# ATTACHMENT B

to **Resolution 14-41**

# Response to Comments on the Environmental Analysis

**Prepared for the**

**Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles (Truck and Bus Regulation)**

California Environmental Protection Agency

**Air Resources Board**

**To be considered at the**

**November 20, 2014 Board Hearing**

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# INTRODUCTION

To meet the requirements of the Air Resources Board's (ARB) certified regulatory program under the California Environmental Quality Act (CEQA), ARB staff prepared an environmental analysis (EA) as part of the Initial Statement of Reasons (ISOR) prepared for the Proposed Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles (Truck and Bus Amendments).

The ISOR for the Truck and Bus Amendments was released for a 45-day public review period from March 7, 2014 to April 21, 2014. Subsequent to the Board hearing held in April 2014, two separate notices with modified regulatory language, reflecting changes directed by the Board at the hearing, were circulated for a period of 15 days as required by the Administrative Procedures Act. The changes reflected in the 15-day notices did not affect the compliance responses to the Truck and Bus Regulation in any way that affected the conclusions of the environmental analysis included in the ISOR so no revision to or recirculation of the environmental analysis was required.

This document presents written responses to comments received during the 45-day comment period and 15-day comment periods that raise environmental issues. These comments are only a subset of all the comments received. Substantive responses in this document are limited to comments that "raise significant environmental issues associated with the proposed action," as required by ARB's certified regulatory program at California Code of Regulations, title 17, section 60007(a). ARB conservatively included comments and responses in this document if the comment raises an environmental issue related to the proposal even if the comment does not directly relate to the adequacy of the environmental analysis. This document includes responses to environmental comments received outside of the 45-day review provided for review of the EA, namely comments received during the subsequent 15-day comment periods provided for purposes of the Administrative Procedure Act, even though the EA was not recirculated or reopened for public review during that time. The Board will consider these written responses for approval as part of its consideration of final action on the amendments.

Written responses to all public comments received have been prepared for purposes of the Administrative Procedure Act in the Final Statement of Reasons (FSOR). The FSOR will be posted in electronic form on the ARB Truck and Bus rulemaking webpage when the regulatory package is submitted to the Office of Administrative Law for review and approval. The link for the ARB Truck and Bus rulemaking webpage is: http://www.arb.ca.gov/regact/2014/truckbus14/truckbus14.htm

## COMMENTERS

The list below identifies the commenters that submitted comments related to the Environmental Analysis, along with the comment log number assigned when the letter was submitted to the electronic docket and an assigned commenter code used to identify the comment in the written responses.

All comment letters and attachments received on the Amendments to the Truck and Bus Regulation are posted on the ARB website, with comments ordered by date received, and grouped by review period. These comments may be viewed at the following link: http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=truckbus14

| Log # | Commenter Code | Commenter |
|---|---|---|
| 124 | WJHPCA01 | Timothy Jones, Comments on behalf of John R. Lawson Rock & Oil, Inc.<br>Written Testimony during 45 day: 04/16/2014 |
| 104 | ESWG | ESW Group<br>Written Testimony during 45 day: 04/11/2014 |
| 142 | MECA01 | Manufacturers of Emissions Controls Association<br>Written Testimony during 45 day: 04/18/2014 |
| 182 | COSO | Coalition of State Organizations<br>Written Testimony during 45 day: 4/21/2014 |
| 71 | WJHPCA02 | Timothy Jones, Comments on behalf of John R. Lawson Rock & Oil, Inc. and California Trucking Association.<br>Written Testimony during 15 day: 07/17/2014 |

The comments are responded to in the following format:

**Comment:** *Comments received under the COMMENT ID are presented individually as shown in this example, beginning with* ***Comment*** *on the first line and followed by the COMMENTER ID in brackets e.g. (ABCD).*

**Agency Response:** *ARB written responses are presented following each comment.*

***General Response to Comments Related to the California Environmental Quality Act in April 16, 2014 Letter from Mr. Timothy Jones Representing John R. Lawson Rock & Oil, Inc***. (WJHPCA01)

**Comment:** An April 16, 2014 letter from Mr. Timothy Jones representing John R. Lawson Rock & Oil, Inc. was submitted during the 45-day comment period and includes comments regarding the proposed amendments' compliance with the California Environmental Quality Act (CEQA), as well as other comments. Staff summarizes and responds to the letter's CEQA comments here and responds to the letter's other non-CEQA related comments in other parts of the FSOR. The CEQA related comments allege generally that the March 5, 2014, Initial Statement of Reasons ("ISOR") ISOR prepared for the proposed amendments includes numerous violations of CEQA.

The comments allege these specific defects in the ISOR:

1. Failure to adequately disclose impacts regarding greenhouse gas emissions;
2. Failure to use appropriate baseline conditions for analysis of impacts;
3. ARB's future baseline analysis shows clear adverse impacts to air quality;
4. ARB assumes, without any analysis, that fleet upgrades will not be rolled back as a result of the amendment;
5. ARB does not address the effect the proposed amendments will have on the resale market for used trucks;
6. That the proposed amendments will eventually result in the same reductions as the current regulation does not obviate the need for environmental review; and,
7. ARB violated CEQA by its implementation of the amended regulations prior to environmental review.

**Agency Response:** ARB staff disagrees generally with the CEQA related comments in the April 16, 2014 letter from Mr. Timothy Jones. Responses to the specific comments follow below. The Board carried out an environmental assessment for the Truck and Bus Regulation when it was originally proposed in 2008 and then again when it was amended in 2010. The environmental analysis for the 2014 amendments builds upon those prior analyses and previous Board findings. The 2014 environmental analysis complies with all CEQA requirements applicable to ARB's certified program, as explained in more detail below.

