California Environmental Protection Agency
Air Resources Board

Final Statement of Reasons for Rulemaking

FOR AMENDMENTS TO EXISTING REGULATIONS MADE AS PART OF THE PUBLIC HEARING TO CONSIDER PROPOSED REGULATION TO REDUCE EMISSIONS FROM IN-USE ON-ROAD DIESEL VEHICLES, AND AMENDMENTS TO THE REGULATIONS FOR IN-USE OFF-ROAD VEHICLES, DRAYAGE TRUCKS, MUNICIPALITY AND UTILITY VEHICLES, MOBILE CARGO HANDLING EQUIPMENT, PORTABLE ENGINES AND EQUIPMENT, HEAVY-DUTY ENGINES AND VEHICLE EXHAUST EMISSIONS STANDARDS AND TEST PROCEDURES AND COMMERCIAL MOTOR VEHICLE IDLING

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State of California
AIR RESOURCES BOARD

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

PUBLIC HEARING TO CONSIDER PROPOSED REGULATION TO REDUCE EMISSIONS FROM IN-USE ON-ROAD DIESEL VEHICLES, AND AMENDMENTS TO THE REGULATIONS FOR IN-USE OFF-ROAD VEHICLES, DRAYAGE TRUCKS, MUNICIPALITY AND UTILITY VEHICLES, MOBILE CARGO HANDLING EQUIPMENT, PORTABLE ENGINES AND EQUIPMENT, HEAVY-DUTY ENGINES AND VEHICLE EXHAUST EMISSIONS STANDARDS AND TEST PROCEDURES AND COMMERCIAL MOTOR VEHICLE IDLING

Public Hearing Date: December 12, 2008
Agenda Item No: 08-11-3

I. GENERAL

A. Action Taken in This Rulemaking

On December 12, 2008, the Air Resources Board (ARB or Board) approved for adoption a new regulation, section 2025, title 13, California Code of Regulations (Cal. Code Regs.) to reduce emissions of diesel particulate matter (diesel PM), oxides of nitrogen (NOx), and greenhouse gases from in-use diesel trucks and buses that operate in California. In this document the regulation will be commonly referred to as the "Truck and Bus regulation. The regulation will establish requirements for in-state or out-of-state motor carriers, California-based brokers, vehicle owners operators, and any California resident who hires or dispatches vehicles subject to the regulation. In addition to adopting section 2025, the Board approved amendments to several existing regulations to ensure that the existing regulations, and the new regulation, work together effectively. The changes were made to clarify the responsibilities and duties of regulated stakeholders, to provide additional compliance flexibility, and to improve enforceability in general of the existing regulations. Specifically, amendments were made to title 13, Cal. Code Regs., section 2020, "Purpose and Definitions of Diesel Particulate Matter Control Measures," sections 2022 and 2022.1, "Diesel Particulate Control Measure for Municipality or Utility On-Road Heavy-Duty Diesel-Fueled Vehicles," section 2027, "Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks," sections 2449 and 2449.3, "Regulation for In-Use Off-Road Diesel-Fueled Fleets," sections 2451, 2452, 2453, 2455, 2456, 2458, 2461, and 2462 of the "Statewide Portable Equipment Registration Program;" section 2479, "Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Railyards," section 2485, "Airborne Toxic Control Measure to Limit Diesel Fueled

Commercial Motor Vehicle Idling," section 1956.8, "Exhaust Emissions Standards and Test Procedures – 1985 and Subsequent Model Heavy-Duty Engines and Vehicles," and to title 17, Cal. Code Regs. sections 93116.1, 93116.2 and 93116.3 of the "Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater. The Executive Officer adopted these amendments on October 19, 2009 in Executive Order R-09-010, bifurcating the amendments from approved section 2025, title 13, Cal. Code Regs., at the request of several stakeholders needing immediate clarification of their rights and responsibilities of stakeholders under the existing regulations and relief from imminent compliance deadlines. This Final Statement of Reasons (FSOR) includes only comments directed towards the amendments to existing regulations. A separate FSOR document covering section 2025 will be issued before October 23, 2009.

