

Responses to Comments

on the

Draft Supplemental Environmental Analysis Prepared for the Proposed Amendments to the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate

**California Air Resources Board
1001 I Street
Sacramento, California, 95814**

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to be considered at the
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1.0 Introduction

The California Air Resources Board (CARB) released a Draft Supplemental Environmental Analysis (Draft Supplemental EA) for the proposed amendments to the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate, herein referred to as the Proposed Amendments or the Proposed Project (i.e., the proposed project under the California Environmental Quality Act [CEQA]) on July 30, 2021, for a public review and comment period that concluded September 19, 2021. This period complies with the requirement for a minimum of 45 days of public review. (Title 17 CCR, section 60004.2(b)(2).) Comments were also accepted during the CARB hearing on September 23, 2021. CARB received numerous comment letters through the comment docket opened for the Proposed Amendments, including the Draft Supplemental EA, during the comment period. Revisions to the Proposed Amendments were released on December 22, 2021, for an additional comment period (15-day) which concluded on January 6, 2022. All the comment letters are available for viewing on the comment docket at: <https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=tru2021>.

CARB staff carefully reviewed all comment letters received to determine which ones raised significant environmental issues related to the analysis in the Draft Supplemental EA and require a written response under CARB's certified regulatory program implementing CEQA. This document includes CARB staff's written responses to that subset of comments and will be provided to the Board for consideration prior to it taking final action on the Proposed Amendments, as amended through public input.

The written responses include a brief summary of each comment, followed by the written response. The full comment letters, from which the comments responded to were extracted, are provided in Attachment A of this document. Although this document includes written responses only to those comments related to the Draft Supplemental EA, all comment letters received were considered by staff and provided to the Board members for their consideration.

A. Requirements for Responses to Comments

These written responses to public comments on the Draft Supplemental EA are prepared in accordance with CARB's certified regulatory program to comply with CEQA. CARB's certified regulations do not have a section specifically about comments on Supplemental EAs; however, regarding comments on Draft EAs, CARB's certified regulations state:

California Code of Regulations, title 17, Section 60004.2(b)(3). Response to Public Comment

CARB shall evaluate comments on environmental issues received during the noticed comment period and shall respond as follows:

(A) Comments received during the noticed public comment period regarding environmental impacts that may result from the proposed project shall be considered, and a written response shall be prepared where required by section 15088 of title 14 of the California Code of Regulations.

(B) CARB may, but is not required to, respond to late comments made outside the noticed comment period.

(C) When responding to a comment raising significant environmental impacts from a public agency, a written proposed response shall be provided to that agency at least 10 days prior to certifying an Environmental Impact Analysis.

(D) The response to comment may be prepared in the form of (1) a revision to the draft Environmental Impact Analysis, (2) a separate section in or attachment to the Final Environmental Impact Analysis, or (3) a separate response to comments document.

(E) The response to comment shall include the following:

1. Comments and recommendations concerning significant environmental issues received during the noticed public review period on the draft Environmental Impact Analysis, either verbatim or in summary;

2. A list of persons, organizations, and public agencies commenting on the draft Environmental Impact Analysis during the noticed public review period; and

3. The responses to significant environmental issues raised during the noticed public review period.

Public Resources Code (PRC) Section 21091 also provides guidance on reviewing and responding to public comments in compliance with CEQA. While this section refers to environmental impact reports, proposed negative declarations, and mitigated negative declarations, rather than an EA, it contains useful guidance for preparing a thorough and meaningful response to comments.

PRC Section 21091, subdivision (d) states:

(1) The lead agency shall consider comments it receives if those comments are received within the public review period.

(2) (A) With respect to the consideration of comments received, the lead agency shall evaluate any comments on environmental issues that are received from

persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of each significant environmental issue that is raised by commenters. The responses shall be prepared consistent with section 15088 of Title 14 of the California Code of Regulations.

California Code of Regulations, title 14, Section 15088 (CEQA Guidelines) also includes useful information and guidance for preparing a thorough and meaningful response to comments. It states, in relevant part, that specific comments and suggestions about the environmental analysis that are at variance from the lead agency's position must be addressed in detail with reasons why specific comments and suggestions were not accepted. Responses must reflect a good faith, reasoned analysis of the comments.