***Responses to Specific Environmental Comments***

1. **Comment:** The commenter asserts the ISOR fails to support the conclusion that the amendments will result in no significant adverse impacts, specifically with regard to the proposed amendments' effect on greenhouse gas (GHG) emissions required to be analyzed under CEQA. (WJHPCA01)

**Agency Response:** Staff disagrees with the commenter's assertion that the ISOR does not sufficiently support the conclusion that the amendments will result in no environmental impacts, specifically with regard to GHG emissions. As the commenter notes, ARB conducts its CEQA review under its regulatory program certified by

Secretary of Natural Resources. With certification of its program, ARB is statutorily exempt from the requirement to prepare EIRs or negative declarations (PRC 21080.5; 14 CCR 15250; 14 CCR 15251(d)). Instead, ARB prepares a substitute document as part of its staff report prepared for the proposed action, which provides an "assessment of anticipated significant long or short term adverse and beneficial impacts associated with the proposed action and a *succinct* analysis of those impacts" (14 CCR 15252 (a); 17 CCR 60005, emphasis added).

In accordance with the requirements of ARB's certified CEQA regulations, the Staff Report prepared for the amendments (2014 ISOR) at Chapter V (pages 39-42) provides a succinct description of why the amendments will not result in any significant adverse impacts to the environment. That chapter relies upon and references other parts of the 2014 ISOR that provide more specific information to support the conclusions related to air quality and GHG emissions. Under the section entitled 'Prior Environmental Analysis' (pg. 39), Chapter V explains that when the Truck and Bus Regulation was initially adopted in 2008, the environmental analysis in the 2008 ISOR concluded that implementation of the Truck and Bus Regulation would not result in any adverse impacts to the environment; only environmental benefits would result from a reduction in diesel particulate matter (PM) and oxides of nitrogen (NOx). The analysis and finding in the 2008 ISOR was a substitute document equivalent to a negative declaration (see 14 CCR 15252). When the Regulation was approved in 2008, the Board confirmed the conclusions of the 2008 ISOR, finding that the regulation would not result in any significant adverse impacts on the environment and would result in benefits to the environment through the reduction of diesel PM and NOx (Resolution 08-43). When the Regulation was amended in 2010 to adjust for the decline in trucking activity due to the economic recession, the 2010 ISOR examined both criteria pollutant emissions and climate change emissions resulting from the proposed modifications to the Regulation. The 2010 ISOR concluded the regulation, as modified by the proposed amendments, would continue to achieve the needed emission reductions, reduce localized risk from exposure to diesel PM, reduce impacts of diesel engine emissions on mortality and other health effects, and meet State Implementation Plan commitments necessary to meet federal air quality standards. Specifically with regard to GHG emissions, the 2010 ISOR concluded the regulation as amended would continue to achieve a cumulative statewide GHG emission reduction of 6 million and 22 million metric tons of carbon dioxide equivalents (MMTCO2-eq) for 100-year and 20-year time horizons, respectively.

Chapter V in the 2014 ISOR builds upon the prior analyses in the 2008 and 2010 ISORs. Chapter V first explains that the methods of compliance for the Regulation (upon which the analysis of potential indirect environmental impacts is based) would not change as a result of the proposed amendments, other than the compliance flexibility provisions which would affect only the projected air quality benefits discussed in more detail under the 'Air Quality Benefits' section and Chapter IV. Chapter V then explains that since the 2008 and 2010 ISORs did not identify any adverse environmental impacts to any resource area, and the methods of compliance remain the same with the proposed amendments, the proposed amendments would also not result in any adverse impacts to any other resource area.

Specifically, Chapter V explains that the proposed amendments do not impose any new requirements to retrofit or replace existing equipment beyond what is already required by the Regulation analyzed in 2008, or any other new actions that affect the physical environment. Further, the proposed amendments do not cause any changes to the existing truck and bus infrastructure in California. The amendments would not result in new development, modification to buildings, or new land use designations, and do not involve any activity that would affect aesthetics, agricultural resources, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, or utility and service systems. Because the amendments do not result in any action that could affect these resources, the 2014 ISOR concluded the proposed amendments would not result in any adverse impacts to any of these resource areas. It was appropriate for the 2014 ISOR to provide a succinct explanation of no impact to this list of resources because it was facially apparent that there was still no impact to any of these resource areas resulting from the proposed amendments. The commenter appears to agree with ARB on this point, noting case authority supporting ARB providing only a brief explanation for areas where it is "facially" apparent there is no impact. The commenter has not introduced any evidence showing any new or additional impact to any of these resource areas.

On the other hand, because some parts of the amendments, specifically the compliance flexibility provisions, could affect the emission reductions associated with the Regulation, air quality and climate change are discussed in more detail under the 'Air Quality Benefits' section. The section entitled 'Air Quality Benefits' in Chapter V (page 41) summarizes and references the more detailed quantitative air quality analysis included in Chapter IV of the 2014 ISOR. In Chapter IV, staff provided: updated information on the emissions inventory for PM, NOx and GHG emissions based on the most current information available; detailed quantified emission reductions now expected from the Regulation from 2014 through 2023; and a quantification of the change in emission reductions expected from the Regulation as modified by the proposed amendments compared to the current Regulation (as amended in 2010). The analysis of GHG emissions included an explanation of how the Truck and Bus Regulation fits within the scope of the State's overall GHG emission reductions. The climate change analysis indicates that the cumulative black carbon (BC) warming reduction for the Truck and Bus Regulation, as modified by the proposed 2014 amendments, for 2010-2025 is about 10.3 and 36.6 MMTCO2e for the 100-year and 20 year time horizons, respectively. It concluded the Truck and Bus Regulation, as modified by the proposed amendments, would continue to lower BC from existing conditions, and compared to the 2010 version of the Regulation, will not significantly impact the cumulative 2010-2025 climate benefits of the regulation. Based on the foregoing, staff disagrees that the 2014 ISOR provided an inadequate explanation of its conclusion of no impacts, failed to comply with CEQA's information disclosure requirements for any resources area, and failed to discuss changes to the GHG benefits.

