



**Comment on Proposition 1B Goods Movement Emission Reductions Program**

**Air Resources Board: June 25, 2015**

**Proposed Change in the Definition of Goods**

**Dr John McClelland, Vice President for Government Affairs**

**Dr. Michael S Graboski, Consultant**

**American Rental Association**

## **Summary of the Situation:**

Equipment Rental Companies not only rent heavy duty construction equipment, but they also deliver and service units in the field. Many companies operate heavy duty diesel truck fleets with GVWR greater than 33,000 pounds to provide this service. We found in our work on the Air Resources Board (ARB) Truck and Bus Rule that many delivery fleets owned by rental companies are older than the corresponding equipment rental fleets, and accumulate significant annual VMT. These fleets could be substantial emission sources.

**ARA believes its member businesses should be eligible to compete for Prop 1B funds. ARA members** have considered applying for Proposition 1B funding to modernize their heavy duty diesel rental delivery fleets but have been discouraged because of the definition of “Goods” in the program.

## **Background**

Proposition 1B was approved by a public vote. Senate Bill 88, 2007 turned the initiative into public law. The law was codified in the California Health and Safety Code, section 39625 and ARB was empowered to disperse a portion of Prop 1B funds to reduce diesel emissions in high traffic trade corridors. ARB held workshops on Proposition 1B and developed a request for proposal document. In this document, there is a specific definition for “goods movement” based upon the California Commercial Code, section 2101 through 2107. This part of the code applies to sales. Since renting or leasing equipment is not considered sales by ARB staff, transporting rented equipment from a store location through a trade corridor does not meet the requirements of the solicitation<sup>1</sup>.

In one case, an equipment rental business attempted to apply for funding but was deemed ineligible. The business appealed the decision. ARB staff responded that they were ineligible because the definition of “Goods” did not encompass rental business activities, but they could propose a revised definition for goods movement at a future workshop<sup>2</sup>.

A June 2015 E-mail to us from Barbara Van Gee reiterated this position and suggested that a comment to the Board regarding this issue might be appropriate<sup>3</sup>.

**Rental Companies are specifically ineligible because they are moving equipment under a “lease” contract and not under a “sales” contract per the guidelines established by ARB.**

On Page 15 of the guidelines, “Goods” are defined as having the same meaning in Commercial Code section 2105, which essentially requires that<sup>4</sup>:

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<sup>1</sup> One member is also an equipment dealer. They argued that they use the same trucks to move equipment they have sold and equipment they have rented. The emissions generated by the delivery truck were independent of whether the unit was sold or rented. AQMD responded that the business would need to demonstrate that the delivery trucks were used a majority of the time moving equipment that was sold to be eligible for funds.

<sup>2</sup> March 2014 E-Mail to Dennis Turner from Elizabeth Yura, ARB.

<sup>3</sup> See the E-mail provided as appendix 1.

- The goods must be movable; and
- The goods being moved must be part of a transaction that involves a contract for the **sale** of the goods

### **ARA Position:**

ARA believes that there is no statutory reason why equipment rental businesses are not eligible for Prop 1B funds to modernize their fleets so as to reduce excess emissions. A reading of Proposition 1B itself and California Health and Safety Code, section 39625 do not restrict funds for goods movement in accordance to Commercial Code section 2101-2107 as specified by ARB.

The introduction, 2101, states that “This division shall be known and may be cited as Uniform Commercial Code--**Sales.**” The phrase “This Division” implies that there are other divisions of the code. In fact, Commercial Code section 10101-10107 applies to leases. The introductory phrase is as follows: “This division shall be known and may be cited as the Uniform Commercial Code-**Leases.**” Each section defines “goods” in a nearly identical fashion except in one case they are goods for sale and in the other case they are goods for lease.

2105. (1) **"Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale** other than the money in which the price is to be paid, investment securities (Division 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2107).

10103 (a)(8) **"Goods" means all things that are movable at the time of identification to the lease contract**, or are fixtures (Section 10309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

Furthermore, in California tax regulations administered by the Board of Equalization, there is no difference between leasing and renting.

LEASE. *The term "lease" includes rental,* hire, and license<sup>5</sup>.