The rulemaking was initiated by the publication on October 24, 2008 of a notice for a December 11 and 12, 2008 public hearing to consider the adoption of the regulation. A "Staff Report: Initial Statement of Reasons for Proposed Rulemaking" entitled "Proposed Regulation For In-Use On-Road Diesel Vehicles" (the Staff Report) and Technical Support Document (TSD) was also released on October 24, 2008 and made available to the public upon request as required by Government Code § 11346.2.

The Staff Report and TSD, which are incorporated by reference herein, described the rationale for the adoption of the amendments, as well as new section 2025. The text of the proposed amendments to the existing regulations was included in Appendix B of the Staff Report. The documents were also posted on the ARB's internet site for the rulemaking at: http://www.arb.ca.gov/regact/2008/truckbus08/truckbus08.htm

On December 12, 2008, the Board considered the proposed adoption of section 2025 and the proposed amendments to the above-referenced existing regulations and received written and oral comments. At the hearing, staff proposed several modifications to the amendments that were made in response to public comments made to staff after the publication of the original proposal.

At the conclusion of the hearing, the Board adopted Resolution 08-43, in which it approved the originally proposed amendments with the modifications presented at the hearing. The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt the new and modified sections described above after making the modified text available to the public for comment for a period of at least 15 days. The Board conditioned this directive with the instruction that the Executive Officer shall consider the written comments regarding the modified text that may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted. The 15-day changes were made available August 19, 2009 and there were no comments received on the amendments to the existing regulation. The 15-Day

Notice of Availability of Modified Text, setting for the rationale of the proposed modifications and the text of the modifications are incorporated by reference and included as part of this bifurcated-rulemaking package. The Executive Officer subsequently issued Executive Order R-09-010, which adopted the amended sections with additional modifications, which is incorporated by reference and included as part of this rulemaking package.

B. Economic and Fiscal Impacts

In developing the proposed amendments to existing regulations, ARB staff evaluated the potential economic impacts on private persons and businesses. The Board determined that the costs associated with approved amendments to existing regulations will not result in additional incurred costs, except for drayage trucks, because the remaining amendments either codify changes that are already in practice or provide for flexibility that potentially lowers compliance costs for existing regulations.

Pursuant to Government Code section 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the adopted amendments will not create costs and may result in savings to a state agency, will not affect federal funding to the state, will not impose 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, nor other nondiscretionary cost or savings to state or local agencies.

C. Consideration of Alternatives

Staff incorporated many suggestions from stakeholders in developing the proposed Truck and Bus regulation that led to numerous special provisions that needed to be addressed in the amendments to existing regulations. However, for reasons set forth in the Staff Report, in staff's comments and responses at the hearing, and in this FSOR, ARB has determined that no alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the amendments were proposed or would be as effective or less burdensome to affected private persons than the adopted regulation.

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

The Board received numerous written and oral comments in connection with the 45-day public comment period and the December 12, 2008 hearing. Set forth below is a summary of each objection or recommendation specifically directed to the amendments to the existing regulations for in-use off-road vehicles, drayage trucks, municipality and utility vehicles, mobile cargo handling equipment, portable engines and equipment, heavy duty engines and vehicle exhaust emissions standards and test procedures and commercial motor vehicle idling or to the procedures followed by ARB in proposing or adopting the regulation. Each comment is followed by the agency response explaining how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. The comments have been

grouped by topic whenever possible. Comments that do not involve objections or recommendations specifically directed towards the proposed amendments, or to the procedures followed by ARB in this rulemaking are generally not summarized below. Additionally, any other referenced documents are not summarized below.

A. Summary of Commenters

During the 45-day comment period, the Board received written comments from the following persons or entities listed in Table 1 regarding the amendments to the previously existing regulations. The identifier in the left column is used to attribute each listed comment to the person or entity submitting the comment. The following individuals made oral comments and did not submit written comments: Alvan Mangalindan, Scott Taylor, Lee Steinberg, and Dick Stuart.

