an unlawful extraterritorial effect in that it applies only to vehicles that operate in California. Not being discriminatory, in conflict with other state regulations, or impermissibly extraterritorial, the regulation is not per se in violation of the Commerce Clause. As OOIDA recognizes, courts in determining whether a local state regulation survives a Commerce Clause challenge, will weigh the putative benefits of the regulation against the burdens that the regulation imposes on the flow of interstate commerce and, specifically, on interstate operators. (*Pike*, 397 U.S. at 142.) The burden of proof in such cases are on those who challenge the regulation. Here, balancing clearly weighs in favor of upholding the adopted regulation.

Balancing the local interest in regulation against the burden on interstate commerce is considered on a case-by-case basis, and the more legitimate the public interest, the greater the interference must be to overcome it. (See *Raymond Motor Transportation v. Rice*, (1978) 434 U.S. 429, 439.) Indeed, the Supreme Court has found that there is a strong presumption of validity of local safety regulations when challenged. (*Bibb v. Navajo Freight Lines, Inc.* (1959) 359 U.S. 520.); see also *Huron Portland Cement Co. v. Detroit* (1960) 362 U.S. 440, 443 [“Constitution when conferring upon Congress the regulation of commerce . . . never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens.”]⁷

In evaluating a state’s interests, the Court has recognized that a state’s interest is never greater than in matters of traditional local concern. (*Hunt v. Washington Apple Advertising Comm’n* (1977) 432 U.S. 333, 350.) Air pollution prevention is undoubtedly a traditional local safety concern. (See *Huron Cement Co.*, 362 U.S. at 445-446.) In adopting the CAA, Congress expressly found that air pollution poses a significant danger to public health and welfare and that “air pollution prevention is primarily a responsibility of the states and local governments.” (CAA § 101(a)(1) and (2).)⁸

The California Legislature has similarly found that a strong public interest exists in the control of air pollution for the purpose of protecting the health and welfare of its citizens. (Health and Safety Code (H&SC) §§ 39000 and 39001.) More specifically, as it applies to the drayage truck regulation, the Legislature has found that toxic air contaminants and ozone pose a grave danger to the citizens of the state and that emissions of such pollutants need to be controlled. (H&SC §§39650 et seq., 43000.5, 43013, and 43018.)

⁷ Given that TRU engines and systems are equipped on vehicles that travel interstate, the TRU regulation would best be analyzed under the interstate transportation line of cases: *Bibb*; *Ramond*, and *Kassel*. Although the Court has divided on how exactly the balancing test should be applied (See *Ramond* and *Kassel*), it is clear that the Court, is in agreement that a greater degree of deference should be given to state safety interests than interests economic protectionist interests. (See Tribe, American Constitutional Law, at p. 1100 [“[s]tate regulations seemingly aimed at furthering public health or safety . . . are less likely to be perceived as ‘undue burdens on interstate commerce’ than are state regulations evidently seeking to maximize the profits of local businesses or the purchasing power of local consumers.”]

⁸To the extent that it may be argued that TRU engines are nonroad engines and that such regulation should be handled uniformly on a nationwide basis, the CAA has delegated the responsibility to adopt nationally uniform regulations to California. (See *EMA*, 88 F.3d at 1089-1092.)

Thus, an undeniable strong public interest exists for the adoption of the regulation. Since the regulation has strong support and is not illusory, significant deference should be accorded to the regulation. (See *Ramond*, 434 U.S. at 448 (Blackmun, J., concurrence); cf. *Kassel*, 450 U.S. at 670-671 [“if safety justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce”]. Weighed against this strong local public interest are the burdens that would be imposed on interstate commerce by implementation of the regulation. As stated, the burdens that the regulation will impose on OOIDA members will not be great.

Comment No. 25:

The Executive Officer of the South Coast Air Quality Management District (AQMD) extended his support for the drayage trucks measure, and urged the ARB to adopt the regulation. He felt that the regulation was written in a clear and concise manner that would provide the needed NO_x and PM emissions reductions targeted in the recently adopted 2007 State Implementation Plan (SIP) for the South Coast Air Basin.

Response to Comment No. 25:

ARB notes and appreciates the support extended by the Executive Officer of the South Coast Air Quality Management District.

Comment No. 27:

The Natural Resources Defense Council (NRDC) submitted a study entitled “Driving on Fumes” (December 2007) in support of their comments on the drayage truck measure being considered for adoption by the ARB. The research paper assesses the elevated health risks truck drivers face from diesel pollution.

The study contends that truck drivers who serve ports have a high occupational risk of being exposed to diesel pollution and face even greater health risks than do the residents of surrounding communities. To reduce health risks to drivers and local residents, the researchers believe it is necessary to clean up the port truck fleet, increase efficiency to reduce wait times at terminals, and reduce pollution from other port sources.

Response to Comment No. 27:

ARB notes the study and appreciates the support for the drayage truck measure. ARB has forwarded the study to its Research Division (Health and Exposure Assessment Branch) for evaluation.

Comment No. 28:

The President of the Rose Foundation for Communities and the Environment expressed support for the drayage truck rule. She noted that diesel pollution is especially prevalent in West Oakland. Residents of East and West Oakland are at increased risk of cancer and respiratory illnesses, and have some of the highest asthma incidences and hospitalizations in California.

In the organization's comment letter, several high school students testified that the diesel pollution from the trucks servicing the Port of Oakland impose adverse health effects on the residents in their communities, and how they have to cope with related illnesses such as asthma.

The environmental organization concluded by urging ARB to adopt the drayage truck regulation.

Response to Comment No. 28:

ARB notes the comments in support of the drayage truck regulation, and concurs with their assessment. ARB appreciates the effort the high school students made to research, understand, and testify on behalf of their communities on the effects of diesel pollution.

Comment No. 30:

On behalf of the California Teamsters Public Affairs Council, a member offered support for the drayage truck measure. However, the member also proposed that ARB consider making some changes to the regulatory language being considered by ARB. The organization would like to see the primary or licensed motor carrier ultimately responsible for compliance with the regulation, irrespective of the drayage truck operator being an employee of the motor carrier firm or an independent contractor with the firm. Additionally, the organization would like to see that only compliant motor carriers (and those motor carriers who employ compliant operators) be allowed to enter port and intermodal rail facilities, and do drayage business with the terminals.

Response to Comment No. 30:

The drayage truck regulation includes language that requires primary motor carriers to only dispatch drayage trucks that are compliant with the requirements of the drayage truck regulation. Responsibility for compliance to a large extent does rest on the motor carrier firm, since they can only dispatch a compliant truck to the terminal. However, the independent owner-operator is the primary operator of the vehicle and is responsible for proper installation and operation of emissions control systems and registering with the DTR.

Comment No. 31:

A coalition of several environmental support groups spear headed by the Natural Resources Defense Council (NRDC) and its combined 470,000 California members expressed to ARB that they strongly support the adoption of the drayage truck regulation.

The coalition pointed out that diesel pollution is a health hazard for communities and truck drivers alike. In support of their comments, NRDC submitted a research study that assessed occupational health risk to drayage truck drivers as a result of exposure to diesel pollution sources (see Comment No. 27 in Section II.a), and concluded that drivers and local residents near freight transport facilities need relief from the daily exposure to diesel pollution.

The coalition also asked ARB to include other intermodal rail facilities such as Fresno, Barstow, Mira Loma, and Bell as affected facilities to which the drayage truck regulation should be applicable. Specifically, the coalition asked ARB to remove the 80 mile limit from a port for including intermodal rail facilities.

In addition, the coalition stated that a comprehensive enforcement effort, coordinated with local air districts and port and rail facilities will be needed to effectively implement and enforce the proposed regulation.

Lastly, the coalition extended support for using Proposition 1B funds to help offset the cost associated with retrofitting or purchasing cleaner trucks.

Response to Comment No. 31:

ARB notes and appreciates the support for the drayage truck measure extended by the coalition of environmental groups.

As directed by the Board at the December 7, 2007 public hearing, staff collected data to evaluate whether rail yards at Fresno and Mira Loma should be included as facilities to which the drayage truck regulation is applicable. Previously, the Fresno rail yard was excluded because the yard was 125 miles from the Port of Stockton. The proposed 15-day modifications to the drayage truck regulation no longer require an intermodal rail facility to be located within 80 miles of a California port for the regulation to be applicable. Facilities greater than 80 miles from a port will be subject to minimum truck activity standards of 100 average truck visits per day.⁹ If the average daily truck activity at the yard meets or exceeds 100 visits per day, then the facility will be subject to the compliance standards of the drayage truck regulation. Staff has confirmed that the Fresno rail yard currently has low daily truck activity and is therefore excluded from further consideration. However, the Fresno rail yard as well as other rail yards located beyond 80 miles of a California port will be subjected to record-keeping and reporting requirements as proposed in the 15-day modifications.

The Mira Loma rail yard was excluded since the majority of trucks servicing the facility are of unibody construction (auto tractor-trailers). Trucks of unibody construction are not subject to the requirements of the drayage truck regulation.

The Barstow rail yard is a classification (switching) yard not engaged in intermodal rail cargo transport. The Bell rail yard was excluded from the regulation's applicability analysis because it is not a Class I intermodal rail yard.

ARB agrees with the coalition's assessment that a comprehensive and coordinated enforcement effort will be needed to effectively implement, enforce, and account for the various provisions of the drayage truck regulation. The Enforcement Division at ARB is responsible for this task.