California Code of Regulations, title 14, Section 15088 (a–c) states:

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

B. Comments Requiring Substantive Responses

CARB is required to prepare written responses only to those comments that raise "significant environmental issues" associated with the proposed action, as outlined in California Code of Regulations, title 17, Section 60004.2(b)(3). A total of 13 comments were submitted electronically on or before September 19, 2021, and during the public hearing on September 23, 2021, to the comment docket set up for the Proposed Amendments and its appendices, including the Draft Supplemental EA. An additional 3 comments were submitted on or before January 6, 2022, during the subsequent comment period. Of the 16 comments, 6 written comments were received at the public

hearing. Out of the 16 total comment letters received, 1 was determined to include comments raising significant environmental issues related to the Draft Supplemental EA and requiring a written response under CARB’s certified regulatory program and CEQA. CARB staff was conservative and inclusive in determining which comments warranted a written response and even included comments that did not mention the analysis included in the Draft Supplemental EA but did raise an issue related to potential adverse impacts related to the Proposed Regulation.

2.0 Responses to Comments

A. Comments Received

The comment letter responded to in this document was coded by the order in which it was received with other comment letters. Table 2-1 lists the comment letter that contains substantive environmental comments. As previously explained, CARB staff were conservative and inclusive in determining which comments warranted a written response and considered comments that did not mention the analysis included in the Draft Supplemental EA but did raise an issue related to potential adverse impacts related to the Proposed Amendments. Responses to these comments are provided below. The comment letter, bracketed to indicate individual comments, is provided in Attachment A.

Table 2-1: List of Comment Letters Receiving Responses for CEQA Purposes for the Draft Supplemental EA Comment Period

Comment Number	Date	Name	Affiliation
5	September 13, 2021	Romanosky, Theresa, et al.	Association of American Railroads

B. Responses to Comments on Draft Supplemental EA

Comment Letter 5 Theresa Romanosky, et al. Association of American Railroads
September 13, 2021

5-1: The commenter states that inspection of CARB identification numbers on TRU generator sets would require individual railroad employees to inspect them, which would increase truck idling time at entry and exit gates. While the Draft Supplemental EA concludes that reporting requirements are administrative and would not result in environmental impacts, the commenter states that the manual inspections could slow traffic through intermodal railyard facility gates, thereby increasing idling and increasing air pollution at the railyards and nearby communities. The commenter states the Draft Supplemental EA has not adequately considered this impact.

Response: See response to comment 5-2.

5-2: While the Draft Supplemental EA concludes that reporting requirements are administrative and would not result in environmental impacts, the commenter states that the manual inspections could slow traffic through intermodal railyard facility gates, thereby increasing idling and increasing air pollution at the railyards and nearby communities. The commenter states the Draft Supplemental EA has not adequately considered this impact or greenhouse gas emissions from increased idling. The commenter also states the Draft Supplemental EA has not considered the increased greenhouse gas emissions associated traffic congestion in communities resulting from delays at intermodal railyard gates.

Response: CARB respectfully disagrees with the comment that the reporting requirements would result in increased pollutant and GHG emissions. The Drayage Truck Regulation has similar requirements, truck idling is regulated by an existing ATCM, and the Proposed Amendments contain measures to make inspections efficient.

The Drayage Truck Regulation (DTR) regulates in-use, heavy-duty diesel-fueled vehicles that transport cargo to and from California's ports and intermodal rail facilities (Cal. Cod. Regs. tit. 13, Section 2027(a)). The DTR has existing reporting requirements for intermodal rail yards, as outlined in section 2027(d)(6). It requires that intermodal rail yards collect information for each regulated drayage truck that is not compliant with the DTR, as determined by information within the Drayage Truck Registry (Cal. Cod. Regs. tit. 13 section 2027(d)(6)). The information includes details about the dispatching motor carrier and the drayage truck. Drayage truck information includes entry date and time, the registered owner's name, the operator's name, the operator's license number, the drayage truck's license plate number and state of issuance, and the drayage truck's vehicle identification number (Cal. Cod. Regs. tit. 13 Section 2027(d)(6)(A)(2)). As CARB staff understand, drivers and rail workers enter truck plate information into the railroads' system to verify compliance at the gate. Union Pacific has indicated that, if a drayage truck is not registered in CARB's online database, they are allowed in. However, they are not allowed out until they are registered in CARB's online database. BNSF submits the required information on non-compliant trucks to CARB. As a result, TRUs associated with trucks entering intermodal facilities are already subject to reporting requirements that require some level of inspection.

