

California Environmental Protection Agency



Air Resources Board

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

**PUBLIC HEARING TO CONSIDER ADOPTING THE REGULATION FOR
MOBILE CARGO HANDLING EQUIPMENT AT PORTS AND
INTERMODAL RAIL YARDS**

Public Hearing Date: December 8, 2005
Agenda Item No.: 05-12-4

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AIR RESOURCES BOARD

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I. GENERAL

In this rulemaking, the Air Resources Board (ARB, Board, or Agency) is adopting a new regulation to reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NO_x) from mobile, compression ignition, cargo handling equipment at ports and intermodal rail yards. The regulation will be contained in new section 2479, title 13, California Code of Regulations (CCR). This regulation will reduce the public's exposure to diesel PM and NO_x by establishing best available control technology (BACT), which includes emission standards and operational requirements, for cargo handling equipment that operate at ports and intermodal rail yards in California. The regulation supports the "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles," which was adopted by the Board on September 30, 2000, and the State Implementation Plan.

This rulemaking was initiated by the October 21, 2005, publication of a notice for a public hearing on December 8, 2005. A "Staff Report: Initial Statement of Reasons" (Staff Report) was also made available for public review and comment starting October 21, 2005. The Staff Report, which is incorporated by reference herein, described the rationale for the proposal. The text of the proposed regulation, which would add a new section 2479 to title 13, CCR, was included as Appendix A to the Staff Report. These documents were also posted on the ARB's internet site for the rulemaking at: <http://www.arb.ca.gov/regact/cargo2005/cargo2005.htm> ("ARB's internet site").

On December 8, 2005, the Board conducted a public hearing to consider the staff's proposal for adoption. Written and oral comments were received at the hearing, and several parties suggested changes to the proposed regulation. The Board approved the staff's proposal with proposed changes that included modifying the Alternative Compliance Plan (ACP) provision of the regulation to allow for public comment on any applications for the ACP, and addressing concerns regarding Department of Defense equipment that is subject to the requirements of the regulation. At the conclusion of the hearing on December 8, 2005, the Board adopted Resolution 05-62, in which it

approved the adoption of the originally proposed regulation with suggested modifications discussed at the hearing. In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to incorporate the modifications into the proposed regulatory text and to make such modifications available for a supplemental comment period of at least 15 days. The Executive Officer was then directed either to adopt the regulation with such additional modifications as may be appropriate in light of the comments received, or to present the regulation to the Board for further consideration if warranted in light of the comments.

The text of the modifications to the originally proposed regulation and the incorporated documents were made available for a supplemental 15-day comment period by issuance of a "Notice of Public Availability of Modified Text and Availability of Additional Documents" ("15-day Notice"). The 15-day Notice, a copy of Resolution 05-62, and the document entitled "Staff's Suggested Modifications to the Original Proposal" were mailed on May 18, 2006, to all parties identified in section 44(a), title 1, CCR, and to other persons generally interested in the ARB's rulemaking concerning cargo handling equipment at ports and intermodal rail yards. These documents were also published on May 18, 2006, on ARB's Internet site. An email message announcing and linking to this posting was transmitted to the more than 1,000 parties that have subscribed to ARB's "cargo" List Server. The 15-day Notice gave the name, telephone, and fax number of the ARB contact person from whom interested parties could obtain the complete texts of the additional incorporated documents and the modifications to the original proposal, with all of the modifications clearly indicated.

Four written comments were received during the 15-day comment period. Three of the four comments did not specifically address the proposed modifications in the 15-day notice. One comment specifically addressed the proposed modifications, but staff determined additional modifications in response to that comment were unnecessary.

After considering the comment received during the supplemental 15-day comment period, the Executive Officer issued Executive Order R-06-007, adopting new section 2479 in title 13, CCR, and adopting the incorporated documents.

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and explaining the modifications that were made to the original proposal as a result of public comment and staff analysis after the Staff Report was issued. The FSOR also summarizes written and oral comments the Board received on the proposed regulatory text during the formal rulemaking process and the ARB's responses to those comments.

Documents Incorporated by Reference. Four test procedures and guidance documents are incorporated by reference in title 13, CCR, section 2479. Each instance of incorporation identifies the incorporated document by title and date. The incorporated ARB test procedures and documents, the American Society for Testing and Materials (ASTM) standards and procedures and the International Organization for Standardization (ISO) test methods, are readily available from the ARB upon request and were made available in the context of this rulemaking in the manner specified in

Government Code section 11346.5(b). Also, the referenced ASTM test methods are published by ASTM, a well-established and prominent organization in the sampling and analysis field. Similarly, the ISO documents are published by well-established and prominent organizations. Therefore, all of the incorporated documents are reasonably available to the affected public from commonly known sources.

The test procedures and guidance documents are incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to print them in the CCR. Existing ARB administrative practice has been to have the test procedures, guidelines, specifications, and similar documents incorporated by reference rather than printed in the CCR because these procedures, specifications, and guidelines are highly technical and complex. They include the “nuts and bolts” engineering protocols, computer modeling, and laboratory practices required for certification of diesel engines and for performing computerized risk assessments. In addition, they have a very limited audience. Because the ARB has never printed complete test procedures and guidance documents in the CCR, the directly affected public is accustomed to the incorporation format utilized therein. The ARB’s test procedures and guidance documents as a whole are extensive, and it would be both cumbersome and expensive to print these lengthy, technically complex procedures for a limited audience in the CCR. Printing portions of the ARB’s test procedures that are incorporated by reference would be unnecessarily confusing to the affected public.

Fiscal Impacts. The Executive Officer has determined that this regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(5) and 11346.5(a)(6), to any state agency or in federal funding to the State, or create costs or mandates to any local agency or school district, whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate that is required to be reimbursed pursuant to section 6 of article XIII B of the California Constitution. It also does not include any other non-discretionary costs or savings to local agencies.

The Board has determined that some costs to ARB will be incurred in order to implement and enforce this regulation; however, we believe these costs can be absorbed in our current budget. In future years, additional enforcement resources may be needed depending on the compliance options selected by the affected sources. No other State agencies are expected to incur costs due to this regulation. Overall, while not specifically determined, the financial savings resulting from the health benefits of reduced exposures to diesel PM are expected to outweigh the cost of implementing and enforcing the proposed regulation.

Consideration of Alternatives. The regulation proposed in this rulemaking was the subject of discussions involving staff and the affected owners, operators, and sellers of cargo handling equipment at ports and intermodal rail yards in California. A discussion of alternatives to the initial regulatory proposal is found in Chapter VII of the Staff Report. These include an option to rely on continued voluntary efforts and an option to regulate yard trucks only. For the reasons set forth in the Staff Report, staff’s

comments and responses at the hearings, and this FSOR, the Board has determined that none of the alternatives considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL AND ADDITIONAL DOCUMENTS MADE PUBLICLY AVAILABLE

At the December 2005 hearing, the Board approved the regulation and proposed modifications. Furthermore, the Board directed staff to work with stakeholders regarding modifications or clarifications to the approved regulation. The following is a description of the modifications and clarifications, by section number.