Table 1 – List of Commenters for 45 day Comment Period

Code	Commenter	Affiliation
BJSC1	Doug Van Allen	BJ Services Company USA
COA	Michael J. Vlaming	Crane Owners Association, Inc
COARC	Alvan Mangalindan	Crane Owners Association and the Association of Crane Rental Contractors
EGI	Robert Engel	Engel & Gray, Inc.
LDT	Larry and Dianne Long	L & D Transportation
GSCL1	John Baudendistel	GSC Logistics, Inc.
GSCL2	Robert Rodriguez	GSC Logistics, Inc.
GSCL4	Scott Taylor	GSC Logistics, Inc.
MCOG	Lee Steinberg	Mobile Crane Owners Group
MCW	Dick Stuart	Maxim Crane Works
NAV1	Thomas Kramer	Navistar, Inc Engine Group
NWSC1	James Thomas	Nabors Well Services Company
PGE	Tyler Wellman	Pacific Gas & Electric Company
PRR	Steve Moore	Pacific Rim Recycling
SDAPCD	Robert Reider	San Diego Air Pollution Control District
SCAQMD1	Barry Wallerstein	South Coast Air Quality Management District
SCAQMD2	Henry Hogo	South Coast Air Quality Management District
WFSI	Tony Picarello	Westport Fuel Systems, Inc.

B. Summary of Public Comments Presented Prior to or at the Hearing and Agency Responses

1. Portable Engines and Equipment

a) Permitting Authority

1. **Comment**: We have some concerns with the proposals regarding two-engine cranes and sweepers. It is our understanding that these proposed amendments are not intended to change the existing classification of the auxiliary engines as "portable engines," such that districts may still require permits and establish

emission standards (if the owner chooses not to register the engine under the PERP program). However, the proposed amendments to the Portable Engines and Equipment Regulation and the Initial Statement of Reasoning Staff Report do not make this clear. We are concerned that once these engines become subject to their associated regulations (i.e., two-engine sweepers would be subject to the proposed In-Use On-Road Vehicle Regulation and two-engine cranes would be subject to the In-Use Off-Road Vehicle Regulation), air districts that would be permitting these equipment if these pieces of equipment have not entered into the state's registration program, would not have an ability to disallow older Tier 0 engines from operating as they do currently. As a result, even though these older equipment would eventually be cleaned up under the on-road or off-road diesel vehicle regulations, they can continue to operate over a longer period of time in areas such as the South Coast Basin than they would have otherwise. For example, equipment that is running with Tier 0 engines are presently not allowed to be permitted and operate in the South Coast Air Basin. Equipment that have Tier 1 engines may be permitted to operate, but must demonstrate that the engine does not exceed the certification level since the engine is certified under a "family emissions level." There is concern among the air districts that the amendments move the two-engine cranes and sweepers out of districts' permitting programs allow them to be unregistered. We request that CARB preserve air districts' authority to affect the use of cleaner equipment through permitting or other means with the proposed amendments. (SCAQMD1) (SCAQMD2)

Agency Response: The amendments to the Portable Equipment Registration Program (PERP) affect only certain requirements on two engine cranes and two engine street sweepers and should not be considered a general "moving out" of the program. These vehicles would still be subject to opacity, inspection and fee requirements of the PERP. Changes to the PERP do not impinge on the local air districts present authority to permit equipment, and equipment owners will continue to have the flexibility in deciding to register in PERP or be subject to district permitting programs. With certain limited exceptions, engines registered in PERP may operate throughout the State without obtaining permits from the local air districts

Both the Truck and Bus and In-Use Off-Road Vehicle regulations allow fleets to offset emissions from dirtier engines and by cleaning up other engines. The Truck and Bus regulation with the amendments to the portable engine requirements limits the hours of operation that Tier 0 auxiliary engines on two engines sweepers may operate and also requires PM and NOx reductions from both engines. As discussed in TSD chapter XVI, although PM and NOx emissions from the auxiliary engine itself could be higher in the first few years, the NOx and PM emissions from both engines on two engine street sweepers will be substantially lower after 2012 than if the amendments were not made. Similarly the effect of emissions from both crane engines in the In-Use Off-Road Vehicle Regulation also will result slight increases in NOx emissions prior to 2013 with substantial reductions being achieved after that date. Additionally, the regulation as amended will achieve substantial PM reductions after 2011.