Staff further notes that the environmental analysis in the 2014 ISOR should be viewed under ARB's certified program as a substitute document prepared to serve as the equivalent of an "addendum" to the analysis in the 2008 ISOR. Therefore, the "substantial evidence" standard of review applies, rather than the "fair argument" standard of review (*Benton v. Bd. of Supervisors* (1991) 226 Cal. App. 3d 1467, 1484). As explained above, the analysis in the 2008 ISOR was the functional equivalent of negative declaration. Since staff's analysis of the modifications to the previously approved regulation (as modified in 2010) found no adverse impacts resulting from the changes, none of the conditions requiring a subsequent negative declaration occurred (See 14 CCR 15162). Therefore, ARB's legal obligation under CEQA was only to provide a brief explanation of why no subsequent negative declaration or further environmental review was required (14 CCR 15164(b)). The commenter does not cite any evidence of any environmental impacts, including potential impacts to greenhouse gas emissions that would result from the implementation of the amendments requiring any additional environmental analysis. In the alternative, even if the 2014 analysis were viewed as a subsequent negative declaration and the fair argument standard applied, the commenter's assertions are unsubstantiated because the commenter fails to cite any credible evidence in the record (rather than bald assertions and conjecture) that support a fair argument that the amendments may result in significant adverse impacts to climate change or any other resource area. Thus, the commenter's assertions regarding the adequacy of the environmental analysis in the 2014 ISOR are without merit (See *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.th 768, 785-786; *Rominger v. Cnty. of Colusa* (2014) 229 Cal. App. 4th 690, 708-711).

**2. Comment:** The commenter maintains that the ISOR fails to use the required present-conditions baseline in its assessment of the environmental impacts of the proposed amendments. (WJHPCA01)

**Agency Response:** Staff disagrees with this comment. The commenter is factually incorrect because the 2014 ISOR, in Chapter V at page 41 states (emphasis added):

> The amendments only change the mid-term timing of clean-up of the truck fleet, and therefore, do not result in any increase in emissions **compared to existing environmental conditions**. Also, despite the projected near-term delay in some emissions benefits compared to what was originally projected to be achieved by the regulation, emissions of diesel PM, NOx, and other criteria pollutants **will continue to drop from today's levels as a result of the regulation** with the proposed amendments and it will ultimately result in the same projected air quality benefits.

As explained above, the summary of air quality changes in Chapter V of the ISOR summarizes and references the more detailed quantitative analysis provided in Chapter IV. Chapter IV includes detailed quantified emission reductions for both NOx and PM expected from the regulation from 2014 through 2023 (see Table IV-2, Figures IV-3, IV-

4 in the ISOR). The reductions in NOx expected from the Regulation with the proposed amendments is 52 tons per day (tpd) in 2014 (today's existing conditions) and 94 tpd by 2023. For PM, the regulation is expected to result in reductions of 5.6 tpd in 2014 (today's existing conditions) and 2.9 tpd by 2023. The figures on page 35 show the reductions projected from the Regulation with the amendments (in red) for both NOx and PM. It is clear from the downward sloping line that compared to today's emissions from these sources (2014), emissions are projected to continue to decline through 2023. This information supports the statements provided in Chapter V that "emissions in diesel PM, NOx, and other criteria pollutants will continue to drop from today's levels." Therefore, the commenter is incorrect that ARB failed to use the existing present conditions as a baseline for the CEQA analysis provided in Chapter V.

In addition to providing quantitative information about emission reductions expected from the Regulation compared to existing conditions, Chapter IV *also* provides information about the proposed amendments compared to the projected statewide emissions from these sources absent the Truck and Bus Regulation. This information is *not* provided for purposes of establishing a baseline for determining the significance of impacts of the regulation under CEQA as the commenter suggests. Rather, this information is provided to meet the requirements of the Administrative Procedures Act (APA). Under the APA, the ISOR must explain the benefits of the Regulation to explain its specific purpose and rationale to carry out the requirements of ARB's statutory obligations (Government Code § 11346.2 (b)(1)). This information discloses the overall projected air quality *benefits* of the Regulation for purposes of explaining why the Regulation is necessary and to quantify reductions applicable to the California State Implementation Plan, ARB's Diesel Risk Reduction Plan, and for improving public health. ARB needs to quantify the cumulative emission reductions projected from the Regulation (as amended) compared to a situation absent any regulation on these sources for air quality planning purposes.

Chapters IV and V *also* discuss the incremental differences between the Regulation as modified by the proposed amendments and the existing Regulation (as amended in 2010). As explained more in the response to Comment 3 below, staff provided a comparison of these two future projected scenarios (a future projected baseline of emission reductions from the existing Regulation compared to the future projected emission reductions from amended Regulation), to better disclose the consequences of the proposed action to the projected emission *benefits* of the Regulation; the benefits of the Regulation are described to justify its purpose for purposes of the Administrative Procedures Act, as explained above, as well as for purposes of ARB's certified regulatory program, as explained in response to Comment 3 incorporated by reference here.

**3.** **Comment:** The commenter asserts ARB improperly found no adverse impact to air quality, which commenter asserts results from the comparison of the amended Regulation compared to the future projected benefits of the Regulation in place. (WJHPCA01)

**Agency Response:** Staff disagrees with this comment. Contrary to commenter's assertion, the amendments do not result in any *increases* in emissions of NOx or PM under either the existing environmental condition baseline scenario explained in more detail in response to Comment 2 above, or under the scenario comparing the amended Regulation to the existing Regulation in place (2010 version).

The summary changes to air quality benefits in Chapter V of the 2014 ISOR, written for compliance with ARB's certified CEQA regulations, summarizes and references the more detailed quantitative analysis provided in Chapter IV. In Chapter IV, ARB provided quantitative estimates of the reductions in NOx and PM in Table IV-2 for both the Regulation with the proposed amendments and the Regulation in place (as amended in 2010). As explained in the response to Comment 2, ARB properly considered the present conditions as the environmental baseline for purposes of determining the significance of any changes to air quality for purposes of CEQA in Chapter V.

The Staff Report did also provided information about the incremental changes to projected emission reductions in Table IV-2 and Figures IV-3 and IV-4 to inform the public and decision makers about the extent of changes in projected emission benefits. Contrary to the commenter's statements, the comparison to the regulation in place was not provided to compare the proposed action against a future baseline to determine the potential adverse impacts of the proposal under CEQA. Rather, as described above in response to Comment 2, this information is provided as part of the rationale for the Regulation as required by the APA (Government Code section 11340, *et seq*.). It is also provided to explain any changes in relation to obligations made under the State Implementation Plan and Diesel Risk Reduction Plan. Further, the discussion and quantification of the changes in projected emission benefits was provided because ARB's certified regulatory program requires a discussion of both the adverse *and beneficial* environmental impacts associated with a proposed action (17 CCR 60005(b)).