A. Exemptions, Subsection 2479(c)

Military Tactical Support Cargo Handling Equipment ((c)(4)): Staff added an exemption for military tactical support cargo handling equipment.

B. Definitions, Subsection 2479(d)

Alternative Diesel Fuel ((d)(1)): Staff modified this definition to include biodiesel to be consistent with the treatment of certain biodiesel blends meeting the definition of California Air Resources Board (CARB) diesel fuel.

California Air Resources Board (CARB) Diesel Fuel ((d)(5)): Staff added this definition to support the existing fuel requirements of the regulation.

Cargo Handling Equipment ((d)(7)): Staff modified this definition to clarify the inclusion of maintenance equipment that is used routinely or for predictable process upsets.

Contiguous Properties ((d)(11)): Staff added this definition to support the revised definition for port.

Intermodal Rail Yard ((d)(27)): Staff modified the definition to clarify that only transportation facilities – where the primary purpose of the greater facility (as opposed to a subcomponent thereof) is the transportation of goods by rail – are intended to fall within the ambit of the rule. Hence, a rail facility, such as a rail spur, that is merely ancillary to a non-transportation related business or operation, would not be subject to the regulation.

Military Tactical Support Cargo Handling Equipment ((d)(31)): Staff added this definition as part of the new exemption for military tactical support cargo handling equipment (see above).

Ocean-going Vessel ((d)(39)): Staff added this definition as part of the revised definition for port.

Port ((d)(44)): Staff revised this definition to clarify the inclusion of military terminals and docks that are part of, or on contiguous properties with, non-military terminals and docks.

Terminal ((d)(55)): Staff modified this definition to include facilities owned and/or operated by the Department of Defense.

Top Handler or Top Pick ((d)(57)): Staff modified this definition to correct a clerical error.

Verification Procedure ((d)(59)): Staff modified this definition to correct a clerical error.

C. Requirements, Subsection 2479(e)

In-Use Performance Standards for Yard Trucks: Compliance Schedules for In-Use Yard Trucks. In (e)(2)(B), staff modified the date used to determine the percentage of yard trucks that must meet the requirements for each compliance deadline. The percentage will be determined based on the total population of yard trucks for a specific model year or model year group that exist in the owner's or operator's fleet as of January 1 of the first compliance deadline year for that model year or model year group. This change allows for early compliance without penalty and is consistent with staff's original intent.

In-Use Performance Standards for Non-Yard Truck Mobile Cargo Handling Equipment: Compliance Option for Basic Container Handling Equipment, Bulk Cargo Handling Equipment, and Rubber-tired Gantry Cranes. In (e)(3)(B), staff modified the text for compliance option (c) for each equipment type to correct a clerical error, which had unintentionally omitted pre-Tier 1 engines.

In-Use Performance Standards for Non-Yard Truck Mobile Cargo Handling Equipment: Compliance Schedule for Non-Yard Truck Mobile Cargo Handling Equipment. In (e)(3)(c), staff modified the date used to determine the percentage of equipment that must meet the requirements for each compliance deadline. The percentage will be determined based on the total population of non-yard truck equipment for a specific model year or model year group that exist in the owner's or operator's fleet as of January 1 of the first compliance deadline year for that model year or model year group. This change allows for early compliance without penalty and is consistent with staff's original intent.

D. Alternative Compliance Plan for Non-Yard Truck Cargo Handling Equipment, Subsection 2479(h)

Requirements. Staff modified the alternative compliance plan (ACP) language in (h)(1)(A) to be more concise and less redundant. In (h)(1)(B), (h)(1)(F), and (h)(1)(H), staff modified the ACP language to make it clear that qualifying equipment must be located at the same port or intermodal rail yard to which the ACP applies, and in (h)(1)(C), staff clarified that no equipment can be included in more than one ACP. Additionally, in (h)(1)(H), staff clarified that emission reductions that are otherwise required by local rules, regulations, or statutes are not allowed to be included in an ACP.

Application Process. Numerous modifications were made to the ACP Application Process in (h)(2), to address the Board's directive to require the ACP to include provisions for public comment. Under the proposed modifications, all documents pertaining to ACP applications will be made available for public review. In addition, two separate public comment periods will be provided during the application process. The first will be provided after the Executive Officer has deemed the application to be "complete." The second will be provided after the Executive Officer proposes to approve or disapprove the application. This comment period will allow the public to comment on the proposed decision by the Executive Officer before final action is taken, as well as a second opportunity to comment on the application.

Revocation or Modification of Approved ACPs. In (h)(3), staff added a provision to enable the Executive Officer to revoke or modify an ACP if there have been violations to the ACP, or if the Executive Officer has reason to believe that the applicant no longer meets the criteria for an ACP.

E. Reporting Requirements, Subsection 2479(j)

Demonstration of Compliance. Paragraph (j)(2) was revised to clarify that the Demonstration of Compliance pertains to each in-use cargo handling equipment engine or vehicle subject to the requirements of subsection (e).

Annual Reporting. In (j)(3)(D), staff added a clarification to require annual reporting of the population (number) of equipment in each yard truck model year group and each non-yard truck model year group in order to determine compliance percentage requirements.

F. Additional Supporting Documentation

In accordance with Government Code section 11347.1, staff has added to the rulemaking record the following documents, which are incorporated by reference in the regulation:

Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach

The document cited above is the final version of the draft document included as Appendix C in the Staff Report.

In addition to the modifications detailed in this FSOR, staff made other minor modifications in the regulatory text to improve clarity; to correct spelling, typographical errors, and grammar; and to make numbering adjustments.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSES TO THE ORIGINAL PROPOSAL

The Board received numerous written and oral comments in the formal 45-day rulemaking comment period leading up to the December 2005 Board meeting, beginning with the notice publication on October 21, 2005, and ending with the closing of the record on December 8, 2005. A list of commenters is set forth below, identifying the date and form of all comments that were timely submitted. Following the list is a summary of each objection or recommendation made regarding the proposed action, together with an explanation of how the proposed action has been changed to accommodate the objection or recommendation or the reasons for making no change. The comments have been grouped by topic whenever possible. Comments not involving objections or recommendations specifically directed towards the rulemaking or to the procedures followed by the ARB in this rulemaking are not summarized below. Additionally, any other referenced documents are not summarized below.