In response to the comments, CARB staff made some changes to the applicable facility reporting requirements to allow facility owners or owner/operators to report alternative information already collected as part of their normal business practice. First, CARB staff modified section 2477.20(m)(2)(A) and section 2477.20(m)(4)(A) to allow facility owners or owner/operators to report the CARB identification number (IDN) or an alternative unique equipment identification number. As specified in section 2477.20(e), the alternative identification number shall be truly unique. Examples of unique identification numbers include the Reporting Marks that are issued by the American Association of Railroads' contractor, RailInc, for their UMLER system and the BIC Codes issued by Bureau International de Containers. Company equipment numbers that are not truly unique on a worldwide basis do not qualify and are prohibited from being reported in place of the CARB IDN. Second, staff modified section 2477.20(m)(2)(E)3. and

section 2477.20(m)(4)(D)3. to allow the motor carrier number, United States Department of Transportation number, or carrier identification number to be reported as an alternative to the truck owner/tractor owner's company name.

Furthermore, the Proposed Amendments contain provisions that are designed to ensure consistency. For example, compliance labels must be placed in specific locations on the TRU "in clear view, correct side up, unobstructed; and kept and maintained in a manner that retains legibility." Therefore, it is probable that intermodal rail facilities would conduct TRU inspections for reporting purposes at the same time and using the same process as the drayage truck information and that it would add a miniscule amount of time, if any, to the entry process. Furthermore, idling of the truck itself would be subject to the ATCM to Limit Diesel-Fueled Commercial Motor Vehicle Idling (Cal. Cod. Regs. tit. 13 Section 2485). It limits idling to no more than 5 consecutive minutes at any location (Cal. Cod. Regs. tit. 13 Section 2485(c)(1)(B)). Regarding TRU use during idling, it should be noted that TRUs that rely on diesel engines do not need to constantly run to provide refrigeration. As shown in Table 9 of the TRU Emissions Inventory (Appendix H to the Initial Statement of Reasons), TRU load factors range from 0.46 to 0.56, indicating that TRU engines are running about half the time that they are providing refrigeration.

In conclusion, it is not clear to CARB staff that the Proposed Amendments would cause increased idling of trucks or TRUs at intermodal facilities or result in increased pollutant or GHG emissions. In addition, the commenter did not present any information or supporting data that provides any substantial evidence contrary to CARB staff's determination. CEQA requires evaluation of reasonably foreseeable impacts and does not require evaluation of speculative impacts (see Cal. Code Regs., tit. 14 Sections 15144, 15145, and 15358). As a result, the Draft Supplemental EA's conclusion that reporting requirements are administrative and would not result in direct or indirect environmental impacts is adequate.

5-3: The commenter states that the Draft Supplemental EA does not account for the likely need for additional intermodal railyard facilities, for installation of hardware and software, and to hire new employees to comply with reporting requirements. If necessary, construction of facilities at intermodal railyards to capture information required under the Proposed Amendments would result in emissions and other environmental impacts.

Response: As described in response to comment 5-2, the Drayage Truck Regulation has similar reporting requirements to the Proposed Amendments. It is likely that similar inspection procedures would be used for the Proposed Amendments that are used for the Drayage Truck Regulation. While new hardware and software may need to be installed for those facilities that chose to automate inspections, CARB respectfully disagrees with the comment that construction of entirely new intermodal railyard facilities will be needed to satisfy inspection requirements. CARB is unaware of evidence that existing intermodal railyard facilities could not be modified, if needed, to facilitate inspection requirements, or that new railyard facilities would be needed.

In general, seaport facilities and intermodal railyards are already automated to reduce driver transaction time. At most seaport facilities, drivers pull up to a pedestal equipped with a phone, keypad, card reader, or other device for communicating with terminal clerks and information system to establish the identity of the driver and drayage firm, verify the specified container is available and ready to be picked-up, etc.¹ Similarly, most railyard facilities have automated computerized gate systems and/or handheld devices. When truck drivers pull up to an automated gate, their tractor-trailer is scanned by high definition cameras. Optical Character Recognition and License Plate Recognition software automatically reads the container, chassis unit, and license plate numbers from the camera footage. This information is used to verify the contents of the shipment, the driver's identity, freight destination and equipment condition.²

Installation of hardware, if undertaken, would be minor in nature and would occur in areas of facilities already subject to the presence of loud equipment like trucks and trains and that are already developed and maintained as intermodal rail facilities. Installation of hardware would therefore be consistent with existing maintenance activities in intermodal railyard facilities if it occurs as a result of the Proposed Amendment. Installation of software would be completed in an office-like facility and would not result in environmental impacts. CEQA Guidelines section 15126.2 (a) states that "[a]n EIR shall identify and focus on the *significant* effects of the proposed project on the environment" (emphasis added). It is possible that installation of hardware and software may not occur. If it does, the impacts would be negligible. Therefore, the Supplemental EA does not need to evaluate the impacts of installation of hardware and software.

