

## **ATTACHMENT B TO RESOLUTION 14-3**

### **Response to Comments on the Environmental Analysis Prepared for the Proposed Amendments to the Regulation for In-Use On Road Diesel-Fueled Vehicles (Truck and Bus Regulation)**

To meet the requirements of the California Environmental Quality Act (CEQA) under ARB's Certified Regulatory Program, the California Air Resources Board (ARB or Board) staff prepared an environmental analysis (EA) as part of the Initial Statement of Reasons (ISOR) for Proposed Rulemaking: Proposed Amendments to the Truck and Bus Regulation. Written comments on the EA were accepted during a 45-day public review and comment period that started on March 7, 2014 and concluded on April 21, 2014.

This document presents those comments received during the 45- day comment period that raise significant environmental issues and ARB's written responses to those comments. Substantive responses are limited to comments that "raise significant environmental issues associated with the proposed action," as required by Title 17 California Code of Regulations (CCR) section 60007(a). In accordance with ARB's Certified Regulatory Program, the Board will consider the written response to these environmental comments for approval prior to taking final action on the proposed amendments.

Staff will also prepare written responses to all public comments, not just the environmental comments, for purposes of the Administrative Procedures Act. The complete written responses to all comments will be included in the Final Statement of Reasons (FSORs) that will be made available in electronic form on the ARB rulemaking webpage at: <http://www.arb.ca.gov/regact/2014/truckbus14/truckbus14.htm>

#### **Summary of April 16, 2014 letter from Mr. Timothy Jones representing John R. Lawson Rock & Oil, Inc.**

An April 16, 2014 letter from Mr. Timothy Jones representing John R. Lawson Rock & Oil, Inc. was submitted during the comment period and contains comments regarding the proposed amendments' compliance with CEQA as well as other comments. Staff summarizes and responds to the letter's CEQA comments here and will summarize and respond to the letter's other comments in the Final Statement of Reasons for this rulemaking.

As noted, Mr. Jones's letter contains several comments regarding the proposed amendments' compliance with CEQA. These comments allege generally that the "March 5, 2014, Initial Statement of Reasons ("ISOR") staff report prepared with regard

to the proposed amendments to the Regulation indicates that ARB's intended course of action will result in numerous violations of CEQA, as detailed herein."

Mr. Jones' comments allege these specific defects in the ISOR: 1. Failure to inform regarding greenhouse gas emissions; 2. Failure to use a present-conditions baseline; 3. ARB's future baseline analysis shows clear adverse impact; 4. ARB assumes, without any analysis, that fleet upgrades will not be rolled back as a result of the amendment; 5. ARB does not address the effect the proposed amendments will have on the resale market for used trucks; 6. That the proposed amendments will eventually result in the same reductions as the current regulation does not obviate the need for environmental review; and, 7. ARB violated CEQA by its implementation of the amended regulations prior to environmental review.

The staff disagrees with the CEQA comments in the April 16, 2014 letter from Mr. Timothy Jones and offers a general response and specific responses as follows.

### **General Response to CEQA Comments**

The Air Resources Board performed environmental assessments when it originally adopted the Truck and Bus regulation in 2008 and when it amended the regulation in 2010. The staff reports, technical support documents and resolutions containing and supporting these assessments are incorporated by reference here.

The environmental assessment the staff performed for the proposed amendments supplements the Board's previous findings, but it would also likely be sufficient to stand on its own. The environmental assessments of the original regulation, the 2010 amendments and the current amendments comply with all CEQA requirements, to the extent they apply to ARB's certified program, including Public Resources Code section 21166, Title 14 CCR sections 15163 and 15164, the authorities cited in *Kostka & Zischke, Practice Under the Cal. Environmental Quality Act* (Cont.Ed.Bar 2d ed. 2013); and *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al*, (2013) 57 Cal.4<sup>th</sup> 439; 160 Cal.Rptr. 3d 1 and authorities cited there. All of the foregoing authorities are incorporated by reference here.

Contrary to the letter's main assertions, the staff did assess the proposed amendments' greenhouse gas impacts and the other relevant factors in the CEQA checklist. And, the staff assessed the proposed amendments' overall air quality impacts against a baseline that assumed no regulation existed in this area and against another baseline that assumed that the current regulation would remain in place. In the latter case, the staff's assessment concludes that the proposed regulations will result in a slower pace of emission reductions than the current regulation would, but in time will achieve the same results.