b) Need for Regulatory Changes

2. **Comment**: Staff is also proposing to make modifications to the PERP to allow unregulated Tier 0 secondary off-road engines on cranes and sweepers to be newly registered under PERP. These engines would then only be subject to the inspection requirements and fees listed in the PERP regulation. Does this mean that these Tier 0 engines will be allowed to operate past December 31, 2009? The PERP regulation was adopted by the CARB Board in September 1997, and the required replacement of all Tier 0 engines by December 31, 2009 was clearly stated. In addition, the PERP required that after July 2001 all engine replacement require certified engines, which did not allow replacement of Tier 0 engines with another Tier 0 engine. The staff report states, "Currently, non-registered Tier 0 secondary engines on cranes and sweepers are not allowed to be registered through PERP." Tier 0 engines were allowed in the PERP in 1997, 1998, 2002 and 2005 through an amnesty period. If a fleet owner did not register during the amnesty periods, they were not allowed in the PERP and could be permitted under the local air districts. (NWSC1)

3. **Comment**: Staff is proposing to make modifications to the PERP to allow unregulated Tier 0 secondary off-road engines on cranes and sweepers to be newly registered under PERP. These engines would then only be subject to the inspection requirements and fees listed in the PERP. Does this mean that these Tier 0 engines will be allowed to operate past January 1, 2010? The CARB Board adopted the PERP regulation in September 1997. As part of the regulations, all fleet owners were required to replace all Tier 0 engines by January 1, 2010. In addition, fleet owners were required to repower engines with certified engines starting in July 2001, which did not allow replacement of Tier 0 engines with another Tier 0 engine. By CARB allowing the PERP to be modified once again is another slap in the face for industries that have been working hand in hand with CARB through the PERP process. BJS has spent multi-millions of dollars to make our fleets comply with CARB regulations since 1998. Allowing industries to come into the PERP and exempting them from the rules that we all had to follow means that CARB is providing a competitive edge to those companies! The staff report states, “Currently, non-registered Tier 0 secondary engines on cranes and sweepers are not allowed to be registered through PERP.” Tier 0 engines were allowed in the PERP in 1997, 1998, 2002 and 2005 through multiple amnesty periods. If a fleet owner did not register during the amnesty periods, they were not allowed in the PERP and could be permitted under the local air districts. (BJSC1)

Agency Response: Amendments to the PERP shift several requirements for two engine cranes and street sweepers to the In-Use Off-Road Vehicle regulation and the Truck and Bus regulation respectively. The changes clarify regulatory compliance by creating a single set of requirements (instead of falling under multiple regulations) that affect these two vehicle types. This means the vehicles will not be subject to the PERP Tier 0 replacement requirement of January 1, 2010, and therefore the PERP registrations for these vehicles will not expire on December 31, 2009. In addition, any portable engine on a two-engine crane or street sweeper will still be allowed to register in PERP, as long as the performance requirements of the off-road or Truck and Bus

regulation are being met. These revisions also modify the Portable Engine ATCM so that the emission control requirements of the ATCM are replaced by the new amendments.

These changes were made to address unique issues that crane and street sweeper operators face related to the safety, complexity and unnecessary cost associated with complying with multiple regulations without any appreciable emission benefits. The high costs of engine repowering would potentially require custom design, manufacture and certification of engines for a small subset of California-specific vehicles that are unlikely to be cost effective. Under the Occupational Safety & Health Administration and California Division of Occupational Safety & Health requirements, the original vehicle manufacturer would have to re-certify replacement and retrofit of the secondary Tier 0 engine for safety and feasibility. The manufacturers' approval, technical support and availability for modifications for compliance create significant safety and design concerns that these amendments and the Truck and Bus regulation address. These specific issues are further discussed in the Appendix L, *Two-Engine Cranes*, and Appendix M, *Street Sweeper*s, sections of the *TSD*.

The Staff understands that certain affected companies may have already made changes to their fleet in anticipation of upcoming regulations. However, the amendments in combination with the other changes apply equally to fleets with the same type of equipment, and fleets who have already taken action will still get credit towards compliance with the respective regulations.

