

15 Day Proposed Changes

Modified Regulation Order

Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks

Adopt section 2027 of article 3, chapter 1, division 3 title 13, California Code of Regulations to read as follows:

[Note: This document shows the modifications to the originally proposed Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks), which was released to the public on October 19, 2007. All of the text shown below is new language to be added to the California Code of Regulations. The modifications to the originally proposed language are shown in strikeout to indicate proposed deletions and underline to indicate proposed additions.]

Section 2027. ~~Purpose and Definitions of Control Measure~~ In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks.

- (a) **Purpose.** The purpose of this regulation is to reduce emissions and public exposure to diesel particulate matter (diesel PM), oxides of nitrogen (NOx), and other air contaminants by setting emission standards for in-use, heavy-duty diesel-fueled vehicles that transport cargo to and from California's ports and intermodal rail facilities.
- (b) **Applicability**
- (1) This regulation applies to owners and operators of on-road diesel-fueled heavy-duty drayage trucks operated at California ports and intermodal rail yard facilities. This regulation also applies to "motor carriers," "marine or port terminals," "intermodal rail yards," and "rail yard and port authorities."
 - (2) This regulation does not apply to:
 - (A) dedicated use vehicles;
 - (B) vehicles operating under an ARB authorized emergency decree;
 - (C) authorized emergency vehicles;
 - (D) military tactical support vehicles;

(E) vehicles that operate at port or rail yard properties in which the ARB Executive Officer has granted an annual exemption under the provisions of subsection (f) to local port or rail yard authorities; and

(F) yard trucks.

(c) **Definitions.** For purposes of this section, the definitions of Health and Safety Code section 39010 through 39060 apply except to extent that such definitions may be modified by the following definitions that apply specifically to this regulation.

(1) “ARB” means the California Air Resources Board.

(2) “ARB Designees” are defined as those entities that ARB designates or contracts with to perform certain functions or provide specific services on its behalf under this regulation.

(3) “Authorized Emergency Vehicle” is as defined in Vehicle Code section 165.

(4) “Average Daily Drayage Truck Visits” is determined by dividing the total number of truck visits within a calendar month by the total number of rail yard open days for that same calendar month as represented by the following equation:

$$\left(\frac{\text{Total number of truck visits}}{\text{Total number of rail yard open days}} = \text{Average daily truck count} \right)$$

Where:

(A) a ‘truck visit’ is defined as each occurrence of a drayage truck transgressing from outside rail yard property onto rail yard property; and,

(B) an ‘open day’ is defined as a calendar day in which a rail yard has drayage truck traffic.

(54) “Beneficial Cargo Owner” is a cargo owner, the person for whose account the ocean or rail transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean or rail transportation intermediary that accepts responsibility for payment of all applicable charges.

(65) “Bill of Lading” is a document that states the terms of the contract between a shipper and a transportation company. It serves as a document of title of the goods shipped, a contract of carriage, and a receipt for goods.

- (76) “CARB Diesel Fuel” is diesel fuel certified by ARB as meeting the fuel specification standards set forth at title 13, California Code of Regulations (CCR) section 2280 et seq.
- (87) “Class I Railroad” is a freight railway based on large revenues (\$250 million or more) in comparison to the revenues of Class II (which ranges from greater than \$20 million but less than \$250 million) and Class III (less than \$20 million) railways, as defined by the Surface Transportation Board (STB).
- (8) ~~“Compliance Label” is a tag issued by ARB or its designee under the Drayage Truck Registry for heavy-duty drayage trucks operated at the ports and intermodal rail yards that meet the requirements and compliance schedules of subsection (d) of this regulation.~~
- (9) “Dedicated Use Vehicles” are uni-body vehicles that do not have separate tractor and trailers and include but are not limited to:
- (A) Dedicated auto transports;
 - (B) Dedicated fuel delivery vehicles;
 - (C) Concrete mixers;
 - (D) On-road ~~M~~obile ~~C~~ranes
- (10) “Diesel Fuel” means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture or primarily liquid hydrocarbons (HC) – organic compounds consisting exclusively of the elements carbon and hydrogen – that is sold or represented by the supplier as suitable for use in an internal combustion, compression – ignition (CI) engine.
- (11) “Diesel-Fueled” means a CI engine fueled by diesel fuel, CARB diesel fuel, or jet fuel, in whole or part, including liquid natural gas (LNG) engines using diesel-fuel for pilot injection are subject to the requirements of this regulation.
- (12) “Diesel particulate matter (diesel PM)” means the particles found in the exhaust of diesel-fueled compression ignition engines. Diesel PM may agglomerate and adsorb other species to form structures of complex physical and chemical properties. ARB has identified diesel PM as a toxic air contaminant.
- (13) “Drayage Truck” means any in-use on-road vehicle with a gross vehicle weight rating (GVWR) of 33,000 pounds or greater operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