Nonetheless, even if this comparison was interpreted in the manner asserted by the commenter, the information provided reveals only a near-term change in emission *benefits*, which is not a "serious adverse environmental impact" as the commenter states. As stated on page 34 of the ISOR, in this comparison for NOx and PM reductions, the NOx emissions benefits will reach the equivalent levels of benefits. There is only a short term delay in some NOx benefits until 2018 and PM benefits until 2020. As explained in Chapter IV and V (page 41), although the Regulation, as modified by the proposed amendments, is expected to achieve fewer emission benefits in the near term compared to the emission benefits that may have been achieved under the current Regulation (2010 version), the Regulation is expected to achieve all the cumulative air quality benefits projected for the Regulation when it was first adopted for the State's long-term planning horizon and will meet State Implementation Plan commitments necessary to meet federal air quality standards. Contrary to the commenter's assertion, there is no actual *increase* in emissions of criteria pollutants caused by the change to the amendments; there is only a projected slower rate of decline in emission reductions in the first few years of implementation of the amended

version of the Regulation compared to the reductions forecasted for the Regulation in 2010. Since the emission benefits of the Regulation still meet State Implementation Plan commitments necessary to meet federal air quality standards, the benefits of the Regulation are unchanged, and the Regulation has not been "relaxed" in a way to remove any environmental protections. Therefore, the amendments do not result in any adverse air quality impacts under either the current conditions comparison or under a future projected environment scenario under CEQA. The ISOR describes this change as a "foregone emissions benefit" compared to what was initially projected in 2010. This projected delay in implementation of a projected environmental benefit is not an *adverse* impact on the environment because there is no "damage" to the physical conditions of the environment, which is what CEQA is intended to address. (14 CCR 15002 (a)(3),15360.) The commenter cites no part of the CEQA statute, Guidelines, or any CEQA case law to support finding an adverse environmental impact under CEQA based on amendments to a regulation that lead to a projected short-term delay in the accrual of the Regulation's projected environmental benefits when the environmental benefits of the Regulation ultimately meet its statutory and planning purposes. Staff also researched this issue and found no authority to support the commenter's proposition.

As explained in the 2014 ISOR, the amendments will protect the anticipated emission reductions from the Regulation and will continue to provide four key benefits. First, the Regulation will continue to provide NOx reductions necessary to meet State commitments associated with attaining state and federal air quality standards. Second, the goals of the Diesel Risk Reduction Plan will continue to be met by reducing localized health risks associated with exposure to diesel PM. Third, the amended Regulation preserves the reduction in premature mortality caused by exposure to ambient PM2.5. Finally, the Regulation continues to provide significant climate change benefits by reducing black carbon emissions.

The commenter also asserts ARB should have compared the changes in emission reductions to local air district thresholds of significance. Since there is no projected increase in emissions of NOx or PM compared to existing conditions, or even compared to the 2010 version of the Regulation, there is no need to compare the change in reductions to the threshold of significance for NOx cited by the commenter. Indeed, even comparing the proposed changes to the air district thresholds of significance would result in the same conclusion, since the proposed amendments would not result in any emissions increases. The cited local district thresholds are used for determining significance of *increases* in emissions of NOx caused by a project; ARB's Regulation leads to a continued decrease in emissions from the regulated sources. Therefore, staff disagrees with the commenter's statement that the amendments result in an adverse impact to air quality.

Further, staff notes that estimates provided for the existing Regulation in the ISOR are based on the expectation in 2010 that all fleets would comply as required. However, since 2010 it became apparent that there are fleets that could not afford to comply and continue to operate their vehicles. As stated on page 8 of Appendix C of 2014 ISOR,

around 85 percent of the California-registered heavy trucks are in compliance. The remaining 15 percent either would not comply or could not afford to comply. The 2014 amendments were proposed to make compliance more affordable for many of these fleets. The amendments were crafted to provide a path for non-compliant fleets to comply at a pace they could manage, and with that compliance, lead to real emission benefits from these fleets, which realistically could not be expected under the current Regulation. See page 12 of the ISOR for more detail on this point.

Further, with regard to projecting emissions benefits, ARB commonly makes hypothetical future projections for emission reductions expected from its regulations. This in is the nature of what ARB does— it designs regulations to protect or enhance air quality, and it uses its expertise to make estimates about the projected benefits of the regulation now and into the future. Occasionally, in response to changed circumstances, such as the recent severe economic recession, ARB must amend its regulations to ensure the projected benefits of the regulation are achieved and to ensure that the reductions are still cost effective as required by the Administrative Procedures Act. (See Government Code, §11346.3.) For the 2014 amendments, ARB provided a new future projection that forecasts fewer emission reductions for a few years when compared to what was projected to accrue when the Regulation was amended in 2010 under a scenario of full compliance, but with ultimate achievement of the same air quality benefits.

With regard to the concerns the commenter raises about the proposed amendments' expansion of the NOx Exempt Area to rural counties and staff's assessment of the potential effects on NOx reductions, as stated on pages 11 and 12 of the ISOR, the economic recovery from the recent recession is not uniform across the State. The 2014 amendments provide additional flexibility for many impacted fleet owners that will help ensure the emissions benefits envisioned by the Regulation will be realized. The amendments will continue to meet the Board's air quality goals while providing additional economic relief to ensure vehicle owners can comply. Urban areas, such as the Bay Area and Los Angeles, are recovering more quickly than rural areas. Due to the slow recovery, rural fleets may have more difficulty complying due to high compliance costs. Under the 2010 version of the Regulation, the likelihood of getting real emission reduction from these fleets would be low. Due to persistent adverse economic conditions, the emission reductions forecast for the existing version of the Regulation was likely not achievable, as discussed in greater detail at page 12 of the ISOR. The amendments provide flexibility to assist these fleets in achieving compliance, thereby protecting the emission reductions that can actually be achieved.

