

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC**

**IN RESPONSE TO
NOTICE OF PETITION FOR DETERMINATION
REQUEST FOR COMMENTS**

[FMCSA Docket No. FMCSA-2010-0387]

**Identification of Interstate Motor Vehicles: the Port Authority of New York and New
Jersey's Drayage Truck Registry Sticker Display Requirements**

**JAMES JOHNSTON
President
Owner-Operator Independent
Drivers Association, Inc.**

December 30, 2010

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

I. INTRODUCTION

These comments are submitted by the *Owner-Operator Independent Drivers Association, Inc.* (“OOIDA” or “Association”) in response to a notice of petition for determination and request for comments published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”), Docket No. FMCSA-2010-0387, 75 Fed. Reg., No. 232, at 75540 (Dec. 3, 2010) responding to a petition filed by the New Jersey Motor Truck Association (“NJMTA”) asking FMCSA to declare a sticker display requirement imposed by the Port Authority of New York and New Jersey (“PANYNJ” or “Port Authority”) to be pre-empted by federal law.

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. The Association’s address is P.O. Box 1000, 1 NW OOIDA Drive, Grain Valley, Missouri 64029. OOIDA is the largest international trade association representing the interests more than 153,000 independent owner-operators, small-business motor carriers, and professional drivers located in all 50 states and Canada who collectively own and operate more than 200,000 individual heavy-duty trucks and small truck fleets. Such small-business truckers have a significant presence in the trucking industry, with one-truck motor carriers representing nearly half the total number of active motor carriers in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks.

The Association actively promotes the views of small-business truckers through its interaction with state, provincial, federal government agencies, legislatures, the courts, other trade associations, private businesses, and in numerous committees and other forums on the

local, state, national, and international levels. OOIDA is responding here because allowing the PANYNJ – even under the dubious moniker of “voluntary” – to require commercial motor vehicles (“CMVs”) engaged in interstate commerce to display a sticker indicating compliance with a local port tariff affects every OOIDA member who transgresses Port Authority property.

II. SUMMARY

This Petition for Determination was initiated because of the PANYNJ’s attempt to require motor carriers to display a sticker on their trucks that identifies those vehicles as being in compliance with a port tariff banning vehicles of a certain age from registering in the Port Authority-administered Drayage Truck Registry (“DTR”). OOIDA believes that FMCSA’s decision on this petition needs to be consistent with two recently-issued determinations that such credentialing schemes, regardless of the intentions underlying them, are a violation of Section 4306 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”). SAFETEA-LU prohibits agencies of two or more states, like the Port Authority, from requiring motor carriers “to display any form of identification on or in a commercial motor vehicle. . . other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.” 49 U.S.C. § 14506(a). As discussed below, it is not a meaningful distinction that the Port Authority has attempted to evade the statutory prohibition by amending the illegal tariff provisions to describe the sticker as technically “voluntary.” Further, claims that these illegal credentialing schemes may be justified under the statutory exemption for “appropriate” state or local credentialing requirements are more appropriately addressed to Congress.

While FMCSA has asked commenters to limit their responses to the issue of whether the PANYNJ sticker requirement is a violation of federal law, OOIDA does not believe that this

requirement can be artificially isolated in this manner. PANYNJ's sticker requirement is just one of a number of state and port initiatives being considered or already being imposed on motor carriers operating in interstate commerce that are *de facto* re-regulation of the trucking industry under the guise of compliance with environmental restrictions. If the PANYNJ requirement is allowed to stand, it is not unreasonable to expect a greater proliferation of unique credentialing requirements that impede interstate commerce at ports nationwide. OOIDA believes FMCSA needs to promptly act to halt this broader problem being faced by interstate motor carriers and, in so doing, must also recognize that the issue is not limited to "stickers" but also includes mandated use of Radio Frequency Identification ("RFID") technology in lieu of stickers.

III. COMMENTS OF THE ASSOCIATION

A. Congress intentionally prohibited this sort of unique credentialing requirement.

Previous state laws that lead to multiple license plates, fuel decals and other paper forms required to be carried on-board a CMV engaged in interstate commerce have historically sparked multiple legal challenges from the trucking industry. Often, those requirements were found by courts to be unconstitutional or otherwise illegal. Congress understood well the inefficient, cumbersome, and expensive costs to the free movement of goods movement within the U.S. from these types of restraints on the trucking industry.

Congress responded to these barriers to interstate commerce by adopting Section 4306 of SAFETEA-LU which, as quoted above, prohibits unique state and local CMV credentialing requirements. 49 U.S.C. § 14506(a). Congressional intent was clear in passing Section 4306. It essentially prohibited differing non-federal jurisdictions from requiring CMVs operated in interstate commerce from displaying anything but certain widely used forms of credentialing approved by the Secretary and deemed "appropriate." Examples of appropriate and approved

displays are an International Reciprocity Plan (“IRP”) base plate, International Fuel Tax Agreement (“IFTA”) decal or Unified Carrier Registration (“UCR”) permit. *See, e.g.*, 49 U.S.C. § 14506(b).