Lastly, ARB notes the support for using Proposition 1B funds to help offset the cost associated with retrofitting or purchasing cleaner trucks. Of the \$250 million appropriated by the Legislature for fiscal year 2007/2008 (first funding cycle of the Program), over \$116 million dollars have been awarded to local agencies to help with the installation of retrofits or replacement of drayage trucks. The agencies awarded funds for drayage truck-related projects for fiscal year 2007/2008 are: the South Coast Air Quality Management District, the Ports of Los Angeles

⁹ Staff based the threshold of 100 average truck visits per day on the health risk at the Fresno rail yard with this level of truck activity. Staff assessed that the ensuing cancer risk was less than 10 in a million at this threshold.

and Long Beach, the San Diego Air Pollution Control District, and the Bay Area Air Quality Management District.

Comment No. 32:

A private citizen expressed concern that older, polluting trucks pose a threat to humans and the environment. He believes emissions from such trucks should be checked and controlled.

Response to Comment No. 32:

ARB agrees with the comments and thanks the citizen for expressing his concerns.

II.b Written Comments Received During the ARB Public Hearing

Written comments from the general public were also accepted by ARB at the time of the ARB Public Hearing (December 6 and 7, 2007). These written comments are also considered to be 45-day public comments. Individuals, businesses, and organizations submitting written comments at the public hearing are listed in Table 2 below. Following the list are summaries of each comment, as well as responses to the objections, concerns, and recommendations made. Each response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

Table 2
List of Individuals & Businesses Submitting Written Comments
at the ARB Public Hearing

Comment Number	Name & Affiliation	Date of Comment
1	Lowenthal, Bonnie, Vice Mayor City of Long Beach Long Beach, California	12-5-07
2	Lassen, Marty, Dir of Commercial Development Johnson Matthey Catalysts Malvern, Pennsylvania	12-7-07
3	Kubsh, Joseph, Executive Director Manufacturers of Emissions Controls Association Washington D.C.	12-6-07
4	Kanter, Robert, Ph.D., Managing Director Port of Long Beach Long Beach, California	12-6-07
5	Osofsky, Alan, Rodgers Trucking, et al West State Alliance Oakland, California	12-3-07
6	Appy, Ralph, Ph.D., Director of Env Management Port of Los Angeles Los Angeles, California	12-6-07
7	Edgar, Brad, Dr., Executive VP Cleaire Advance Emission Controls San Leandro, California	12-7-07
8	Schrap, Matt California Trucking Association West Sacramento, California	12-7-07

Comment Number	Name & Affiliation	Date of Comment
9	Bushey, David, Private Citizen Advocate for Renewable Fuels Location Unknown	12-7-07
10	Evans, Duane, VP J.B.A. Company Wilmington, California	11-27-07

Comment No. 1:

The Vice Mayor of the City of Long Beach extended her support for the drayage trucks measure and urged the Board to adopt the regulation to control emissions from diesel fueled drayage trucks operating at ports and intermodal rail yard facilities. The public official cited that emissions from drayage trucks moving goods to and from California ports and intermodal rail yards contribute to adverse health effects in residents of their communities.

Response to Comment No. 1:

ARB thanks the Vice Mayor of the City of Long Beach for supporting the adoption of the drayage truck regulation.

Comment No. 2:

The executive of a private catalyst manufacturer stated to the Board that his company supports the goal of ARB's Diesel Risk Reduction Program, and their current proposal to control emissions from in-use, on-road, diesel-fueled heavy duty drayage trucks operating at ports and intermodal rail yard facilities. The catalyst manufacturer requested ARB to consider including 2004 through 2006 model year heavy duty diesel trucks in the category of trucks subject to Phase 1 compliance requirements by the end of 2009. The company expects their level 3 diesel emissions control system to be verified by ARB in 2008.

The executive also assured the Board that through their global manufacturing capabilities, the company could easily meet the estimated demand of 20,000 level 3 VDECS over a span of two years.

Response to Comment No. 2:

ARB appreciates the support for ARB's Diesel Risk Reduction Program and the drayage truck regulation. ARB also thanks the company executive for his assurance to the Board members on the availability of adequate retrofit devices.

In regards to including 2004 through 2006 model year trucks to the Phase 1 requirements of the regulation, see Response to Comment Nos. 16 and 26 in Section II.a.

Comment No. 3:

The Manufacturers of Emissions Controls Association (MECA) submitted comments on the day of the Board Hearing that were identical to concerns expressed in the previously submitted 45-day public written comment period (see Comment Nos. 16 and 26 in Section II.a).

Response to Comment No. 3:

See Response to Comment Nos. 16 and 26 in Section II.a.

Comment No. 4:

The Managing Director of Environmental Affairs at the Port of Long Beach (POLB) presented written comments for both the at-berth ocean-going vessel (shoreside power) regulation (ARB, 2007) and the heavy duty drayage trucks measure being considered by the Board on December 7, 2007. He stated POLB's support for the Board's adoption of the drayage truck regulation. He mentioned that the San Pedro Bay Ports (Port of Los Angeles and Port of Long Beach) had recently adopted a measure called the Clean Trucks Program (Port of Los Angeles / Port of Long Beach, 2008)¹⁰ that accelerates the CARB requirements locally while being consistent with ARB's statewide goals for achieving emissions reduction at port and intermodal rail facilities. The POLB asked ARB to work together and identify the sources of funding necessary to assist drivers to get into newer, cleaner vehicles.

Response to Comment No. 4:

ARB thanks the Managing Director for presenting comments related to both the shoreside power regulation and the drayage trucks measure.

¹⁰ (Port of Los Angeles / Port of Long Beach, San Pedro Bay Ports Clean Truck Program, July 2008).

The specific concerns related to the shoreside power regulation will be addressed by ARB in the Final Statement of Reasons for the shoreside power regulation when finalized. In regards to the drayage trucks regulation, ARB appreciates POLB's support.

ARB notes that public funding for heavy duty diesel retrofits and replacements using Proposition 1B State funds is being addressed as a parallel measure independent of the drayage truck regulation. In February 2008, the Board approved staff's recommendations for distributing the \$1 billion dollars of Proposition 1B funds between the State's four primary trade corridors (identified in Senate Bill 88), with 55 percent or \$550 million targeted for the Los Angeles / Inland Empire region. The Ports of Los Angeles and Long Beach are included in the Los Angeles/Inland Empire trade corridor, along with the South Coast Air Quality Management District. For the first cycle of funding (fiscal year 2007/2008), the Board awarded these local entities over \$107.5 million to clean up trucks serving major seaports and intermodal rail yards. Specifically, the Ports of Los Angeles and Long Beach were awarded \$98 million to help defray the cost of replacing 1,960 drayage trucks (\$50,000 maximum per truck) with 2007 or newer trucks, and the South Coast Air Quality Management District was awarded over \$6.9 million to replace 130 trucks and over \$2.6 million to install diesel particulate matter filters (or retrofit devices) on 500 drayage trucks.

ARB believes that significant outreach and implementation challenges exist for both ARB and the Ports of Long Beach and Los Angeles. ARB looks forward to working with Port authorities to ensure successful outreach and implementation of the public funding program.

Comment No. 5:

The West State Alliance is an organization made up of truck drivers, owners and operators serving the Port of Oakland. On behalf of the members, the organization urged ARB to allow pre-1994 model year trucks to continue to operate with a level 3 VDECS installed. These trucks would then operate at a performance level comparable to retrofitted 1994 through 2003 model year trucks. The organization added that if the current proposal is left unchanged, it could have severe impacts on their business and hamper the sustainability of their regional and long-haul transportation industry.

Response to Comment No. 5:

As noted in the Staff Report and Technical Support Document for the drayage truck regulation (ARB, 2007), ARB has thoroughly analyzed the economic impacts of the regulation. ARB believes that all known risks have been disclosed and does not believe that the drayage truck regulation threatens the sustainability of the regional / long-haul transportation industry.

In regards to allowing retrofitted pre-1994 model year trucks to continue to operate, see Response to Comment Nos. 16 and 26 in Section II.a.

Comment No. 6:

The Port of Los Angeles and the Board of Harbor Commissioners expressed support for ARB's efforts to reduce emissions from the heavy-duty vehicle trucks that service California's ports and commended ARB staff for their hard work and commitment in developing the regulation. The Director also noted that both the Ports of Los Angeles and Long Beach are also developing a Clean Trucks Program that accelerates the turnover of trucks. They further appreciated ARB assurance that the drayage truck regulation would not preempt the requirements of their program, or affect their ability to receive Proposition 1B funding.

The Director requested the Board to consider making some changes to the proposed compliance requirements. The Port of Los Angeles would like the drayage truck registry requirements (DTR) in the regulation be substituted by the registration requirements of the Clean Trucks Program. Furthermore, he added that the Port intends to use technology such as RFID tags to verify compliance with the Port requirements for truck gate entry, and that this technology be accepted as an alternative verification / compliance method with the drayage truck regulation.

Response to Comment No. 6:

ARB notes and thanks the Port of Los Angeles and Board of Harbor Commissioners for their support of the drayage trucks measure.

ARB agrees that a streamlined registration process for both programs is important. Staff is currently developing the information requirements for the drayage trucks registry database and is working closely with the Port of Los Angeles and the Port of Long Beach.

Section (d)(6)(A) of the proposed 15-day modifications to the drayage truck regulation no longer requires that a terminal or rail yard check for a

DTR label to determine a truck's compliance. This section now requires that a terminal or rail yard check to make sure a truck is DTR compliant without specifying the method on how they conduct such checks. Terminals and rail yards are encouraged to use a method to collect truck information that best suits their needs. Possible methods include: manually noting the license plate or VIN number, using optical license plate readers, and / or having drayage trucks install remote sensors and using infrared readers, and/or the use of compliance labels.