Baseline and "environmental setting" are contained in the in CEQA Guidelines at Title 14 CCR section 15125(a) which provides:

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

The staff's assessment of the proposed amendments more than discharged any duty applicable to ARB that the California Supreme Court recently recognized in Neighbors for Smart Rail to use an appropriate baseline and "inform decision makers and the public of any significant adverse effects a project is likely to have on the physical environment. (§ 21061; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428 [53 Cal. Rptr. 3d 821, 150 P.3d 709].) To make such an assessment, an EIR must delineate environmental conditions prevailing absent the project, defining a "baseline" against which predicted effects can be described and quantified. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315 [106 Cal. Rptr. 3d 502, 226 P.3d 985] (*Communities for a Better Environment*).)" At p. 447.

The question posed in Neighbors for Smart Rail was whether a "baseline may consist *solely* of conditions projected to exist absent the project at a date in the distant future or whether the EIR must include an analysis of the project's significant impacts on measured conditions existing at the time the environmental analysis is performed." *Id.* Staff's analysis of the proposed amendments does both.

The Court's discussion at p. 455 is useful here:

The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency's failing to assess its impacts on existing environmental conditions. For such projects as for others, existing conditions constitute the norm from which a departure must be justified—not only because the CEQA Guidelines so state, but because using existing conditions serves CEQA's goals in important ways.

Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that tradeoff requires some knowledge

about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not “giv[e] due consideration to both the short-term and long-term effects” of the project (Cal. Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA's informational purpose well. The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term.

The Neighbors for Smart Rail court went on to hold at p. 457:

For all these reasons, we hold that while an agency preparing an EIR does have discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value. *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council*, *supra*, 190 Cal.App.4th 1351, and *Madera Oversight Coalition, Inc. v. County of Madera*, *supra*, 199 Cal.App.4th 48, are disapproved insofar as they hold an agency may never employ predicted future conditions as the sole baseline for analysis of a project's environmental impacts.

Because the standard articulated here involves a primarily factual assessment, the agency's determination is reviewed only for substantial evidence supporting it. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 435.) If substantial evidence supports an agency's determination that an existing conditions impacts analysis would provide little or no relevant information or would be misleading as to the project's true impacts, a reviewing court may not substitute its own judgment on this point for that of the agency. (*Ibid.*)

ARB commonly makes hypothetical future projections for emission reductions expected from its regulations. This is the nature of what it does— it adopts regulations to protect or enhance air quality now and into the future. And, in response to changed circumstances, ARB must sometimes amend its regulations as it is proposing to do here. In the case of the proposed amendments, ARB has provided a new future projection that forecasts fewer emission reductions for a few years under the proposed amendments when compared to the existing regulation, but ultimate achievement of the same air quality levels. ARB's assessment also compares the projected benefits of the proposed amendments against a scenario in which no regulation had been enacted at all. Comparing the two future projected emission reductions (the proposed amendments vs. the existing regulation), shows a temporary loss of emission benefits under the proposed amendments. The ARB's environmental assessment goes on to conclude, however, that this is not an adverse physical impact on the actual physical environment

(for which CEQA might require a different kind of assessment), but rather a reduction in an expected benefit that would accrue under the existing regulation. In other words, for purposes of the physical environment (which is CEQA's main concern), under the proposed amendments, air quality will keep improving and the state will still meet its air quality goals in 2020, albeit at a slower pace than if the regulation were not amended as proposed. Compared to today's current physical conditions (existing regulation or not), the environment would not be adversely affected by the proposed amendments, but in fact would be benefited. Again, compared to the current physical conditions existing today, air quality would improve under the proposed amendments and would reach the same air quality endpoint that the current regulation would, only at a somewhat slower pace. Of course, compared to a scenario where there is no regulation at all, the ISOR also indicates that amended regulation achieves even greater emissions reductions.

The staff's analysis of the proposed amendments supplements the Board's former assessments, consistent with Public Resources Code section 21166 and Title 14 CCR sections 15163 and 15164.

Public Resources Code section 21166 provides:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

As noted in the ISOR none of these factors are present in the current situation, regardless which "baseline" is used for CEQA analysis.