Of course, Section 4306 is not a complete ban since the Secretary is allowed by SAFETEA-LU to permit a particular state or local display if deemed “appropriate.” Neither the statute nor the legislative history provides much direct guidance on what should be deemed “appropriate.” 49 U.S.C. § 14506(b)(3). But the lack of an explicit definition does not mean that the term “appropriate” has *any* possible meaning. The meaning of an ambiguous phrase or word in a statute can be determined from its legislative and statutory context. As discussed more fully in OOIDA’s December 03, 2010, Petition Seeking a Determination that Drayage Truck Registries Established by Port Authorities Are Preempted by Federal Law (the “OOIDA Petition”), which is attached as an addendum hereto, this particular provision is located in Subtitle C of SAFETEA-LU, which was specifically intended to “put an end to the single state registration system (SSRS) and the myriad of related credentialing requirements imposed upon motor carriers by various states. . . .” Interpreting the discretionary authority granted the Secretary to approve state and local credentialing requirements in a broad manner to include the PANYNJ sticker and comparable requirements would clearly be contrary to this Congressional purpose. Further, as also discussed in the OOIDA Petition:

Since this discretionary authority is not stated as a separate sixth exception to preemption, however, but is instead included as an add-on to this particular exception related to motor vehicle license plates, basic rules of statutory construction would lead to the conclusion that other appropriate displays must be in the nature of or related to motor vehicle license plates. Indeed, this wording calls for the application of the maxim *ejusdem generis*, the statutory canon that “[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001), *citing* 2A N. Singer, Sutherland on Statutes

and Statutory Construction § 47.17 (1991); *Washington Dep't of Social Servs. v. Keffeler*, 537 U.S. 371, 384 (2003).

Applying this principle, it should reasonably be found that an “appropriate” display in this case means something akin to a motor vehicle license plate and other credentials listed in the exception under § 14506. The PANYNJ sticker requirement does not fit within that category. Rather, it is precisely the form of identification Section 4306 was meant to prohibit.

B. The use of compliance stickers, as a practical matter, is not “voluntary”.

In two recent decisions, the FMCSA has invalidated various state and local credentialing requirements under Section 4306 of SAFETEA-LU notwithstanding the statutory authority granted DOT to approve “appropriate” state and local requirements. *See* Identification of Interstate Motor Vehicles: New York City, Cook County and New Jersey Tax Identification Requirements; Petition for Determination, Docket No. FMCSA-2009-0271, 75 Fed. Reg. 64779 (Oct. 20, 2010), *and* Identification of Vehicles: Oregon Department of Transportation Tax Credentials; Petition for Determination, Docket No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (March 6, 2007). OOIDA believes that the reasoning of those decisions should be applied directly in this case to achieve a uniform result.

In an October 21, 2010, letter supplied to FMCSA Administrator Ferro by the PANYNJ in response to the involved Petition for Determination, the Port Authority attempts to distance its actions from those other cases on the basis that its sticker indicating compliance with DTR registry requirements is allegedly “voluntary.” However, in the very same letter the Port Authority undermines its own argument by citing from Subrule 34-1090 of its tariff, which states that “...*if* used as instructed, a voluntary compliance sticker *will facilitate and expedite* a drayage truck’s transit onto, through and out of Port Authority Terminals.” That statement does not indicate a meaningful choice but a none-so-subtle form of overt coercion to ensure compliance

under the penalty of substantial delays and waste of a driver's limited on-duty time with more burdensome and inefficient alternative compliance procedures. Under the circumstances, use of a sticker is the only rational choice and is as a practical matter mandatory; non-use simply is not a realistic option.

C. Port Drayage Truck Registries Are Also Preempted by the FAAAA.

The PANYNJ has joined a growing group of ports nationally that have adopted DTR strategies purportedly designed to improve air quality surrounding the day-to-day operations of the ports. While outside the scope of this particular Petition for Determination, OOIDA believes many port authorities that are duplicating these initiatives which originated on the west coast are not just violating Section 4306 of SAFETEA-LU with unique credentialing requirements but also violating the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c), by the mere establishment of mandatory registries for trucks engaged in interstate commerce. Specifically, the FAAAA provides in clear and unequivocal terms that a state, political subdivision of a state, or political authority of two or more states,

may not enact or enforce a law, regulation, or other provision having the force and effect of law, related to a price, route, or service of any motor carrier...with respect to the transportation of property.

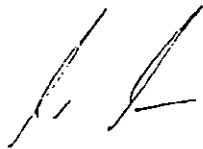
While FMCSA may be reticent to be drawn into a discussion here regarding the validity of DTRs overall in connection with this credentialing issue, and would rather make a "preemption determination on the substantive provisions of the DTR as a separate matter," (75 Fed. Reg. at 75541), the failure by the Agency to appropriately address this ancillary issue in connection with PANYNJ sticker requirements seriously compromises its decision making on this issue. To fully inform FMCSA of our position on this issue without setting it out fully here and to repudiate erroneous representations in justifying illegal requirements by various port authorities during the

reply comment period, OOIDA is submitting as an addendum to these comments the Dec. 03, 2010 OOIDA Petition filed with DOT regarding this precise matter.

IV. CONCLUSION

Consistent with its previous determinations on the credentialing issue, FMCSA should preclude the PANYNJ from requiring CMVs engaged in interstate commerce, as a practical matter, to display a unique port-issued compliance sticker, regardless of their intention underlying the requirement. FMCSA should also make clear that requiring an RFID tag instead of a sticker is also impermissible. OOIDA also asks FMCSA to consider, at the same time, issuing a broader interpretation related to the permissibility of requirements that trucks engaged in interstate commerce must register in port or state sponsored DTRs.

Respectfully submitted,



JAMES JOHNSTON
President
Owner-Operator Independent
Drivers Association, Inc.

December 30, 2010



December 3, 2010

Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: Petition Seeking a Determination that Drayage Truck Registries
Established by Port Authorities or State Environmental Agencies Are Pre-
empted by Federal Law

Dear Secretary LaHood:

The Owner-Operator Independent Drivers Association, New Jersey Motor Truck Association, and Port Drivers Federation 18 (jointly "Petitioners") hereby petition the Department of Transportation ("DOT") for a determination that mandatory drayage truck registries implemented by various ports and the California Air Resources Board ("CARB") are preempted by Section 209(c) of the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c). Further, because truck owners typically are required to place some type of identification on their trucks to evidence registration, Petitioners also request a determination that additional identification requirements imposed through the use of registries are prohibited by Section 4306 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"), 49 U.S.C. § 14506(a).