Although tier 0 engines will be able to operate beyond 2009, the changes will require accelerated installations of PM filters and engine replacements beyond what is required under the existing portable engine regulation. With the adopted amendments, nearly all auxiliary engines will need to have PM filters when the Portable Engine Regulation just begins to phase in its emission requirements. Furthermore, both the Truck and Bus and In-Use Off-Road Vehicle regulations require fleets to replace or retire the dirtier engines in the fleet and that fleets clean-up other vehicle engines that remain in the fleet to offset emissions from these dirtier engines The specific requirements would depend on the individual fleet size and make-up. Fleets who have already made changes will be closer to meeting the regulatory requirements than fleets who have not.

c) Two-Engine Cranes

4. **Comment**: The Crane Owners Association is an organization of mobile crane rental contractors who provide mobile crane services principally in northern California. In the event there is a basis to delay acting on the proposed regulation, we respectfully request that the two engine crane provisions be adopted to allow immediate implementation. Without this action, crane rental contractors will be forced to comply with multiple ATCM's and multiple reporting requirements. (COA)

5. **Comment**: Members of the Crane Owners' Association and Association of Crane Rental Contractors out of northern California currently own approximately 1,000 mobile cranes, of which a large portion are two-engine cranes that are licensed for travel on California roadways. We request that the two-engine crane provisions contained in the rulemaking package today be adopted immediately, independent

of any possible delay as to the rest of the provisions contained in the rulemaking package. (COARC)

6. **Comment**: The members Mobile Crane Owners Group in southern California own and operate more than 90 percent of the mobile crane rental fleet in southern California. We support immediate adoption of the requirements for two-engine cranes, even if there happens to be a delay in the adoption of the rest of the proposal. The requirements for two-engine cranes provides a comprehensive approach to regulating the diesel-powered cranes, which are now subject to three different rules - the off-highway, PERP, and on-highway. Adoption will help our relatively small industry to continue to invest in equipment required by California industry contractors. (MCOG)

7. **Comment**: Maxim Crane Works is a nationwide crane rental company with five locations in California and approximately 250 cranes. Roughly 32 of the cranes that we have in California will be impacted by the two-engine crane provision described in Appendix L of the ISOR. Our company supports these provisions as an efficient means of allowing the crane industry to achieve CARB's emissions objectives. In the event there is a delay acting on the on-road rule, we would request that there's no delay in avoiding that particular provision or implementation of that particular provision. This will avoid the multiple reporting requirements and ATCMs that currently apply and reduce the burden of compliance for our industry. (MCW)

Agency Response: ARB has recognized the imminent need to ensure a smooth regulatory transition for the crane and street sweeper industries and has accelerated administrative rule making procedures to ensure a timely adoption of the amendments.

8. **Comment**: Both the proposed modification to the Portable Diesel Engine ATCM and PERP define "Crane" as "means the same as "Two-Engine Cranes" defined in title 13, Cal. Code Regs., section 2449(c)(56)". In San Diego County there are a number of single engine cranes that move along a fixed track and are located at ship yards. These crane engines are currently regulated under the Portable Diesel Engine ATCM. The District requests a definition be added for portable single engine cranes and clarification added to the applicability section that non-vehicular portable single engine cranes will remain subject to the Portable Diesel Engine ATCM and PERP requirements.

   The District also requests that the current proposed definition for "Crane" be changed to "Two-Engine Crane" and defined in the Portable Diesel Engine ATCM and PERP rather than referencing title 13, Cal Code Regs., section 2449(c)(56). It is clearer for the affected industry to read and understand the regulation without having to refer to a separate section of the Health and Safety Code. (SDAPCD)

Agency Response: There is no need to add a separate definition for single engine cranes that are not self propelled because the engines on these cranes already meet the definition of portable and remain within the scope of the existing regulation. Because two-engine cranes will be subject to the In-Use Off-Road Vehicle regulation, the owners of these machines should be familiar with the definition contained in that

regulation. Therefore, it should not be difficult for affected industry to refer to a regulation of which they are already knowledgeable.

2. Municipality & Utility Vehicles

9. **Comment**: Amend Public Agencies and Utility Rule Section 2022 (1)(d)(8) to read: (8) Privately-Owned Utility Extension. A utility may be granted an extension for Group 2 and Group 3 intermediate and final compliance deadlines as required in section 2022.1(c)(1) by two years, provided that thirty (30) percent of its fleet vehicles meet the 2010 engine emission standards, and twenty (20) percent of its fleet vehicles meet the 2007 or newer engine Emission standards for NOx as defined in section 2025(d) by December 31, 2013. (PGE)

Agency Response: ARB staff revised the language for utility fleets consistent with the comment to clarify the actions required to comply with the Truck and Bus regulation.