ARB notes that the drayage truck regulation requires the port and rail yard authorities to provide noncompliance reports collected by the port terminals and rail yards on a quarterly basis. The requirement for the port and rail yard authorities to collect, filter, and submit compliance information to ARB is also technology neutral. ARB believes that the ports could integrate their RFID data collection efforts, compile, consolidate, extract relevant information and then submit it to ARB.

Also, as noted in response to this section's Comment No. 4 above, the drayage truck regulation has not affected the Ports' abilities to receive Proposition 1B funding, as evidenced by the Ports being awarded \$98 million in the first cycle of funding (fiscal year 2007/2008) to help defray the cost of replacing 1,960 port trucks (\$50,000 maximum per truck) with 2007 or newer trucks.

Comment No. 7:

An executive of a California retrofit products manufacturer presented oral testimony and submitted written comments on the day of the Board hearing. These comments are similar to the concerns raised in the 45-day public written comments (see Comment Nos. 16 and 26 in Section II.a).

Response to Comment No.7:

See Response to Comment Nos. 16 and 26 in Section II.a.

Comment No. 8:

In support of the oral testimony provided by the California Trucking Association (CTA) on the day of the Board hearing, the CTA provided written comments that primarily addressed business impacts and cost analysis of the regulation. CTA contends that due to uncertainties in the Staff Report (ISOR), the Board should consider the following recommendations:

1. The Board should direct ARB staff to reassess the rule's cost effectiveness and feasibility in the context of uncertainties regarding the key issues outlined below, and also require the staff to report back to the Board one year after the regulation is adopted. Specifically, CTA would like staff to address the following:
 - i. Staff must schedule a review after consideration of Proposition 1B public financing proposals to ensure that public funds will be made available for all phases of the rule.
 - ii. Staff should develop a used truck price forecast and take demand factors into consideration, and assess the impact on MY 2007 and newer truck prices.
 - iii. Staff should assess economic impacts on drayage owner-operators if they are unable to pass through costs as staff has initially assumed in the Staff Report.
 - iv. Staff should assess what impact the regulation will have on California exports and exporters.
 - v. Staff should assess the potential impacts of the regulation on the supply of drayage truck operators and their unhindered ability to move cargo, and specify how they would monitor for disruptions in goods movement.
 - vi. Staff should present actual costs that are likely to be incurred by drayage owner-operators, and include costs for workers displaced from drayage operations.
2. CTA feels that after ARB staff address the issues mentioned above, if further analysis indicates that the cost-effectiveness benchmarks have changed, or if other issues arise, then the Board should direct staff to reconsider the implementation timeline.

Response to Comment No. 8:

ARB notes that written 45-day comments were submitted on behalf of the California Trucking Association (see Comment No. 14 in Section II.a), and that it has provided a detailed response to each concern raised therein. Additional written comments were subsequently presented by CTA on the day of the public hearing in support of oral testimony presented by CTA. Staff will only address the written comments submitted on December 7, 2007 in this section.

1. In response to the concerns mentioned above, ARB notes the following:

- i. That it intends to monitor appropriations and disbursements associated with Proposition 1B funding closely as they develop, and disseminate the information during planned outreach activities to the licensed motor carriers and independent owner-operators that conduct drayage business at the affected ports and intermodal rail facilities.

Local entities such as air districts and port authorities awarded funding for the first year of the Proposition 1B's Goods Movement Emission Reduction Program for drayage truck projects began soliciting applications for funding starting in June 2008. Some of these entities offer funding for only drayage truck retrofit projects (Phase 1 of the regulation), while others have funding for replacement projects (Phase 2 of the regulation) as well. Interested parties should consult the local entities' websites for application information, as most will only be accepting applications during specified timeframes, although they may have more than one solicitation period per fiscal year.

Depending on appropriation of Proposition 1B funds by the Legislature in future years, applications for funding will again be accepted during specific timeframes by those districts or partner entities that request and are awarded funding for drayage truck projects. At this time ARB anticipates another \$250 million to be appropriated by the Legislature for fiscal year 2008/2009 projects in all source categories (that is, not just for drayage truck projects) and awarded in spring 2009, and expects the remaining \$500 million to be appropriated in future years.

- ii. ARB believes that all known risks associated with the used truck price forecasting models developed for predicting used model year 2007 truck prices in 2013 and for determining the economic impact assessment presented in the Staff Report and the associated Technical Support Document (ARB, 2007) were disclosed. ARB has addressed the supply of used model year 2007 and newer trucks for Phase 2 replacements, as well as the impact the demand will have on used truck prices in ARB's response to Comment No. 14 - Concern 1 in Section II.a. If any surge in model year 2007 or newer used truck prices from expected values due to regulatory demand is witnessed, ARB believes that the price spike will be short lived, and prices will soon correct as more supply becomes available. Therefore, ARB urges drayage owner-operators to take compliance action

early and avoid any last minute uncertainties. Lastly, in regards to the impact of regulatory requirements on new and used truck prices, see Response to Comment No. 4 - Concern 2 in Section II.a.

- iii. This concern was previously expressed by CTA (see Response to Comment No. 14 – Concern 2 in Section II.a).
- iv. ARB has determined that compliance costs will pass through the goods movement supply chain, and eventually to the consumer. ARB has also determined that the compliance cost increases for a drayage owner-operator is less than 1 percent of the standard overseas shipping freight rates, applicable to both exporters and importers. Therefore, ARB believes that the drayage truck regulation compliance costs will have a negligible impact on California exporters.
- v. This concern was previously expressed by CTA (see Response to Comment No. 14 – Concern 7 in Section II.a).

ARB further believes that with outreach and education about public funding options, drayage owner-operators will take early compliance action and a shortage of drayage operators or disruptions in the flow of cargo will be avoided.

- vi. This concern was previously expressed by CTA (see Response to Comment No. 14 – Concern 8 in Section II.a).

With reference to the concern regarding workers displaced from drayage operations, ARB provides the following response: Dr. Kristen Monaco, Professor of Economics at California State University – Long Beach, who has authored several studies on port drayage, has advised ARB (Monaco, 2007) that many seasonal, infrequent visitors to the ports are also engaged in seasonal construction, manufacturing, or other semi-skilled employment, including commercial driving, local delivery, etc. ARB believes this would also apply to any port or intermodal rail drayage operator. According to Dr. Monaco, if operators are displaced from port and intermodal rail drayage due to not being able to sustain a respectable wage, then they would most likely find comparable employment in other driving jobs.

Using the E-DRAM model, staff assessed that even with the few job losses predicted in port and intermodal rail drayage as a result of the regulation, there would still be net job creation in the transportation sector of the Californian economy between

2006 and 2013. Therefore, staff did not assess worker displacement costs associated with the regulation.

2. At the December 2007 hearing, the Board directed staff to periodically provide updates to the Board on implementation and outreach issues. If staff's analysis shows that any of the regulation benchmarks such as the cost-effectiveness has drastically changed, then ARB would consider making recommendations to ensure the regulation does not impede goods movement at the ports.

Comment No. 9:

An advocate for the use of renewable and alternate fuels submitted a compilation of recent State and national directives aimed at increasing the use of renewable and alternative fuels thereby reducing dependency on foreign oil and petroleum fuels. Some of the directives cited were from California Governor Schwarzenegger to establish the world's first Low Carbon Fuel Standard (LCFS) for transportation fuels, and the national Renewable Fuels Standard spearheaded by the U.S. EPA. The private citizen urged ARB to encourage the development of advanced technologies, and the production and use of alternative and renewable fuels, and help California achieve a 20 percent use of these fuels in its rulemaking.

Response to Comment No. 9:

ARB notes the comments addressed to ARB. ARB is developing a low carbon fuel standard, tentatively scheduled for Board consideration in March 2009.

The drayage truck regulation does not require that any portion of the diesel fuel used in a heavy duty drayage truck be of renewable content, or be used in conjunction with, or be replaced by an alternative fuel. The drayage trucks measure seeks to reduce emissions and public exposure to diesel particulate matter (diesel PM) and oxides of nitrogen (NOx) by setting emissions performance standards for in-use, diesel-fueled heavy duty vehicles that transport cargo to and from California's port and intermodal rail facilities.

While the regulation has no requirement governing the use of renewable or alternative fuels, drayage truck owner-operators are urged to check the compatibility of renewable fuel use with retrofit and OEM emissions control devices, and consider implications of renewable fuel use on warranty requirements of their emissions control devices.

Comment No. 10:

The vice-president of a California port trucking firm expressed concern that the requirements of the proposed regulation could have adverse, irreversible economic impacts on the California economy. He mentioned that issues such as new engine costs, rate increases needed to cover the cost of the technology and the lack of competitive pricing of the VDECS will all adversely impact California GDP (output). Owners of existing trucks could further have their residual truck values eroded as the trucks are rendered obsolete for the California port and intermodal rail service. Another concern raised was the inability of ARB staff to adequately police compliance / enforcement. The trucking company business owner also suggested that the regulatory requirements should be consolidated with those of the proposed private fleet rule in 2008.

Response to Comment No. 10:

These same concerns were expressed by other business owners (see Response to Comment No. 4 in Section II.a).