Petitioners

The Owner-Operator Independent Drivers Association is a non-profit trade association representing approximately 153,000 owner-operators, small-business motor carriers, and professional truck drivers who operate more than 200,000 trucks in all 50 states and Canada, on all issues affecting their operations. Such small-business motor carriers have a significant presence in the trucking industry. Indeed, one-truck motor carriers represent nearly half of all active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks.

The New Jersey Motor Truck Association (NJMTA) was founded in 1914 to protect and promote the interests of the New Jersey trucking industry. The association represents

more than 500 fleets operating in New Jersey that employ well over 40,000 people, as well as, 200 Allied Members that serve the trucking industry. Our mission is to foster and promote sound economical and efficient service by motor carrier transportation; to promote safety and courtesy in highway transportation; to foster and support beneficial laws and regulations affecting the motor carrier industry; and to engage in any and all activities that will advance the interests of highway transportation and highway users generally.

The Port Drivers Federation 18 is a non-profit trade association representing the interests of approximately 1,000 members, independent owner-operators who primarily lease their trucks to motor carriers operating on and off the property of the Port Authority of New York and New Jersey.

In sum, each of the Petitioners has members that transport freight, on a regular or intermittent basis, via heavy-duty trucks to and from the nation's ports and/or rail yards. Accordingly, these increasing numbers of truck registries and the associated identification requirements have a significant and burdensome effect upon their members' operations. Those operations are defined as interstate commerce.

DISCUSSION

1. The Involved Drayage Truck Registries.

The Petitioners recognize that it is important for the United States, acting through various governmental entities, to take steps to reduce the levels of harmful emissions from all motor vehicles, including heavy-duty diesel trucks and engines (jointly "heavy-duty trucks" or "trucks"). They support the use of inspections and other common enforcement mechanisms that might help ferret out non-compliant trucks. Thus, the sole objection raised here by Petitioners is to the proliferation of mandatory state or port-specific truck registries and associated credentialing requirements that are being imposed to facilitate the legitimate components of state/port emission reduction programs.

Emissions-related drayage truck registries originated in California in 2007. Although all heavy-duty trucks entering California must eventually comply with emission standards set forth in other CARB regulations, standards that are stricter than the federal standards imposed by EPA,¹ CARB implemented a drayage truck registry ("DTR") imposing even

¹ Under the Clean Air Act, the EPA sets national emissions standards for new motor vehicles and motor vehicle engines. 42 U.S.C. § 7521. However, because California already had such emission standards in place when EPA stepped into this arena, that state, acting through the CARB, can and has applied for waivers that have allowed California to adopt and enforce more stringent emission standards. 42 U.S.C. § 7543(b). While other states may not adopt their own unique emission standards, a state with an EPA-approved state implementation plan (SIP) is permitted to adopt either the EPA or California standards. 42 U.S.C. § 7507.

stricter emissions limitations on the subset of heavy-duty trucks serving California's intermodal freight facilities, including ports and rail yards. See Exhibit A, Cal. Code Regs., Title 13, § 2027. The stricter emissions standards apply to trucks serving ports or intermodal rail yards, whether the trucks are based inside or outside of California, and whether they serve those facilities regularly or on a very infrequent and irregular basis.

CARB chose to implement its stricter drayage truck standards through a mandatory requirement that heavy-duty trucks must register in order to serve the state's ports and rail yards.² *Id.* at § 2027(d) (5) (A) 3 & (e) (1) (A)&(B). However, certain older model engines as well as trucks that have not been retrofitted with specified emissions control equipment are prohibited from registering and, accordingly, cannot be dispatched to those facilities.³ *Id.* at § 2027(d)(5) (A)2&3. Further, CARB makes labels evidencing registration available to registrants.⁴ See CARB's DTR fact sheet (5/13/09), at www.arb.ca.gov/msprog/onroad/porttruck/dtrfactsheet.pdf. Thus, the registry is not used simply to keep track of trucks serving ports or rail yards. Rather, it is a tool created and used primarily to prevent whole classes of trucks equipped with engines that otherwise comply with federal or even California's own statewide emission standards for heavy-duty trucks from entering these facilities.

The Ports of Los Angeles and Long Beach have created their own drayage truck registry ("PDTR"). Port of Los Angeles Tariff No. 4, Items 2025; Port of Long Beach Tariff No. 4, Rule 34-J, Item 1025. See Exhibit B. With limited exceptions, these two ports have required truckers serving these particular ports to register and then affix a radio frequency identification device ("RFID") or individually numbered compliance labels to their trucks. Port of Los Angeles Tariff No. 4, Items 2005-2020; Port of Long Beach Tariff No. 4, Rule 34-J, Item 1000; see also: www.portoflosangeles.org/ctp/ctp_non_container.asp; www.polb.com/civica/filebank/blobload.asp?BlobID=6444; www.polb.com/news/displaynews.asp?NewsID=660&TargetID=24. As with the statewide registry, these localized port registries implement a progressive ban on older trucks equipped with non-compliant engines or trucks without suitable retrofits for emissions purposes.

² Violations of the emission standards are also enforceable through field inspections and audits of drayage activity and dispatch reports, and violations are punishable by civil and criminal penalties. *Id.* at § 2027(d) (5)5.(e)(3).(g).(h).

³ All trucks older than 1994, plus 1994-2003 trucks that have not been retrofitted with specified emissions control equipment, are not allowed to register. *Id.* at § 2027(d) (1). Model year 2004 through 2006 trucks must be retrofitted at future dates to maintain their registration, and trucks must meet 2007 engine emission standards to be registered after the end of 2013. *Id.* at § 2027(d)(1)&(2).

⁴ When CARB tried to incorporate a mandatory label requirement into the state-wide DTR, OOIDA informed them of the legal problems with such a requirement and CARB eventually backed away from mandating the unique credential.