3. Drayage Trucks

10. **Comment**: For the most part, the trucks that are producing the most pollution are those that run short-haul from the ports to distribution centers outside of the port areas. The trucks going into the ports are very old, not maintained to the same degree as most over-the-road trucks are; and they are subject to fewer in-depth inspections because they rarely cross a scale where they can be inspected periodically. (LDT)

Agency Response: The Board recognized the serious impact of air pollution generated by older vehicle used in port operation and in response approved the In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Truck Regulation on December 7, 2007 to aggressively clean up port trucks. Tractors entering and intermodal rail yards must register with ARB and must meet stringent performance requirements to enter the facility starting in late 2009. The ARB is dedicated to protect public health and provide safe, clean air to all Californians by reducing emissions of air contaminants through the fair, consistent and comprehensive enforcement of statutory and regulatory requirements. ARB enforcement inspectors randomly audits the maintenance and inspection records of fleets and tests a representative sample of vehicles to ensure compliance all applicable regulations including vehicles in drayage operation.

11. **Comment**: We ask that CARB remove the amendment that port drayage trucks meet the Private Fleet Rule. (GSCL4)

Agency Response: As discussed in the Technical Support Document, page 259, when the Drayage Truck regulation was initially proposed and adopted, staff working on the drayage rulemaking were concerned that the regulation not be incompatible with the then planned Truck and Bus regulation because it was uncertain what the final regulatory proposal would be for non-drayage trucks. The changes to the drayage truck regulation align the requirements between the two regulations. These changes help meet the State's PM emission reduction commitments and ensure that uncontrolled trucks will not cycle into the drayage fleet to delay meeting the requirements of the Truck and Bus Regulation. The amendments to the regulation require that drayage

owners and operators install verified diesel emissions control strategies (DECS) on 2004 model year engines by 2012 and on 2005 or 2006 model year engines by 2013. Adding drayage trucks to the scope of the Truck and Bus Regulation starting in 2021 will require drayage trucks meet the same requirements as other fleets.

12. **Comment:** My company employs over 150 drivers at our logistics facility within the Port of Oakland. Many of our drivers have purchased 2004 tractors, attempting to abide by existing CARB regulations. The Private Fleet Rule will be devastating to port drayage drivers because their 2004 tractors will be in violation of CARB's regulations after December of 2011. All port drivers have financed their 2004 tractors over a minimum of 60 months and could not trade it in for a newer tractor if the Private Fleet Rule is implemented. Fundamentally, the drivers would be out of business. (EGI)

13. **Comment:** As the compliance manager for GSC Logistics I have always been given the directives from day one to be proactive, take initiative, and use the resources that are available in order to educate and help our valued contracted independent owner operators stay in compliance. I along with our management team have been working diligently with our owner operators for the last 12 months to meet the upcoming “Drayage Regulations”. GSC Logistics along with our 150 partnered Owner Operators were on track to meet the upcoming regulations. It was no easy task to have our team of Owner Operators buy into the "drayage regulations”. And after months of discussion explaining the costs involved from either retrofitting or replacing their equipment, our owner operators have been complying with little or no help from the grant funds that would lock them into a contract. Now you are telling me that I have to go back to these hard working people which I feel are the most important part of the commerce chain and tell them that the rules have changed again and they will have to spend several more thousand dollars to continue operating their businesses. How can you tell our industry and the thousands of people involved in this economy to spend more money? I urge you to withdrawal the added drayage regulations portion from the private fleet rule. (GSCL2)

14. **Comment:** I am President, CEO and owner of Pacific Rim Recycling. Pacific Rim is a 65 employee company located in Benicia, California and processes residential recyclables for over 500,000 people. In addition, I am President, CEO and Owner of P and R Trucking, an Oakland based an inter-modal trucking company with 35 trucks in and out of the Oakland Port 50-100 times per day, primarily hauling recyclable commodities from not only our facility but from dozens of recycling facilities around northern California. I am here to tell you, "the recycling industry is upside down." Everyone is losing money, big money. Adding additional expense to our operations at a time when we are struggling to survive is unwise. The CIWMB had a hearing just yesterday to try and figure out what to do with this latest crisis. (PRR)