In addition to more than 1,200 supportive comment letters from private citizens, government agencies, and legislators, we received comments from the following that were generally supportive of the regulation or the rulemaking process:

American Lung Association of California (ALAC)
Coalition for Clean Air (CCA)
California Environmental Rights Alliance (CERA)
National Resources Defense Council (NRDC)
Alan Gordon for Senator Joe Simitian (GORDON)
Long Beach Alliance for Children with Asthma (LBACA)
Manufacturers of Emission Controls Association (MECA)
Pacific Merchant Shipping Association (PMSA)
Port of Long Beach (POLB)
Sacramento Metropolitan Air Quality Management District (SMAQMD)
Union of Concerned Scientists (UCS)

Comments Received during the 45-day Comment Period

<u>Abbreviation</u>	<u>Reference Number</u>	<u>Commenter</u>
ALAC	ALAC	Bonnie Holmes-Gen American Lung Association of California Oral testimony: December 8, 2005
CCA	CCA	Candice Kim Coalition for Clean Air Oral testimony: December 8, 2005
CE	CE 1	Mitchell W. Pratt Vice President, Public Affairs and Business Development Clean Energy Written testimony: December 6, 2005
	CE 2	Todd Campbell Clean Energy Oral testimony: December 8, 2005
CERA	CERA	Joe Lyou California Environmental Rights Alliance Oral testimony: December 8, 2005
CNGVC	CNGVC 1	Michael L. Eaves President California Natural Gas Vehicles Coalition Written testimony: December 7, 2005
	CNGVC 2	Michael L. Eaves President California Natural Gas Vehicles Coalition Oral testimony: December 8, 2005
DENNISON	DENNISON	Laura Dennison Private Citizen Written testimony: December 7, 2005
DOD	DOD 1	Rene Trevino Executive Director Department of Defense, Department of the Navy Written testimony: December 8, 2005

	DOD 2	Major Jeremy Jungreis Department of Defense, Department of the Navy Oral testimony: December 8, 2005
DOWDLE	DOWDLE	Mr. M. Dowdle California State University Bakersfield Library Written testimony: December 3, 2005
EMA	EMA	Jed Mandel and Timothy French Engine Manufacturers Association Written testimony: December 5, 2005
ENVIR	ENVIR	Diane Bailey, et al Scientist Natural Resources Defense Council Written testimony: December 6, 2005
GNR	GNR	Erik Neandross Gladstein, Neandross & Associates, LLC Written testimony: December 7, 2005
GORDON	GORDON	Alan Gordon Senator Joe Simitian Oral testimony: December 8, 2005
LBACA	LBACA	Elina Green Project Manager Long Beach Alliance for Children with Asthma Oral testimony: December 8, 2005
LOWENTHAL	LOWENTHAL	Bonnie Lowenthal Councilmember City of Long Beach Written testimony: December 8, 2005
MECA	MECA 1	Joe Kubsh Executive Director Manufacturers of Emission Controls Association Written testimony: December 6, 2005
	MECA 2	Joe Kubsh Executive Director Manufacturers of Emission Controls Association Oral testimony: December 8, 2005

NRDC	NRDC	Diane Bailey National Resources Defense Council Oral testimony: December 8, 2005
PASHA	PASHA	Kenneth Keane Director, Maritime Safety and Security Pasha Stevedoring and Terminals L.P. Written testimony: November 16, 2005
PMSA	PMSA 1	John McLaurin President Pacific Merchant Shipping Association Written testimony: December 7, 2005
	PMSA 2	T.L. Garrett Vice President Pacific Merchant Shipping Association Oral testimony: December 8, 2005
POLB	POLB	Thomas Jelenic Port of Long Beach Oral testimony: December 8, 2005
SCAQMD	SCAQMD 1	Barry R. Wallerstein Executive Officer South Coast Air Quality Management District Written testimony: December 7, 2005
	SCAQMD 2	Barry R. Wallerstein Executive Officer South Coast Air Quality Management District Oral testimony: December 8, 2005
SMAQMD	SMAQMD	Larry Greene Air Pollution Control Officer Sacramento Metropolitan Air Quality Management District Written testimony: December 5, 2005
UCS	UCS	Don Anair Engineer Union of Concerned Scientists Oral testimony: December 8, 2005

A. Performance Standards and Operational Requirements

1. **Comment:** Requirements to replace or retire equipment should be based upon engine hour usage and not model year. (PASHA)
2. **Comment:** Low-use vehicles and equipment should be exempt from the regulation. (DOD 1)
3. **Comment:** PMSA requests that staff work with the companies disproportionately impacted to establish a minimal use threshold. (PMSA 1)
4. **Comment:** PMSA would like to see some consideration for those who are disproportionately affected by the cost impacts because their equipment is used only sporadically and for a very low number of hours on an annual basis. (PMSA 2)

Agency Response: We disagree with these comments. Because there have been no previous regulations reducing emissions from in-use cargo handling equipment, older model year equipment that are run much fewer hours can actually have higher emissions than newer equipment running more hours. For instance, a 1999 off-road yard truck run 500 hours a year would emit more diesel PM and NOx than a 2006 off-road yard truck running twice as many annual hours. Moreover, enforcing an hourly limit would be problematic for this type of equipment and would require overly burdensome recordkeeping. During the rulemaking process, staff assisted companies in explaining the available compliance options, and staff will continue to remain available to offer assistance in understanding the requirements of the regulation.

5. **Comment:** The regulation will require all new cargo handling equipment to meet the final Tier 4 off-road engine standards as of January 1, 2007. (EMA)

Agency Response: We disagree. The regulation is directed towards owners and operators as opposed to manufacturers and does not include any additional manufacturer requirements than existing U.S. EPA and ARB rules. Interim Tier 4 off-road engine standards begin in 2011 for most cargo handling equipment, with final Tier 4 standards becoming effective in 2014 to 2015. Meeting the final Tier 4 off-road engine standards is an option for owners and operators when those engines become available. However, until that time, cargo handling equipment that is newly purchased, leased, or rented as of January 1, 2007, must meet either the current model year on-road standards or off-road standards, as specified in subsection (e) of the regulation.

6. **Comment:** The proposed regulation threatens to undermine the regulatory harmonization between the ARB and the United States Environmental Protection Agency (U.S. EPA) for controlling emissions from mobile off-road vehicles and equipment by requiring engines to meet final Tier 4 standards before they're required. (EMA)

7. **Comment:** All in-use equipment will be required to meet final Tier 4 standards over a ten-year phase-in period between 2007 and 2017. (EMA)

Agency Response: We disagree. The regulation will have no impact on the regulatory harmonization between the ARB and the U.S. EPA regulations for off-road vehicles. While meeting the final Tier 4 off-road engine standards is an option when those engines become available, it is not a requirement for all equipment types. In particular, non-yard truck equipment that have either met the 2007 or later on-road engine certification standards or that have applied the highest level verified diesel emission control strategy (VDECS) to meet their initial compliance deadline as specified in subsection (e)(3)(C), are not required to meet the Tier 4 off-road engine requirements so long as the level of control is sufficient for the category of equipment. This would include all Level 3 VDECS and some Level 2 VDECS. Those equipment that are required to take the next step in meeting Tier 4 off-road engine standards are not required to do so before the end of 2015 (Tier 4 engine standards are effective by 2011 to 2012 for most equipment types).