- (14) “Drayage Truck Owner” means:
- (A) the person registered as the owner of a drayage truck as shown by the Department of Motor Vehicles, or its equivalent in another state, province, or country; or the International Registration Plan.
- or
- (B) the lessee of the truck, as indicated on the drayage truck’s registration pursuant to Vehicle Code section 4453.5.
- (15) “Drayage Truck Operator” means the driver of the vehicle or any person, party or entity that controls operation of a drayage truck at a port or intermodal rail yard facility.
- (16) “Drayage Truck Registry (DTR)” is an ARB database that contains information on all trucks that conduct business at California ports and intermodal rail yards.
- (17) “Drayage Truck Registry Number” is a unique identifier issued to the owner of a drayage truck upon registering in the DTR and corresponds to the truck registered.
- (18) “DTR Compliant” means that a drayage truck is currently compliant with the requirements of the regulation, including the requirements for the DTR and emission standards.
- (~~19~~18) “Emergency Event” means any situation arising from sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire, or other acts of God, or other unforeseen events beyond the control drayage truck owners and operators that threatens public health and safety or the reasonable flow of goods movement.
- (~~20~~19) “Emergency Decree” means a determination by the Executive Officer that an emergency event has occurred that requires the immediate temporary operation of drayage trucks at ports and rail yard facilities.
- (~~21~~20) “Executive Officer” is the Executive Officer of ARB or his/her authorized representative.
- (~~22~~21) “Gross Vehicle Weight Rating (GVWR)” is as defined in Vehicle Code Section 350.
- (~~23~~22) “Heavy-Duty” is a manufacturer’s gross vehicle weight rating of greater than 33,000 or more pounds.

(2423) “Intermodal Rail Yard” is any rail facility owned or operated by a Class 1 railroad within 80 miles of a port where cargo is transferred from truck to train or ~~vice~~ vice-versa that:-

(A) is within 80 miles of a port;

or,

(B) is located more than 80 miles from the nearest port and having, on or after January 2008, 100 or more average daily drayage truck visits in any one calendar month.

Once a rail yard, identified in (B) above, has 100 or more average daily drayage truck visits in any one month, the rail yard will be considered an intermodal rail yard and will be subject to all provisions of this regulation regardless of the size of future average daily drayage truck visits.

Intermodal rail yards include, but are not limited to, the following facilities: Union Pacific (UP) Oakland, Burlington Northern Santa Fe (BNSF) Hobart, LATC Union Pacific, Commerce UP, Richmond BNSF, Commerce Eastern BNSF, ICTF UP, San Bernardino, Stockton Intermodal BNSF, Lathrop Intermodal UP, and BNSF Oakland.

(2524) “International Registration Plan” is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

(2625) “Lessee” has the same meaning as in Vehicle Code section 371.