5-4: The comment states that CARB did not consider more efficient methods for gathering information from TRUs operating in California, and the Proposed Amendments impose burdensome requirements on intermodal railyards.

Response: CARB respectfully disagrees with the comment. CARB staff understand that facility operations are complex. For that reason, the Proposed Amendments provide two compliance options to provide flexibility to applicable facilities and allow them to choose the option that works best for their business operations. Applicable facilities are not required to report TRU activity to CARB unless they choose that option. Under option 1, outlined in section 2477.17(e)(1), an applicable facility may choose to report all TRUs that operate on applicable facility property to CARB. The purpose of the applicable facility reporting requirements under this option is to provide CARB staff the information needed to identify non-compliant TRUs operating in California and bring them into compliance. CARB's TRU reporting database includes TRU owner information, but does not include information necessary to identify additional responsible parties involved in the operation of a specific TRU on a given day and time (e.g., TRU operator,

¹ Truck Drayage Productivity Guide. National Cooperative Freight Research Program, 2011. (web link: <https://www.nap.edu/catalog/14536/truck-drayage-productivity-guide>)

² 3BL Media, "BNSF's Automated Gate Systems Reduce Carbon Emissions," November 6, 2013. (web link: <https://www.3blmedia.com/news/bnsfs-automated-gate-systems-reduce-carbon-emissions>)

trailer owner, truck owner, tractor owner, etc.). The required information is the minimum information CARB enforcement staff determined would be necessary to identify a non-compliant TRU and the responsible parties involved with the operation of a non-compliant unit on a specific day and time. As an alternative, applicable facilities may choose option 2, outlined in section 2477.17(e)(2). Under option 2, an applicable facility would be required to ensure that only compliant TRUs operate on their property. Applicable facilities choosing option 2 may verify TRU compliance onsite (by checking for a valid TRU compliance label or looking-up a TRU's compliance status on CARB's website) and not allow non-compliant TRUs to operate on their property, or require the use of compliant TRUs in their contracts.

Regarding consideration of other methods of gathering information from TRUs as an alternative under CEQA, this comment does not set forth a CEQA alternative because such an alternative must reduce or avoid at least one of the Proposed Amendment's significant environmental impacts. (Cal. Code Regs., tit. 14 Section 15126.6.). As explained in response to comment 5-2, the reporting requirements would not result in a significant impact. Therefore, the commenter's suggestion would not meet the CEQA requirements for alternatives and does not need to be considered in the Supplemental EA.

ATTACHMENT A
COMMENT LETTERS

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**BEFORE THE
CALIFORNIA AIR RESOURCES BOARD**

**WRITTEN COMMENTS ON PROPOSED AMENDMENTS TO THE AIRBORNE
TOXIC CONTROL MEASURE FOR IN-USE DIESEL-FUELED TRANSPORT
REFRIGERATION UNITS (TRUS) AND TRU GENERATOR SETS, AND
FACILITIES WHERE TRUS OPERATE**

**COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS, BNSF
RAILWAY, AND UNION PACIFIC RAILROAD COMPANY**

The Association of American Railroads (“AAR”), BNSF Railway, and Union Pacific Railroad Company (collectively, “the Railroads”) respectfully submit the following comments on the California Air Resources Board’s proposed amendments to the airborne toxic control measure for in-use diesel-fueled transport refrigeration units (“TRU”), TRU generator sets, and facilities where TRUs operate (“Proposed Rule”).

AAR is a non-profit industry association whose membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR also represents passenger railroads that operate intercity passenger trains and provide commuter rail service. BNSF and UP are two of the largest Class I freight railroads in North America. Both railroads own and operate intermodal freight railyards in California.

The Railroads submit these comments as part of the rail industry’s continuing efforts to work with CARB to find sensible and effective ways, consistent with federal law, to reduce emissions from rail operations.