CEQA Guidelines Title 14 CCR section 15163 provides that:

The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if *only minor additions or changes* would be necessary to make the previous EIR adequately apply to the project in the

changed situation. The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised. A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087. A supplement to an EIR may be circulated by itself without re-circulating the previous draft or final EIR.

CEQA Guidelines Title 14 CCR section 15164 provides that:

The Lead or Responsible Agency shall prepare an addendum to an EIR or Negative Declaration if only minor technical changes or additions are necessary to make the document adequate, and the changes made by the addendum do not raise important new issues about the significant effects on the environment. An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted Negative Declaration. The decision-making body shall consider the addendum with the final EIR or Negative Declaration prior to making a decision on the project.

A supplemental environmental assessment or addendum is appropriate here because, if the proposed amendments are adopted, the effect would merely be to slow the pace at which the benefits of the current regulation are achieved, but they would ultimately be met at the same point in the future. ARB gave notice of its assessment of the proposed amendments and circulated them and its assessment for public comment.

### **Further Responses to Specific CEQA Comments**

Staff incorporates the foregoing by reference into the following responses.

#### **A. April 16, 2014 letter from Mr. Timothy Jones representing John R. Lawson Rock & Oil, Inc.**

##### **Comment 1. Failure to inform regarding greenhouse gas emissions**

The commenter maintains that the ISOR fails to inform about the proposed amendments' effect on greenhouse gas emissions and host of other impacts on other environmental conditions required to be analyzed under CEQA.

Staff disagrees with the commenter's assertion that the finding in the ISOR that the amendments will result in no environmental impact is not sufficiently supported. As the commenter notes, because ARB has a regulatory program certified by Secretary of Natural Resources, ARB is exempt from the requirement to prepare EIRs or negative declarations. (CEQA Guidelines, § 15250; 2 Kostka & Zischke, Practice Under the Cal.

Environmental Quality Act (Cont.Ed.Bar 2d ed. 2013) § 21.2, p. 1084 (2 Kostka & Zischke).) ARB's regulatory program, found at California Code of Regulations, title 17, sections 60001 through 60007, requires the preparation of a staff report at least 45 days before the public hearing on a proposed regulation that includes an "assessment of anticipated significant long or short term adverse and beneficial impacts associated with the proposed action and a *succinct* analysis of those impacts." (Cal.Code Regs., tit. 17, § 60005, emphasis added.) It also states that it is ARB's policy "to prepare staff reports in a manner consistent with the environmental protection purposes of [ARB's] regulatory program and with the goals and policies of [CEQA]." (Cal.Code Regs., tit. 17, § 60005, subd. (b).)

The ISOR at pages 39-40, under the section entitled 'Prior Environmental Analysis', explains that when the Truck and Bus regulation was initially adopted in 2008, the analysis in the Staff Report prepared for that action found implementation of the regulation would not result in any adverse impacts to the environment. The analysis and finding in the 2008 ISOR can be interpreted as a substitute for a negative declaration, which was adopted by the Board when they approved the initial regulation in 2008. As indicated in the ISOR at page 40, the analysis in the Staff Report prepared for the 2010 amendments found that implementation of the proposed amendments to the regulation would not result in any adverse impacts. The analysis in the 2010 Staff Report can be interpreted as either the functional equivalent of an addendum to the prior adopted substitute negative declaration or a brief explanation of why no further environmental review was required. (See CEQA Guidelines, sections 15162(b), and 15164.)

Likewise, because none of the conditions described in CEQA Guidelines section 15162 calling for a subsequent (substitute) negative declaration are triggered by the current changes proposed to the regulation, the current ISOR serves as either the functional equivalent of or an addendum to the 2008 substitute negative declaration or the basis for finding no additional environmental review is required. The information provided in the entire ISOR, including the information in Chapters IV and V, discusses the modifications to the original regulation (project) and properly considered only the incremental differences between the regulation in place and the modification when evaluating whether the modifications would result in any significant environmental impacts. (*Benton v. Bd. of Supervisors* (1991) 226 Cal. App. 3d 1467, 1484.) It also assessed the difference between having no regulation at all and adopting the proposed amendments. That information in the ISOR provides substantial evidence that implementation of the proposed changes to the regulation does not result in any adverse impacts to the environment and no additional environmental analysis is required.

