July 13, 2016

California Air Resources Board
1001 I Street
Sacramento, California 95812

*Submitted Electronically at http://www.arb.ca.gov/lispub/comm/bclist.php*

**Comments on the Proposed 2016 State Strategy for the State Implementation Plan**

Dear Sir or Madam:

The Pacific Merchant Shipping Association (PMSA) submits the following comments, on behalf of its member ocean carriers and marine terminals operating throughout the State of California, regarding the draft State Implementation Plan and accompanying Environmental Analysis prepared pursuant to the California Environmental Quality Act.

As you know, the maritime industry has aggressively reduced emissions over the past decade. Our members are also committed to further reducing emissions and continue investing in California's economy. Throughout California, PMSA member companies have served as a test bed for new clean technologies and have pushed technological progress on numerous emission-reduction strategies technologies at a cost of billions of dollars. The success of these efforts is evidenced by the tremendous reductions that have been achieved. Since 2006, our members have reduced particulate matter emissions by 85%, emissions of oxides of nitrogen ($NO_x$) by over 50%, and $SO_x$ emissions by over 90%.

While maritime industry companies doing business in California have done more here to successfully meet the challenge of reducing emissions than anywhere else in the world, they understand that additional emission reductions will ultimately be necessary for the State to meet its environmental goals. Those goals will be increasingly more difficult to reach than the reductions that have already been achieved through great cost. A study conducted by Moffat & Nichol estimates that terminal operators will invest roughly $7 billion in California-based marine terminal equipment but would incur an additional $16-$28 billion in order to replace the current cleaner equipment with even cleaner zero and near-zero equipment.

These challenging emission reduction goals take place in a challenging global economic environment with weak trade growth and ocean carriers facing billions of dollars in losses this

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year. California competes with other U.S. regions, and ports across North America, for international trade and the maritime industry is linked directly to international economic cycles. These are facts which are relevant when considering how measures to further reduce emissions, beyond the significant reductions already achieved, will be achieved.

The draft State Implementation Plan (SIP) is an aggressive attempt by the California Air Resources Board (CARB) to meet National Ambient Air Quality Standards (NAAQS) by 2031. In some respects, the draft represents the logical next steps in emissions control throughout the State necessary to reach compliance. In some other instances, the plan is overly optimistic and serious questions must be raised as to the plan's ability to achieve its goals.

In other respects, the SIP goals are not achievable without significant action by federal and international agencies. The State of California cannot be reasonably held responsible for sources it has no legal authority over. CARB should acknowledge that it must effectively rely on assigned emission reductions to the U.S. Environmental Protection Agency (US EPA) and International Maritime Organization (IMO). While CARB may have been unsuccessful in the past at its attempts to hold US EPA accountable for their fair share of emission reductions, it should not shirk its responsibility to clearly state that attainment with federal air quality standards is not possible without federal action on mobile sources, whether it is promulgation of new engine standards for trucks or locomotives, or coordinating federal action to petition IMO. PMSA will support CARB in this effort as only through such coordinated action will federal agencies ever acknowledge that California is being held to unreasonable standards if the state can only attain the NAAQS by over-burdening its regulated sources and feeling forced to embrace legally problematic efforts to expand its jurisdiction over federal sources.

PMSA is also concerned about the Vision forecasting tool used to estimate future emission reductions from changes in the fleet. It is unclear how this tool has taken into account the current forecasts of vessel turnover and implementation of existing IMO rules. This is particularly important given that vessels and other sources identified as federal and international sources account for nearly 45% of total emission reductions in the South Coast and nearly 50% of total emission reductions state-wide. Given the historic difficulty in estimating and forecasting emissions from the maritime sector, PMSA calls on CARB to form a technical working group composed of representatives of ocean carriers, marine terminal operators, and ports to examine State emissions forecasts and emission reduction strategies from the maritime sector. Such an effort may result in more robust forecasts and emissions reductions.