**4.** **Comment:** ARB assumes, without any analysis, that fleet upgrades will not be rolled back as a result of the amendments. Even if ARB had considered the presently existing environmental conditions resulting from the Regulation as adopted (rather than using pre-adoption as a "current" baseline), and assuming, arguendo, that the future baseline ARB analyzed is of no consequence, there remains a defective assumption on the part of ARB that all PM filtration upgrades

and 2010 equivalent replacements are permanent, and would not be rolled back by amending the regulation. ARB fails to consider whether those who have installed PM filters, and would not become exempted by the proposed amendments, would opt to remove or disable those systems. Given the substantial record of complaints regarding PM filter systems, including high maintenance costs, resulting vehicle breakdowns, and reduced performance, ARB should consider whether the proposed amendments would induce those who have already installed PM filtration systems to roll back those upgrades. If that does occur, this will result in a further adverse effect to the environment, reversing gains the Regulation has accomplished to date. (WJHPCA01)

**Agency Response:** Staff disagrees with this comment, which is not supported by any credible facts or evidence. Staff finds it highly improbably that fleets would first incur the expense and downtime of replacing their filter-equipped or otherwise upgraded compliant vehicles and then replace them with non-compliant vehicles that can operate only for the limited period of time provided by the short extensions in the amendments. At the end of these short term extension, fleets must still comply and would have to incur the same expenses to come into compliance again. There are substantial costs incurred when vehicles are bought and sold, such as taxes and fees, which make this scenario of rolling back existing upgrades highly unlikely. Further, buying and selling vehicles requires significant time and resources, time and resources which fleets are more likely to spend improving business rather than to roll back existing upgrades and then to install upgrades again later when the extensions expire. The commenter also suggests (again without evidence) that since fleets could use the amendments to delay compliance, they could opt to remove or disable their emission reduction systems. This could constitute tampering with the vehicles' emission control systems, which is prohibited by law. Also, fleets cannot alter the emission control system without express approval by the Executive Officer of ARB. Since November 2014, when ARB released Advisory MSC 13-28 that explained the forthcoming proposed amendments, staff has not seen the rollbacks suggested by the commenter. Therefore, there is no evidence that this would occur and no evidence supporting a finding of adverse environmental impact resulting from rollbacks of the upgrades fleets have already installed.

5. **Comment:** ARB does not address the effects of market forces resulting from the Regulation and the proposed amendments with regard to 2010 and newer engines. For example, the Regulation has reduced the resale value of pre-2010 trucks in California, given their expected forced regulatory obsolescence. This has the effect of those trucks being sold out of state, and not for use in California. In NOx exempt areas, which do not face the ultimate obsolescence of pre-2010 trucks, the dynamic is considerably different, as a 2009 model, for example, will be available at reduced prices in comparison to the less polluting 2010 and newer models. This effectively induces the use of pre-2010 trucks in NOx exempt areas. The proposed amendments greatly increase the number of NOx exempt areas, and in turn will result in more pre-2010 trucks in service in California – trucks which otherwise may likely have been sold out of state. (WJHPCA01)

**Agency Response:** The staff analysis addresses the economic impact of the amendments compared to the existing regulation. The effect of the original regulation on truck prices was originally discussed in the Staff Report for the 2008 and again in the 2010 amendments, which are incorporated by reference. The effect on number of retrofits installed and trucks replaced each year on a Statewide basis, including changes for NOx exempt areas, is documented in the current Staff Report in Chapter VII, is reflected in the emissions inventory and is reflected in the cost analysis regarding the amendments.

The NOx exempt area extension in the existing regulation only requires PM filters and does not require any upgrades to 2010 engines, in recognition that air quality needs are not the same in all areas of California, are different in certain areas of the State. NOx emissions reductions are not needed in NOx exempt areas, but critically needed to meet federal air quality standards in areas that are non-attainment for ozone; therefore, if fewer vehicles are replaced in these areas, there would be no significant impact on health and would have no impact on meeting air quality goals. The amended regulation expands the number of regions that are designated NOx exempt and extends the existing PM filter phase-in schedule. As noted by the commenter, staff agrees that the added NOx exempt areas in amended regulation could allow more pe-2010 model year engines to remain in the State. To the extent that happens, the amended regulation would result in a bigger market for used trucks in California without jeopardizing air quality needs in those areas. The effect would be to lower compliance costs for owners that operate in the expanded NOx exempt areas who no longer need to upgrade to 2010 engines and expand the used truck market in California, which would result in better prices for owners in other parts of the State that must sell their trucks.

In addition, funding to replace trucks is available for fleet owners located in NOx exempt areas as well as in other parts of the state. The Carl Moyer Program provides funds through the Voucher Incentive Program and local Moyer programs run by the local air districts. The program is designed to achieve cost-effective emission reductions that are earlier and/or in excess of what is required through local, state, and federal regulations. The emission reductions must be creditable toward the SIP. Per statute, applicants must also currently be in compliance with regulations. The Rural District Assistance Program also provides a pooled funding resource to help rural air districts identify and fund cost-effective projects through a combined application and project selection process. Fleet owners that do not meet the requirements of the funding programs can also apply to the state loan program.

**6.** **Comment:** That the proposed amendments will eventually result in the same reductions as the current regulation does not obviate environmental review. (WJHPCA01)

**Agency Response:** Staff has conducted an appropriate level of environmental review and incorporates its responses to Comments 1 through 5 here.

ARB provided an environmental analysis in Chapter V of the ISOR that concluded that emissions from these sources will continue to decline from today's level, and with the amended Regulation, air quality will continue to improve. As indicated in response to Comment 3, the recession reduced fleets' ability to comply, especially for fleets operating in rural areas. Due to compliance costs, these rural fleets need assistance to help them comply and ensure the environmental benefits of the Regulation are achieved. Many of these fleets would likely operate in violation of the Regulation without the amendments, resulting in little emission reductions; the amendments provide a pathway for them to comply. With the amendments, emissions will decline and all air quality goals will be achieved by 2020.