I. The Proposed Rule's Attestation Provision Is Unrealistic.

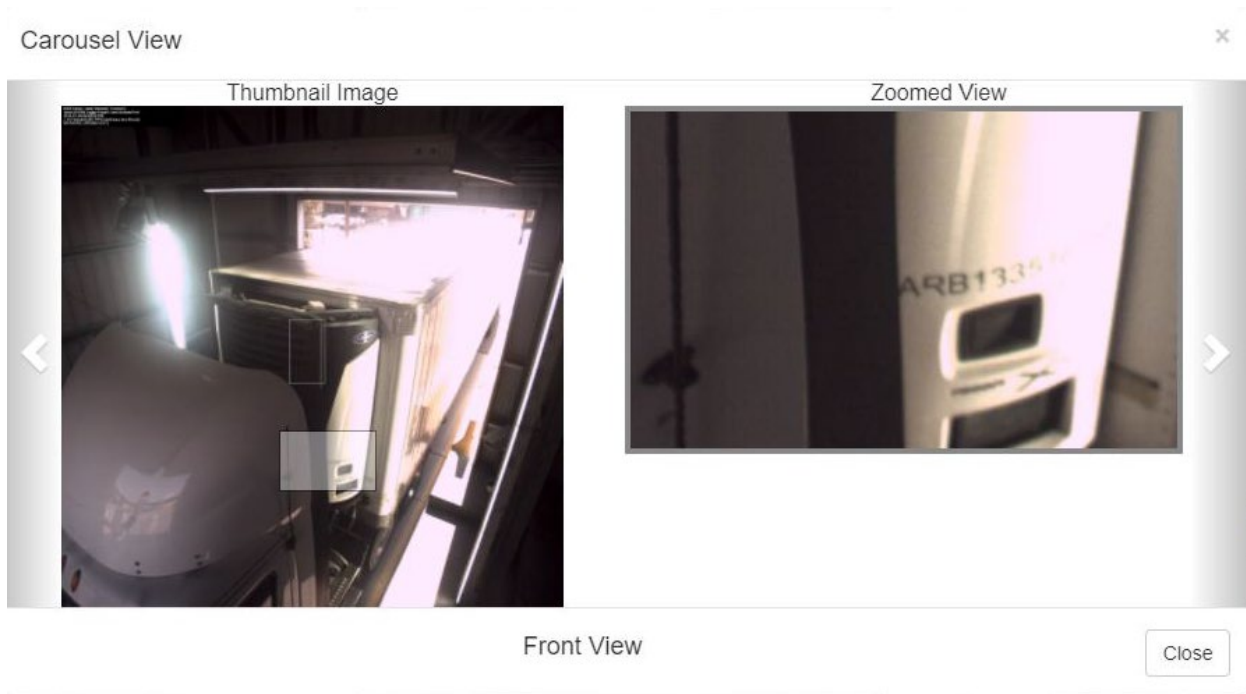
CARB's proposed regulation requires that, beginning in 2024, "applicable facility owners or applicable facility owner/operators shall report information to CARB" on a quarterly basis. § 2477.17(e)(1)(B). Section 2477.20 then details the scope of information that regulated entities must provide to the agency. As part of this submission, the proposed regulation would require the individual preparing the information to "certify under penalty of perjury under the laws of the State of California that the information provided is true, accurate, and complete." § 2477.20(c).

Intermodal facilities process over 100,000 refrigerated cargo shipments each year and 100% reporting accuracy is close to impossible for reasons beyond the Railroads' control. For example, CARB's ARBER database is incomplete. Entries for over 900 trucks in the ARBER database reflect a license plate including the letters "TEMP." These license plate records are clearly not accurate, but they are the best information available to a facility owner in circumstances in which a plate is obscured when entering or leaving the facility gate. Under the proposed language of the certificate, the facility owner or operator reporting this information sourced from CARB's own database could potentially be cited for failure to report accurate information or for falsely attesting to the accuracy of the reported information.

Likewise, inaccurate information may be provided to a facility owner or operator by the shipper. Railroads rely on information provided by shippers for cargo transported through intermodal facilities within railyards. Some of this information (such as, for example, the equipment owner) cannot be readily confirmed. Under the proposed regulation, a facility owner that inadvertently passes along inaccurate information regarding a TRU (such as the trailer, container, or tractor owner name) due to inaccurate reporting by the shipper could be charged with perjury.

Information required for reporting under the proposed rule may be unavailable. For example, the CARB IDN or the license plate number are often unreadable when a TRU enters or leaves a facility and, as such, a clear photograph of the identifying characteristics may not be possible (see Figure 1 for an example of this scenario). If the vehicle transporting the TRU enters or leaves the intermodal facility by providing other, legally satisfactory information (such as a transponder signal), the facility owner may not be able to accurately report the obscured information. This presents a significant concern because under the Proposed Rule, a facility owner could be charged with perjury for being unable to accurately report information on the TRU.