The commenter also incorrectly asserts that the fair argument standard “based on limited facts in the record” applies. Rather, it is well established that the substantial evidence standard of review applies to an agency’s determination whether additional environmental review is required, including when a negative declaration is prepared. (*Id.* at p. 1481.) The commenter has not submitted any evidence demonstrating that any of the three factors in CEQA Guidelines section 15162 exist, including any evidence, (not just unsubstantiated assertions) that any environmental impacts, including potential impacts to greenhouse gas emissions, would result from the implementation of the proposed amendments.

Staff also explained the potential air quality impacts of the proposed amendments, including climate change in Chapter IV of the ISOR. There, staff provided the analysis of climate change and how the Truck and Bus regulation fits in the scope of overall greenhouse emission reduction. The analysis indicates that the cumulative black carbon (BC) warming benefit for the proposed Truck and Bus amendments for 2010-2025 are about 10.3 and 36.6 MMTCO<sub>2e</sub> for the 100-year and 20 year time horizons, respectively. Therefore, the proposed amendments to the Bus and Truck regulation will not significantly impact the cumulative 2010-2025 climate benefits from the existing regulation, and are well within the more than 30 percent uncertainties for the calculations. The regulation will continue to lower BC compared to today.

Staff’s analysis of other impacts at page 42 of the ISOR provides whatever explanation is required by Section 1506(d)(3) and other authorities:

Staff concludes that the proposed amendments would not result in any significant adverse impacts to any other resource area. The Staff Reports prepared for the original regulation and subsequent 2010 amendments did not identify any adverse environmental impacts to any resource areas and the methods of compliance remain the same with the proposed amendments, other than the compliance flexibility provisions which would affect only the projected air quality benefits discussed above. The proposed amendments do not impose any new requirements to retrofit or replace existing equipment beyond what is already required by the current regulation, or any other new actions that affect the physical environment. The proposed amendments do not cause any changes to the existing truck and bus infrastructure in California or new development, modification to buildings, or new land use designations and do not involve any activity that would involve or affect aesthetics, agriculture resources, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, or utility and service systems. Because the amendments do not result in any action that could affect these resources, staff concludes the proposal would not result in any adverse impacts.

Since no significant adverse environmental impacts were identified, this environmental analysis does not include a discussion of mitigation measures or environmental alternatives (17 CCR 60006; 14 CCR 15252).

## **Comment 2. Failure to use present-conditions baseline**

The commenter maintains that the ISOR fails to use the required present-conditions baseline in its assessment of the environmental impacts of the proposed amendments.

Staff disagrees with this comment. The ISOR actually uses two present-conditions baselines, with and without the existing regulation.

The commenter is simply incorrect in maintaining that ARB only used a baseline without the regulation in place for purposes of CEQA. The pages in the ISOR that the commenter refers to (at page 28 of Chapter IV “Air Quality”) appear in a section called ‘Need for Emission Reductions’ provided to explain why the regulation is necessary, e.g. to meet SIP requirements and improve public health. The chart at page 34 of the ISOR shows emission benefits gained from the Truck and Bus regulation as amended by the proposed amendments compared to a situation of no regulation of these sources. The chart at page 34 also compares the proposed amendments to the regulation currently in place and shows that even with the proposed amendments, the regulation will still achieve significant emission benefits necessary to achieve SIP and public health objectives. In addition to describing the proposed amendments’ impact on air quality, this information is also provided for purposes of complying with the Administrative Procedures Act (Government Code section 11340, et seq.).

Chapter V of the ISOR, which describes whether the proposed amendments would result in any significant environmental impacts for purposes of CEQA, uses both the existing environmental conditions and a future projected conditions baseline. First, that chapter discusses the reductions expected from the Truck and Bus regulation as modified by the proposed amendments compared to the baseline of existing air quality conditions today (see ISOR page 41). It concludes, based on the more detailed information in Chapter IV, that there would be no increase in emissions caused by the regulation as amended and the amended regulation would result in a continued reduction of emissions of criteria pollutants. The discussion also considers the incremental differences between the projected emission reductions expected from regulation in place (as amended in 2010) and the projected emission reductions expected with the regulation as modified by the proposed amendments (see ISOR page 41). By comparing these two future projected scenarios (a future projected baseline of emission reductions from the existing regulation compared to the future projected emission reductions from amended regulation), the analysis concludes the proposed

amendments result in a delay in NOx and PM *benefits* for a few years, with emission reductions eventually reaching projected reductions expected from the regulation in place by 2020.