15. **Comment**: The Private Fleet rule and the Drayage rules are in conflict. Many owners and owner operators purchased 2004 newer trucks which should qualify up through 2013 based on the Drayage truck rules. The differences in the two

rules are in conflict. The Private Fleet rule decreased the time allowed on a 2004 vehicle to operate. This increases the cost to the owner who purchased under the Drayage rules. A 2004 truck costs in the range of $45K, which many operators have purchased expecting to be compliant up to 2013. This is now not the case under the Private Fleet rules. Consistency in the rules and the agencies is of paramount importance. (GSCL1)

Agency Response: Staff agrees that there will be economic impact associated with the amendments to the Drayage Truck regulation for owners of drayage trucks with 2004-2006 model year engines. Although we recognize the challenges with the current economic climate, the amendments do not impose additional requirements until 2012. The costs attributable to the drayage trucks category are estimated in Appendix J and include the costs attributable to the amendments made to the Drayage Truck regulation and the costs attributable to adding drayage trucks to the scope of the Truck and Bus regulation starting in 2021. Although we recognize the impact of the economy on businesses, ARB must balance the cost to stakeholders against how to best achieve federally mandated reductions of smog forming pollutants and hazardous particulate matter (PM) emissions.

The amendments to the regulation requires that drayage trucks with 2004-2006 model year engines be equipped with the highest level verified DECS for PM according to the same schedule as all other trucks subject to the Truck and Bus regulation. See response to comment 11 regarding the rationale for the amendments.

The Drayage Truck regulation already requires all drayage trucks to have 2007 model year engines or equivalent by 2014. Accordingly, a drayage truck owner who plans to continue in drayage service with a 2004-2006 model year engine must already be planning to replace the vehicle or engine prior to 2014. The additional investment required for a drayage truck owner with a 2004-2006 model year engine is associated with the amendment that requires the installation of a verified DECS by January 1, 2012 and 2013, respectively, for 2004 and 2005-2006 drayage trucks. A substantial portion of this additional cost is likely to be recouped when sold for non-drayage use in the state. 2004-2006 model year engines with verified DECS that do not operate at ports or intermodal rail yards will be able to operate at least until 2015 or 2019 or longer depending on the fleet size and a number of other factors. As a result, 2004 to 2006 model year engines already equipped with verified DECS should have higher value than a similar vehicle that will need to be equipped with a verified DECS. In the event that a drayage truck owner, with a 2004-2006 model year engine, chooses to discontinue operation in drayage service, the vehicle will immediately be subject to the Truck and Bus regulation and will need to be equipped with verified DECS to meet the same requirements and schedule as other non-drayage trucks. In addition, some drayage trucks may also qualify for public financial assistance for installation of verified DECS which could substantially reduce or eliminate the economic impact of the amendments.

16. Comment: Westport Innovations wishes to seek clarification on the status of CARB 2004 certified heavy-duty pilot ignition engines under this ruling and additionally the Port Drayage Truck Rule, adopted on November 24th, 2008. There

are approximately 120 of these engines currently operating in heavy-duty vehicles in California at this time. The engines are CARB certified. See Executive Order A-343-0003. These particular engines have a NOx reduction of over 50 percent, and PM levels below the 2004 certification levels. Additionally greenhouse gas emissions reductions of approximately 18 percent over diesel-fueled engines are achieved with this engine, contributing to the goals of this regulation.