Ports in other states have begun emulating the truck registration systems originating in California. For example, the Port Authority of New York and New Jersey (“PANYNJ”) has recently incorporated a DTR requirement into its tariff. See Exhibit C, Section G of the Port Authority Marine Terminal Tariff FMC NO. PA10, Oct.15, 2010 (“NY/NJ DTR”). This plan too phases out older trucks by requiring all trucks intending to serve those ports to register and prohibiting certain classes of trucks from registering based upon their model year of engine. *Id.* at Subrule 34-1100 & 34-1130. Similarly, the PANYNJ issues what it calls “Voluntary Compliance Stickers,” which allow registrants to enter, travel through, and exit the port facilities without the burdensome and time-consuming compliance inspections that would otherwise be conducted by Port Authority Police to determine compliance. *Id.* at Subrule 34-1090 & 34-1110. The Port of Seattle too has created a similar registry (“Seattle DTR”). See Exhibit D, Port of Seattle Tariff No. 5, Item 9000. However, at this port the posting of a “Green Gateway” sticker identifying a vehicle as being registered and qualified to enter a port terminal is mandatory. See: www.portseattle.org/downloads/seaport/DTR_Flyer_20100827.pdf. Port authorities throughout the country have faced considerable political pressure to emulate registry programs that originated in California.

Petitioners believe that the mandatory drayage truck registry systems adopted by the various ports and CARB with the associated identification requirements are pre-empted by federal law. More specifically, the progressive bans on certain groups of trucks equipped with older engines results in a regulatory regime that impacts the “price, route, or service” offered by motor carriers in violation of the FAAAA. The associated truck RFID or labeling requirements are essentially credentialing requirements violating the SAFETEA-LU’s prohibition on the adoption or enforcement of any state or local provision that requires motor carriers to display any form of identification other than those specifically required by the Federal Motor Carrier Safety Regulations.

II. State/Port Drayage Truck Registries That Contain Progressive Truck Bans Are Preempted by the Federal Aviation Administration Authorization Act.

In their zeal to reduce pollution at port facilities, both the ports and CARB have run afoul of the FAAAA, codified at 49 U.S.C. § 14501(c). The FAAAA provides in clear and unequivocal terms that a state, political subdivision of a state, or political authority of two or more states,⁵

may not enact or enforce a law, regulation, or other provision having the force and effect of law, related to a price, route, or service of any motor carrier. . .with respect to the transportation of property.

⁵ A port authority is a special-district governmental or quasi-governmental public authority that owns and/or controls the land and activities at a port. As such, the involved ports are subject to the FAAAA as political subdivisions of a state or, in the case of the PANYNJ, a political authority of two states

Congress enacted the FAAAA's motor carrier pre-emption provision to ensure that the substantial deregulation of the trucking industry accomplished through reduced federal government intervention in interstate trucking was not replaced by a patchwork of inconsistent state laws and regulations. Such a plethora of laws would not only place an undue burden on motor carriers engaged in interstate commerce, but would also prevent competitive market forces from shaping the offerings of motor carriers.

To keep states from getting around this pre-emption with carefully worded, less direct legal pronouncements, the FAAAA's pre-emption provision has been broadly interpreted to go beyond purely economic regulations to include any provisions that have a "connection with, or reference to" motor carrier pricing, routes, or services. See *Rowe v. New Hampshire Motor Transport Ass'n.*, 552 U.S. 364 (2008) citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992). There need only be "more than an indirect, remote, or tenuous effect" on prices, routes, or services for preemption to arise. *ATA v Los Angeles*, 559 F.3d 1046 (9th Cir. 2009), citing *Tocher v. Santa Ana*, 219 F.3d 1040 (9th Cir. 2000). As explained by President Clinton in his statement accompanying the signing of this law, the provision pre-empts any state "controls on who can enter the trucking industry within a State, what they can carry and **where they can carry it**, and whether competitors can sit down and arrange among themselves how much to charge shippers and consumers." (Aug. 23, 1994) (emphasis added).

The proliferation of drayage truck registries with the associated progressive truck/engine bans is precisely the type of state and local interference with trucking that the FAAAA was meant to eliminate, because such registries have a significant direct impact on motor carrier pricing, routes, or services. First, such registries directly impact the "service" provided by motor carriers to the extent that they prevent carriers from serving a particular port absent registration with that port. The need to register all trucks and keep that registration up to date as trucks join and leave fleets places a real paperwork burden on all carriers, even regional or local motor carriers that regularly serve only a limited geographic area surrounding a particular port. The burden is especially troublesome for motor carriers whose trucks travel throughout the entire country on irregular routes. Those motor carriers will have to register with each and every mandated registry just to be certain that they will be able to accept cargo to and from those locations. Additionally, carriers operating trucks that are too old to be registered will have to entirely stop serving ports that condition access upon registration. It is difficult to imagine a greater and more direct impact on the "service" provided. The same progressive ban on registration will also force motor carriers whose trucks are now, or in the future will become, non-compliant to avoid any "route" that includes those same ports.

Of course, carriers can avoid these service and route limitations by retrofitting older trucks or purchasing newer trucks. But retrofits and new trucks cost money that in the current economic climate with low (or no) profit margins is difficult to generate. Thus, any

increased operational costs from these mandates will undoubtedly be passed through to shippers, increasing the “price” of transportation. Also, the number of in-use trucks qualified to serve these types of public facilities will be substantially reduced as a result of the truck bans. While it cannot be determined exactly how many trucks will be affected over time by the truck bans, it is clear that the number will be significant. According to the statistics recently gathered by the Port of Seattle, approximately 25 percent of the truck fleet serving that port predates 1994. Statistics compiled by the PANYNJ show approximately 15 percent of the trucks serving those ports predate 1994. *See A Clean Air Strategy* report (dated Oct. 21, 2009), at Figure 2 & Table 4. *Age Analysis of Drayage Trucks Operating at the Port of Seattle* (Aug. 2007), at Tables 1&2. Unless there is now a surfeit of trucks serving these ports, the impact of such a reduction in qualified trucks will be felt immediately.