Contrary to the commenter's assertion, there is no actual *increase* in emissions of criteria pollutants into the environment caused by the change to the regulation under either the existing environmental condition scenario or the comparison between the two future projections. There is only a projected slower rate of decline in emission reductions, what the chapter describes as a foregone emissions benefit compared to what was initially projected in 2010. This projected delay in implementation of a projected environmental benefit is not an *adverse* impact on environment because there is no "damage" to the physical conditions of the environment, which is what CEQA is intended to address. (See CEQA Guidelines, Title 14 CCR sections 15002 (a)(3) 15360.)

### **Comment 3. ARB's future baseline analysis shows clear adverse impact**

The commenter takes issue with the staff's assessment of the environmental impact of the proposed amendments, compared to the baseline the staff used with the current regulation in effect. Staff disagrees with this comment and incorporates its response to comments 2 and 5 by reference here. As noted in the previous paragraph, contrary to commenter's assertion, there is no actual *increase* in emissions of criteria pollutants into the environment caused by the change to the regulation under either the existing environmental condition scenario or the comparison between the two future projections.

According to ARB staff estimate, as shown in Table IV-2 of the ISOR, the NOx and PM emissions benefits with the proposed amendments would be lower than the current regulation. The estimate is based on the expectation that all fleets comply as required; however, there are fleets that could not afford to comply, and continue to operate their vehicles. As stated on page 8 of Appendix C of ISOR, around 85 percent of the California-registered heavy trucks are in compliance. The remaining 15 percent either would not comply or could not afford to comply. The proposed amendments would make compliance more affordable for many of these fleets. It would provide a path for non-compliant fleets to comply at a pace they could manage and, if so, would result in real emission benefit from these fleets where we would not expect it with the current regulation as explained on page 12 of the ISOR.

Additionally, with regard to the concerns the comment raises about the proposed amendments' expansion of the NOx Exempt Area to rural counties and staff's assessment of the potential effects on NOx reductions, as stated on pages 11 and 12 of the ISOR, the economic recovery from the recent recession is not uniform across the state:

“The proposed amendments provide additional flexibility for many impacted fleet owners that could help ensure the emissions benefits envisioned by the regulation will be realized. The amendments will continue to meet the Board’s air quality goals while providing additional economic relief to facilitate the ability for vehicle owners to comply.” (ISOR, p. 12).

Urban areas such as Bay Area and Los Angeles are recovering more quickly than rural areas. Due to the slow recovery, rural fleets may have more difficulty in complying due to high compliance costs. Under the current regulation, the likelihood of getting real emission reduction from these fleets would be low. Due to persistent adverse current economic conditions, the emission reductions forecast for the existing version of the regulation may not be achievable. The amendments would provide flexibility to assist these fleets in achieving compliance, thereby protecting the emission reductions that can be achieved.

In any event, staff adequately assessed this matter and disagrees with this comment.

**Comment 4. ARB assumes, without any analysis, that fleet upgrades will not be rolled back as a result of the amendment**

Staff disagrees with this comment, which is not supported by any credible facts or evidence.

Moreover, it defies common sense that fleets would willingly incur the expense and downtime of replacing their filter-equipped or otherwise upgraded, compliant vehicles with non-compliant vehicles just to operate without them for a limited period of time, at the end of which fleets would have to incur the same expenses to come into compliance all over again. The taxes and fees that are incurred when vehicles are bought and sold would also render this scenario unlikely. Buying and selling vehicles require fleet management, and need time and resources to plan, time and resources that could be better spent on improving business. The commenter suggests (again without evidence) that since fleets could use the amendments to delay compliance, they could opt to remove or disable their emission reduction systems. This could constitute tampering with the vehicles’ emission control systems, and is prohibited by law. Also, fleets cannot alter the emission control system without express approval by the Executive Officer of ARB. Finally, since the release of Advisory MSC 13-28 in late 2013, staff has not seen rollbacks as suggested by the commenter. Therefore, staff does not believe there would be environmental impact as result of rollbacks of the upgrades fleets have put in place.

**Comment 5. ARB does not address the effect the proposed amendments will have on the resale market for used trucks**

Staff disagrees with this comment.