8. **Comment:** The rule should have included idling limits that were proposed in earlier drafts. (ENVIR) (GORDON)

Agency Response: We disagree. Idling limits were considered by staff early in the regulatory development process as part of our preliminary regulatory concepts. Staff subsequently determined that idling limits would be difficult to implement and could actually delay the implementation of the regulation for a number of reasons, including difficulty determining what constitutes necessary versus unnecessary idling. The limits were, accordingly, removed from staff's proposal. However, staff will continue to look at idling restrictions for this type of equipment and others as part of potential future rulemakings.

9. **Comment:** Operators should be required to purchase yard trucks with engines meeting the 0.2 g/bhp-hr NO_x level. (SCAQMD 1) (SCAQMD 2) (NRDC) (CERA)

Agency Response: We disagree. The practical effect of the comment would be to require the use of alternative fuel (i.e., natural gas) engines, which staff determined are not cost-effective or even commercially available for many types of cargo handling equipment (Staff Report, Appendix F). However, to the extent these engines are available and equipment operators choose to use them, they remain a compliance option for meeting the requirements of the regulation. Additionally, the proposed use of on-road engines will not have as significant a shortfall in NO_x reductions as the commenters infer. The on-road diesel engine standards as specified in title 13, CCR, section 1956.8 require 50 percent of new engines for model years 2007 through 2009 to meet a 0.2 g/bhp-hr NO_x standard, while the other 50 percent could meet a 2.0 g/bhp-hr NO_x standard. Engine manufacturers have stated that 2007 through 2009 model year engines will actually meet a 1.2 g/bhp-hr (or lower) NO_x level, significantly below the 2.0 g/bhp-hr standard.

- 10. Comment:** The rule should require non-yard truck equipment to have a Level 3 control installed or meet the Tier 4 standards by 2011. (SCAQMD 1) (CERA)

Agency Response: We disagree. Currently, diesel particulate filters (DPFs) are the only technology capable of achieving Level 3 reductions in diesel PM. However, there are operational limitations to the use of DPFs in non-yard truck cargo handling equipment applications (this is discussed in the Staff Report, pp. V-4 – V-5).

Because of this, a universal requirement that all non-yard truck engines be equipped with DPFs is not technologically feasible at this time. Additionally, the non-yard truck equipment population is very diverse, has high capital replacement costs, and long useful lives, making rapid turnover impractical. However, by allowing a phased-in turnover, as provided in the regulation, to either a Level 3 VDECS or Tier 4 engine for most non-yard truck equipment by December 31, 2015, more equipment are expected to meet the lower NOx standards provided in the Final Tier 4 off-road engines, which become effective in 2014 and 2015 for most cargo handling equipment. This will provide greater emission benefits relative to the commenters' suggestion.

- 11. Comment:** Rubber-tired gantry (RTG) cranes and equipment with a Level 2 control should also be required to meet the Tier 4 standards or install Level 3 retrofits. (SCAQMD 1) (CERA)

Agency Response: We disagree. As discussed in the Staff Report and this FSOR, staff considered the feasibility of retrofit controls, availability of VDECS, potential for engine repowering, average engine and equipment useful life, associated health risks, and economic feasibility of replacing equipment when establishing performance standards and operational requirements. Based on this information, staff concluded that requiring all non-yard truck equipment with a Level 2 VDECS to either meet Tier 4 standards or install a Level 3 VDECS was not appropriate or feasible due to technological and economic constraints.

- 12. Comment:** Highest level NOx retrofits should be required concurrently with highest level PM retrofits. (SCAQMD 1) (CERA)

Agency Response: We disagree. Few NOx retrofits exist for this equipment category. Only one NOx retrofit system, which is used in conjunction with a Level 2 diesel PM VDECS, has been verified by the ARB for this application. As discussed in the Staff Report and this FSOR, staff considered the feasibility of retrofit controls, availability of VDECS, ability for engine repowering, average useful life, associated health risks, and economic feasibility of replacing equipment when determining performance standards and operational requirements. Staff determined that requiring NOx retrofits concurrently with PM retrofits is not appropriate or feasible. However, staff will continue to evaluate the feasibility of this technology in a cargo handling equipment application and may consider future recommendations to the Board as appropriate.

B. Best Available Control Technology (BACT) and Alternative Fuels

- 1. Comment:** The rule should require BACT and offer incentives for the use of alternative fuels. (ENVIR)

Agency Response: The regulation establishes and requires BACT for all equipment types. However, we disagree with the commenter that ARB should offer incentives for the use of alternative fuels. In this regulation, as with other mobile source regulations, BACT is a selection of compliance options, and alternative fuels may be used in meeting those requirements.

- 2. Comment:** Non-yard truck equipment should be required to meet the most stringent compliance option available before being allowed to use a less stringent option. (ENVIR) (CNGVC 2)
- 3. Comment:** For new non-yard truck equipment, electric powered equipment should be the performance standard first, followed by alternative clean fuels such as natural gas. (SCAQMD 1) (CERA)
- 4. Comment:** The regulation should require new purchases to comply with a hierarchy BACT approach, which would maximize emission reductions, be fuel neutral and emissions-driven, and support the Governor's Action Plan and the Goods Movement Action Plan. The proposed regulation fails to require BACT for new and existing equipment and instead allows for three options for compliance in an attempt to provide regulatory flexibility. (CE 1)
- 5. Comment:** ARB should identify a hierarchy of compliance measures that if available and workable for an application, should be used; if a BACT technology option is deemed infeasible, the next order of compliance must be evaluated for applicability. (CNGVC 1)

Agency Response: We disagree. Staff considered a top-down BACT approach, but determined that it was not cost-effective considering the extremely high costs of replacing equipment, the long useful lives, the contribution of emissions for this category of cargo handling equipment, and the additional reductions that would be achieved from the Tier 4 off-road engines that will be available in future years. This regulation follows the direction of other mobile source regulations in establishing BACT as a selection of several compliance options that maximize both flexibility and emission reductions.

- 6. Comment:** Appendix F of the Staff Report regarding natural gas as a compliance option includes outdated information on demonstration projects and fuel pricing. (CNGVC 1)

Agency Response: We disagree. Staff utilized the most currently available data and research at the time the Staff Report was released. Staff's evaluation of this data included demonstration programs and an evaluation of natural gas fuel prices. Staff

additionally noted an upcoming demonstration program at the Port of Long Beach that is now underway but had not yet begun at the time of writing (Staff Report, pp. F-5).

7. **Comment:** The ARB Staff Report fails to take into consideration the current efforts at the Ports of Los Angeles and Long Beach to demonstrate up to 10 LNG yard tractors. (GNR)

Agency Response: We disagree. The demonstration programs noted by the commenter had not begun at the time of publication of the Staff Report. However, at the time of publication, staff was aware of the upcoming demonstration at the Port of Long Beach and mentioned it in Appendix F (Staff Report, pp. F-5).