**7.** **Comment:** ARB violated CEQA by implementing the amendments through Regulatory Advisory MSC 13-28, prior to any environmental review. (WJHPCA01)

**Agency Response:** Staff objects to this comment because it is not directed at the CEQA analysis supporting the proposed amendments or to the proposed amendments themselves and no written response is required for this comment under ARB's certified regulatory program or the Administrative Procedures Act. Regulatory Advisory MSC 13-28 is not within the scope of the proposed project (regulatory amendments). The comment about the Advisory, although it raises a CEQA issue, is neither directed at the proposed amendments nor the environmental analysis that supports them. Without waiving this objection, staff incorporates by reference all of it responses to the commenter's other CEQA comments and responds as follows.

Staff notes that Issuance of Regulatory Advisory MSC 13-28 was not an "approval" of a "project" which would trigger CEQA, so no CEQA was required for the advisory. Further, the advisory did not implement the proposed amendments. Regardless of the advisory, the Board retains/retained full discretion to approve or reject staff's proposed amendments at their public hearing and nothing in the advisory precluded full environmental review of the amendments in the 2014 ISOR.

**8.** **Comment:** As part of its analysis, the Board should also request that ARB staff provide a more detailed accounting for all the environmental consequences of the proposed amendments and relaxations. (ESWG)

**Agency Response:** Staff disagrees with this comment and incorporates its General Response to CEQA Comments and its responses to Comments 1 through 6 by reference here. An environmental analysis was prepared by ARB staff and included in the 2014 ISOR at Chapter V, supported by detailed quantitative discussion of changes to emission reductions in Chapter IV. As stated in the ISOR, the amendments do not result in any adverse environmental impacts, including air quality, because emissions from these sources will continue to decline compared to today's existing environmental conditions.

As explained in the ISOR, the amendments will protect the anticipated emissions reductions from the Regulation and will continue to provide four key benefits. First, the amended Regulation will continue to provide NOx reductions necessary to meet State commitments associated with attaining state and federal air quality standards. Second, the goals of the Diesel Risk Reduction Plan will continue to be met by reducing localized health risks associated with exposure to diesel PM. Third, the amended Regulation preserves the reduction in premature mortality caused by exposure to ambient PM2.5. Finally, the amended Regulation continues to provide significant climate change benefits by reducing black carbon emissions. The change in emissions reductions associated with the amended Regulation, including a comparison of the statewide NOx and PM2.5 emissions trends without the Regulation, and a comparison with the projected emissions reductions under the current (2010) version of the Regulation, are described in detail in Chapter IV of the ISOR. The emissions analysis methodology and results are described in Appendix F of the ISOR.

**9.** **Comment:** The ISOR correctly concludes that by 2020 the ton per day contribution of diesel PM2.5 emissions under the proposal will be at the same level as predicted by the current rule. It is also correct that the overall impact on PM reductions is approximately a loss of 7 percent of the reductions under the current regulation in the early years of implementation. Looking at it in terms of the total mass of PM emitted and then the volume of PM emitted as a result of all of the changes to this rule gives a different perspective. What sounds like a benign 7 percent loss of PM reductions equates to 1,350 tons of additional PM emissions over the first five years of the proposed regulation. (MECA01)

**Agency Response:** Staff disagrees with this comment and incorporates its responses to Comments 1 through 8 by reference here. As shown in Table IV-2 of ISOR, staff estimated the NOx and PM emissions benefits would be less with the amendments compared to the existing Regulation ( 2010 version, which was based on the expectation that all fleets comply as required). Staff's analysis shows that around 85 percent of the California-registered heavy trucks are in compliance, as stated on page 8 of Appendix C of ISOR. The remaining 15 percent of the fleets either do not comply or could not afford to comply, and continue to operate their vehicles. The proposed amendments would provide a path for non-compliant fleets to comply at a pace they could manage and would result in real emission benefits from these fleets that we would not expect with the current Regulation as explained on page 12 of the ISOR.

**10.** **Comment:** The lost PM emissions as a result of repeated flexibilities don't stop with the direct health effects. Black carbon emissions are a major component of diesel particulate matter from diesel engines. These lost PM reductions represent a significant climate change co-impact due to the large contribution that black carbon may have on short term global warming as viewed by many leading climate experts (including Dr. Mark Jacobson of Stanford University, Dr. V. Ramanathan of the Scripps Institute at the University of San Diego, and Dr.

Charles Zender of the University of California - Irvine). With a 20 year Global Warming Potential of 2,200 tons of CO2-eqivalent, black carbon is second only to carbon dioxide in its climate impact. The ISOR points out that on a 20-year time horizon, the impact of the proposed changes to the regulation is the equivalent to emitting 3 million tons of $CO_2$, which staff considers as insignificant and within the accuracy of the estimate. This is correct when taken in isolation; however, the cumulative impact of both the 2010 amendments and the 2014 proposed changes to the rule is equivalent to the warming potential of 10 million tons of $CO_2$ emitted. We believe there is a danger in losing the high level perspective when only considering the incremental impact of individual regulatory changes in the cost benefit analysis of a regulation. We encourage the Board to also review the cumulative impact of multiple changes when weighing the benefit of a regulation or the cost of any future amendments to the truck and bus regulation. In addition to the warming impact of black carbon in the atmosphere, black carbon that settles on snow or ice can decrease the reflectivity of the frozen material (a property known as the “snow or ice albedo”), leading to a faster melting rate. This has a special relevance to California because of the state’s reliance on Sierra Nevada snow pack to store water during the wet season and then release it slowly during the spring and summer. Thus, black carbon that settles on the Sierra snowpack can increase the melting rate, overload reservoirs and cause flooding (Barnett T.P., Adam, J. C., and Lettenmaier, D. P., "Potential Impacts of a Warming Climate on Water Availability in Snow-Dominated Regions,"). (MECA01)