Figure 1



CARB should revise the attestation component of the reporting requirement at § 2477.20(c) of the Proposed Rule to allow Facility Operators to report reasonably available information collected and

reported in good faith without threat of penalty, even if it later proves to be inaccurate. Further, Facility Operators should be able to report information as “missing” or “not available,” also without threat of penalty. To that end, the railroads propose the following change to 2477.20(c):

Statement of Accuracy. All information submitted to CARB as required under this TRU Regulation shall be accompanied by the following statement, signed by the TRU owner, applicable facility owner, or responsible official: “I certify under penalty of perjury under the laws of the State of California that the information provided is true, accurate, and complete **to the best of my knowledge and belief as of the date of this report.**”

This change will provide a reasonable “safe harbor” for intermodal facility operators operating in good faith.

II. The Provision Regarding Applicable Penalties Is Unclear.

The Proposed Rule’s provision addressing potential penalties is in § 2477.19 (a)(1). It states:

For purposes of enforcement, if a TRU, TRU gen set, or applicable facility is cited for non-compliance with this TRU Regulation and neither the owner nor the operator can produce evidence of the party responsible for compliance with State laws, then the owner of the TRU, TRU gen set, or applicable facility in violation shall be liable for any non-compliance.

This provision lacks clarity and should be reworded to ensure all stakeholders understand how CARB envisions the penalty provision to operate.

The party subject to penalties under the Proposed Rule should be the Owner or Operator (as defined within the Proposed Rule) of the TRU or TRU gen set – not the applicable Facility Owner or Operator. As written, the proposed text suggests that if (for example) an applicable Facility Owner is unable, for reasons outside of its control, to provide evidence of the “party responsible for compliance

with State laws,” that Facility Owner may be found liable for any non-compliance. Such an outcome would be patently unjust.

The Railroads propose the following changes to this enforcement provision, with additions indicated in bold text and proposed deletions stricken:

“For purposes of enforcement, if a TRU **or TRU gen set,** ~~or applicable facility~~ is cited for non-compliance with this TRU Regulation and neither the owner nor the operator can produce evidence of the party responsible for compliance with State laws, then the owner of the TRU **or TRU gen set,** ~~or applicable facility~~ in violation shall be liable for any non-compliance.”

III. The Definition of an “Intermodal Facility” and “Intermodal Railyard” Is Unclear.

CARB has not proposed changes to the term “Intermodal Facility” in this amendment.

However, this rulemaking presents an opportunity to clarify the current definition. We ask that CARB’s definition recognize that in some instances an “intermodal facility” may constitute only a portion of a railyard, and the TRU regulation only applies to the intermodal facility portion of that yard. CARB should make the following changes, indicated in bold text, with proposed deletions stricken, to the definition “Intermodal facility” in § 2477.4(a)(54) of the proposed regulation.

“Intermodal Facility” means a facility, **or a portion of a facility,** involved in the movement of goods in one and the same loading unit or vehicle which uses successively several modes of transport without handling of the goods themselves in changing modes. Such a facility **(or portion of a facility)** is typically involved in ~~loading and unloading~~ **the transfer of** refrigerated shipping containers and trailers to and from railcars, trucks, and ocean-going ships.

Similarly, the definition of an “Intermodal Railyard” should be modified to clarify that only the portion of a railyard where intermodal activities occur constitute an “Applicable Facility” for the purposes of this regulation. § 23477.4(a).

The inclusion of a “portion of a facility” and a “portion of a railyard” would make clear that the rule is applicable only to the portion of a railyard where intermodal activities occur (i.e., the “Intermodal Facility”), and not to other portions of the railyard. This is a critical distinction because some railyards include both intermodal activities (as defined above) and non-intermodal activities (such as classification and/or maintenance). Further, the proposed language highlights the fact that there is no “loading and unloading” of containers and trailers at an intermodal facility – rather the shipping containers are transferred from one mode of transport to another.

IV. The Proposed Rule’s Reporting Requirements Are Unclear.

a. CARB Should Not Require Facilities to Report CARB IDNs or Detailed Driver Information.

Under Section 2477.20(e)(6) of the Proposed Rule, the owner or operator of the TRU may use an “alternative unique equipment identification markings instead of affixing a CARB IDN” under certain conditions. The owner or operator can make the determination as to which identification number to report (CARB IDN, AAR/UMLER, BIC) and then report that information to CARB through ARBER.