(2726) “Liquid Natural Gas (LNG) Fueled Trucks” are drayage trucks that utilize a heavy-duty pilot ignition engine that is designed to operate using an alternative fuel, except that diesel fuel is used for pilot ignition at an average ratio of no more than one part diesel fuel to ten parts total fuel on any energy equivalent basis. An engine that can operate or idle solely on diesel fuel at any time does not meet this definition.

(2827) “Marine or Port Terminals” means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment. For the purposes of this regulation, the term includes but is not limited to production or manufacturing areas, warehouses, storage facilities, and

private or public businesses or entities located on or surrounded by port property.

- (~~2928~~) “Military Tactical Support Vehicles” is as defined in title 13, CCR, section 1905.
- (~~3029~~) “Motor Carrier” is a business intermediary that contracts with beneficial cargo owners, ship companies, port terminals or Class I railroads for pick-up and delivery of goods and with drayage truck owners, who it dispatches to ports and/or intermodal rail yards to pick up and deliver such goods.
- (~~3130~~) “On-road” means a vehicle that is designed to be driven on public highways and roadways and that is registered or is capable of being registered by the California Department of Motor Vehicles (DMV) under Vehicle Code sections 4000 et seq. – or DMV’s equivalent in another state, province, or country; or the International Registration Plan. A vehicle covered under ARB’s In-Use Off-Road Regulation, title 13, CCR, section 2449 is not an on-road vehicle.
- (~~3234~~) “Oxides of nitrogen (NOx)” means compounds of nitric oxide, nitrogen dioxide, and other oxides of nitrogen. Nitrogen oxides are typically created during combustion processes and are major contributors to smog formation and acid deposition.
- (~~3332~~) “Port” is the port property where marine and port terminals are typically located for the loading and unloading of any facility used for water-borne commerce which typically consists of different terminals, where cargo is loaded onto and unloaded from ocean-going vessels. For the purposes of this regulation, ports does not include, port property that is not related to or primarily used to engage in water-borne commerce. Ports covered by this regulation include, but are not limited to, the Port of Long Beach, Port of Los Angeles, Port of Humboldt Bay, Port of San Diego, Port of Hueneme, Port of Oakland, Port of San Francisco, Port of Sacramento, Port of Stockton, Port of Redwood City, Port of Crockett, Port of Richmond, Port of Pittsburg, and the Port of Benicia.
- (~~3433~~) “Port Authority” means those entities, either public or private, that are responsible for the operation of the ports.
- (~~3534~~) “Port Property” means publicly or privately owned the property where a port is located. It is the property that includes constituting the physical boundaries, either contiguous or non-contiguous, of a the port and may include other properties owned by the port. For the purposes of this regulation, port property ~~also~~ includes privately owned property located within a publicly or privately owned port property’s boundaries.

(~~3635~~) “Rail Yard Authority” means those entities, either public or private, that are responsible for the operation of Class I rail yards.

(~~3736~~) “Rail Yard Property” means the property constituting the physical boundaries of intermodal rail yards. For the purposes of this regulation, rail yard property also includes privately owned property located within rail yard boundaries.

(~~3837~~) “Uni-Body Vehicles” are vehicles that do not have separate tractor and trailer and include but are not limited to:

- (A) concrete mixers;
- (B) on-road mobile cranes;
- (C) on-road construction equipment.

(~~3938~~) “Vehicle” is as defined in Vehicle Code Section 670.

(~~4039~~) “Verified Diesel Emission Control Strategy (VDECS)” is an emission control strategy that has been verified pursuant to the “Verification Procedure, Warranty 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.

(~~4140~~) “Yard Truck” means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also know as utility tractor rig (UTR), yard tractor, yard goat, yard hustler, or prime mover.

(d) ***Requirements and Compliance Deadlines.*** Drayage trucks subject to this regulation must meet the following requirements by the compliance deadlines detailed in both Phase 1 AND Phase 2.