The long-term effect is a bit more speculative, as it is uncertain what percentage of trucks will be retrofitted or replaced before the long-term bans eliminating trucks with engines that do not meet the 2007 model year standards are adopted (2014 at California ports, 80 percent by 2015 and 100% by 2017 at Seattle, and 2017 at the NY/NJ Port). It is likely, however, that the percentages of trucks being disqualified from serving those ports will be much higher. We say this because, if trucks currently serving the PANYNJ or Port of Seattle regularly that are more than 10 years old were banned, which is the time-frame for the 2017 ban of pre-2007 trucks, 60 percent of all trucks now serving that port would be denied entry. *See id.*

Importantly, these CARB or port-imposed registration requirements cannot escape pre-emption simply because they are meant to promote legitimate public health concerns. To the contrary, in *Rowe v. New Hampshire, supra*, even though the Supreme Court acknowledged the state’s valid public health interest in preventing underage smoking, the Court held that a state law adopted in an attempt to stop the delivery and sale of cigarettes to minors was pre-empted by the FAAAA because it was directed at “services” offered by motor carriers. As noted by the Court in reaching this conclusion, the FAAAA expressly excludes certain matters such as vehicle safety, liability insurance requirements, and local route controls from the scope of preemption, but does not contain a public health exception. *Id.*; *see also* 49 U.S.C. § 14501(c) (2) (exceptions to preemption); *cf. ATA v. Los Angeles, supra* (exception covers regulations that are genuinely responsive to safety concerns).

III. Truck Identification Requirements Associated With Truck Registries Are Credentialing Requirements Preempted by SAFETEA-LU.

As described above, each of the DTR programs implemented by ports incorporate some form of identification to be placed on the truck that evidences compliance with the relevant emission standards and registration requirements. Several ports make the use of

RFID devices or identifying stickers mandatory. Other ports make some type of credential (usually compliance stickers) available to registrants to be used at their option. In those cases, however, the use of that identifier makes entry onto and travel around the port facilities substantially easier than it would be without the credential. Uncredentialed trucks, even if not totally banned, will be subject to inspections or other burdensome administrative procedures not required of registered and credentialed trucks. The difficulties encountered in the absence of the stickers, as a practical matter, makes their use mandatory. Accordingly, all of these identification requirements are pre-empted by Section 4306 of the SAFETEA-LU, codified at 49 U.S.C. § 14506. That provision prohibits states, local governments, and agencies of two or more states, from enacting or enforcing any provision having the force of law requiring motor carriers “to display any form of identification on or in a commercial motor vehicle. . . other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.” 49 U.S.C. § 14506(a).⁶

There are five statutory exceptions to this broad prohibition. 49 U.S.C. § 14506(b). Four of them are tied to credentials permitted by other statutory schemes, e.g., the International Registration Plan under 49 U.S.C. § 31704; the International Fuel Tax Agreement under 49 U.S.C. § 31705; hazardous materials transportation requirements under 49 U.S.C. § 5103; and federal vehicle inspection standards under 49 U.S.C. § 31136. Clearly, none of those exceptions apply here.

The remaining exception, and the only one that could conceivably apply to the RFID, sticker, or comparable identification requirements at issue here, without any statutory citation excepts “a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate.” What “other displays” might be deemed “appropriate” is not further explained. Since this discretionary authority is not stated as a separate sixth exception to pre-emption, however, but is instead included as an add-on to this particular exception related to motor vehicle license plates, basic rules of statutory construction would lead to the conclusion that other appropriate displays must be in the nature of or related to motor vehicle license plates. Indeed, this wording calls for the application of the maxim *ejusdem generis*, the statutory canon that “[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001), *citing* 2A N.

⁶The referenced section 390.21 of the Federal Motor Carrier Safety Regulations precisely describes the size, shape, and location for the following required markings which must be placed on the truck: the motor carrier’s name as listed on the motor carrier identification report (Form MCS-150), the identification number issued by FMCSA preceded by the letters “USDOT,” and if the operating carrier is different than the owner, that carrier’s name and identification number preceded by the words “operated by.”

Singer, Sutherland on Statutes and Statutory Construction § 47.17 (1991); *Washington Dep't of Social Servs. v. Keffeler*, 537 U.S. 371, 384 (2003).

Narrowing the scope of the discretionary authority in this manner would also appear warranted given the origin of this pre-emption provision. Subtitle C of SAFETEA-LU, where this provision is located, is the Unified Carrier Registration Act, the legislation that put an end to the single state registration system (SSRS) and the myriad of related credentialing requirements imposed upon motor carriers by various states (e.g., multiple license plates and fuel tax decals). Since Congress's intent was to get rid of the state requirements that had previously interfered with the free flow of goods between the states and burdened interstate operations with paperwork requirements that could drive up transportation costs, it seems improbable that it meant to give the Secretary unbridled authority to approve any credentialing "displays." On the other hand, limiting the discretion to approval of other forms of identification that serve the same function as motor vehicle license plates is consistent with and furthers the legislative intent.

Importantly, the motor vehicle license plates exception has been read narrowly by the DOT's Federal Motor Carrier Safety Administration ("FMCSA"), when confronted with industry credentialing challenges. Only last month, the FMCSA found that tax-related license plates, certificates, stamps, and window stickers, required by various states, all violated the prohibition on unique forms of identification. 75 Fed. Reg. 64779 (Oct. 20, 2010). Similarly, several years earlier, the FMCSA found that paper cab cards required by Oregon to facilitate reporting and payment of the state's weight-mile tax were precisely the type of display that 14506 was trying to eliminate. 72 Fed. Reg. 9996 (March 6, 2007). Directly applicable here, in arriving at its conclusion the agency recognized as a general matter that such credentials "should be authorized only when absolutely necessary," and that there was no necessity where the same data could be obtained through other means. *Id.* at 9998.