As previously discussed with CARB staff, railyards, as part of their current normal course of business, only record the AAR/UMLER and BIC codes for all shipments (regardless of how TRU’s are registered by equipment owners through ARBER). Railroads do not capture the CARB IDN in the normal course of business. It would be extremely difficult for railroads to implement procedures to collect CARB IDNs accurately and completely for every TRU entering a railyard.

Given this, Facilities should be permitted to report AAR/UMLER or BIC codes to CARB for TRUs entering a railyard regardless of how the TRU owner has registered the TRU in ARBER. By providing the

AAR/UMLER or BIC code for each TRU, CARB could then consult its own registry to determine the CARB IDN for a unit.

To effect this change, AAR proposes the following modifications to the proposed rule:

2477.20(m)(2)(A) (Reporting – Trailer TRU or DSC TRU information)

CARB IDN (or ~~if one is used,~~ the alternative unique equipment identification number ~~reported to CARB under~~ **as defined in section 2477.20(e)(6)**).

2477.20(m)(4)(A) (Reporting –TRU gen set information)

CARB IDN (or ~~if one is used,~~ the alternative unique equipment identification number ~~reported to CARB under~~ **as defined in section 2477.20(e)(6)**).

b. CARB Should Allow Facilities to Report Container BIC Numbers for TRU Gen Sets Rather than CARB IDNs.

Similarly, with respect to TRU gen sets and the reporting requirements reflected in § 2477.20(m)(4), railroads do not track information regarding gen sets because they are customer-owned property.

Further, the BIC number is located on the container, not on the TRU gen set itself. TRU gen sets may be positioned at the front or rear of a container or chassis, or along the undercarriage of a chassis. Obtaining CARB ID numbers for TRU gen sets would be virtually impossible using cameras and would likely require an individual railroad employee to walk around the trailer to find the ID number – a solution that is neither practical nor environmentally sound, as it would substantially increase truck idling times at entry and exit gates.¹

¹ The Railroads respectfully disagree with CARB’s conclusion in its TRU Draft Supplemental Environmental Analysis that the reporting requirements are “administrative and would not result in any direct or indirect environmental impacts.” *TRU Rulemaking, Appendix D, TRU Draft Supplemental Environmental Analysis* at 11 (<https://ww3.arb.ca.gov/board/rulemaking/tru2021/appd.pdf>). These requirements are not administrative as they will require facility staff to manually search for required information on incoming and outgoing TRUs. This could slow down truck traffic through intermodal railyard facility gates – leading to increased truck idling and, therefore, increased

Rather than imposing unworkable regulations on Facilities, CARB should amend the regulation and require facilities to provide the container BIC number. As discussed in the preceding section, providing the container BIC number for TRU gen sets to CARB would allow CARB staff to trace the container and, if required, determine which TRU gen set was affixed to the container or chassis on that particular date.

c. CARB Should Not Require Facilities to Report a Truck Company Name.

The reporting requirements in the Proposed Rule include several references to a “company name” for trailer, container and gen set TRUs. The rule language should be revised to clearly allow for the “Motor Carrier” name to be provided in lieu of the “Company Name.” This will still provide information to enable CARB to identify a potentially responsible party in the event of an alleged violation. Proposed language to effect this change is as follows:

- 2477.20(m)(2)(C) (Reporting – Trailer TRU or DSC TRU information)
 - Trailer or container owner’s company name, **or motor carrier name.**
- 2477.20(m)(2)(E)(3) (Reporting – Trailer TRU or DSC TRU information)
 - Truck owner/tractor owner’s company name, **or motor carrier name.**
- 2477.20(m)(4)(C) (Reporting –TRU gen set information)
 - TRU gen set owner’s company name, **or motor carrier name.**
- 2477.20(m)(4)(D)(3) (Reporting –TRU gen set information)
 - Truck/tractor owner’s company name, **or motor carrier name.**

emissions. As such, these reporting requirements may have a negative impact on air pollution at intermodal railyards and in nearby communities. This environmental impact has not been adequately considered by CARB as is required by CEQA.

5-1
cont.

d. CARB Should Not Require Reporting for Non-operating TRUs.