Low $NO_x$ Engine Standard

The language describing the benefits of the strategy does not identify the magnitude of the emission benefit difference between federal action and California action beyond "a California-only low $NO_x$ standard would only impact a fraction of the heavy-duty activity and emissions in California." Without more information, it is questionable what the benefit of a California-only

action will be. Would the strategy of a California-only action be to simply make the trucks commercially available for purchase through the Incentive Funding measure described later in the SIP? Given how many heavy-duty trucks are already sold outside of California, could this strategy prompt truck manufacturers to abandon the new truck market in California, knowing they can capture most sales in neighboring states? Without more information, PMSA cannot support California-only action on ultra-low $NO_x$ engine standards.

PMSA requests that CARB more fully develop the measure and provide detailed emissions benefit for the federal and California scenarios. PMSA supports the development of a national ultra-low $NO_x$ new engine standard. A new federal engine standard will provide a level playing field throughout the country when it comes to new heavy-duty on-road equipment.

Tier 4 Vessel Standards

PMSA appreciates CARB's recognition that some emission sources are properly regulated at the federal and international level. For instance, the International Maritime Organization is the proper forum for setting vessel standards regarding vessel emissions. Furthermore, we support CARB working directly with the U.S. EPA and U.S. Coast Guard with respect to the development of positions at the IMO. As the State is well aware, the federal government, through the U.S. State Department, U.S. EPA, and USCG, maintains standing at the IMO and sub-national agencies do not have standing to "lobby" the IMO directly. We encourage CARB, no matter what the topic, to work with the federal government if it believes that it can contribute to the development of a U.S. position on any issue before the IMO. Similarly, PMSA supports CARB efforts to seek new truck and locomotive standards at the federal level. Such standards at the federal and international level will avoid harm to California's competitiveness as other regions throughout the country vie for international trade.

In prior actions, PMSA has supported revisions to MARPOL and other IMO Annex developments which have resulted in significant emissions reductions at the International level. These agreed upon ocean-going vessel emissions improvements fostered through IMO facilitate far greater overall emissions reductions, and at lower overall expense to the supply chain, than individual patchwork regulations implemented on a national or sub-national basis.

With respect to the content of the suggestion, we are uncertain as to whether the timeframes and expectations established under this measure reflect the economic realities of the shipping industry today. Currently, the container shipping industry suffers from a worldwide glut in vessel capacity and corresponding weak levels of international trade volumes. This overcapacity is currently driving trans-Pacific freight rates down to historically-low, unsustainable levels, with some estimates for total industry losses of between $6 billion and $10 billion in 2016. It is not clear when this glut will end, but the additional capacity which has been built into the system with the advent of the largest classes of container ships reaching 18,000 – 20,000 TEUs is undeniable. In the near term there will be little incentive for new vessel orders. Combined with

the useful life of the existing vessel fleet, a time period measured in decades, it is unlikely that a Tier 4 standard even if passed on CARB's timeline would result in any meaningful penetration of new ships by 2031.

Incentivize Low Emission Efficient Ship Visits

PMSA supports efforts to incentive cleaner fleets. PMSA generally encourages the State and Ports to work with vessel owners and operators to achieve emissions benefits, and has long supported, and its member vessels participate in, local vessel incentive programs at the Ports of LA and Long Beach with great success. We look forward to partnering with CARB on the creation of incentives which are realistic, easily implementable, and effective.

In order to be successfully deployed, this effort must reflect the marketplace and economic realities of the shipping industry today. With regard to new incentives for new vessel types, when there is a glut of new vessel capacity, vessels are going to be deployed based on demand and ability to fill a ship. Incentives may be unlikely to affect a carrier's deployment decisions in the short term. Moreover, with the ocean carrier restructuring of the industry and re-juggling of vessel alliances and other carrier consolidation, it is hard to predict how vessel redeployment will respond to incentives. Given the historically low shipping rates (resulting in industry losses in the billions of dollars this year) a strategic incentive of proper size may prove justifiable in some respects, yet the short-term and long-term reactions to incentives is impossible to guess without significant discussion and study.

In short, PMSA shares the state's motivation to maximize all effective vessel incentives. As an initial step, CARB should commit to study the necessary levels of incentives most likely to achieve successful utilization of state incentive programs by ocean carriers. For instance, what level of incentive is necessary to modify behaviors in an industry where a single asset may cost $140 million to deploy, but where the entire market faces operating losses of between $6 billion and $10 billion this year? The numerous market dynamics and how they may interact with the potential costs and benefits to the State are not straightforward and should be analyzed.