**Agency Response:** Staff disagrees with this comment and incorporates its responses to Comments 1 through 9 by reference here. The ISOR explained the potential environmental effects of the proposed amendments in Chapters V and IV. As explained in response to Comments 1 through 9, the estimated decreases in PM emissions projected for the Regulation in 2010 was based on the expectation that all fleets would comply as required. But staff’s analysis shows only around 85 percent of the California-registered heavy trucks are in compliance. The amendments would provide a path for non-compliant fleets to comply at a pace they could manage and would result in real emission benefit from these fleets that we would not expect with the current Regulation. The ISOR provided a specific analysis of GHG emissions, including an explanation of how the Truck and Bus Regulation fits within the scope of the State’s overall greenhouse emission reductions. For climate change, the analysis indicates that the cumulative black carbon (BC) warming benefit for the amended Truck and Bus Regulation for 2010-2025 is about 10.3 and 36.6 MMTCO2e for the 100-year and 20 year time horizons, respectively. The assessment concluded the Bus and Truck Regulation, as modified by the proposed amendments, would continue to lower BC compared to today, and compared to the 2010 version of the regulation, will not significantly impact the cumulative 2010-2025 climate benefits of the Regulation.

11. **Comment:** Despite this significant progress, there are still thousands of older trucks operating in California that need to be cleaned up in order meet regional air

quality standards and reduce local health risks. As such, we strongly urge the board to limit any changes to the Truck and Bus regulation in order to maintain the health benefits of the standards and ensure that existing clean truck investments by California companies are not undermined. This regulation is vitally important to cleaning up California's air and protecting public health. CARB must continue its efforts to ensure that the rule is successfully implemented and that the health benefits are achieved. (COSO)

**Agency Response:** Responses to Comments 1 through 10 are incorporated by reference here. As explained in the ISOR, the amendments will protect the anticipated emissions reductions from the Regulation and will continue to provide the benefits needed to meet regional air quality standards and reduce local health risks. The amended Regulation will continue to provide NOx reductions necessary to meet State commitments associated with attaining state and federal air quality standards. It will also help attain the goals of the Diesel Risk Reduction Plan and preserve the reduction in premature mortality caused by exposure to ambient PM2.5. The amended Regulation also continues to provide significant climate change benefits by reducing black carbon emissions.

12. **Comment:** As an initial matter, the July l , 2014, Notice does not include any data or analysis concerning the potential environmental effects of the 15-Day Changes, including but not limited to, the effect of the extension of the compliance date for the second truck of the Small Fleet Option to 2017, and the additional exemptions for certain agricultural vehicles. Thus, any finding that the proposed modifications do not warrant any further environmental review is not supported by substantial evidence. The July 1, 2014, Notice also suggests that no further environmental review is required because the "modifications are primarily administrative in nature" (See July 1, 2014, Notice at 2). While some of the proposed modifications could be characterized as "administrative," other modifications contemplated in the 15-day changes are substantive in nature, including but not limited to the extended compliance date for the second truck of the Small Fleet Option to 2017, and the additional exemptions for certain agricultural vehicles. To the extent ARB Staff's environmental determination is based upon this statement, such statement is factually inaccurate, and not supported by substantial evidence. (WJHPCA02)

**Agency Response:** Staff disagrees with these comments. As stated in the July 1, 2014, 15-day notice, the revisions reflected in the modified regulatory language do not change the compliance responses to the Regulation in a way that alters the conclusions of the environmental analysis included in the ISOR released on March 5, 2014. The noticed modifications to regulatory language consist primarily of clarifications to definitions and regulatory provisions, changes to provide consistency and improved readability. It also includes the modifications directed by the Board at the public hearing on April 24-25, 2014, including revising the language regarding cattle livestock trucks in coordination with affected stakeholders and improving enforceability of the economic

hardship extension. These modifications discussed at the Board hearing, and directed by the Board to be carried out by staff through the 15-day notice process required by the Administrative Procedures Act, do not alter any of the conclusions about the environmental impacts of the amendments, and therefore, no additional environmental analysis was required. There is no evidence in the record supporting a finding that the 15-day modifications would result in any adverse environmental impacts. The commenter does not cite any evidence in the record, nor provide any evidence, indicating any adverse environmental impacts result from the revisions that trigger additional environmental review.

With regard to the extended compliance date for the second truck of the Small Fleet Option from 2016 to 2017, staff's presentation at the hearing at slide 16 quantified the estimated change in emission benefits at a statewide level caused by this modification. Staff's conservative estimate is .4 tpd for PM and 5 tpd for NOx for the year 2016 only. This was a conservative estimate because, as stated at the hearing, staff expects the change in emission reductions projected for this modification would be partially offset by the newly created incentive funding opportunity.

This change in emission benefits does not affect the conclusion in Chapter V that emissions will continue to decline and air quality will continue to improve compared to the existing present condition baseline used for purposes of CEQA. Response to comment 2 is incorporated by reference here.

Further, this change does not significantly alter the quantified environmental benefits of the Regulation, and the amended Regulation would continue to provide the NOx reductions necessary to meet State commitments associated with attaining state and federal air quality standards, the reductions needed to achieve the goals of the Diesel Risk Reduction Plan, and achieve reductions to reduce localized health risks associated with exposure to diesel PM. Finally, the Regulation as amended (including the extended compliance date for the second truck of the Small Fleet Option from 2016 to 2017) continues to provide significant climate change benefits by reducing black carbon emissions. To the extent that the commenter is suggesting that a slower rate of accrual of air quality benefits from the Regulation in the first few years (from 2014 to 2018) constitutes an adverse impact on the environment, please refer to response to Comments 2 and 3 for more detailed explanation about ARB's purpose for quantifying changes to emissions benefits and why that change is not a significant adverse impact on the environment under CEQA.