(1) ***Phase 1:*** By December 31, 2009, all drayage trucks must be equipped with-a:

(A) 1994 – 2003 model year engine certified to California or federal emission standards and a level 3 VDECS for PM emissions;

or,

(B) 2004 or newer model year engine certified to California or federal emission standards;

or,

- (C) a 1994 or newer model year engine that meets or exceeds 2007 model year California or federal emission standards.
- (2) ***Phase 2:*** After ~~By~~ December 31, 2013, all drayage trucks must be equipped with an a 1994 or newer model year engine that meets or exceeds 2007 model year California or federal emission standards.:
- ~~(A) —meets or exceeds 2007 model year California or federal heavy-duty diesel-fueled on-road emission standards;~~
~~or,~~
- ~~(B) —is certified to 2004 or newer model year California or federal emission standards.~~
- (3) *Drayage Truck Owner Requirements*
- (A) Drayage truck owners shall:
1. meet all applicable requirements and deadlines set forth in Phases 1 and 2 above;
 2. if an aftermarket level 3 VDECS is installed, be able to demonstrate that:
 - a. the VDECS has been verified by ARB for use with the engine and vehicle, as described in the Executive Order for the VDECS;
 - b. use of the vehicle must be consistent with the conditions of the Executive Order for the VDECS;
 - c. the VDECS is installed in a verified configuration;
 - d. the engine met the engine manufacturer's operational specifications prior to the VDECS installation;
 - e. the VDECS label is visible;
 - f. the level 3 VDECS is mounted in a safe and secure manner on the vehicle consistent with provisions in (3)(A)(2)(iii) above, and the fixed position of the level 3 VDECS does not obscure vehicle rear view or side mirror visibility in any way.

- g. all emission control devices are functioning properly and maintained per manufacturer's specifications;
- h. in the event of a failure or damage of an aftermarket level 3 VDECS or an OEM equivalent diesel emissions control system while the device is still under warranty, it has taken prompt action to repair or replace the device by the manufacturer or authorized dealer with the same level of VDECS or OEM equivalent diesel emissions control system within 45 days of first noticing or being notified of the failure or damage to the device.
- i. it has adhered to the terms and conditions in the aftermarket manufacturer or OEM warranty governing the use of the device.
- j. if the failure or damage to the level 3 VDECS or OEM equivalent diesel emissions control system occurs after expiration of the warranty period, it has taken prompt action to personally repair or replace the failed or damaged device with the same level VDECS or OEM equivalent diesel emissions control system available for the engine within 90 days of first noticing or being notified of the failure or damage to the device.
- k. it has not misused, dismantled, or tampered with any components of the level 3 VDECS or OEM equivalent diesel emissions control system, except for purposes of recommended periodical maintenance by an authorized agent, or when it is necessary to detach the device to service the vehicle.

- 32. register with the DTR, according to subsection (e);
- ~~3. upon receipt of ARB issued DTR compliance label, affix label as required under subsection (e)(5);~~
- ~~4. ensure that all emission control devices are functioning properly;~~

- ~~5. maintain all installed VDECS per manufacturer's specifications;~~
- ~~6. maintain and keep VDECS maintenance log in the drayage truck and available upon request;~~
- ~~47. ensure be able to demonstrate that the drayage truck(s) operator has all been informed about the information required under subsection (d)(5)(A)(4) for the dispatching motor carrier available and accessible in the vehicle and that the driver of the vehicle be instructed to provide the such information upon demand to any enforcement personnel listed in subsection (i), upon request.~~

(B) Phase 1 compliance deadline extension:

1. Drayage truck owners may apply for a one-time, one-year, per-truck Phase 1 compliance deadline extension. The compliance deadline application must be either electronically filed or postmarked by June 1, 2009. To receive the Phase 1 compliance deadline extension, a drayage truck owner must demonstrate all of the following:
 - ia. the engine installed on his/her current truck is a California or federally certified 1994 – 2003 model year engine;
 - iib. the truck was registered with the DTR prior to June 1, 2009;
 - iiic. no Level 3 diesel emission control technology verified by ARB for use on that combination of truck and engine was available at the time the extension was filed.