Consistently, we would respectfully request that staff delete the suggestion of a "green lane" and avoid any other references to types of coordination across multiple Ports to control such new and novel incentives. Multi-state or sub-national incentive programs have the potential for raising numerous legal and operational concerns for the shipping industry, but would also add numerous market complexities regarding costs and competitiveness to any study of how incentives can be effectively deployed. We are committed to working with CARB and other Port stakeholders on the development of incentives that are effective.

At-Berth Regulation Amendments

PMSA requests that CARB work with PMSA and its members as it considers these amendments. PMSA already has voiced significant concerns about how the regulation is currently implemented in a letter to CARB dated February 10, 2016. The concerns outlined in the letter include consideration of *force majeure* conditions, consideration that time needed for commissioning visits not be counted against vessel compliance, annual instead of quarterly compliance, consideration of a single compliance pathway that maintains equity for early adopters, definition of "Berthing Time" and "Visit", and a number of other issues. That letter is attached and we renew our request that CARB consider these requests as it pursues its regulatory amendments of the At-Berth Regulation.

Further Deployment of Cleaner Technologies

Throughout the draft SIP, CARB relies on "Further Deployment of Clean Technologies" to achieve its attainment goals. For 2023, "Further Deployment of Clean Technologies" account for 95% of the quantified emission reductions sought for attainment. For 2031, the same category accounts for 65% of quantified emission reductions. Unfortunately, throughout the draft SIP, the measures are vague and nebulous.

Often it is unclear how these measures differ appreciably from other measures. For example, "Incentive Funding to Achieve Further Emission Reductions from On-Road Heavy-Duty Engines" seeks to reduce truck emissions by incentivizing clean truck technologies; "Further Deployment of Clean Technologies" seeks the same goals. At the very least, the SIP needs to describe what differentiates "Further Deployment of Cleaner Technologies" from other measures that appear to implement similar strategies. The lack of specifics is also a concern when "Further Deployment of Clean Technologies" accounts for 95% of needed emission reductions over the next seven years. Without such detail, what is the enforceable commitment and how will stakeholders know that it has been completed?

Despite the lack of detail, the "Further Deployment of Cleaner Technologies" is very specific in its assignment of emission reductions in each category. Either CARB has more detail on these measures that it has not publically shared or its emission reduction estimates are entirely arbitrary. CARB must revise these measures to present more detail and provide stakeholders the basis for its emission reduction estimates.

Environmental Analysis

The environmental analysis prepared by CARB on the impact of the SIP is wholly inadequate. Throughout the document, it assumes that the only foreseeable response to the proposed measures is compliance. This approach willfully ignores other possible responses and their environmental consequences. First and foremost, these measures will increase the cost of operating in California as indicated throughout the SIP.

Increased costs which disrupt operations can have environmental consequences. Economists and universities throughout the country specialize in estimating the cost of regulation and its impact both in terms of increased costs and lost opportunities. Economic impact models have already been developed which can evaluate the economic implications of the entire transportation and freight systems, including the evaluation of state goods movement plans, new and expanded highway corridors, airports, seaports, rail, freight and multimodal developments.

Within the maritime sector, cargo could be diverted to other west coast ports, Mexico, the gulf coast, or the east coast, which is especially highlighted with the opening of the expanded Panama Canal. Such vessel diversions will occur if the costs of using a west coast gateway exceed its benefits. Diversions that increase sailing days or result in backhauls to the western United States could significantly increase greenhouse gas emissions. Alternatively, logistics facilities may choose to operate outside the South Coast or San Joaquin Air Basins or outside California entirely to avoid increased regulatory burdens, such actions could significantly increase greenhouse gas emissions if cargo is moved to Phoenix or Las Vegas for handling rather than close to the ports. Even if such operations remain in California they move further from the ports to offset increased regulatory costs with less expensive land and facility costs, again potentially significantly increasing greenhouse gas emissions.

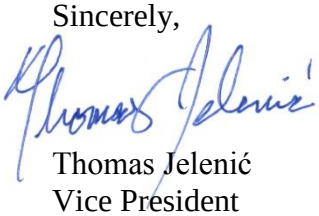
Similarly, if CARB lowers the threshold of vessel calls that subject fleets to its At-Berth regulation, or expand the scope to vessel types not previously covered by the regulation, ocean carriers may divert vessels to other ports to remain under the threshold and dray cargo to their final destination, potentially significantly increasing greenhouse gas emissions.