II.c Oral Comments Provided on Day of ARB Public Hearing

Oral comments by the general public were presented to members of the Board during the ARB Public Hearing held on December 7, 2007, in El Monte, California. Persons that made oral statements on the proposed drayage truck regulation are listed in Table 3 below. Following the list are summaries of each comment, as well as responses to the objections, concerns, and recommendations made. Each response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

Table 3
List of Individuals & Businesses Providing Oral Comments
on the Day of the ARB Public Hearing

Comment Number	Name & Affiliation	Written Comments Provided
1	Dagberto, Larios Port Truck Driver	No
2	Pineda, Miguel Truck Driver	No
3	Abrica, Salvador Truck Driver	No
4	Prinzer, Charles Truck Driver	No
5	Zerolnick, Jon Los Angeles Alliance for a New Economy, CCSP	No
6	Appy, Ralph Port of Los Angeles	Yes
7	Kanter, Robert Port of Long Beach	Yes
8	Schlageter, Martin Coalition for Clean Air	No
9	Logan, Angelo E. Yard Communities for Environmental Justice	No
10	Anair, Don Union of Concerned Scientist	No
11	Broad, Barry Teamsters	No
12	Clark, Darrel Sierra Club of Los Angeles	No

Comment Number	Name & Affiliation	Written Comments Provided
13	Ramirez, Isella E Yard Communities for Environmental Justice	No
14	Pugh, Alex Los Angeles Chamber of Commerce	No
15	Kubsh, Joseph Manufacturers of Emissions Controls Association	Yes
16	Edgar, Brad Cleaire	Yes
17	Haller, Bill Sierra Club of California	No
18	Ibarra, Cecilia Harbor Truckers for a Sustainable Future	No
19	Hendricks, Mary-Lou Cal West Express	No
20	Bartolic, Richard American Pacific	No
21	Lightman, Michael Great Freight & Harbor Truckers for S.F.	No
22	Guss, Ron Trucker	No
23	Hobbs, Lee Hobbs Trucking	No
24	Schrap, Matt California Trucking Association	Yes
25	Flores, Walter Independent truck Drivers Association	No
26	Rajkovicz, Joseph Independent Drivers Association	No
27	Salazar, Carlos WCVI	No
28	Bushey, David Comp Pro Systems	Yes
29	Cox, Charlie Ironman Parts	No
30	Bailey, Diane Natural Resources Defense Council	No
31	Lassen, Marty Johnson Matthey Catalyst	Yes
32	Green, Elina Long Beach Alliance for Children with Asthma	No

Comment Number	Name & Affiliation	Written Comments Provided
33	Applena, Athena West Oakland Environmental Industries	No
34	Aborashad, Wafaa Healthy San Leandro	No
35	Jackoski, Helen Private Citizen & Resident of San Pedro Harbor	No
36	Callahan, Colleen American Lung Association of Los Angeles	No
37	Patel, Rupal Communities for Clean Ports	No
38	Shahenian, Nicole Breathe California of Los Angeles County	No
39	Macmillan, Ian Los Angeles Unified School District	No
40	Hogo, Henry South Coast Air Quality Management District	No

Comment Nos. 1, 2, and 3:

A port drayage trucker asked ARB staff if they were aware of working conditions at the ports. He stated that the companies that port drivers work for (referring to the motor carriers) are inflexible and offer low wages. He also stated that these wages are barely enough to survive on, let alone purchase a new truck. He concluded by saying that it was his understanding that the motor carriers would purchase the new trucks with the subsidies and retain the truck drivers as employees.

Another drayage trucker, while supportive of efforts to clean up the air, also expressed concerns to the Board of his inability to pay for the cost of a retrofit or purchase a new truck. He stated that conditions in drayage / trucking are deplorable, and that the harbor commissioners have yet to present a solution to the truck driver's problems (referring to low wages, compliance requirements, etc.). He also stated that the concessionaire model supported by the San Pedro Bay Ports Clean Air Action Plan was questionable, but the truck drivers would be willing to be employees if the motor carriers assume the cost of purchasing new trucks.

A resident of Wilmington expressed his support for the ARB proposal. As a former truck driver, motor carrier dispatcher, and operations manager at the ports, he believed that the motor carrier firms have the

ultimate responsibility for compliance with the regulation. He also stated that the solution to the industry problems may rest with “passing the buck”, implying that costs pass-through is critical to any solution.

Response to Comment Nos. 1, 2, and 3:

ARB is aware that port and intermodal rail drayage is a low margin business, and that drayage owner-operators may have a limited ability to pay for the compliance requirements of the regulation. ARB believes that the success of the regulation depends upon successful implementation of cost-pass through in the goods movement supply chain, and a well designed and executed public financial assistance package to help drayage truck operators to either retrofit or replace their vehicles. ARB urges drayage truck owner-operators to contact their respective port and intermodal rail authorities, or their regional air quality districts as soon as possible, and inquire about truck replacement and retrofit funding opportunities. Motor Carriers and independent owner-operators alike may apply for funding.

ARB intends to conduct additional outreach to drayage truckers. However, owner-operators are advised to keep abreast with changing port authority requirements for motor carriers and harbor drayage service.

Comment No. 4:

A resident of Wilmington testified that the ill health effects of pollution in their community has taken a toll on residents, many of whom are no longer alive. He further testified that children in Wilmington schools suffer from asthma problems, and that the most important legacy we can leave our children is clean air.

Response to Comment No. 4:

ARB notes the comments and agrees that residents living in communities in and around where drayage activities occur are exposed to higher levels of diesel pollution and suffer the resulting ill health effects.

Comment No. 5:

A Research Analyst representing the Los Angeles Alliance for a New Economy and the Coalition for Clean and Safe Ports strongly supported ARB efforts at regulating emissions from drayage trucks servicing the

ports and intermodal rail facilities. Additionally, he testified that residents near the Commerce rail yards are more likely to contract cancer than people in the rest of Los Angeles, and asthma rates in places like West Oakland and Long Beach are twice what they are in the rest of the State. He also supported the NRDC research study that assesses the impact of diesel PM pollution from occupational (truck driver) exposure. He added that drivers tend to work as well as live in communities impacted by the pollution, and at the end of the day, they get no respite from breathing toxic emissions from diesel trucks. Lastly, he stated that industry must be held accountable, and that the costs for compliance must shift from those currently suffering to those currently benefiting from commerce.

Response to Comment No. 5:

ARB notes the comments and appreciates the support for the proposed measure. ARB agrees that the drayage industry employs some of the oldest and the most polluting trucks on the road which can have profound ill health effects for residents living in and around communities where the drayage trucks coalesce. ARB anticipates that the compliance costs will spread throughout the goods movement supply chain.

Comment Nos. 6 and 7:

The Director of Environmental Management of the Port of Los Angeles expressed his support for the drayage trucks measure proposed by staff. He mentioned that in conjunction with the Port of Long Beach, the combined ports have developed a Clean Trucks Program. To implement the program, the Ports are expecting to receive 80 percent of the Proposition 1B funds, and is relying on ARB support not to preempt their programs.

The Managing Director for Environmental Affairs and Planning at the Port of Long Beach also expressed his support to the Board for adopting the drayage truck regulation. He mentioned that working with ARB staff has been a terrific collaborative working experience that has resulted in the crafting of an effective regulation which parallels the Clean Trucks Program. He further said that the next step was to identify the sources of funding and help those affected get into clean trucks. Since the combined ports have a disproportionate impact, the Port official urged the Board to help them with Proposition 1B funds which will increase the total pool of funds needed for their programs.

Response to Comment Nos. 6 and 7:

ARB is appreciative of the Ports of Los Angeles and Long Beach support for adoption of the drayage truck regulation. In regards to the concerns expressed, see Response to Comment Nos. 4 and 6 in Section II.b.

Comment Nos. 8 and 9:

The Campaign Director of the Coalition for Clean Air strongly supported the adoption of the drayage truck regulation. He was also supportive of the proposed 15-day modifications that may include the Fresno and Mira Loma rail yards as facilities to which the drayage truck regulation is applicable. He said that adopting the drayage truck regulation was a starting point, and that the coalition looks forward to working with ARB and the ports on implementation, and on the funding proposals.

A member of the East Yard Communities for Environmental Justice (EYCEJ), located in the City of Commerce (East of Los Angeles) expressed support for the drayage truck regulation and urged the Board to adopt the measure. He mentioned that the City of Commerce has four intermodal rail facilities, and over 35,000 truck trips a day coming from the ports. He cited an ARB study that showed that 40 percent of the cancer risk in their communities came from drayage trucks. He mentioned that setting those statistics aside is the reality that real people in their communities are being assessed with cancer, asthma, and bronchitis every day.

The member recommended that ARB provide definitive criteria for inclusion of rail yards to which the regulation applies, and found that the cut-off of 100 trucks visits per day was vague, mainly because such criteria can fluctuate with expansion or seasonal demand. Lastly, he stated that the burden of achieving emissions reduction has been put on the drayage operators (drivers).

Response to Comment Nos. 8 and 9:

ARB is appreciative of the Coalition's and EYCEJ's support of the drayage truck regulation.

In response to the EYCEJ member's concern regarding the arbitrary selection of 100 truck visits per day, ARB notes that the threshold of 100 average truck visits per day is based on a health risk assessment at the Fresno rail yard. Staff assessed that the ensuing cancer risk was found to be less than 10 in a million at this threshold of truck activity. The Fresno rail yard was found to be the largest of the intermodal rail yards

outside the 80 mile radius of the ports, with truck activity below the threshold of 100 average truck visits per day. The issue of including the intermodal rail yards outside the 80-mile radius of the ports is discussed in more detail in Section II.a (see Response to Comment No. 31). The modifications adopted by ARB regarding these outlying intermodal rail yards establishes definitive criteria for their inclusion or exclusion from the regulation.

With regards to the burden for achieving emissions reductions being put on the drayage operator, see Response to Comment Nos. 1, 2, and 3 of Section II.c.

Comment No. 10:

A member of the Union of Concerned Scientists, expressed strong support to the Board for adopting the drayage truck regulation. He mentioned that this regulation would be difficult to implement, and that they are willing to work with ARB to make it happen. He stressed that for the regulation to be successful, there are three elements that must be specifically addressed -- funding, outreach, and enforcement -- and offered suggestions on how ARB could address each one of the issues.