13. **Comment:** The Executive Officer is prohibited from making environmental determinations regarding the 15-Day Changes; rather, any such determination must be made by the Air Resources Board itself. Because the Board has already approved modifications to the Truck and Bus Rule, the Executive Officer may not complete the environmental review process, or make environmental determinations on the 15-Day Changes. As such an action would constitute an impermissible

splitting of decision making authority under, *inter alia*, *POET v. California Air Resources Board* (2013) 218 Cal.App.4th 681 ("POET"). (WJHPCA02)

**Agency Response:** Staff disagrees with this comment.

First, the Executive Officer has exercised his discretion to bring the Final Regulation Order for the amendments to the Truck and Bus Regulation back to the Board for final adoption since there were several changes requested at the hearing that required subsequent modified regulatory language to be issued for public comment. The Board is also being presented with the written responses to this comment letter received during the 15-day comment period, even though not legally required because the environmental analysis was not revised and recirculated for additional comment during the 15-day period. As explained above, the environmental analysis was not revised or recirculated because the modifications did not alter any of the conclusions of the environmental analysis included in the 2014 ISOR. Even though not legally required, the Board will be provided the opportunity to reaffirm its prior CEQA findings and approve these written responses to comments when it considers the Final Regulation Order for final adoption. Therefore, there is no split in any part of the process between the Board and the Executive Officer.

Nonetheless, even if the Executive Officer had taken action to adopt the finalized regulation, there would be no splitting of the CEQA process. The environmental review process was complete, and the Board made all the required CEQA determinations, when it voted to approve the amendments in April 2014. The revisions to the amendments released in the July 15-day change notice were presented to the Board at the hearing on April 24, 2014, along with staff's conclusion that these modifications were projected to only insignificantly affect the emission benefits projected for the Regulation. The modifications did not otherwise alter any of the conclusions of the environmental analysis included in the ISOR. The Board considered the amendments, with the modifications presented at the hearing, the changes to emission benefits presented, along with the environmental analysis in the ISOR, comments on the environmental analysis, and staff's written responses to those environmental comments, when it made its finding that the amendments would not result in any adverse environmental impacts in Resolution 14-3. In the resolution, the Board directed the Executive Officer to issue the modified regulatory language presented at the hearing, which was developed after the initial 45-day proposal was published, in one or more 15-day change notices as required by the Administrative Procedures Act, and then adopt the final regulation order that would reflect these modifications. If the modifications were later found to affect the conclusions of the environmental analysis relied upon by the Board for its approval, the Executive Officer would bring the item back to the Board for further consideration. That way, the Board, as the decision maker, could consider any changes to the environmental analysis. Contrary to the commenter's assertion, the Executive Officer was not authorized to make any CEQA determinations other than whether to bring the item back to the Board for further consideration. This back-stop provision directed the Executive Officer to bring the item back to the Board in the event that during the 15-day notice period staff received comments that raised new

environmental issues that staff determined should be addressed and presented to the decision making Board. Otherwise, the Executive Officer could proceed to carry out the ministerial task of adopting the final regulation order that reflects the amendments approved by the Board. Contrary to the commenter's assertions, the Executive Officer was not directed to "complete the environmental review process" and there was no splitting of the CEQA process. The resolution also directed the Executive Officer to bring the item back for final adoption "if warranted" – indicating the item may be brought back to the Board for final action at the Executive Officer's discretion for reasons not related to CEQA.

The facts here are clearly distinguishable from those in the case *POET v. California Air Resources Board* (2013) 218 Cal.App.4th 681 ("POET"), cited by the commenter. In POET, the court found the Board's approval of the LCFS regulation occurred *before* the environmental review process required by ARB's certified program was complete because the Executive Officer had been delegated the duty to approve written responses to environmental issues (17 CCR 60007; *Id*. at p. 726). That is not the case here because, as explained above, the Board approved written responses to environmental comments, made a CEQA finding of 'no impacts,' and approved the amendments to the Truck and Bus Regulation. Unlike the facts in POET, no part of the CEQA process was delegated to the Executive Officer because the Board had already completed the entire CEQA review process for the entirety of the amendments presented to them for approval (45-day day language and modifications presented at the hearing). Unlike the facts relied upon by the court in POET, here the responsibility to complete the environmental review was not separated from the authority to approve or disapprove the project (*Id*. at 731). The completion of the environmental review process and the approval of the amendments to the Truck and Bus Regulation both occurred at the April, 24, 2014 Board hearing. The back stop provision in the Board resolution ensured that if any changes occurred before the regulatory package was submitted to the Office of Administrative Law for review and approval that could alter the conclusions of that CEQA process completed by the Board, the Executive Officer would bring the item back to the decision making Board for further action.

14. **Comment:** The environmental impacts of the 15-Day Changes and the modifications considered at the April 24, 2014, hearing should be analyzed together, and considered as part of the same approval. By splitting the environmental review into separate phases, and having the Executive Officer consider the environmental impacts of the 15-Day Changes, ARB is impermissibly piecemealing environmental review. The "requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences" (Envt'l Prot. Info, Ctr. V. Calif. Dept. of Forestry & Fire Prot. (2008) 44 Cal.4th 459, 503). (WJHPCA02)

**Agency Response:** Staff disagrees that the environmental review was been split into separate phases, "piecemealed," or "chopped" into different pieces. As explained

above, the regulatory language for the proposed amendments published for the 45-day comment period in March 2014, and the proposed modifications to the 45-day regulatory language developed after the publication of the 45-day notice, were all presented to the Board at the hearing on April 24-25, 2014. Staff also presented their assessment of the potential for environmental impacts associated with proposed amendments as a whole (both the published 45-day language and the additional modifications presented at the hearing). The additional modifications presented at the hearing caused only a small change in the projected emission benefits. That change in emission benefits was quantified on slide 16 in the presentation provided at the hearing. Please refer to response to Comment 12 for a more detailed explanation of this change to emissions benefits. None of the other modifications discussed at the hearing affected any of the conclusions about air quality described in the 2014 ISOR. The Board considered the proposed amendments (both the 45-day language and the modifications) and the air quality analysis provided in the ISOR, along with the changes to emission benefits explained on slide 16, when it made its finding (in Resolution 14-3) that the amendments would not result in any adverse environmental impacts. Therefore, the Board made all the required CEQA determinations for the proposal when it voted to approve the amendments. The Board also considered and approved written responses to environmental comments received during the public review period provided for the environmental analysis (March 7, 2014 through April 21, 2014 as published in the official notice posted on ARB's website on March 5, 2014 and broadly distributed by list serve). Therefore, the environmental review process was complete when the Board voted to approve the amendments in April 2014.