2. Compliance extension applications shall be submitted to ARB at:

California Air Resources Board
~~e/e~~ Drayage Truck Phase1 Extension, SSD
 P.O. Box 2815
 Sacramento, CA, 95812

or electronically through ARB's drayage truck website;

<http://www.arb.ca.gov/drayagetruck>

3. If after the one-year extension ARB verified technology is still unavailable, the truck owner must comply with the regulation within 90 days of the expiration of the extension by replacing the existing heavy duty truck and / or engine with a truck or engine that meets or exceeds the Phase 1 requirements.

(4) *Drayage Truck Operator Requirements*

Drayage truck operators shall, upon ~~request demand~~, provide the dispatching motor carrier's contact information as detailed in subsection (d)(5)(A)(4) ~~the following information~~ to authorized enforcement personnel as set forth in subsection (i):

~~(A) the dispatching motor carrier's contact information as detailed in subsection (d)(5)(A)(4);~~

~~(B) the VDECS maintenance log of the drayage truck.~~

(5) *Motor Carrier Requirements*

(A) Each motor carrier shall:

1. provide a copy of this regulation or an ARB approved summarized version to each drayage truck owner that it contracts with for deliveries to ports and intermodal rail yards;
2. ~~ensure that all trucks dispatched~~ only dispatch drayage trucks to a port or intermodal rail yard that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in subsection (d);
3. ~~ensure that all drayage trucks dispatched~~ only dispatch drayage trucks to ports and intermodal rail yards that are registered and in good standing with the Drayage Truck Registry (DTR) and are DTR compliant and are properly affixed with an ARB issued compliance label according to subsection (e);
4. ~~ensure demonstrate that it has only dispatched drayage trucks whose operators~~ the motor carrier information listed below is available and accessible on each drayage truck covered by this regulation that it contracts with and that the

~~driver of the vehicle is~~ have been informed ~~instructed~~ to provide a copy of the motor carrier information listed below, upon request ~~demand~~, to enforcement personnel, as listed in subsection (i).

- ia. the motor carrier's business name;
 - iib. contact person's name;
 - iiic. motors carrier's street address, state, and zip code;
 - ivd. contact person's business phone number.
- 5. keep a record of all dispatched drayage trucks containing the information set forth in i through iv below for a minimum of five years from the dispatch date. Dispatch records are to be made available to enforcement personnel within 72 hours of an official written or oral request.
 - ia. truck dispatch date and time;
 - iib. bill of lading or tracking number;
 - iiic. truck license plate number and issuing state;
 - ivd. Drayage Truck Registry number.

(6) *Marine or Port Terminals and Rail Yard Requirements*

- (A) Starting ~~January 1~~ September 30, 2009, marine or port terminals and intermodal rail yards shall collect the following information for ~~each dispatching motor carrier and each drayage truck~~ subject to this regulation that enters the facility that is not displaying a valid and current compliance label DTR compliant as determined by information contained within the Drayage Truck Registry. ~~that does business at its facility.~~

- 1. Dispatching motor carrier:
 - ia. business name of dispatching motor carrier;
 - iib. contact person's name;
 - iiic. street address, state, zip code of the dispatching motor carrier;
 - ivd. phone number of the dispatching motor carrier;
 - ve. bill of lading or tracking number.
- 2. Drayage truck:
 - ia. entry date and time;
 - iib. registered owner's name;
 - iiic. driver's operator's name;
 - ivd. driver's operator's license number;

- ve. drayage truck’s license plate number and state of issuance;
- vif. drayage truck’s vehicle identification number (VIN).

All information collected in subsection (d)(6) shall be kept for a period of not less than five years from the truck entry date and is to be made available to enforcement personnel within 72 hours of an official written or oral request.

- (B) Marine or port terminals and rail yards shall report the information collected in subsection (A) above to their respective authorities according to schedule (A) below and in a format acceptable to their respective authority.