As discussed earlier, it is not inconceivable that California-only action on an ultra-low $NO_x$ new engine standard could cause some manufacturers to abandon new truck sales in California. If manufacturers, in whole or in part, begin avoiding the California new truck market, what impact would that have on measures such as the Medium- and Heavy-Duty Greenhouse Gas Emissions Standards Phase 2 described in the Sustainable Freight Action Plan? Could such actions result in emissions higher than CARB planned for?

The analysis presented by CARB appears to assume changes in pricing (i.e., the cost of doing business in California) will have no effect on demand (i.e., goods movement services in California). There is no basis for this assumption. CARB should conduct a careful analysis of (1) how the impact of its proposed regulatory scheme on the goods movement industry may result in changes to the way the industry operates, (2) how those changes could result in environmental impacts such as increased greenhouse gases, and (3) identify ways to mitigate those impacts, including modifying its proposed regulatory scheme. The tools exist to do this. CARB must provide substantial evidence for its conclusions on possible outcomes to its regulatory scheme and not simply provide unsupported statements.

PMSA looks forward to working with CARB on the finalization of the State Implementation Plan.

Sincerely,



Thomas Jelenić
Vice President

Attachment: Letter to CARB re: At-Berth Regulatory Advisory and Amendments, February 10, 2016

***Via Email***

February 10, 2016

Cynthia Marvin
Chief, Transportation and Toxics Division
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Dear Ms. Marvin:

Subject: PMSA Response to 2016 Regulatory Advisory and Amendments to the Vessel At-Berth Regulation.

The Pacific Merchant Shipping Association (PMSA) appreciates the efforts that your staff has taken in advancing the much needed corrections to the Vessel At-Berth Regulation. Clearly much progress has been made and we look forward to continuing that progress.. The move towards a single compliance option that eliminates the connection window, and annual compliance averaging, are much needed amendments to improve compliance with this complex regulation. Equally important is the recognition that fleets are doing their best to comply with the regulation but circumstances beyond their control inhibit full utilization of shore power by the vessels. It was on this principle of good faith efforts by the fleets that the need to amend the regulation was agreed to by CARB two years ago.

Prior to the regulation's shore power requirements became effective in 2014, PMSA and our members have meet with CARB staff and have given our input on how the regulation should be amended to achieve the maximum amount of emissions reductions while recognizing real world circumstances. We are pleased to continue these collaborative efforts and respectfully submit following comments on the 2016 Regulatory Advisory and the Regulatory Amendments.

## 2016 Regulatory Advisory

**Scenario 1 modification/clarifications**
PMSA is deeply concerned about the language to limit consideration of vessel visits to only when the landside shore power equipment is not functioning.

> "This scenario only covers instances where a shore power vessel visits a shore power berth, but is not technically able to provide shore power. This scenario does not cover instances where a

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vessel is required to berth at a non-shore power berth nor does it cover instances where a vessel is required to berth in such a way that it is unable to connect to shore power."

The Vessel At-Berth Regulation has resulted in massive investments to develop and use shore power connections on vessels calling at California Ports. PMSA members, including ocean carriers and marine terminals, and the California Port Authorities, have expended hundreds of millions of dollars to comply with this regulation. With these investments the fleets have demonstrated their commitment to comply with this regulation. Fleets calling at California ports need to maximize the utilization of their shore power for every vessel visit that calls at California ports in order to comply with this regulation and to recover the investment.

As you know, careful planning is required to make the decisions to convert fleets that call at California ports. For compliance it is always in in the fleets' best interest to connect as soon as possible and stay connected as long as possible. In addition, an independently enforceable requirement in Section (d)(1)(I), requires that every vessel equipped for shore power visiting a berth equipped for shore power, "shall utilize the shore power during every visit to that berth". The result of this provision is, if for any reason, a shore power equipped vessel does not connect they are subject to enforcement actions. Therefore, any time a shore power equipped vessel is denied the ability to connect shore power, for reasons beyond the control, and contrary to the clear intent of the vessel to connect, is a penalty to the fleet under the regulation.