8. **Comment:** Natural gas vehicles are inherently cleaner than their diesel counterparts and are significantly cleaner than current emission standards. (CE 1) (GNR)

Agency Response: While we agree that natural gas vehicles have lower PM emissions than diesel engines, they have higher total hydrocarbon (THC) emissions and can potentially have higher NOx emissions, depending on the duty cycle and condition.

9. **Comment:** ARB staff should recommend alternative fuel engines to be considered BACT for the purposes of this regulation. (GNR) (GORDON)

Agency Response: As has been discussed in previous responses, we disagree with exclusively specifying alternative fuel engines as BACT because of the issues regarding availability and cost-effectiveness (Staff Report, Appendix F). However, we believe it appropriate to allow alternative fuel engines to be one of the various options that can be used in meeting the BACT requirements for all equipment types.

10. **Comment:** In regards to selecting BACT, in terms of application and need, the urgency to reduce emissions, why are we picking winners? Why don't we let the market pick the winners? We need to be a little more fuel neutral and a little bit more emissions driven and support rules that make sense. (CE 2)

Agency Response: The regulation remains fuel neutral and allows the use of either diesel engines or alternative fuel engines to meet the requirements of the regulation.

11. **Comment:** The cleanest options are going to be alternative fuels certified to the optional low NOx standards of 0.2 g/bhp-hr in 2007, and we're proposing that that technology should be employed where applicable. (CNGVC 2)

12. **Comment:** It is important for Central Valley air quality that the small and large vehicles handling the cargo from ship to shore be required to use alternative fuels with the lowest emission levels possible. (DENNISON)

13. **Comment:** The final Tier 4 standards will require 0.3 g/bhp-hr NO_x emissions and 0.01 g/bhp-hr PM emissions. Natural gas engines in 2007 will be certified to 0.2 g/bhp-hr NO_x and 0.01 g/bhp-hr PM. If Tier 4 emissions are cited as BACT, then certainly natural gas engines, for the purposes of a 2007 regulation, should be considered BACT. (CNGVC 1)

Agency Response: We disagree. The possible higher cost of the alternative fuel and alternative fuel infrastructure, along with cleaner diesel engines, which have emissions near to those of alternative fuel engines, favors selection of alternative fuels on a case-by-case basis instead of a general mandate. Therefore, we do not believe that it is appropriate to exclusively establish natural gas engines as BACT in cargo handling equipment applications. The regulation is intended to be fuel neutral, and alternative fuel engines are among the various compliance options that are considered BACT for meeting the requirements of the regulation.

14. **Comment:** We are concerned that the Tier 4 standards and the 2007 on-road standards are seen as equivalent; but the Tier 4 standards don't come into effect until 2011 and are not fully compliant until 2014. We think that's too long and too far away, especially when some of the alternative fuels will beat the Tier 4 standards in 2007. We should be fuel neutral. (CNGVC 2)

15. **Comment:** The rule gives the implication that Tier 4 non-road engines will be available in 2007, but Tier 4 non-road standards don't go into effect until 2011, and the manufacturers don't have to be fully compliant with Tier 4 regulations until 2014. Given the reluctance shown by engine manufacturers to introduce low emission technology before required, it is hard to see how the proposed rule implemented in 2007 can be considered BACT. (CNGVC 1)

Agency Response: The regulation does not suggest that Tier 4 engines will be available in 2007. The Staff Report discusses in detail both the on-road and off-road standards, including Tier 4, and their effective dates (Staff Report, pp. II-8 – II-10). In-use yard trucks, which are responsible for approximately two-thirds of the cargo handling equipment emissions, are required to use either a certified on-road engine (2007 or later) or a final Tier 4 off-road engine or equivalent. Until the final Tier 4 engines are available in 2014/2015, we expect most owners and operators to comply using certified on-road engines for the model year purchased. Non-yard truck equipment may also use either certified on-road or off-road engines. As discussed in previous responses, the regulation is fuel neutral, and we do not believe it is appropriate to exclusively establish natural gas engines as BACT in cargo handling equipment applications. However, alternative fueled engines are among the various compliance options that are considered BACT and may be used in meeting the requirements.

16. **Comment:** The cost of operation for alternative fuel was not considered in the cost-effectiveness analysis, and the operation costs will more than offset the costs of the new technology. (CNGVC 2)

Agency Response: We disagree. Staff studied the cost of alternative fuel operation, which included costs for fuel, infrastructure, and equipment relative to diesel. Costs, however, are only one consideration in establishing regulatory requirements. Alternative fuel use in cargo handling equipment has only been successful in limited equipment applications, and the use of 2007 on-road engines in yard trucks greatly narrows the emissions reduction advantage of alternative fuels compared to diesel for this application.

17. **Comment:** Please mandate that equipment and transportation involved in cargo movement use the cleanest possible technology and fuels. (DOWDLE)

Agency Response: As has been discussed in response to previous comments, the regulation requires BACT for all equipment types, which can include the use of alternative fuel engines.

18. **Comment:** I request that the Board require terminal owners and operators to purchase the cleanest and best available control equipment available on the market for cargo handling equipment. (LOWENTHAL)

Agency Response: The regulation requires BACT for all newly purchased, leased, or rented equipment.

C. Compliance Timeline

1. **Comment:** Because industry has been proactive in applying retrofit controls before they were required, the compliance dates should be extended. (PMSA 1) (PMSA 2)

Agency Response: We agree in the case of yard trucks where the majority of early retrofits have occurred, and the regulation does allow an additional year for compliance for equipment that have had a verified diesel emission control strategy (VDECS) installed prior to December 31, 2006.

2. **Comment:** The regulation should take into account various incentive programs that have legal contractual requirements that may extend beyond the compliance dates. (PMSA 1) (PMSA 2)

Agency Response: We agree in the case of yard trucks where the majority of incentive programs have been applied. The regulation includes a compliance extension option for applicable equipment that extends three years beyond the installation date of the VDECS if the funding was provided by a public agency, and if the program stipulated minimum use requirements that would expire after the required compliance date.

3. **Comment:** Compliance deadlines for equipment used at ports and intermodal facilities within the South Coast should be accelerated. (SCAQMD 1) (CERA)

Agency Response: We disagree. Staff worked with stakeholders, including local air district and U.S. EPA staff, to craft a statewide regulation that would affect the ports and intermodal rail yards throughout the state consistently. Requiring separate compliance dates for one area relative to another would be contradictory, and could put some terminals in one area of the state at a business advantage relative to terminals in other parts of the state.

- 4. Comment:** The compliance timeline could be shorter and the financial burden for compliance placed on the entities being controlled. (GORDON)

Agency Response: We disagree. Staff believes that the regulation contains the most expeditious and stringent compliance schedule feasible, and that it maximizes emission reductions in the most cost-effective manner.