Response to Comment No. 10:

ARB appreciates the support for the drayage truck regulation and their willingness to help with outreach. ARB intends to conduct several workshops in the coming months and address all three issues (outreach, funding, and enforcement) to ensure successful implementation of the drayage trucks measure. In addition, the Board-approved guidelines for implementation of the Goods Movement Emissions Reduction Program (incentive funding program of Proposition 1B or Program) require local agencies participating in the Program to work with their local communities when developing funding proposals, and to conduct outreach to equipment owners and local communities on the funding opportunities and responsibilities under the Program.

Comment No. 11:

The Director of the California Teamsters mentioned that it is critical that the drayage truck regulation be matched to the regulatory system that governs the trucking industry. After briefing the Board members on the inner workings of the drayage profession, he stated that the responsibility for the safe operation of the vehicle rests with the motor carriers, and it is they who should be held responsible for compliance

with the air quality standards. He also stated that since the drayage profession partially works in an underground economy, it is going to be difficult to enforce the regulation. However, he mentioned that ARB should not settle for requirements that seem impractical to enforce, but instead aim to enforce strict requirements with a little bit of pain.

Response to Comment No. 11:

ARB notes the comments and agrees that compliance should primarily rest with the motor carriers and that a strong enforcement program is critical to the success of the program. In developing the regulatory requirements, ARB devised minimum performance standards for drayage vehicles, and also imposed requirements for motor carriers to engage and dispatch only compliant vehicles to the ports and intermodal rail facilities.

Comment No. 12:

An executive of the Sierra Club of Los Angeles testified that relative to Statewide emissions sources, the ports and greater Los Angeles areas have emissions that are disproportionately higher than the rest. While being supportive of the regulation and staff effort, he suggested that Board members consider extending the regulatory applicability beyond the 80-mile radius from a port, and include the Fresno rail yard. He also stated that the Sierra Club favors moving containers by rail instead of short-haul trucking.

Response to Comment No. 12:

ARB notes the comments and appreciates the support of the Sierra Club. ARB notes that in the 15-day proposed modifications to the drayage truck regulation, the definition of "Intermodal Rail Yard" (section (c)(24)) has been modified to include intermodal rail yards located more than 80 miles from the nearest port, if they have, after January 1, 2008, 100 or more average daily drayage truck visits in any one month. The issue of including the Fresno rail yard as one of the facilities to which the drayage truck regulation should be applicable has been addressed in Response to Comment No. 31 in Section II.a.

Comment No. 13:

A member of the East Yard Communities for Environmental Justice (EYCEJ) and resident of the City of Commerce testified to the Board members that their community is seriously impacted by pollution from

those who engage in goods movement activities and expose residents to emissions that cause higher cancer risk. As a result, the community member urged the Board to adopt the drayage truck regulation and make a difference in their community.

Response to Comment No. 13:

ARB agrees with the comments presented.

Comment No. 14:

A member of the Los Angeles Chamber of Commerce expressed his support for adoption of the drayage trucks measure. He mentioned similar concerns expressed earlier regarding the potential shortage of drayage workers after the regulation goes into effect. They also commented that their organization wants ARB to continue working with industry to identify relevant labor issues, and have a contingency plan ready if drayage truck operator shortages develop.

Response to Comment No. 14:

ARB notes the comments and acknowledges the potential for disruptions in the supply of drayage operators as a result of the regulation. This concern was also raised by the CTA and has been addressed in the Response to Comment No. 14 – Concern 7 in Section II.a.

ARB also believes that with early implementation, last minute pitfalls can be avoided and any disruptions in drayage truck operator supply can be minimized or short-lived.

Comment No. 15:

In addition to the 45-day written comments (see Comment No. 26), the Executive Director of the Manufacturers of Emissions Control Equipment (MECA) expressed strong support for the drayage trucks measure being heard before the Board. The Executive Director assured ARB staff and Board members that his industry stands prepared to meet the retrofit device demand, and address any supply concerns that may arise in the future. He reiterated that model year 1991 through 1993 and 2004 through 2006 diesel-fueled heavy duty trucks should be included for Phase 1 compliance in the drayage truck regulation, as level 3 VDECS for these truck engines are available today. He concluded by urging ARB to adequately staff and allocate resources for the retrofit verification

function and making sure that more retrofit options are made available not only for the drayage truck regulation, but also for future regulations.

Response to Comment No. 15:

Since MECA's comments were also expressed earlier, see Response to Comment Nos. 16 and 26 in Section II.a.

Comment No. 16:

In addition to the 45-day written comments (see Comment No. 16), an executive of a California based manufacturer of advanced emissions control equipment presented testimony that uncontrolled, newer 2004 through 2006 diesel-fueled heavy duty trucks will emit approximately ten times the particulate matter of either a 1991 model year retrofitted truck or a 2007 model year truck. He stated that this loophole of not requiring 2004 through 2006 model year trucks to be compliant in Phase 1 should be closed. He also suggested that staff and Board members consider two specific improvements to the rule; require retrofits on all trucks equipped with 2004 through 2006 model year engines, and also permit 1988 through 1993 model year trucks to operate with a level 3 VDECS installed on the vehicles.

Response to Comment No. 16:

A detailed response to the same concerns is provided in Section II.a (see Response to Comment Nos. 16 and 26).

Comment No. 17:

The co-chair of the Sierra Club of California expressed strong support to the Board for adoption of the drayage truck regulation. He questioned whether the deplorable conditions at the ports would improve if the Board did not pass the drayage trucks measure. He further questioned the future viability of the port economic model, and suggested that the ports, the shippers, and the truckers figure out a way to make it more sustainable. He concluded by saying that it was his belief that there will be heroes in the drayage business, because they will see the need to step up, follow the regulation, and do the right thing and save more lives by cutting down on pollution.

Response to Comment No. 17:

ARB appreciates the comments and the support for adoption of the drayage truck regulation.

Comment No. 18:

A member of the organization Harbor Truckers for a Sustainable Future (HTFSF) reminded Board members that the issue at hand was related to the environment and not related to labor supply or demand. She stated that the labor issue should be dealt with separately. She also mentioned that she has been involved in outreach to members of the Hispanic trucking community to understand what problems are of concern to them, and identified that funding is the main issue that needs to be addressed. She concluded by saying that she represents the industry and the industry supports the drayage truck measure.

Response to Comment No. 18:

ARB notes the comments and appreciates the outreach efforts made to members of the Hispanic trucking community.

ARB agrees that funding is a major concern (see Response to Comment No. 11 in Section II.a and Response to Comment No. 4 in Section II.b).

Comment No. 19:

The owner of a warehousing distribution and trucking company asked Board members to consider the impact of the inability of businesses such as theirs to pass on costs by raising shipping rates, and on the supply of drayage operators if small businesses were forced out of business due to compliance requirements. She further mentioned that funding was a big issue.

Response to Comment No. 19:

ARB acknowledges the concerns regarding the potential impacts on small businesses. However, ARB believes that with cost pass-through assumptions, and available public financial assistance for drayage truck owners, the impact to small businesses will be minimal with a greater benefit to local air quality, and better health for all Californian citizens. A detailed assessment of the economic impact of the regulation is

presented in the Staff Report and the Technical Support Document (ARB, 2007) for the drayage truck regulation.

ARB also agrees that funding is a major concern (see Response to Comment No. 11 in Section II.a and Response to Comment No. 4 in Section II.b).

Comment No. 20:

The owner of a southern California drayage company expressed concern that with the Phase 1 regulatory requirement to upgrade older equipment to a 1994 through 2003 model year truck, both the motor carriers and independent owner-operators that they contract with may not be able to realize the full useful life of equipment before it is retired from service. This requirement literally forces the truck owner to pay more for the next tier of equipment which is 2004 through 2006, or even 2007 model year trucks, thereby creating an artificial price hike. He advised the Board that if this requirement to upgrade trucks is not successful, then there should be a contingency plan, or else face the likely impact that many independent owner-operators would operate outside the ports to recover their investment in newer vehicles, or leave the drayage profession altogether.

He also stated that the industry has already witnessed attrition in the available labor workforce due to higher fuel prices, and is likely to see further attrition due to TWIC (Truck Worker Identification Card), and ARB requirements.

Lastly, he commented on the impact that higher shipping / freight rates could have on the California export economy, which is largely comprised of low priced goods. He believes that California exports could be affected if safety nets or contingency plans are not devised into the regulation.

Response to Comment No. 20:

ARB notes the concerns expressed by the drayage company owner. When the regulation goes into effect, all pre-1994 model year trucks will be restricted from California port and intermodal rail drayage service. A detailed response for this requirement is given in Response to Comment No. 4 – Concern 5 in Section II.a.

The requirements of the drayage truck regulation are performance based standards. The requirement to retrofit a 1994 – 2003 model year truck in Phase 1 and then upgrade it in Phase 2 is not necessarily a

recommended sequential course of action for independent drayage owner-operators. Individual business decisions, along with available public financial assistance, will dictate how most independent owner-operators will be compliant or choose to comply with the requirements of the regulation. ARB expects vehicle retrofit and upgrade costs to be within the cost-effectiveness parameters established in the Staff Report and Technical Support Document (ARB, 2007).

ARB acknowledges the concerns about the potential impact of the drayage truck fleet. However, ARB believes that any supply issues in the drayage profession will be resolved as public funding programs are implemented. See Response to Comment No. 14 – Concern 7 in Section II.a.