Penalizing the fleet for circumstances beyond control is contrary to the good faith efforts on which this process was initiated. With this clear intent to comply, and the clear understanding of the potential penalties of the regulation, any vessel visit of a shore power equipped vessel where the vessel is unable to connect to shore power for reasons beyond the control of vessel, are *force majeure* conditions. Examples of *force majeure* conditions include, but are not limited to:

- Shore-side connection is inoperable
- Berth pre-occupancy
- Berthing of vessels that precludes connection
- Testing or commissioning required by a regulatory agency or port authority
- Maintenance of shore-side infrastructure
- Safety concerns or issues that originate with equipment on-board the vessel
- Safety concerns or issues that originate with shore-side services
- Delayed clearance by regulatory agencies
- Requirements to either disconnect the vessel or operate the auxiliary engines by a regulatory agency, port authority, or power utility, during the vessel visit
- Connection delays caused by shore-side personnel.

PMSA hopes that CARB will include these conditions in the upcoming regulatory advisory. Regardless, we will continue to advise our members to document and submit all instances were a shore power equipped vessel is unable to connect due to circumstances beyond the control of the vessel.

**Scenario 2 modifications**

We are grateful that CARB will allow for hours precluded from connection during commissioning visits (Scenario 2) to be excluded from the fleet totals. We believe that not excluding the lost hours in the fleet totals is the right approach to avoid penalizing fleets, and should also be applied to all *force majeure* situations listed above.

**Scenario 3 modifications**
We appreciate extending Scenario 3, and considering the benefit of annual versus quarterly compliance demonstration. A principle we strongly support that is best accomplished by eliminating the connection window requirements from the amended regulation.

PMSA and our members thank you for these proposed adjustments in the 2016 Regulatory Advisory.

## Regulation Fixes

We also thank CARB for recognizing that there are many issues that remain unresolved. In November 2014, at the first public workshop on the proposed amendments to Vessel At-Berth Regulation, CARB provided an outstanding overview of the issues and would be an excellent starting point for the second public workshop. That presentation can be found at:
http://www.arb.ca.gov/ports/shorepower/meetings/11062014/staffpresentation.pdf.

In preparation for the next public workshop, PMSA offers the following on the comments on regulatory amendments.

**Single Pathway**
PMSA and our members strongly support this approach. Eliminating major portions of Section (d)(1) and combining provisions into a modified Section (d)(2), just makes sense. The benefits of that approach are:

- Eliminates the connection window (3-hr) requirement for all captured fleets.
- Eliminates the percent vessel visit requirements.
- Provides the single compliance metric of emissions reductions for all fleets.

This approach would also eliminate vessel visit requirement and the provision that if a vessel is equipped for shore power it must connect. Neither of those provisions are consistent with the requirement to reduce emissions by 50% beginning in 2014, 70% in 2017, and 80% by 2020 that would be created under a single pathway. The vessel visit requirement has the unfortunate effect of requiring the retrofit of smaller, generally, older vessels, to maintain a requirement that does nothing to improve emissions. The amended regulation must maintain the compliance levels of emission reductions by allowing fleets to determine the best way to comply. The vessel visit requirement does nothing to improve emission reductions and may inadvertently increase emissions by forcing fleets to maintain older vessels in service at California ports longer to recover the investment. This is clearly counterproductive to California's need for expeditious replace the current fleet with Tier II and Tier III vessels, and should be dropped.

The requirement that a shore power equipped vessel must connect to shore power is also counterproductive. It could actually create an incentive to not retrofit vessels since that would subject the fleet to additional requirements and potential penalties that competing fleets without shore power vessels would not be subject to.

PMSA's position is that the emission reduction requirements should be the only metric for fleets to determine compliance moving forward.

**Visit Requirement**
PMSA and our members greatly appreciate the elimination of the connection window requirement. However, the suggestion that a vessel visit requirement could apply to both shore power and alternative technology vessel visits is counterproductive for the reasons stated above. Most importantly, it does nothing to reduce emissions.

**Annual Compliance Period**
PMSA and our members appreciate that CARB is moving forward with replacing the quarterly compliance calculations with annual.

**Port Commissioning Visits**
PMSA and our members appreciate CARB adding this consideration of Port Commissioning/Testing Visits.