D. Alternative Compliance Plan and Compliance Extensions

- 1. Comment:** The Alternative Compliance Plan (ACP) is a loophole that doesn't include operational constraints or allow for public comment. (ENVIR) (CE 1) (GORDON) (CCA) (ENVIR) (UCS)

Agency Response: We disagree. The ACP provision does not provide a loophole in the regulation because safeguards are included to ensure that the required emission reductions are achieved. Specifically, applicants must provide documentation, calculations, emissions test data, or other information which demonstrates that the alternative emission control strategies under the proposed ACP will result in equivalent or greater emission reductions than compliance with subsection (e)(3) of the regulation. Applicants must also maintain recordkeeping, reporting, monitoring, and testing procedures that will demonstrate continued compliance with the ACP. At the Board's direction, staff proposed modified regulatory language in the 15-Day Notice that establishes a process that is open to public scrutiny. Specifically, under the proposed modifications, all documents pertaining to ACP applications will be made available for public review, and two separate public comment periods will be provided during the application process.

- 2. Comment:** The Long Beach Alliance for Children with Asthma urges the Board to strengthen this rule by changing the ACP provision to include public review and public comment, if possible. (LBACA 2)
- 3. Comment:** I hope that the resolution will include a public comment process for the ACP and a report back to the Board on the progress of those plans and to also strengthen and be more specific in the requirements of those plans. (NRDC)

Agency Response: At the Board's direction, the staff proposed modifications to the ACP process to provide for greater public participation and scrutiny. Specifically, under the proposed modifications, all documents pertaining to ACP applications will be made

available for public review, and two separate public comment periods will be provided during the application process. As stated in the response to Comment number 1 above, safeguards are included in the ACP provision to ensure that the required emission reductions are achieved. Specifically, applicants must provide documentation, calculations, emissions test data, or other information which demonstrates that the alternative emission control strategies under the proposed ACP will result in equivalent or greater emission reductions than compliance with subsection (e)(3) of the regulation. Applicants must also maintain recordkeeping, reporting, monitoring, and testing procedures that will demonstrate continued compliance with the ACP. Additionally, staff will report back to the Board on the status of the development of the ACP guidance and periodically on the number of ACP applications that have been received and how those applications have been handled.

4. **Comment:** The compliance extensions and ACP options should be removed. (CNGVC 1) (CE 1)

Agency Response: We disagree. Removing compliance extensions and ACP options would unnecessarily limit the flexibility of the program and stifle innovation. Currently, there are promising control technologies under development that may be demonstrated to effectively control cargo handling equipment emissions, and allowing these demonstrations to go forward could increase the potential emission reductions from this category.

5. **Comment:** The Coalition does not support compliance extensions. The menu of options ARB is proposing should be sufficient. At worst case, diesel options will include installation of Level 1 control devices, which is no different than the diesel retrofit rule for solid waste collection vehicles, which had no compliance extensions. (CNGVC 1)

Agency Response: We disagree. Please see response to Comment number 4 above.

6. **Comment:** The ACP takes some of the opportunities for emission reductions off the table that we can't afford to give away right now. (CNGVC 2)

Agency Response: We disagree. As discussed previously, safeguards are included in the ACP provision to ensure that each approved ACP will result in equivalent or greater emission reductions than compliance with the performance requirements in subsection (e)(3) of the regulation. The ACP provision also encourages the application of innovative technologies that could lead to ARB verification of additional diesel emission control technologies.

7. **Comment:** The ACP language doesn't specify that each ACP can include only equipment at the same facility, so that should be addressed. (CERA)

Agency Response: We agree. The staff proposed modified regulatory language in the 15-Day Notice, which requires owners and operators to include only equipment under

their direct control at the same port or intermodal rail yard and does not allow any equipment to be included in more than one ACP.

- 8. Comment:** There should be a requirement for staff to provide a written response to public comments received for ACP applications. (CERA)

Agency Response: Staff proposed modified regulatory language in the 15-Day Notice that provides for a public review process. During that process, the Executive Officer will consider and address all comments received during the public comment periods and provide responses to each comment on the ACP Internet site.

- 9. Comment:** Whether an ACP is approved or denied, whoever has an interest should be able to appeal that decision to the full Board. (CERA)

Agency Response: We disagree. Appealing to the full Board would delay the ACP application process, which in turn could result in a loss of emission reduction benefits. Staff's proposed modified regulatory language in the 15-Day Notice provides interested parties an opportunity to submit comments regarding the Executive Officer's proposed approval or disapproval of an ACP application.

- 10. Comment:** The ACP provision would essentially allow one to propose an alternative compliance method to be substituted for the proposed regulation – when, in reality, all emission sources and solutions will be required. The ACP provisions will be detrimental to the public need to address all sources. Compliance options that are currently outside the proposed regulation will eventually have to be regulated by local if not ARB authority. (CNGVC 1)

Agency Response: We disagree. The ACP provision is intended to allow for flexibility in meeting the requirements of the regulation and for innovation of additional emission control technologies and only applies to non-yard truck equipment subject to the rule. The ACP applicant must demonstrate that the ACP will achieve equivalent or greater emission reductions. If the commenter was also referring to the inclusion of other sources of emissions besides cargo handling equipment, equipment and sources not subject to the regulation are not eligible to be included in an ACP.

E. Expanding the Regulation to Cover Additional Equipment

- 1. Comment:** The rule should have been applicable to cargo handling equipment at distribution centers and airports. (ENVIR) (CE 1) (GORDON)
- 2. Comment:** The rule should be amended within one year to include distribution centers and airports where significant cargo handling takes place. (CNGVC 1)

Agency Response: We disagree. Because of the community health risks associated with cargo handling equipment at ports and intermodal rail yards, it was important to address them quickly with this rule. While the risks with distribution centers and airports

may also be significant, including them in this rule would have delayed the regulatory process because it would have greatly increased the scope of the rule. A statewide in-use off-road equipment regulation is under development and is scheduled to be considered by the Board in 2007. That rule will address diesel off-road equipment not covered by this rule. Another rule, which addresses the large, spark-ignition equipment statewide, was approved by the Board in May 2006.

3. **Comment:** I was disappointed that this rule only applies to ports and intermodal rail yards when the Business, Transportation, and Housing Agency (BTH) and California Environmental Protection Agency (CalEPA) process, the Goods Movement Emission Reduction Plan, is looking at everybody that's impacted by the goods movement system, not just the people at the ports and intermodal rail yards. (CE 2)

4. **Comment:** It is critical that the Board direct staff to come back to the Board within one year to include cargo handling equipment at airports and distribution centers. We don't understand why staff decided to remove airports and distribution centers from the original rulemaking process, as their omission contradicts the goals established by the Goods Movement Action Plan. (CE 1)

Agency Response: We disagree. See response to Comments number 1 and 2 above.

5. **Comment:** The Board should consider adopting similar rules for heavy-duty on-road trucks that transport cargo from ports to intermodal rail yards. (CNGVC 1) (SCAQMD 1) (SCAQMD 2) (CE 1) (NRDC) (CERA)

Agency Response: We agree. Staff is currently developing a port-truck measure to specifically address emissions from on-road trucks at ports. This measure, which may be regulatory or non-regulatory, is expected to be considered by the Board in 2007. Additionally, a proposed regulation for on-road private truck fleets is scheduled to be considered by the Board in the near future.