ARB adds that as a result of the drayage truck regulation, it has determined that post-regulatory economic conditions will not have a negative impact on the overall California economy. The transportation sector is still expected to grow between now and 2013. ARB further believes that the requirements of the drayage truck regulation alone are not likely to hamper the California export economy, as the economic impact measured by the average container fee and expected increases in overseas freight shipping was found to be small. A detailed response on the impact of the economic concerns raised here is also provided in Response to Comment Nos. 4 and 14 in Section II.a and Comment No. 8 in Section II.b.

Comment Nos. 21 and 22:

A member of the organization Harbor Truckers for a Sustainable Future (HTFSF), and also owner of a drayage company expressed his concerns to Board members about the drayage truck regulation. He mentioned that as a member of the trucking profession, he does endorse the idea of cleaning up the air and not trying to “dodge” out of compliance requirements. However, he would like to see a more complete plan or regulation that addresses funding availability, labor supply, and contingencies for disruptions in goods movement.

Of his biggest concerns was the potential shortages in the labor supply due to TWIC requirements and the concessionaire models endorsed by the ports that seek to eliminate independent owner-operators by incorporating them as employees. He further mentioned that since California transports goods to the rest of the country, federal funds should be solicited for funding the drayage truck measure, and the burden of the regulation should also rest on the ultimate beneficiaries

(implying consumers in the rest of the country who consume the goods and services).

A president-owner of a drayage company testified to Board members that while his organization is supportive of ARB efforts to clean the air, they are scared of some of the regulatory requirements and their implications on the Californian economy. He identified that the major problems with the drayage truck regulation were issues such as funding for replacing drayage trucks, labor supply and attrition in the drayage industry, and the absence of contingency provisions or safety nets. He also expressed his dissent that in the drayage industry, they do not have the kind of business margins that make it possible to purchase new trucks. Nor did he consent to or believe that staff's proposed Phase 1 requirements that require truck retrofits in 2009 and then Phase 2 truck replacements four years later is a prudent decision for any business.

Response to Comments Nos. 21 and 22:

ARB notes that these same concerns were expressed by the CTA (see Response to Comment No. 14 in Section II.a and Response to Comment No. 8 in Section II.b).

Other sources of funding from container tariffs are also being independently proposed and adopted by the port authorities (Port of Los Angeles, 2007). If the three major California ports are successful in collecting a proposed container fee, the burden of compliance with the regulation will pass onto all citizens who consume goods imported or exported through the California ports.

ARB agrees that concerns regarding drayage operator supply (such as shortages due to TWIC requirements) are real and could compound any impact caused by the drayage truck regulation. ARB intends to participate in numerous outreach activities to avoid last minute compliance issues. As far as shortages due to TWIC or the adoption of a concessionaire model, ARB intends to monitor the availability of drayage truck operators and make appropriate recommendations in the event any problems arise.

ARB evaluated the potential supply scenario of model year 2007 heavy duty diesel vehicles in 2013 and found that the supply for complying with Phase 2 requirements is adequate (ARB, 2007).

On the issue of imposing retrofit and replacement requirements on drayage truck owner-operators, see Response to Comment No. 20 in Section II.c.

Comment No. 23:

The owner of a port drayage company testified to the Board that it just isn't profitable enough to haul containers anymore. As a substitute business, their firm moves bulk commodities such as paper and newsprint. The owner asked the Board to consider the impact of the requirements in the drayage truck regulation to replace their entire fleet of 2004 model year trucks to a 2007 compliant trucks in 2013. Their firm invested \$2 million upgrading their fleets to model year 2004 trucks, and have learned that these trucks cannot be successfully retrofitted to be compliant with 2013 requirements.

Response to Comment No. 23:

ARB is cognizant of the fact that hauling containers is a low margin business. ARB is also aware of the limitations to retrofitting certain model year 2004 through 2006 trucks to meet the 2007 model year emission standards, and the regulation does not require that these vehicles comply with the 2007 standards until December 31, 2013 with the advent of Phase 2 in. Although, at present, truck replacement appears to be the most likely compliance pathway, ARB is hopeful that retrofit technology will continue to advance and be available for compliance with Phase 2. The requirement to have all trucks compliant with California or federal model year 2007 emissions standards stems from SIP commitments to achieve NOx emissions reductions by 2013.

ARB also notes that his firm has as much right to public funding grants as any other firm engaged in port and intermodal rail drayage. Therefore, the owner should not rule out the possibility that there will be grant money available in the future for Phase 2 truck replacements. ARB encourages independent drayage truck owner/operators and fleet owners to contact their local agencies for application and funding availability information. Depending on appropriation of Proposition 1B funds by the Legislature in future years, applications will be accepted by those districts or partner entities that request and are awarded funding for drayage truck projects. Current Program guidelines specify eligibility requirements for funding truck replacement projects, including a project completion date no later than 3 years prior (for private fleets) to the regulation taking effect on December 31, 2013, or 2 years prior for independent owner-operators.

Comment No. 24:

In addition to written comments submitted previously (see Comment No. 14 in Section II.a, and Comment No.8 in Section II.b), the California Trucking Association (CTA) provided oral testimony before the Board. Most of the concerns expressed in the written comments were reiterated by CTA. In addition to those concerns, CTA feels that the drayage truck regulation should be revisited and reevaluated after the uncertainties in bond funding have been resolved. CTA contends that there is no provision in the regulation to replace the 28 percent of the fleet that is deemed to be noncompliant at the end of 2009, referring to the pre-1994 model year vehicles that would be precluded from California port and intermodal drayage service after the regulation goes into effect. Neither did the cost effectiveness and affordability of the regulation take into account demand factors when dealing with the impact of the regulation on 2007 or newer truck purchases. The other concerns expressed by CTA to the Board members were related to the inability of the independent drayage owner-operators to pass on costs, and contingencies for disruptions in the supply of drayage operators should things go wrong.

Response to Comment No. 24:

ARB notes the comments presented by CTA. ARB has provided a detailed written response to written comments provided by CTA (see Response to Comment No. 14 in Section II.a and Response to Comment No. 8 in Section II.b). ARB also adds the following:

1. The drayage truck regulation was devised as a stand-alone measure independent of public funding. ARB understands that even though public funding is critical to the success of the drayage truck regulation, it was able to assess worst case economic impact in the event that there was no public financial assistance available to the drayage owner-operators.
2. Replacement costs for pre-1994 vehicles, which comprise approximately 28 percent of the estimated total drayage fleet affected by the regulation, were factored into the total regulatory costs of the program. These trucks intended for replacement in 2009 are nearing the end of their 20-year economic or useful life. ARB, accordingly, conservatively estimated in considering the costs of the regulation that these vehicles had no residual value for which truck owners would be credited.
3. ARB determined that year over year sales and hence production of Class 8 heavy duty diesel tractors are down due to a weak North

American market and economy, and also partly due to the 2006 pre-buy effect¹¹. ARB expects production of these tractors to rebound and return to their historic levels with the recovery in the U.S. economy and with the ports implementing their Clean Truck Programs. ARB made an assessment of annual Class 8 tractor production levels and the cumulative supply of used model year 2007 or newer tractors in 2013 for the North American market. ARB has concluded that there should be enough used trucks in the market to cover approximately 30,000 replacements for meeting the Phase 2 requirements of the drayage truck regulation. This issue has also been addressed in Response to Comment No. 14 – Concern 1 in Section II.a.

4. In regards to concerns related to costs pass through and disruptions in drayage operator supply, see Response to Comment No. 8 in Section II.b, as well as Response to Comment No. 14 in Section II.a.

Comment No. 25:

In addition to 45-day written comments submitted to the Board (see Comment No. 17 in Section II.a), the International Truck Drivers Association (ITDA) provided oral testimony before the Board. Some of the concerns expressed in the written comments were reiterated by ITDA in its testimony. In addition, ITDA voiced concern that the projected compliance costs had created a demoralizing effect on the owner-operators.

Response to Comment No. 25:

ARB notes the comments. A detailed response has been provided to ITDA's 45-day written comments (see Response to Comment No. 17 in Section II.a).

ARB would also like to note that public funding is, and will be, available to help offset the compliance costs of the regulation (see Response to Comment No. 11 in Section II.a and Response to Comment No. 4 in Section II.b).

¹¹ Ahead of U.S. EPA implementing higher emissions performance standards on Model Year 2007 and newer on-road diesel-fueled heavy duty engines and vehicles, many truckers fearing price increases and performance issues rushed to purchase Model Year 2006 and older used vehicles. This phenomenon was termed the "2006 pre-buy effect".

Comment No. 26:

An executive member of the Owner Operator Independent Drivers Association (OOIDA) testified to the Board that their industry is highly fragmented, with 96 percent of the operating trucks belonging to a fleet of 20 or less trucks. Having said that, he believed that trucking is truly a small business operation, and their members are the infrequent visitors to the ports often carrying goods like meat from the Midwest, or machinery for export to the far east. He expressed concern that the drayage truck regulation was intended for drayage trucks, and according to the definition of drayage truck, the regulation could effectively apply to the national truck population, even trucks that never go into a port or intermodal rail facility. In addition, he mentioned that the requirements of the Drayage Truck Registry (DTR) were in violation of federal law that prohibits unique credentialing of trucks engaged in interstate commerce.

Response to Comment No. 26:

Staff notes the comments that were addressed to Board members, which were also set forth in OOIDA's written comments. See Response to Comment No. 24 in Section II.a. ARB further directs the organization members to the proposed 15-day modifications to the drayage truck regulation; where labeling requirements of the DTR have been amended to comply with federal requirements.

Comment No. 27:

A port drayage worker expressed concern to the Board members that a large number of port drayage workers belong to the Latino communities, and asked the Board and other institutions (critical in formulation of policy) to engage with their community as a whole in the decision making process. He further mentioned that members in their community are not cognizant of the inner workings of regulatory development or may want to influence the outcome of the regulation in a different direction.