The data that the ports expect to obtain from stickers or RFID tags placed on heavy-duty trucks could be obtained by other means. Vehicle registrations can be checked upon entry to ports. This can be combined with spot-enforcement techniques. Similar random checks used for roadside interdiction are well established and are used successfully by enforcement agencies across the country to ensure compliance with a multitude of safety-related laws and regulations. Thus, the stickers or other forms of identification evidencing compliance with the registration requirements are not necessary for the regulatory scheme imposed by these registries.

CONCLUSION

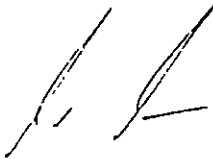
For the reasons discussed above, the Petitioners request that DOT issue a determination that prohibits any state or port from mandating that motor carriers engaged in interstate

commerce must comply with requirements to participate in any drayage truck registry. Petitioners further request that DOT issue a determination prohibiting any port from requiring the placement on or in trucks of stickers or other forms of identification evidencing registration, or even from giving preferential treatment to those who voluntarily use such forms of identification.

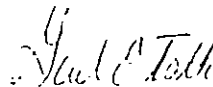
Petitioners would point out that such drayage truck registries are neither a necessary or effective tool for reducing harmful emissions. With respect to necessity, these drayage trucks are already subject to the same emissions limitations and enforcement procedures as other heavy-duty trucks. With respect to effectiveness, the overall improvement in air quality from these registries is minimal. Trucks banned from one port can and will continue to serve other ports as well as the geographic areas immediately surrounding the ports. Further, trucks currently serving the ports compose only a small portion of the heavy-duty diesel trucks operating in the port vicinity. As conceded by PANYNJ in its *Clean Air Strategy* report, *supra*, "Port trucks make up less than 4% of all trucks and less than 1% of all vehicles on the regional roadways."

Since all of the state/port registries are imposed for environmental purposes and capture in their data-bases virtually every truck that "may" enter a port or rail yard facility during the course of a year, the burden on interstate commerce is significant.

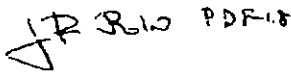
Respectfully submitted,



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Drayage Truck Regulation

§ 2027. In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks.

(a) **Purpose.** The purpose of this regulation is to reduce emissions and public exposure to diesel particulate matter (diesel PM), oxides of nitrogen (NO_x), and other air contaminants by setting emission standards for in-use, heavy-duty diesel-fueled vehicles that transport cargo to and from California's ports and intermodal rail facilities.

(b) Applicability.

(1) 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."

(2) This regulation does not apply to:

- (A) dedicated use vehicles;
- (B) vehicles operating under an ARB authorized emergency decree;
- (C) authorized emergency vehicles;
- (D) military tactical support vehicles;
- (E) vehicles that operate at port or intermodal rail yard properties in which the ARB Executive Officer has granted an annual exemption under the provisions of subsection (f) to local port or rail yard authorities; and
- (F) yard trucks.

(c) **Definitions.** For purposes of this section, the definitions of Health and Safety Code section 39010 through 39060 apply except to the extent that such definitions may be modified by the following definitions that apply specifically to this regulation.

(1) "Alternative Diesel Fuel" means any fuel used in diesel engines that is not a reformulated diesel fuel as defined in sections 2281 and 2282 of title 13, of the California Code of Regulations, and does not require engine or fuel system modifications for the engine to operate, other than minor modifications (e.g., recalibration of the engine fuel control) that may enhance performance. Examples of alternative diesel fuels include, but are not limited to, biodiesel, Fischer-Trosch fuels, and emulsions of water in diesel fuel. Natural gas is not an alternative diesel fuel. An emission control strategy using a fuel additive will be treated as an alternative diesel fuel based strategy unless:

- (A) the additive is supplied to the engine fuel by an on-board dosing mechanism, or
- (b) the additive is directly mixed into the base fuel inside the fuel tank of the engine, or

(C) the additive and base fuel are not mixed until engine fueling commences, and no more additive plus base fuel combination is mixed than required for a single fueling of a single engine or vehicle.

(2) "ARB" means the California Air Resources Board.

(3) "ARB Designees" are defined as those entities that ARB designates or contracts with to perform certain functions or provide specific services on its behalf under this regulation.

(4) "Authorized Emergency Vehicle" is as defined in Vehicle Code section 165.

(5) "Average Daily Drayage Truck Visits" is determined by dividing the total number of truck visits within a calendar month by the total number of intermodal rail yard open days for that same calendar month as represented by the following equation:

$$\left(\frac{\text{Total number of truck visits}}{\text{Total number of intermodal rail yard open days}} = \text{Average daily truck count} \right)$$

Where:

(A) a 'truck visit' is defined as each occurrence of a drayage truck *transgressing from outside intermodal rail yard property onto intermodal rail yard property*; and,

(B) an 'open day' is defined as a calendar day in which an intermodal rail yard has drayage truck traffic.

(6) "Beneficial Cargo Owner" is a cargo owner, the person for whose account the ocean or rail transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean or rail transportation intermediary that accepts responsibility for payment of all applicable charges.

(7) "Bill of Lading" is a document that states the terms of the contract between a shipper and a transportation company. It serves as a document of title of the goods shipped, a contract of carriage, and a receipt for goods.

(8) "CARB Diesel Fuel" is diesel fuel certified by ARB as meeting the fuel specification standards set forth at title 13, California Code of Regulations (CCR) section 2280 et seq.