6. **Comment:** We ask that ARB staff work with the Port of Long Beach to develop solutions to the emissions from on-road heavy-duty trucks. (POLB)

Agency Response: We agree. See response to Comment number 5 above.

7. **Comment:** Switcher locomotives and line haul locomotives should be included in the regulation within one year. (SCAQMD 1) (CE 1) (NRDC) (CERA)

8. **Comment:** ARB should develop an enhancement in the short term to this rule to cover locomotive switcher and line haul engines when they are at standby or under maintenance. (SCAQMD 2)

Agency Response: The California Legislature has granted ARB broad authority to regulate locomotive emissions, and has specifically directed the ARB to achieve the

maximum degree of emission reductions by the earliest practicable date from off-road equipment and vehicles, including locomotives. However, while this authority under State law is quite clear, preemption limitations at the federal level, which are supreme to State law, restrain the ability of ARB to engage in a regulatory approach targeting locomotive emission standards. Federal law significantly restricts the ability of states and local jurisdictions to control locomotive emissions, or to enforce rules that affect national railroad transportation. These limitations mean that voluntary agreements, as opposed to regulation, are preferable courses of action to ensure timely and certain emission benefits from railroad operations.

- 9. Comment:** I trust that you will also consider ways to reduce pollution from trains that travel the valley. (DENNISON)

Agency Response: ARB has developed a comprehensive program to reduce emissions from railroad operations. The program includes negotiating memoranda of understanding with the two major railroads that accelerate locomotive turnover by 2010, require the installation of automatic idling devices, establish a statewide smoke opacity inspection program, and perform yard-by-yard risk assessments and mitigation. Additionally ARB strongly supports the adoption of more stringent (Tier 3) national locomotive standards and accelerating the introduction of these locomotives into California.

F. Procedures and Miscellaneous Issues

- 1. Comment:** The Board should require an annual report back on the implementation of the regulation and the ACP. (SMAQMD)
- 2. Comment:** The Board should require staff to report back to them within six months on updates to the regulation and on the feasibility of addressing similar issues in future diesel regulations. (ENVIR)

Agency Response: Staff will report back to the Board regarding the development of the ACP guidance and semi-annually on the number of ACP applications that have been received and how they have been handled.

- 3. Comment:** The Board should make sure that rules are adopted quickly to address this kind of equipment in other types of locations and making sure that we are getting the best possible technologies used in reducing emissions from these types of sources. (ALAC)

Agency Response: As discussed in response to previous comments, additional statewide regulations to address other off-road diesel-fueled equipment not covered by this regulation are under development. Staff is also committed to forming a technology working group, or working through one of the existing technical working groups, such as the Maritime Air Quality Technical Working Group, to monitor the feasibility of retrofit

emission controls and to share information on successful applications of experimental emission control strategies (Staff Report, pp. ES-10 – ES-11).

4. **Comment:** We ask the Board to request staff to come back to them with recommendations regarding encouraging the use of alternatives to diesel-powered equipment, accelerating the turnover of the equipment above and beyond what the regulation is requiring, reducing idling emissions from this equipment, and addressing the lack of distribution centers and airports in this regulation. (UCS)

Agency Response: As discussed in response to previous comments, additional regulations are under development to address off-road equipment statewide, and staff is committed to monitoring the feasibility of retrofit emission controls and to share information on successful applications of experimental emission reduction strategies. Staff will continue to look at idling restrictions for this type of equipment and others as part of potential additional rulemakings.

5. **Comment:** We ask that staff report back in no later than six months on how to require the use of best available control technologies for all types of equipment considering age and other technological feasibility issues, how to appropriately offer incentives for the use of cleaner, more protective alternative fuels, and how to reinstate idling limits. (CCA)

Agency Response: Please see response to Comment number 4 above. More stringent on-road and off-road diesel engine standards are lessening the benefits of selecting alternative fueled engines over diesel engines, particularly in the case of yard trucks, which, in order to meet the requirements of this regulation, will be required to accelerate turnover to certified on-road engines or final Tier 4 off-road engines (or the equivalent). Within the first three years of implementation, by 2010, the emissions from on-road diesel engines and alternative fuel (LNG) engines will be virtually identical, making incentives for one over the other an impractical option. Staff will continue to look at idling restrictions for this type of equipment and others as part of potential additional rulemakings.

6. **Comment:** Military tactical support equipment should be exempt from the regulation. (DOD 1) (DOD 2)

Agency Response: We agree and have included the exemption as part of the changes in regulatory language in the 15-Day Notice.

7. **Comment:** Because the 2007 certified engine standards are manufacturer average standards, yard trucks could end up with engines that emit 2.4 g/bhp-hr NO_x. (SCAQMD 2) (NRDC)

Agency Response: We disagree. Under the certified on-road diesel engine standards (title 13, CCR, section 1956.8), at least 50 percent of the engines manufactured for

model years 2007 through 2009 must meet a 0.2 g/bhp-hr NOx standard, while the other 50 percent must meet a 2.0 g/bhp-hr standard. Manufacturers have consistently expressed to staff that they intend to have 100 percent of their engines meet the average (1.1 to 1.2 g/bhp-hr NOx) for model years 2007 through 2009. Because of this, we believe it is unlikely that 2007 through 2009 model year yard truck engines will exceed 1.2 g/bhp-hr NOx emissions. For model years 2010 and beyond, 100 percent must meet a 0.2 g/bhp-hr NOx standard.

8. **Comment:** Operators have begun the use of electrified rubber-tired gantry (RTG) cranes, and where that wasn't feasible, there is alternative fueled equipment available. (SCAQMD 2) (NRDC)

Agency Response: As discussed in the Staff Report and this FSOR, the use of alternative fueled equipment, particularly for non-yard truck vehicles, is limited. While BNSF Railway is proposing a new intermodal rail yard at the Port of Los Angeles for which they are considering the use of electric RTG cranes, there are only two electric RTG cranes in operation in the world (both in Europe), and none are currently in operation in the United States. BNSF Railway's proposal is currently conceptual and has not been demonstrated to be feasible.

9. **Comment:** The resolution should acknowledge and encourage the development of effective local strategies, such as those being pursued in the Port of Los Angeles. (SCAQMD 2) (NRDC)

Agency Response: Acknowledgement for the ports' air quality improvement plans to reduce emissions from port-side diesel equipment was included in the Staff Report (Staff Report, pp. II-11). Staff has worked closely with the ports in their development of their strategic plans and will continue to partner with them as they begin to implement the strategies specified in their plans.