In making this comment (again without evidence to support it), the commenter notes that the proposed amendments would expand the NOx Exempt Area to areas that are in attainment or soon to be in attainment. Therefore, additional NOx reductions are not needed in these areas as explained on page 58 of ISOR. As stated by the commenter, older vehicles could operate in these expanded areas longer. However, staff has not seen an appreciable increase in the number of vehicle population in the NOx exempt Area. The latest data from ARB reporting system recorded that less than 4,600 vehicles are using the NOx Exempt Area provision compared the 3,700 as of December 1, 2013, the time just before the option was open for enrollment. That is an increase of 900 vehicles. Out of the 4,600 NOx Exempt Area vehicles, 1,150 are small fleet compared to 800 before. Since small fleets have no requirement before 2014, some of the increase in NOx Exempt Area vehicles could be contributed by small fleets switching provision instead of vehicles in the expanded NOx Exempt Area. This demonstrates that expanding the NOx Exempt Area has little effect on the overall resale market for used trucks.

**Comment 6. That the proposed amendments will eventually result in the same reductions as the current regulation does not obviate environmental review**

Staff disagrees with this comment and incorporates its responses to comments 1-5 here.

ARB did an environmental review that showed emissions with the amendments would be reduced. As indicated in response two, the recession reduced fleets' ability to comply especially for fleets operating in rural areas. Due to compliance costs, these rural fleets need assistance to help them comply. Many of these fleets would likely operate in violation without the proposed amendments, resulting in little emission reduction, but the proposed amendments provide a pathway for them to comply. With the proposed amendments, emissions would be reduced and air quality goals would be achieved by 2020.

**Comment 7. ARB violated CEQA by its implementation of the amended regulations prior to environmental review**

Staff objects to this comment because it is not directed at the CEQA analysis supporting the proposed amendments or to the proposed amendments themselves.

Regulatory Advisory MSC 13-28 and the proposed amendments are two separate things. As a consequence, the comment about the advisory, although it raises CEQA issues, is neither directed at the proposed amendments nor the environmental analysis

that supports them. Without waiving this objection, staff incorporates by reference all of its responses to the commenter's other CEQA comments and responds as follows.

Issuance of Regulatory Advisory MSC 13-28 was not an “approval” of a “project” which would trigger CEQA, so no CEQA was required for the advisory. The advisory did not implement the proposed amendments. Also, regardless of the advisory, the Board retains/retained full discretion to approve or reject staff’s proposed amendments at their public hearing and nothing in the advisory precluded a full environmental review in the ISOR.

#### **8. Failure to protect against fraudulent loan denials**

#### **9. Damages for regulatory takings**

#### **10. Violation of equal protection and due process**

#### **11. Interference with contract**

Responses to Tim Jones’ letter Comments 8 – 11:

These comments are not directed to the proposed amendments’ compliance with CEQA, and will be addressed in the Final Statement of Reasons.

### **B. April 11, 2014 Letter from Mark Yung ESW Group**

#### **Summary of Comment**

As part of its analysis, the Board should also request that ARB staff provide a more detailed accounting for all the environmental consequences of the proposed amendments and relaxations.”

**Response:** The staff disagrees with this comment and incorporates its General Response to CEQA Comments and its responses to Comment A by reference here. An environmental analysis was prepared by ARB staff. The proposed amendments do not result in any increase in emissions compared to today’s existing environmental conditions as described in Chapters IV and V of the ISOR. An environmental analysis was prepared by ARB staff.

The proposed amendments will protect the anticipated emissions reductions from the regulation, and provide four key benefits. First, the goals of the Diesel Risk Reduction Plan will continue to be met by reducing localized health risks associated with exposure to diesel PM. Second, the regulation will continue to provide NOx reductions necessary to meet State commitments associated with attaining state and federal air quality

standards. Third, the amended regulation preserves the reduction in premature mortality caused by exposure to ambient PM2.5. Finally, the regulation continues to provide significant climate change benefits by reducing black carbon emissions.

The emissions impact of the amended regulation, including a comparison of the statewide NOx and PM2.5 emissions trends without the regulation (baseline), with the current regulation, and with the proposed amendments, is described in Chapter VI of the ISOR. The emissions analysis methodology and results are described in Appendix F of the ISOR.