**Experimental Exemption**
PMSA and our members greatly appreciate this provision that should assist in the development of additional control technologies for vessels while at berth. We would request that CARB credit those fleets that helped in the certification in the two currently approved alternative technologies to be given credit for their past efforts.

**Shared Accountability for Terminal Operators and Ports**
This raises a number of serious concerns and would significantly alter the framework of the current regulation. Besides the clear implication that Marine Terminal Operators and the Ports would be responsible for fleet compliance, it is unclear how shared accountability would work or be fairly implemented. We would suggest that *force majeure* conditions would exist for marine terminals and ports, as they do for vessels. The marine terminals and ports have made massive investments in shore power equipment and infrastructure and have assigned and trained personnel to provide the shore power connection service. The planning and investment demonstrate their clear intent to comply and should not be penalized for circumstances beyond their control.

**Default Values**
PMSA and our members agree that an updated evaluation of the default values in use for emission factors is needed. It is our position that the most accurate information should be used whenever possible. In addition, as was presented at the first public workshop, we also support the creation of default reduction percentages for vessel visits as the most efficient way to ensure fleets that have short vessel visits can comply.

- Establish default reduction percentages for shore power:

| Hours operating Aux Engines | Default Value |
|---|---|
| 3 hours or less | 90% |
| More than 3, less than 4 hours | 80% |
| More than 4 hours, less than 5 hours | 70% |
| 5 hours or more | Actual Values |

## Potential Regulation Expansion Ideas

**Ro/Ro, Bulk & Tanker**
PMSA and our members are not the best representatives for these types or vessels. However, we offer whatever services we can provide as you explore the potential of regulating addition types of vessels.

**Environmental Ship Index**
Without prejudice to Environmental Ship Indexes, PMSA would suggest that using the IMO Tier emission standards combined with EIAPP certificates for each vessel would be a simpler and more accurate way to promote cleaner vessels coming to California's Ports.

## Additional Regulatory Issues

**Redeployment**
In order for vessel fleets to operate efficiently in the ever changing world marketplace, and to allow California ports to be competitive gateways, vessel operators must be able to adjust fleet composition. Unfortunately, this critical aspect of fleet operations has not been recognized by CARB since the December 2013 Regulatory Advisory expired. Now with the opening of new wider locks at the Panama Canal that will allow for larger vessels, it is reasonable to assume that many fleets calling at California's ports will be affected. With the redeployment of vessels it is likely that ship yards will again be backed-up with vessel retrofits that may require additional lead time. With the upcoming requirement to submit fleet and terminal plans by July 1, 2016, it is critical that some reasonable accommodation on vessel redeployment be reached. This isn't just critical to a fleet's ability to compete; improving efficiency through fleet turnover also reduces emissions. Fleet turnover is needed to achieve CARB's emission reductions goals and should be encouraged not penalized.

We also recognize that allowing for this turnover could result in short-term deficits to the emission reductions of the regulation. Although we are opposed to any fee program, we believe there are ways to compensate for these deficits through amendment to the Fleet Emission Credit (FEC) provisions, section (e)(2)(D), of the current regulation. The major criticism of credit trading programs is that the credits are used somewhere other than where they were generated, and do not benefit the local population. In this case, the FECs would be restricted to the same port complex they were generated and, most likely, by the same fleet that created the shortfall, eliminating this fundamental concern. We welcome further discussion on the redeployment issue, and ways to address any shortfalls.

**Enhanced Compliance and Equity Considerations**
CARB should enhance compliance flexibility by reviving the Fleet Emission Credit [Section (e)(2)(D)] provisions of the regulation. FECs generated by excess emissions requirements beyond regulatory requirements should be allowed for both intra- and inter-fleet FEC trading. Allowing early adopters to certify emission reductions generated prior to January 1, 2014, and providing an incentive to produce early and excess emission reductions, could potentially provide additional air quality benefits and could partially offset the equity issues imposed on early adopters under the dual option approach of the current regulation.