Response to Comment No. 27:

ARB notes the concerns regarding more engagement and representation of Latino community groups in discussions with ARB and other institutions (such as port / harbor authorities). Since the inception of the proposed regulation, ARB has actively conducted public consultation and workgroup meetings, and public workshops to engage individual drayage owner-operators, members of the affected communities, trade organizations, port authorities and terminal

operators, and other interest groups in meaningful dialogue¹² related to the development of the regulation. At these meetings, ARB staff discussed proposed requirements and also solicited feedback from the public, giving every participant a chance to voice their concerns. In addition, staff distributed thousands of multi-lingual regulatory information flyers at public weigh stations and port gates of entry, and answered numerous phone calls related to individual concerns. A complete list of staff public outreach activities with regards to the development of the drayage truck regulation is provided in Appendix E of the Technical Support Document (ARB, 2007).

While the regulation and policy has been formulated, ARB believes that the next formidable task is to inform the community groups about the compliance dates and requirements of the drayage truck regulation, and how to participate in the public financial assistance process. ARB will continue to meet with community groups to provide outreach and discuss any issues related to public funding and implementation of the drayage truck regulation.

Comment No. 28:

The owner of an alternative fuels company informed the Board members about various State and national regulatory directives aimed at increasing and encouraging the usage of alternative and renewable fuels such as biodiesel. He urged the Board to consider the use of biofuels for the proposed rulemaking.

Response to Comment No. 28:

ARB notes the oral comments presented. See Response to Comment No. 9 in Section II.b.

Comment No. 29:

A consultant with a retrofit business firm (that has completed more than 5,000 retrofits jobs) testified before the Board that from experience, when fleets choose to retrofit “just-in-time” before the compliance deadlines, it puts a tremendous strain on the firm’s resources as production and installation demand, and labor demand, is massive. Therefore, he suggested the Board consider drafting early implementation provisions in the drayage truck regulation so that last

¹² Spanish translation services were also provided at some of the meetings held in Oakland, Los Angeles, Long Beach, and San Diego. The notices for these meetings were mailed in Spanish and English languages.

minute compliance issues are avoided. These early implementation provisions could be in the form of financial incentives or delayed compliance dates.

He also noted that with available public financial assistance, compliance with Phase 1 requirements will not be so onerous. Lastly, he assured the Board members that the questionable supply of retrofit devices is not a real concern, as manufacturers can supply thousands of devices every month.

Response to Comment No. 29:

ARB notes and appreciates the comments expressed. The same concerns were addressed in Section II.a (see Response to Comment No. 2).

Comment No. 30:

A scientist representing NRDC came out in strong support for the drayage truck regulation by calling it the single most important piece of legislation addressing the health toll impacting communities and drivers from the freight transport industry. NRDC in collaboration with a local West Oakland drayage firm, then presented a short documentary video that showed the occupational risk faced by truck drivers from exposure to diesel emissions inside the truck cabins. NRDC found that diesel soot levels inside cabins were consistently at least ten times higher than background urban levels in other parts of Oakland. In some older trucks, diesel soot levels were even 25 times higher than the background levels. NRDC claimed that this exposure had the corresponding effect of raising the cancer risk for the individual driver to 2600 per million. NRDC then concluded the presentation by urging Board members to adopt the drayage truck regulation.

Response to Comment No. 30:

ARB notes the support for the drayage truck regulation, and thanks NRDC and the local West Oakland drayage firm for their research efforts and video presentation. The subject of the video presentation was also submitted as a research paper to the ARB. The research paper was forwarded to the ARB Research Division for further evaluation.

Comment No. 31:

A member of a retrofit products manufacturing company urged Board members to adopt the drayage truck regulation. He asked the Board member to also consider including Phase 1 compliance requirements for model year 2004 through 2006 heavy duty diesel trucks. He mentioned that only active control devices exist today, but by the middle of 2008, their firm would also have a passive device available. In addition, their firm expects to have a combination NOx-PM control device on the market by 2008.

The member also felt that the verification program at ARB was understaffed, and that Board members ought to consider adding additional staff since the success of the program is contingent upon the timely verification of control devices. He also assured Board members that with 12 manufacturing plants located globally, and a capacity to manufacture 16 million retrofit devices per year, there would be a more than adequate supply of retrofit devices available for the drayage truck regulation.

Response to Comment No. 31:

ARB notes the comments and support for the drayage truck regulation. See Response to Comment Nos. 16 and 26 in Section II.a.

Comment Nos. 32 and 33:

The manager of the Long Beach Alliance for Children with Asthma voiced support for the drayage trucks measure and urged Board members to adopt the regulation. She mentioned that port trucks are a chronic source of local pollution impacting their communities. The organization claims that one in five children suffer from asthma in their communities, and that truck pollution is a large source contributing to those rates.

She further quoted that studies from USC show that there can be immediate health benefits to pollution reduction such as the return of lung function when pollution exposure to children is decreased. Additionally, it is not easy for families to just move away from sources of pollution to improve the environment in which their children live, and must therefore depend upon regulations such as the one currently proposed.

She appreciated ARB including drayage trucks servicing the intermodal rail yards in their regulation and cited that the ICTF intermodal rail facility

is located in the proximity of eight schools. She urged the Board to adopt the drayage truck regulation.

A resident of West Oakland commented about how many of her family members suffer from asthma and that therapy is quite severe. She also added that one in five children in West Oakland suffers from asthma and that the regulation should become a standard for all ports in the country to follow. She stated that if the law was adopted internationally, then shipping companies wouldn't have to use other ports as a diversion measure.

Response to Comment Nos. 32 and 33:

ARB notes the comments and appreciates the support for the drayage truck regulation. ARB also appreciated their testimony related to diesel pollution in Long Beach and West Oakland communities and its impacts on residents.

Comment No. 34:

A member of the community group Healthy San Leandro Environmental Collaborative expressed strong support to the Board for adopting the regulation. She mentioned that pollution from diesel trucks has health impacts in her community which include premature death and asthma. The organization is planning to study the effect of goods movement on the 880 corridor, and assess the impact on communities near the corridor as well as occupational risk of truck drivers, railroad workers, and heavy duty equipment operators. She also stated West Oakland residents are exposed to six times more diesel particulates per person and 90 percent more diesel pollution per square mile, and asked Board members to assess the effect on their community.

Response to Comment No. 34:

ARB notes the comments and appreciates the support expressed by the organization. ARB also appreciates the information on how diesel pollution from goods movement activities affects the community.

The Air Resources Board in cooperation with the Bay Area Air Quality Management District, Maritime Port of Oakland, and Union Pacific Railroad, performed a study to help understand the potential public health impacts from diesel particulate matter (diesel PM) emissions on the West Oakland Community (ARB, 2008)¹³. The purpose of the study

¹³ (ARB, West Oakland Health Risk Assessment Preliminary Summary of Results (Staff Presentation), March 19, 2008).

was to: investigate potential cancer risk in the community from various diesel PM emissions sources and to provide information to help evaluate effectiveness of possible mitigation measures.

The study found that the West Oakland community is exposed to diesel PM concentrations that are almost three times the estimated background diesel PM concentrations in the BAAQMD. The estimated lifetime potential cancer risk for residents of West Oakland from exposure to diesel PM emissions was found to be about 1,200 excess cancers per million, with on-road heavy-duty trucks making the largest contribution to the overall potential cancer risks levels in the West Oakland community. The estimated noncancer health impacts resulting from port operations were also found to be high.

Comment No. 35:

A private citizen and resident of the San Pedro harbor area urged the Board members adopt the drayage truck regulation without being afraid of consequences that cannot be ascertained with any factual basis (referring to uncertainties in issues such as funding). She said that of all the people who have testified today, not one of them was against clean air, and therefore as a private citizen depended on the Board to lead the public forward on the basis of what is best, not on the basis of their fears of what might happen down the road.

Response to Comment No. 35:

ARB notes the comments and is appreciates the support for the regulation.

Comment No. 36:

A manager of the American Lung Association of California (ALA) thanked ARB staff for their hard work and expressed strong support to the Board for adoption of the regulation. She highlighted four important elements of the regulation that must be dealt with: public health, equal protection, funding, and enforcement. She mentioned that the drayage truck regulation will go far to help port communities, but it's also important to note that the distance of port trade corridors stretch past county lines, along freeways and roads crisscrossing the entire state. She suggested that all intermodal diesel magnet facilities should also be included in this regulation, including those in Mira Loma, Barstow, and Fresno, citing that everyone living and working near a rail yard receiving truck traffic should have a right to equal protection from dirty diesel

pollution. She also mentioned that there continues to be support for using Proposition 1B funding as well as local port tariffs, adding that while the drayage truck rule does not address the root problem found in the misclassification of port truck drivers, this regulation is a critical first step and will complement actions at the ports including what is to be a comprehensive San Pedro Ports Clean Trucks Program. Lastly, she emphasized to Board members that enforcement and accountability is critical to ensuring the public health benefits of the rule.

Response to Comment No. 36:

ARB notes the comments expressed and thanks the organization for their support.

The Board members unanimously approved the regulation with modifications for adoption. Staff were asked to investigate and address the issue of including additional facilities such as the Fresno and Mira Loma rail yards to which the regulation should also be applicable (see Response to Comment No. 31 in Section II.a).

In regards to Proposition 1B funds being a critical element to the success of the program, see Response to Comment No. 11 in Section II.a and Response to Comment No. 4 in Section II.b.

ARB notes that ARB and the San Pedro Bay (SPB) Ports staffs have worked together to develop the drayage truck regulation. The SPB Ports, however, are free to augment these standards in their jurisdiction.