### **C. Statement of Rasto Brezny, Manufacturers of Emission Controls Association Submitted April 18, 2014**

#### **1. Summary of Comment**

The staff report correctly concludes that by 2020 the ton per day contribution of diesel PM2.5 emissions under the proposal will be at the same level as predicted by the current rule. It is also correct that the overall impact on PM reductions is approximately a loss of 7 percent of the reductions under the current regulation in the early years of implementation. Looking at it in terms of the total mass of PM emitted and then the volume of PM emitted as a result of all of the changes to this rule gives a different perspective. What sounds like a benign 7 percent loss of PM reductions equates to 1,350 tons of additional PM emissions over the first five years of the proposed regulation.

**Response:** The staff disagrees with this comment and incorporates its General Response to CEQA Comments and its responses to Comment A by reference here. It is true that staff estimated the NOx and PM emissions benefits with the proposed amendments would be less than the current regulation, with the expectation that all fleets comply as required, as shown in Table IV-2 of ISOR. However, staff analysis shows that around 85 percent of the California-registered heavy trucks are in compliance, as stated on page 8 of Appendix C of ISOR, indicating that the remaining 15 percent of the fleets either do not comply or could not afford to comply, and continue to operate their vehicles. The proposed amendments would provide a path for non-compliant fleets to comply at a pace they could manage and would result in real emission benefits from these fleets that we would not expect with the current regulation as explained on page 12 of the ISOR.

#### **Summary of Comment 2**

The staff report points out that on a 20-year time horizon, the impact of the proposed changes to the regulation is the equivalent to emitting 3 million tons of CO<sub>2</sub>, which staff considers as insignificant and within the accuracy of the estimate. This is correct when taken in isolation; however, the cumulative impact of both the 2010 amendments and the 2014 proposed changes to the rule is equivalent to the warming potential of 10 million tons of CO<sub>2</sub> emitted. We believe there is a danger in losing the high level perspective when only considering the incremental impact of individual regulatory changes in the cost benefit analysis of a regulation. We encourage the Board to also review the cumulative impact of multiple changes when weighing the benefit of a regulation or the cost of any future amendments to the truck and bus regulation.

**Response:** The staff disagrees with this comment and incorporates its General Response to CEQA Comments and its responses to Comment A by reference here. Staff explained the potential environmental effect of the proposed amendments in Chapter IV, Section D, of the ISOR. Staff provided the analysis of climate change and how the 2014 amendments to the Truck and Bus regulation fit in the scope of overall greenhouse emission reduction. The greenhouse gas emission analysis as a result of both the 2010 amendments and the 2014 proposed changes was not needed because the greenhouse emissions due to 2010 amendments had already been addressed and remedied as described in Chapter VI, Section F, of the 2010 ISOR.

### **Summary of Comment 3**

In addition to the warming impact of black carbon in the atmosphere, black carbon that settles on snow or ice can decrease the reflectivity of the frozen material (a property known as the “snow or ice albedo”), leading to a faster melting rate. This has a special relevance to California because of the state’s reliance on Sierra Nevada snow pack to store water during the wet season and then release it slowly during the spring and summer. Thus, black carbon that settles on the Sierra snowpack can increase the melting rate, overload reservoirs and cause flooding (Barnett T.P., Adam, J. C., and Lettenmaier, D. P., "Potential Impacts of a Warming Climate on Water Availability in Snow-Dominated Regions,").

**Response:** The staff disagrees with this comment and incorporates its General Response to CEQA Comments and its responses to Comment A by reference here. As explained in response #1, the estimated increase in PM emissions due to the amendments is based on the expectation that all fleets comply as required, but staff analysis shows only around 85 percent of the California-registered heavy trucks are in compliance. The proposed amendments would provide a path for non-compliant fleets to comply at a pace they could manage and would result in real emission benefit from these fleets that we would not expect with the current regulation. See also Chapters IV and V of the ISOR.

**D. April 21, 2014 Letter Submitted by Rule Advocates (various, Comment #182)**

**Summary of Comment**

Despite this significant progress, there are still thousands of older trucks operating in California that need to be cleaned up in order meet regional air quality standards and reduce local health risks. As such, we strongly urge the board to limit any changes to the Truck and Bus regulation in order to maintain the health benefits of the standards and ensure that existing clean truck investments by California companies are not undermined. This regulation is vitally important to cleaning up California's air and protecting public health. CARB must continue its efforts to ensure that the rule is successfully implemented and that the health benefits are achieved."

**Response:** The staff disagrees with this comment and incorporates its General Response to CEQA Comments and its responses to Comment A-C by reference here.