The Proposed Rule defines “operate” as “to start, cause to function, program the temperature controller, select an operating program or otherwise control, fuel, monitor to assure proper operation, or keep in operation.” § 2477.4. It continues, “[a] TRU that is operational (e.g., capable of being operated) shall be considered to operate if it is in California.” *Id.*

This definition could be interpreted to require dry boxes (containers/trailers that do not contain refrigerated goods) to be reported by intermodal yards if they have TRUs. The Proposed Rule should be clarified to make clear that reporting is only required for trailers/containers that contain refrigerated goods. To implement this change, the rule should be revised to include the bolded language below:

“‘Operate’ means to start, cause to function, program the temperature controller, select an operating program or otherwise control, fuel, monitor to assure proper operation, or keep in operation. **Except with respect to the reporting requirements of 2477.20(m), a** TRU that is operational (e.g., capable of being operated) shall be considered to operate if it is in California.”

e. Facilities Should be Allowed to Report Either the TRU Entry or Exit Date and Time.

At intermodal railyards, some of the information required to be reported for TRUs is not acquired until the TRU leaves the yard via the exit gate. To improve clarity, the reporting language for this information should be modified to reflect this reality. Suggested edits are indicated in bold text below.

2477.20(m)(2)(B) Entry **or exit**_date and time

V. CARB’s CEQA Analysis Fails to Adequately Consider the Environmental Impacts of the Proposed Rule.

California’s Environmental Quality Act (“CEQA”) requires the preparation of an environmental impact report (“EIR”) in order “to identify the significant effects on the environment of a project, to

identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” Cal. Pub. Res. Code (“PRC”), § 21002.1; *see also* 14 Cal. Code Regs. (“CEQA Guidelines”) §§ 15000-15387. The California Air Resources Board (“CARB”) implements this requirement through the preparation of an Environmental Analysis (“EA”) under its certified equivalent program. *See* 17 CCR §§ 60000-60008. Nonetheless, the underlying substantive requirements of CEQA must be met by CARB’s EA. 17 CCR 60004(b).

CARB’s Supplemental Environmental Analysis (“SEA”) is inadequate in several respects. First, as noted above, CARB asserts in the SEA that its proposed reporting requirements are “administrative and would not result in any direct or indirect environmental impacts.” *TRU Rulemaking, Appendix D, TRU Draft Supplemental Environmental Analysis* at 11

(<https://ww3.arb.ca.gov/board/rulemaking/tru2021/appd.pdf>) (hereafter “SEA”). These requirements are not simply administrative. In reality, if enacted as proposed, they will require facility staff to manually search for required information on incoming and outgoing TRUs. This could slow down truck traffic through intermodal railyard facility gates – leading to increased truck idling and, therefore, increased emissions. As such, these reporting requirements may have a negative impact on air pollution at intermodal railyards and in nearby communities. This environmental impact has not been adequately considered by CARB as is required by CEQA. Relatedly, CARB has failed to consider these reasonably foreseeable increased criteria emissions from truck idling at entrance and exit gates and the associated impacts on neighboring communities when identifying resource area impacts. *Id.* at 22 et seq. Nor has it considered the associated increases in greenhouse gas emissions associated with increased idling and the associated fuel consumption or the increased traffic congestion in communities neighboring intermodal railyards as a result of delays at in- and out-gates. *Id.*

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CARB has also failed to account for the impact of additional likely compliance responses as a result of the need for construction of additional intermodal railyard facilities, the development and installation of hardware and software required to implement the Proposed Rule, and the need to hire additional employees to comply with the new reporting mandates for those railyards. *Id.* at 2. If it is necessary to construct additional facilities at intermodal railyards in order to capture the information required under the Proposed Rule, this construction would result in additional emissions as well as other environmental impacts (e.g. noise, aesthetics) that must be considered in CARB’s SEA. *Id.* at 30.

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Finally, CARB failed to consider more efficient methods for capturing the desired information from TRUs operating within California. As proposed, the draft TRU rule imposes burdensome requirements on intermodal railyards and requires collection of information currently unavailable to the railroads. Much of the information that the Railroads would be required to provide to CARB under this reporting regime is currently available to CARB through its ARBER database and could be readily access by CARB staff using less information than the Proposed Rule currently requires.

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Absent the incorporation of these recommendations by the Railroads, the timeline for enactment of the Proposed Rule is not feasible. As currently proposed, BNSF and UP would need to plan, design, and construct new facilities at the in- and out-gates of intermodal railyards in addition to hiring and training new employees and implementing significant software and hardware changes in order collect all of the requisite information in the Proposed Rule. It is not feasible to implement all of these changes prior to 2023. Additional time will be required.

We appreciate this opportunity to provide comments on CARB's Proposed TRU Rule. Please feel free to contact Theresa Romanosky at AAR with any questions.

Respectfully submitted,

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