### **What does the Health and Safety Code 39625 Require?**

The California Health and Safety Code section 39625 is the part of Proposition 1B that authorizes ARB to administer certain bond funds for clean air. The relevant parts of the preamble are as follows:

39625. The Legislature finds and declares as follows:

- (a) In November 2006, the voters approved the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, also known as Proposition 1B, that, among other things,

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<sup>4</sup>[http://www.arb.ca.gov/bonds/gmbond/docs/prop\\_1b\\_goods\\_movement\\_2013\\_program\\_guidelines\\_for\\_implementation.pdf](http://www.arb.ca.gov/bonds/gmbond/docs/prop_1b_goods_movement_2013_program_guidelines_for_implementation.pdf).

<sup>5</sup> <http://www.boe.ca.gov/lawguides/business/current/btlg/voll/sutr/sales-and-use-tax-regulations-art15-all.html>

provided one billion dollars (\$1,000,000,000) to reduce emissions associated with the movement of freight along California's trade corridors.

Furthermore ...

- (g) The purpose of this chapter is to establish standards and procedures for the expenditure of these funds.

We searched this section of the code for certain key words.

- “Goods” appeared 11 times. In every case, “goods” is associated with “movement”. Sale, buy, lease and rent do not appear with “goods”.
- “Contract”, related to goods under contract, appears 5 times but this is related to the person receiving funds and is not related to a definition of “Goods Movement”.

We conclude that the legislature did not care that the funds were to apply only to “goods for sale”. This is *an arbitrary and capricious*<sup>6</sup> decision made by ARB staff in its rulemaking.

### **Who is Eligible for Funds?**

It appears that some of the initial Proposition 1B awards were for drayage trucks. Even trucks driving 5000 miles per year qualified for funding. Such an award cannot generate much in the way of surplus emissions reductions.

In a current round, funding proposals to AQMD were made by many commercial industries that use the LA trade corridor but probably do not start or end their business at a port or airport. Some examples are Ralphs Grocery Chain, Forster Poultry Farm, several Ready Mix suppliers, furniture transporters, recyclers, lumber and hardware, food service, and delivery service. Also, UPS has applied for funds. UPS probably did not have to demonstrate that 51% of the goods it moves are sales, and not other things being shipped by individuals to other individuals.

### **Request to the Board**

**ARA formally requests that the Air Resources Board change the definition of “Goods” in the Proposition 1B eligibility criteria so that the criteria considers the movement of goods for both sales and leases as equally eligible for funding under the program. We believe the current eligibility requirements for Proposition 1B funding is arbitrary and capricious in its definition of goods. *Movement of either sold or leased goods produces emissions. Transport of a track loader to a jobsite is not emission neutral!***

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<sup>6</sup> **Arbitrary and capricious** as used here means that the definition of goods was made on unreasonable grounds or without any proper consideration of circumstances.

## Appendix 1

**From:** Van Gee, Barbara@ARB [Barbara.Vangee@arb.ca.gov]  
**Sent:** Monday, June 15, 2015 10:52 AM  
**To:** Dennis Turner  
**Cc:** CHAYOLAW@aol.com; john.mcclelland@ararental.org; msggraboski@gmail.com; Afshan, Ambreen@ARB; Arias, Heather@ARB  
**Subject:** RE: Formal Request for Appeal and to make sense of the ARB ruling which eliminates Rental Goods from the 1B program

Dear Mr. Turner,

Thank you for your follow-up email regarding the Prop 1B. Goods Movement Emission Reduction Program and the ability to appeal the definition of "goods". As per my previous response, staff is not proposing to change the definition of "goods". There is no administrative appeal process from a request to make changes to the Program Guidelines. However, the public has numerous opportunities at public workshops and public Board Meetings to provide comments to proposed changes to the Program Guidelines.

The proposed updates to the Program Guidelines will be presented at the June 25, 2015 Board Meeting for consideration for approval. Any changes to the proposed Guidelines have to be approved by the Board including changing the definition of "goods". To request a change you may submit written comments prior to or at the Board Meeting, and/or verbally testify at the Meeting.

The Notice of Public Meeting To Consider Updates to the Prop. 1B: Goods Movement Emission Reduction Program Guidelines has information on submitting comments. The Notice is located at: <http://www.arb.ca.gov/regact/nonreg/2015/prop1bnotice.pdf>.

To provide your comments electronically before the Board meeting:

[http://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=prop1b2015&comm\\_period=N](http://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=prop1b2015&comm_period=N)

Or by mail: Postal Mail: Clerk of The Board, Air Resources Board  
1001 I street, Sacramento, California 95814.

To be considered by the Board, written comments not physically submitted at the meeting, must be received no later than 5:00 pm, June 22, 2015.

Thank you for your interest in the program.

Barbara

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American Rental Association June 25, 2015