Schedule A: Terminal Reporting Schedule

Date Truck Enters Terminal or Rail Yard	Date by which Information is to be Reported to Port or Rail Authority
January 1 – March 31	April 15
April 1 – June 30	July 15
July 1 – September 30	October 15
October 1 – December 31	January 15

(7) *Port Authorities and Rail Yard Authorities Requirements*

- (A) Port and rail yard authorities shall respectively report the information collected by the port terminals and rail yards, as detailed in subsection (d)(6), to, and in a manor and format prescribed by, ARB according to Schedule B below. ARB reporting parameters are detailed on ARBs website

<http://www.arb.ca.gov/drayagetruck>.

Schedule B: Port and Rail Yard Authority Reporting Schedule

Date by which Information is to be Reported to the California Air Resources Board
May 15
August 15
November 15
February 15

- (B) Port and rail yard authorities shall ensure their respective terminals and/or rail yards abide by all Schedule A reporting deadlines.
- (C) Rail yard authorities operating rail yards located greater than 80 miles from the nearest port with less than 100 average daily

drayage truck visits for each calendar month starting January 2008, must complete and submit quarterly verification reports according to Schedule B and in a format approved by ARB.

The first quarterly verification report shall include average daily drayage truck visits for each calendar month starting January 2008 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;

- a. reporting rail yard authority contact information;
 - b. rail yard name and address;
 - c. average daily drayage truck visits by calendar month.
- Quarterly verification applications and additional guidelines can be obtained by contacting ARB at:

California Air Resources Board
Rail Yard Daily Truck Verification, SSD
P.O. Box 2815
Sacramento, CA, 95812

or electronically through ARB's drayage truck website;

<http://www.arb.ca.gov/drayagetruck>

(e) *Drayage Truck Registry and ~~Compliance Label~~ Requirements*

(1) *Truck Owner Requirements*

- (A) Owners of all drayage trucks doing business at a port or intermodal rail yard prior to September 30, 2009 and intending to continue operations after that date must register with the DTR database by September 30, 2009.
- (B) Drayage trucks intending to begin operations at a port or intermodal rail yard after September 30, 2009 must be registered with the DTR database prior to commencing operations.
- (C) Owners of all drayage trucks covered by the regulation must provide the following information to ARB or its designee by mail to the address in subsection (e)(2) or electronically through ARB's DTR website <http://www.arb.ca.gov/drayagetruck>. The information shall include but may not be limited to:

1. truck owner name, address, and contact information (e.g. phone number, email address, fax number);
2. engine make, model, and model year;
3. vehicle identification number (VIN);
4. vehicle license number and state of issuance;
5. compliance status, which shall include:
 - ia. identifying whether the drayage truck has complied with the requirements of Phases 1 and 2, set forth in subsection (d) above;
 - ii**b.** if so, how was compliance achieved (e.g. new compliant truck or description of the level 3 VDECS that was used), who did the installation work, and when was it completed;
 - iii**c.** if not, identifying when the drayage truck is scheduled to come into compliance under Phases 1 or 2.

(D) After filing the initial application, the drayage truck owner shall within 30 days of bringing a truck into compliance with Phase 1 or 2, update the DTR with the vehicle's compliance status information and any other changes to the vehicle's ownership, DMV registration status, or participation status in IRP.

~~(E) Upon receipt of a DTR compliance label from ARB or its designee, the drayage truck owner must affix the label in accordance with subsection (e)(5).~~

(2) *Mailing Address for Filing Initial Applications and Updates.* Drayage truck owners shall submit DTR applications and any updated information to ARB at:

California Air Resources Board
 c/o Drayage Truck Registry, SSD
 P.O. Box 2815
 Sacramento, CA, 95812

(3) Failure to register with the DTR or submittal of false information is a violation of state law and subject to civil or criminal penalty.