**Equivalent Technologies**
PMSA and our members welcome the merging of the two paths into a single approach that would allow for the use of CARB approved technologies. This is the approach in section (d)(2) that we think should be the model for the amendments. But, allowing these technologies, at this late date does create equity issues for fleets. PMSA raised these equity issues very early on. The late adoption of the single pathway and changing the rules for using alternative technologies has created a situation where early adopters have suffered a competitive disadvantage. Fleets and ports have already spent hundreds of millions of dollars in pursuing the only currently allowed compliance option, shore power. Likewise, fleets that selected the EER option, and have been complying since 2010, would be stripped of any advantage that they earned by this late change. The unfair burden that this late change has on those early adopters of the regulation must be addressed. Given CARB's comments at our January 2016 meeting regarding accountability, CARB should be equally concerned and committed to equity for early adopters.

Our proposal would be to allow any fleet that can document at-berth emission reductions prior to January 1, 2014, be allowed to bank those emission reductions as FECs. Amending the current FEC provisions to allow trading between fleets in the same port area would provide some minimal compensation for those early adopters. Allowing the ongoing generation and use of FECs might also encourage those early adopters to maintain their edge by generating excess emission reductions for internal use or for trading. Finally, emerging technologies that can participate in generating FECs could be critical for acceptance and adoption by the fleets resulting in new and innovative ways to reduce emissions at-berth.

**Revised Definition of "Berthing Time" and "Visit"**
Section (c)(5) and (c)(38) contain definitions of "Berthing Time" and "Visit" that must be corrected. The current definitions state that "the period that begins with the vessel is first tied to the berth and ends when the vessel is untied from the berth". As we have pointed out repeatedly, this definition unfairly penalizes the vessel by starting before the vessel has <u>any control</u> over the connection process. We submit the following as accurately describing the time period when the vessel master actually has control.

> "Berthing Time" (or Visit) means the period that begins when clearance to work the vessel is granted by Customs and Border Protection (CBP), or other governmental agency. In cases without CBP clearance, the Berthing Time (or Visit) begins when the vessel has the gangway down and safety nets secured. Berthing Time (or Visit) ends when the departure Pilot is on the bridge.

This is simply the most appropriate and fair definition of when a vessel is under the control of the vessel master and can be safely worked. When a vessel arrives from a foreign port, clearance from CBP is a pre-requisite. When arriving from a domestic port, the minimum safety requirements needed to begin the connection process are the gangway and safety nets being in place and secured. Changing these definitions, along with eliminating the connection window requirement, will further improve safety by reducing the need to rush once the vessel is cleared.

**Reduce Unnecessary Record Keeping and Reporting**.
In addition to simplifying the record keeping and reporting by changing to annual compliance period, eliminating the connection window, vessel visit, and redundant connection requirements, it should be possible to reduce, if not eliminate the annual reports from the terminal operators and port authorities. The point of the terminal operator and port authorities' annual reports are to verify the "Berthing Time" and provide records on the electrical use of vessels using shore-power. Since the ship's log is a legal document and the Pilot on-board provides a better standard of verification than either of the current sources, we see no need for either the ports or terminal operators to provide redundant and potentially conflicting "Berthing Times" and recommend those requirements, section (g)(3)(A), be removed from the regulation. Further, only the recipient of the electrical use from the utility should be required to provide that information in an annual report, thus eliminating the annual record keeping and reporting requirements for those terminal operators where the Port Authority receives the information from the utility. This represents another unnecessary burden that adds no value and section (g)(3)(B) should be modified to focus on collecting the electrical usage information from the appropriate party.

## Conclusion

PMSA and our members again want to thank you, and your staff, for all of your efforts in providing this opportunity for the much needed amendments to the At-Berth Regulation and an improved 2016 Regulatory Advisory. The vessels, terminals, Ports and utility providers now have extensive experience with shore power that has informed these comments. We continue to believe that the amendments to the regulation presents the unique opportunity to adapt the regulation to reflect this experience, and craft amendments that will enhance compliance and encourage innovation to maintain, and potentially enhance, the emission reduction goals of the original regulation. We look forward to working with you, and your staff, to achieve these mutual objectives.

If you have questions, or need more information, please contact me by email at tgarrett@pmsaship.com, or by phone at (310) 918-3535.

Sincerely,

T.L. Garrett
Vice President

Cc: Heather Arias
Richard Boyd
Angela Csondes
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Doug Ito
Debbie Klossing
Paul Milkey
Elizabeth Yura
Nicholas Rabinowitsh