(9) "Class I Railroad" is a freight railway based on large revenues (\$250 million or more) in comparison to the revenues of Class II (which ranges from greater than \$20 million but less than \$250 million) and Class III (less than \$20 million) railways, as defined by the Surface Transportation Board (STB).

(10) "Compression Ignition Engine" means an internal combustion engine with operating characteristics significantly similar to the theoretical diesel combustion cycle. The regulation of power by controlling fuel supply in lieu of a throttle is indicative of a compression ignition engine.

(11) "Dedicated Use Vehicles" are uni-body vehicles that do not have separate tractor and trailers and include but are not limited to:

- (A) Dedicated auto transports;
- (B) Dedicated fuel delivery vehicles;
- (C) Concrete mixers;
- (D) On-road mobile cranes

(12) "Diesel Fuel" means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons (HC) - organic compounds consisting exclusively of the elements carbon and hydrogen - that is sold or represented by the supplier as suitable for use in an internal combustion, compression - ignition (CI) engine.

(13) "Diesel-Fueled" means a CI engine fueled by diesel fuel, CARB diesel fuel, or alternative diesel fuel, in whole or part.

(14) "Diesel particulate matter (diesel PM)" means the particles found in the exhaust of diesel-fueled compression ignition engines. Diesel PM may agglomerate and adsorb other species to form structures of complex physical and chemical properties. ARB has identified diesel PM as a toxic air contaminant.

(15) "Drayage Truck" means any in-use on-road vehicle with a gross vehicle weight rating (GVWR) greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

(16) "Drayage Truck Owner" means:

(A) the person registered as the owner of a drayage truck as shown by the Department of Motor Vehicles, or its equivalent in another state, province, or country; or the International Registration Plan.

or

(B) the lessee of the truck, as indicated on the drayage truck's registration pursuant to Vehicle Code section 4453.5.

(17) "Drayage Truck Operator" means the driver of the vehicle or any person, party or entity that controls operation of a drayage truck at a port or intermodal rail yard facility.

(18) "Drayage Truck Registry (DTR)" is an ARB database that contains information on all trucks that conduct business at California ports and intermodal rail yards.

(19) "Drayage Truck Registry Number" is a unique identifier issued to the owner of a drayage truck upon registering in the DTR and corresponds to the truck registered.

(20) "DTR Compliant" means that a drayage truck is currently compliant with the requirements of the regulation, including the requirements for the DTR and emission standards.

(21) "Dual-Fuel Engine" means any compression ignition engine that is engineered and designed to operate on a combination of alternative fuels, such as compressed natural gas (CNG) or liquefied petroleum gas (LPG) and diesel fuel or an alternative diesel fuel. These engines have two separate fuel systems, which inject both fuels simultaneously into the engine combustion chamber. A dual-fuel engine is not an alternative-fuel engine.

(22) "Emergency Event" means any situation arising from sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire, or other acts of God, or other unforeseen events beyond the control of drayage truck owners and operators that threatens public health and safety or the reasonable flow of goods movement.

(23) "Emergency Decree" means a determination by the Executive Officer that an emergency event has occurred that requires the immediate temporary operation of drayage trucks at ports and intermodal rail yard facilities.

(24) "Executive Officer" is the Executive Officer of ARB or his/her authorized representative.

(25) "Gross Vehicle Weight Rating (GVWR)" is as defined in Vehicle Code Section 350.

(26) "Heavy-Duty" is a manufacturer's gross vehicle weight rating of greater than 33,000 pounds.

(27) "Intermodal Rail Yard" is any rail facility owned or operated by a Class I railroad where cargo is transferred from drayage truck to train or vice-versa that:

(A) is within 80 miles of a port;

or,

(B) is located more than 80 miles from the nearest port and having, on or after January 2006, 100 or more average daily drayage truck visits in any one calendar month.

Once a rail yard, identified in (B) above, has 100 or more average daily drayage truck visits in any one month, the rail yard will be considered an intermodal rail yard and will be subject to all provisions of this regulation regardless of the size of future average daily drayage truck visits. Intermodal rail yards include, but are not limited to, the following facilities: Union Pacific (UP) Oakland, Burlington Northern Santa Fe (BNSF) Hobart, LATC Union Pacific, Commerce UP, Richmond BNSF, Commerce Eastern BNSF, ICTF UP, San Bernardino, Stockton Intermodal BNSF, Lathrop Intermodal UP, and BNSF Oakland.

(28) "International Registration Plan" is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

(29) "Lessee" has the same meaning as in Vehicle Code section 371.

(30) "Liquid Natural Gas (LNG) Fueled Trucks" are drayage trucks that utilize a heavy-duty pilot ignition engine that 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 any energy equivalent basis. An engine that can operate or idle solely on diesel fuel at any time does not meet this definition.

(31) "Marine or Port Terminals" means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment. For the purposes of this regulation, the term includes but is not limited to production or manufacturing areas, warehouses, storage facilities, and private or public businesses or entities located on or surrounded by port property.

(32) "Military Tactical Support Vehicles" is as defined in title 13, CCR, section 1905.

(33) "Motor Carrier" is a business intermediary that contracts with beneficial cargo owners, ship companies, port terminals or Class I railroads for pick-up and delivery of goods and with drayage truck owners, who it dispatches to ports and/or intermodal rail yards to pick up and deliver such goods.

(34) "On-road" means a vehicle that is designed to be driven on public highways and roadways and that is registered or is capable of being registered by the California Department of Motor Vehicles (DMV) under Vehicle Code sections 4000 et seq. or DMV's equivalent in another state, province, or country; or the International Registration Plan. A vehicle covered under ARB's In-Use Off-Road Regulation, title 13, CCR, section 2449 is not an on-road vehicle.