~~(4) ARB or its designee shall issue a DTR compliance label upon verification of compliance with the requirements of this regulation. The DTR label will be number coded by year to show compliance through that year. For example: a compliant truck issued a 2013 coded label will be able to access ports and rail yards through 2013. After 2013, the truck will again have to demonstrate regulatory compliance and apply for a new compliance label.~~

~~(5) All DTR compliance labels shall be:~~

~~(A) located on or near the lower left hand corner on the outside of the driver's side door; and,~~

~~(B) affixed to the truck in clear view, correct side up, un-obstructed; and kept and maintained in a manner that retains legibility.~~

(f) *Annual Port or Rail Yard Exemption*

(1) *Annual Exemption.* An annual exemption may be granted, under limited circumstances, by the ARB Executive Officer to ports or rail yards. An exemption may cover a clearly defined portion or the entirety of a port or rail yard. The Executive Officer ~~has sole discretion in issuing an exemption, which will be issued to~~ will exempt a ports or rail yards that are is able to demonstrate one or more of the following:

(A) port or rail yard land is not typically used for truck traffic and its primary function or location does not include or attract drayage trucks covered under this regulation (e.g. a shoreline animal sanctuary);

(B) the overwhelming majority of trucks accessing the port or rail yard are exempted under this regulation (e.g. a port where only dedicated auto transports are in service).

(2) *The Exemption Application Request*

(A) ~~may be obtained from the ARB's website~~ <http://www.arb.ca.gov/drayagetruck> or by mail from; a port or rail yard requesting an exemption shall mail the request to

California Air Resources Board
c/o Drayage Truck Port / Rail Yard Exemption App., SSD
P.O. Box 2815
Sacramento, CA, 95812

or may send it electronically to ARBs' website <http://www.arb.ca.gov/drayagetruck> using the request form available on the site.

- (B) the request must be completed and submitted annually (via the same website or address listed above) no later than January 1 of the year prior to the exemption year (e.g. a 2009 year exemption application must be completed and submitted by January 1, 2008);
 - (C) the request will be approved or disapproved by the Executive Officer no later than July 1, of the year prior to the exemption year. The Executive Officer will then issue an exemption to be valid for the specified port or rail yard for the specified exemption year.
- (g) **Penalties.** Any person who fails to comply with the performance requirements of this regulation, who fails to submit any information, report, or statement required by this regulation, or who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this regulation may be subject to civil or criminal penalties under sections 39674, 39675, 42400, 42400.1, 42400.2, 42402,.2, and 43016 of the Health and Safety Code. In assessing penalties, the Executive Officer will consider factors, including but not limited to the willfulness of the violation, the length of time of noncompliance, whether compliance was attempted, and the magnitude of noncompliance.
- (h) **Right of Entry.** For the purpose of inspecting on-road vehicles covered in this regulation, and their records to determine compliance with these regulations, an agent or employee of ARB, upon presentation of proper credentials, has the right to enter any facility (with any necessary safety clearances) where on-road vehicles are located or on-road vehicle records are kept.
- (i) **Enforcement.** Enforcement of this section may be carried out by authorized representatives of ARB, port and rail yard authorities; peace officers as defined in California Penal Code, Title 3, chapter 4.5, sections 830 et seq. and their respective law enforcement agencies; and authorized representatives of air pollution control or air quality management districts.
- (j) **Relationship to Other Law.** Nothing in this section allows drayage trucks to operate in violation of other applicable law, including, but not limited to:
- (1) California Vehicle Code;
 - (2) California Health and Safety Code;
 - (3) division 3, title 13, California Code of Regulations;

(4) any applicable ordinance, rule, or requirement as stringent as, or more stringent than, than the requirements of subsection (d) of this regulation.

(k) Severability. If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

Note: Authority Cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2., 42410, 43013, 43016, 43018, 43023, 43600, California Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402, 2, 42410, 40717.9, 43013, 43016, and 43018, 43023, 43600, California Health and Safety Code.