According to the current language of the ruling there is a credit available to fleets running "alternative-fueled engines" or "heavy-duty pilot ignition engines" in their fleet. This credit is outlined in definition 9 of the in-use on-road diesel vehicle rule. With credit being given to these engines effectively taking their PM emissions as zero, Westport understands that these engines are exempt from this fleet rule as it is written. Thus Westport understands that this exemption should also apply to the Port-Drayage Truck rule. Westport would like to see CARB supply wording to the current rules to clearly define these engines as being exempt. (WFSI)

Agency Response: Staff does not believe additional wording is necessary to define Westport's certified heavy-duty pilot ignition engine as exempt from the Truck and Bus regulation. We believe that the regulation's statement of scope and applicability and the definition of a heavy-duty pilot ignition engine are sufficient to establish that heavy-duty pilot ignition engines are exempt from the regulation. Section 2025(b,) which describes the scope and applicability of the regulation, states that affected vehicles are those that operate on diesel fuel, dual-fuel, or alternative diesel fuel. Alternative fuel vehicles are not included in the scope and applicability and are therefore not subject to the regulation. As defined in the regulation, a heavy-duty pilot ignition engine is designed to operate "using an alternative fuel, except that diesel fuel is used for pilot ignition at an average ratio of no more than one part diesel fuel to ten parts total fuel on an energy equivalent basis". An engine that can operate or idle solely on diesel fuel at any time does not meet this definition. Westport's certified heavy-duty pilot ignition engine is therefore an alternative-fuel vehicle that meets the definition given in the regulation of would not be subject to the regulation.

Although alternative fuel vehicles like those operating with Westport's heavy-duty pilot ignition engines are exempt from the requirements of the regulation, a fleet may count these vehicles in their fleet to reduce the average emissions of the fleet. The provision in the regulation for alternative fuel vehicles is intended to be an incentive to fleets gives credit for alternative fueled engines that burn cleaner than diesel fueled engines. Also, for fleets using vehicles equipped with alternative fuel or heavy-duty pilot ignition engines, credit would be granted for the purpose of calculating the NOx and PM fleet average target rates towards compliance with the fleet average. In using this credit, the PM emission factor would be zero, and the NOx factor would be based on the emission factor corresponding to the engine standard to which the engine is certified.

The drayage truck regulation has been amended to make the definition and scope consistent with the truck and bus regulation. This means that drayage trucks operating with Westport's heavy-duty pilot ignition engine or any other alternative fuel engine are

exempt from the drayage truck regulation. The amendments to the drayage truck regulation were approved by the Board at the December 2008 public hearing.

17. Comment: The new proposed amended version of the regulation for In-Use On-Road Heavy-Duty Drayage Trucks lists the applicability as follows:

> This regulation applies to owners and operators of on-road diesel-fueled, alternative diesel-fueled and dual-fueled heavy-duty drayage trucks operated at California ports and intermodal rail yard facilities. This regulation also applies to "motor carriers," "marine or port terminals," "intermodal rail yards, " and "rail yard and port authorities."

Under this proposed amendment, the Westport ISX G engine, the definition most closely describing vehicles powered with the Westport ISX G is definition 30 (Liquid Natural Gas (LNG) Fueled Trucks) and thus Westport understands that any vehicle powered with the Westport ISX G is exempt from the regulation to control emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Port Drayage Trucks. (WFSI)

Agency Response: The applicability of the drayage truck regulation to the Westport ISX G engine is as Westport understands it. Any vehicle powered with the Westport ISX G is an alternative fuel vehicle is exempt from the drayage truck regulation.

4. Commercial Idling Regulation

18. Comment: As originally written, the provisions and requirements of the Heavy Duty Diesel Idling Requirements and Automatic Engine Shutdown System (AESS) overlooked an important vehicle type, armored cars, for exemption to the rule. Some manufacturers of vehicles that are produced and ultimately used for build-up into armored cars would have no practical way to apply the infrastructure required to discriminate a chassis that was required to comply with the idle shutdown rule versus one that did not need to comply. As such, manufacturers and dealers would have incurred a costly burden of programming all engines to engage the idle shutdown, and then "de-selecting" those settings once the truck was delivered to a location other than the State of California. For the aforementioned reason, plus for reasons of security of armored car cargo, driver and operator safety, and the need to not hamper the drive-off capability of an armored car we are pleased that staff recognized the requirement and suggestions of the affected industries and have taken measures to include armored cars in the category of exempt vehicles. Navistar endorses the changes as stipulated in § 2485(d)(2)(M) and 1956.8(a)(6)(B). (NAV1)

Agency Response: ARB staff revised the rule for the Commercial Idling Regulation to improve the health and safety of the onboard guard.

5. Summary of Comments and Agency Responses to Notice of Modified Text

No comments were received.