ARB agrees that enforceability and accountability are two issues critical to the success of the drayage truck regulation. As a result, ARB has made a requisition for additional staff members to undertake field enforcement and inspection activities associated with the drayage truck regulation.

Comment No. 37:

A member of the organization Communities for Clean Ports expressed support for the drayage truck regulation and thanked the Board and staff for their leadership on reducing port pollution. She stated that the environmental and public health crisis caused by port pollution will only get worse as projected cargo throughput triples in the future and translates into increased truck trips throughout the state. She urged the Board members to consider holding trucks to the cleanest available standards. They support the use of EPA 2010 standards, which was originally proposed in early drafts of the drayage truck regulation and

would also like to see more non-diesel technologies included in the regulation.

The organization would also like the Board to consider funding streams so that port drayage truckers are not saddled with paying for the necessary but costly engine replacements and retrofits. She stated that port drayage workers would be unable to comply with the requirements given the broken trucking industry structure and the very low prevailing wages.

She also urged the Board and staff members to consider including rail yards from the Central Valley and the Inland Empire which are connected to the mega distribution centers and are also targets for massive development and growth. She concluded by showing support for the regulation, and thanking the Board and staff for their leadership on this issue.

Response to Comment No. 37:

ARB notes the comments and support for adoption of the drayage truck regulation. In response to the organization's concern for including rail yards from the Central Valley and the Inland Empire, see Response to Comment No. 31 in Section II.a.

The original requirement which proposed EPA 2010 standards for in-use, diesel-fueled heavy duty drayage trucks was changed due to the commercial unavailability of certified EPA 2010 compliant vehicles and retrofit devices to comply with Phase 1 and 2 deadlines.

In response to the concerns regarding public funding and low prevailing wages in the drayage industry, ARB replies that an assessment was made in the Technical Support Document (ARB, 2007) that port and intermodal rail drayage is a low margin business with workers barely making or exceeding California mean income levels. As a result, drayage owner-operators are likely to be dependent upon costs pass-through, and available public financial assistance from sources such as the Proposition 1B bond funds. See Response to Comment No. 14 - Concern 2 in Section II.a, and Response to Comment No. 4 in Section II.b.

With regards to a non-diesel alternative to the drayage truck regulation, ARB determined that the costs were much higher, thus less cost-effective. The alternative considered was the replacement of diesel fueled vehicles with LNG fueled vehicles. A detailed discussion can be found in the Technical Support Document (ARB, 2007) accompanying the Staff Report (ARB, 2007).

Comment No. 38:

A member of the Breathe California organization expressed strong support to the Board for adopting the drayage truck regulation. The member cited public health impacts, and occupational exposure health risk from diesel pollution.

It was recommended that staff consider the inclusion of some additional rail yards in the San Joaquin Valley and Inland Empires such as Fresno, Barstow, and Mira Loma as facilities to which the regulation should apply. In addition, the regulation should apply to all rail yards receiving truck traffic to provide equal protection to those who live near rail yards that do not fall under the drayage truck regulation.

Response to Comment No. 38:

ARB notes the comments expressed to the Board members on behalf of Breathe California. ARB thanks the organization for their concerns and strong support of the drayage truck regulation.

In response to the organization's concern for including rail yards from the Central Valley and the Inland Empire, see Response to Comment No. 31 in Section II.a. The organization also asked why the drayage truck regulation does not apply to all rail yards receiving truck traffic and provide equal protection to those who live near rail yards not subject to this regulation. The drayage truck regulation subjects all Class I rail roads to the requirements of the regulation, irrespective of the distance from the port. However, intermodal rail facilities with truck activity less than 100 visits per day will only be subject to monitoring, recordkeeping, and reporting requirements of the regulation. ARB has determined that the health risks at this level of truck activity are low.

Comment No. 39:

A representative of the Office of Environmental Health and Safety at the Los Angeles Unified School Districts expressed strong support to the Board for adoption of the drayage truck regulation. He mentioned that diesel exhaust, especially from diesel trucks, has some of the most significant, adverse health effects that affect students at their schools. He concluded by commending the Board for their recent effort at controlling emissions at the Ports.

Response to Comment No. 39:

ARB agrees with the comments expressed and is appreciative of their support for adoption of the drayage truck regulation.

Comment No. 40:

The Assistant Deputy Executive Officer for the Mobile Source Division at the SCAQMD (District) offered support for the drayage truck regulation. He stated, that the District is closely working with the ports to secure Proposition 1B bond funds. Furthermore, the ports were working on a tariff fee to bring additional monies for providing cleaner trucks to drayage workers.

He also indicated that the District was also willing to work with ARB to devise a business model that improves on the efficiency of the drayage process. He concluded by saying that the District believes that adoption of the regulation will provide a focus and certainty on the types of projects that the Proposition 1B money as well as other future money would go towards.

Response to Comment No. 40:

ARB notes the testimony and appreciates the support to the Board for adopting the drayage truck regulation.

With part of the uncertainty in funding for the clean truck programs out of the way (given the \$107 million awarded for drayage truck projects proposed by the Ports of Los Angeles and Long Beach, and the South Coast Air Quality Management District), both the District and ARB can move a step forward in achieving the goals of the drayage truck regulation.

ARB is also working with the District and the port authorities in providing timely outreach that ensures successful implementation of the drayage truck regulation.

II.d Written Comments Received During the 15-Day Public Comment Period from May 21, 2008 to June 13, 2008

Written comments from the general public were also accepted by ARB during the 15-day open public comment period following the issuance of the 15-Day Notice. The modified regulation was released for public comment on May 21, 2008. The public comment period remained open until the close of business on June 13, 2008. Persons that commented on the modified drayage truck regulation by submitting written comments are listed in Table 4 below. Following the list are summaries of each comment, as well as responses to the objections, concerns, and recommendations made. Each response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

**Table 4
List of Individuals & Businesses Submitting Written Comments
During the 15-Day Public Comment Period**

Comment Number	Name & Affiliation	Date of Comment
1	Joint Letter Submitted by Diane Bailey (Natural Resources Defense Council), Don Anair (Union of Concerned Scientist), and Martin Schlageter (Coalition of Clean Air).	06-12-08
2	Eric Sauer California Trucking Association	06-10-08

Comment Nos. 1 and 2:

On behalf of the Natural Resources Defense Council, Union of Concerned Scientists, Coalition for Clean Air, American Lung Association of California, Sierra Club of California, Long Beach Alliance for Children with Asthma, Communities for Clean Ports, and their respective organizations combined 470,000 California members, the group expressed support for adoption of the proposed 15-day modifications to the regulation. While appreciative of staff efforts to analyze and expand the applicability of the drayage truck regulation to intermodal rail yards beyond the 80-mile radius of the ports, they cautioned that the proposed changes to the labeling and record keeping requirements could hamper ARB enforcement efforts. As a result, they believe that ARB will have to be more vigilant in enforcement planning and monitoring activities.

The California Trucking Association (CTA) expressed similar concern that with the removal of the DTR compliance label on drayage trucks, the burden of verifying compliance and providing the information to ARB has shifted to the individual port terminals and intermodal rail facilities.

They claim that ARB has given too much leeway to terminals and railyards on how they should determine the compliance status of drayage trucks. The lack of specifications for this task opens the doors to errors whose costs will be borne by the individual drivers and motor carriers. Under the proposed amendments to the drayage truck regulation, different terminals can choose different methods to ascertain compliance, and trucks must be compliant under all methods at all terminals. However, CTA believes that trucks subject to different compliance methods at different terminals could fail at one terminal and be compliant at another. These differences could result in fines being assessed on compliant trucks as well as noncompliant trucks not being fined. CTA suggests that ARB employ a uniform methodology with an audit track so that errors can be readily corrected.

Response to Comments Nos. 1 and 2:

ARB notes the comments and is appreciative of the support for the proposed 15-day modifications to the drayage truck regulation.

The amendments to the labeling and recordkeeping requirements were proposed to ensure compatibility with the federal law. Concerns were raised during the 45-day public comment period (see Comment No. 24 in Section II.a) that the proposed labeling requirements on a vehicle is a violation of federal statute Section 4306 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). To comply with the federal statute, the rule no longer requires that drayage truck owners and motor carriers have responsibility for affixing a DTR compliance label on the truck. In addition, the regulation no longer requires that a terminal or intermodal rail yard check for a DTR label to determine whether a drayage truck is compliant.

ARB Enforcement Division staff are aware of these proposed modifications and the impact they are likely to have on enforcement activities at the California ports and intermodal rail facilities. As a result, Enforcement Division staff will be modifying their inspection and monitoring procedures by incorporating online access tools that verify compliance status for drayage trucks. Furthermore, removing the requirement to affix the DTR label does not absolve drayage truck owner-operators or motor carriers from registration requirements of the DTR. In the long-term, ARB expects that automated technologies such

as the use of radio frequency identification (RFID) tags, and optical character recognition (OCR) monitoring systems will be commonplace methodologies for verifying the compliance status of drayage trucks at terminal entry gates of the busiest ports.

In response to CTA concerns regarding the assessment of fines, ARB notes that the ultimate responsibility for issuing fines for noncompliant entities rests on the ARB Enforcement Division. Fines will not be issued for trucks that are determined to be compliant with drayage truck regulation provisions, even if misinformation is sent by the port terminals and intermodal rail facilities to the ARB. Lastly, ARB agrees that the potential for noncompliant trucks to escape penalties due to terminal error exists. However, ARB believes that inspections of individual terminals and intermodal rail facilities by ARB Enforcement Division staff are likely to correct any problems with gate entry procedures.