10. **Comment:** ARB cannot enforce any aspect of the regulation until the U.S. EPA has authorized the proposed rulemaking pursuant to the federal CAA section 209(e)(2). (EMA)

Agency Response: As discussed in the Staff Report, CAA section 209(e) allows California to request and receive authority from the U.S. EPA to establish requirements for off-road mobile engines (Staff Report, pp. ES-2, I-2). ARB will make such a waiver request to the U.S. EPA as soon as this regulation becomes effective. A central part of ARB's request to U.S. EPA will be authorization to require existing off-road yard trucks to repower using new 2007 heavy-duty vehicle on-road engines. California has already been granted a waiver by U.S. EPA to adopt and enforce emission standards for these engines. See *California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption, Decision of the Administrator (Heavy-Duty Diesel Vehicles and Engines Standards for 2007 and Later Model Years)*, 70 Fed.Reg. 50322 (8/26/05).

11. **Comment:** MECA would like to work with ARB staff to define a streamlined verification extension process that would help deliver more verified options to the off-road sector and expand the verified retrofit technology options available for cargo handling fleet operators to comply with the proposed ARB PM reduction regulations. (MECA 1) (MECA 2)

Agency Response: Staff will be happy to work with MECA in the verification process.

12. **Comment:** MECA is happy to report that the development effort for the 2007 on-road diesel engines is on track; those engines will be in the marketplace come 2007. (MECA 2)

Agency Response: We appreciate MECA's comment.

13. **Comment:** Our attorneys disagree with the statement in the Staff Report, "Districts are not authorized to adopt requirements for equipment subject to the proposed regulation." We ask that this be struck from the Staff Report. If one looks at Vehicle Code Section 670, definition of a vehicle, it clearly says, "A device by which any person or property may be propelled, moved or drawn upon highway." There are clearly types of emission sources covered by this rule that we believe we have authority under other provisions of the Health and Safety Code. (SCAQMD 2) (NRDC)

14. **Comment:** I suggest that you strike the line regarding SCAQMD's authority as they requested, and let the lawyers fight it out and get back to you with their decisions. (CCA)

Agency Response: Under the Health and Safety Code, ARB has exclusive authority to regulate vehicular sources, and air districts have the primary authority to regulate nonvehicular sources. See Health and Safety Code section 39002, which provides in relevant part:

Local and regional authorities have the primary responsibility from all sources other than vehicular sources. The control of vehicular sources, except as otherwise provided in this division, shall be the responsibility of the Air Resources Board.

California courts have broadly defined vehicular sources to include any self-propelled vehicle that is capable of being drawn upon a highway, whether or not the object was designed to operate on a highway. Health and Safety Code section 39060 defines "vehicular sources" as "those sources or air contaminants emitted from motor vehicles." The Health and Safety Code definitions of "motor vehicle" and "vehicle" incorporate the definitions in the Vehicle Code. Vehicle Code section 670 defines "vehicle" as "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon

stationary rails or tracks.” Vehicle Code section 415 defines “motor vehicle” as “a vehicle which is self-propelled.”

The courts have largely interpreted the definitions in the context of insurance claims, and have uniformly found the definitions to be broad. California courts have found, among other vehicles, a bulldozer,¹ a self-propelled mobile crane,² a forklift,³ and a four-wheel Le Tourneau scraper⁴ all to be motor vehicles. There is no reported case in which similar machines have been found not to be a motor vehicle.

G. Incentive Funding

- 1. Comment:** The regulation will preclude equipment from accessing certain incentive funding programs which could possibly delay early implementation of currently available and future technologies. (PMSA 1)

Agency Response: We disagree. Existing incentive funding programs, such as the Carl Moyer Program, remain an option for equipment that complies early or goes above and beyond the requirements of the regulation. Staff believes the commenter is referring to the Energy Policy Act of 2005, which authorizes \$200 million each year, nationwide, for fiscal years 2007 through 2011 to provide grants or low-cost revolving loans to achieve reductions in diesel emissions. These monies cannot be used to fund emission reduction measures mandated under Federal, State, or local law. As discussed in the Staff Report, it is unknown when monies will be appropriated and how much funding will be made available to California. While this regulation is clearly a State mandate, the ARB would support the use of these monies by cargo handling equipment operators provided the funds are used to comply early or to achieve greater emissions benefits, similar to the manner in which Carl Moyer Program funds can be used.

- 2. Comment:** Federal funds are coming into play under the Energy Policy Act. We would like to see some consideration for allowing more of the incentive funds from both state and federal programs to be applied to this equipment in the hopes that we'll turn over the equipment more aggressively and sooner than we might otherwise do if we solely rely upon the regulation to turn over the equipments. (PMSA 2)

Agency Response: See response to Comment number 1 above.

¹ *Lambert v. Southern Counties Gas Company* (1959) 52 C.2d 347.

² *Donahue Const. Co. v. Transport Indem. Co.* (1970) 7 Cal.App.3d 291.

³ (*Travelers Indem. Co. v. Colonial Ins. Co.* (1966) 242 Cal.App.2d 227, 236-238 disapproved on appeal on other grounds),

⁴ *People v. Pakchoian* (1952) 114 Cal.App.2d Supp.

H. Recordkeeping and Reporting Requirements

1. **Comment:** Individual labels on equipment are redundant and unnecessarily burdensome. (PASHA) (PMSA 1) (PMSA 2)

Agency Response: In subsection (i)(2) (Records Kept in Mobile Cargo Handling Equipment), the regulation allows for either individual labels or an alternative form approved by the Executive Officer or designee that is immediately accessible at the time of inspection by the enforcement agency. In other words, the commenter and others may use an alternative method which they believe is less burdensome in lieu of applying individual labels, so long as the Executive Officer has approved the alternative method.

2. **Comment:** Records should be maintained for three to five years or until the equipment is sold. Maintaining records longer than that becomes onerous and burdensome. (DOD 1)

Agency Response: In order to adequately enforce the requirements of the regulation, staff believes it is necessary for owners and operators to maintain the appropriate records for their equipment as long as it operates at a port or intermodal rail yard in California.

IV. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES – NOTICE OF MODIFIED TEXT

Four written comments were received during the 15-day comment period. One comment was made in support of the modifications, and two others did not specifically address the modifications. Only one comment was made regarding the specific regulatory actions proposed in the Notice of Modified Text (dated May 18, 2006). Set forth below is a summary of the comment together with the Agency's response.

Comment Received during the 15-day Comment Period

<u>Abbreviation</u>	<u>Reference Number</u>	<u>Commenter</u>
PARKER	PARKER	Brad Parker Private Citizen Written testimony: May 30, 2006

1. **Comment:** Staff should not have exempted the military, which makes up a huge part of the ports (Seal Beach). Their emissions alone will undermine the purpose of reductions.

Agency Response: The military is not exempt from the requirements of the regulation. Since the intent of the regulation is to reduce emissions from commercial ports and

intermodal rail yards because of the near source health risk to communities, the regulation applies to military operations that occur as part of a port or on contiguous properties. However, staff modified the proposed regulatory text to exempt military tactical support cargo handling equipment used in combat, combat support, combat service support, tactical or relief operations, or training for such operations. Staff believes the modification is appropriate and necessary for reasons of national defense and security.