(35) "Oxides of nitrogen (NOx)" means compounds of nitric oxide, nitrogen dioxide, and other oxides of nitrogen. Nitrogen oxides are typically created during combustion processes and are major contributors to smog formation and acid deposition.

(36) "Port" is the port property where marine and port terminals are typically located for the loading and unloading of water-borne commerce onto and from ocean-going vessels. For purposes of this regulation, port does not include port property that is not related to or primarily used to engage in water-borne commerce. Ports covered by this regulation include, but are not limited to, the Port of Long Beach, Port of Los Angeles, Port of Humboldt Bay, Port of San Diego, Port of Hueneme, Port of Oakland, Port of San Francisco, Port of Sacramento, Port of Stockton, Port of Redwood City, Port of Crockett, Port of Richmond, Port of Pittsburg, and the Port of Benicia.

(37) "Port Authority" means those entities, either public or private, that are responsible for the operation of the ports.

(38) "Port Property" means publicly or privately owned property where a port is located. It is the property that includes the physical boundaries, either contiguous or non-contiguous, of the port and may include other properties owned by the port. For the purposes of this regulation, port property includes privately owned property located within a publicly or privately owned port property's boundaries.

(39) "Rail Yard Authority" means those entities, either public or private, that are responsible for the operation of Class I rail yards.

(40) "Rail Yard Property" means the property constituting the physical boundaries of intermodal rail yards. For the purposes of this regulation, rail yard property also includes privately owned property located within intermodal rail yard boundaries.

(41) "Uni-Body Vehicles" are vehicles that do not have a separate tractor and trailer and include but are not limited to:

(A) concrete mixers;

(B) on-road mobile cranes;

(C) on-road construction equipment.

(42) "Vehicle" is as defined in Vehicle Code Section 670.

(43) "Verified Diesel Emission Control Strategy (VDECS)" is an emission control strategy that has been verified pursuant to the "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines" in Title 13, California Code of Regulations, commencing with section 2700, and incorporated by reference.

(44) "Yard Truck" means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as a utility tractor rig (UTR), yard tractor, yard goat, yard hustler, or prime mover.

(d) Requirements and Compliance Deadlines. Drayage trucks subject to this regulation must meet the following requirements by the compliance deadlines detailed in both Phase 1 AND Phase 2.

(1) Phase 1:

(A) By December 31, 2009, all drayage trucks must be equipped with:

1. 1994-2003 model year engine certified to California or federal emission standards and a level 3 VDECS for PM emissions;

or,

2. 2004 or newer model year engine certified to California or federal emission standards;

or,

3. a 1994 or newer model year engine that meets or exceeds 2007 model year California or federal emission standards.

(B) After December 31, 2011, all drayage trucks with 2004 model year engines must be equipped with the highest level VDECS for PM emissions

(C) After December 31, 2012, all drayage trucks with 2005-2006 model year engines must be equipped with the highest level VDECS for PM emissions.

(2) Phase 2: After December 31, 2013, all drayage trucks must be equipped with a 1994 or newer model year engine that meets or exceeds 2007 model year California or federal emission standards.

(3) Drayage Truck Owner Requirements

(A) Drayage truck owners shall:

1. meet all applicable requirements and deadlines set forth in Phases 1 and 2 above;

2. if an aftermarket level 3 VDECS is installed, be able to demonstrate that:

a. the VDECS has been verified by ARB for use with the engine and vehicle, as described in the Executive Order for the VDECS;

b. use of the vehicle must be consistent with the conditions of the Executive Order for the VDECS;

c. the VDECS is installed in a verified configuration;

d. the engine met the engine manufacturer's operational specifications prior to the VDECS installation;

e. the VDECS label is visible;

f. the level 3 VDECS is mounted in a safe and secure manner on the vehicle consistent with provisions in (3)(A)(2)(c) above, and the fixed position of the level 3 VDECS does not obscure vehicle rear view or side mirror visibility in any way.

g. all emission control devices are functioning properly and maintained per manufacturer's specifications;

h. in the event of a failure or damage of an aftermarket level 3 VDECS or an OEM equivalent diesel emissions control system while the device is still under warranty, it has taken prompt action to repair or replace the device by the manufacturer or authorized dealer with the same level of VDECS or OEM equivalent diesel emissions control system within 45 days of first noticing or being notified of the failure or damage to the device.

i. it has adhered to the terms and conditions in the aftermarket manufacturer or OEM warranty governing the use of the device.

j. if the failure or damage to the level 3 VDECS or OEM equivalent diesel emissions control system occurs after expiration of the warranty period, it has taken prompt action to personally repair or replace the failed or damaged device with the same level VDECS or OEM equivalent diesel emissions control system available for the engine within 90 days of first noticing or being notified of the failure or damage to the device.

k. it has not misused, dismantled, or tampered with any components of the level 3 VDECS or OEM equivalent diesel emissions control system, except for purposes of recommended periodical maintenance by an authorized agent, or when it is necessary to detach the device to service the vehicle.

3. register with the DTR, according to subsection (e);

4. be able to demonstrate that the drayage truck operator has been informed about the information required under subsection (d)(5)(A)(4) for the dispatching motor carrier and instructed to provide such information to any enforcement personnel listed in subsection (i), upon request.

(B) Phase 1 compliance deadline extension:

1. Drayage truck owners may apply for a one-time, one-year, per-truck Phase 1 compliance deadline extension. The compliance deadline application must be either electronically filed or postmarked by June 1, 2009. To receive the Phase 1 compliance deadline extension, a drayage truck owner must demonstrate all of the following:

- a. the engine installed on his/her current truck is a California or federally certified 1994 - 2003 model year engine;
- b. the truck was registered with the DTR prior to June 1, 2009;
- c. no Level 3 diesel emission control technology verified by ARB for use on that combination of truck and engine was available at the time the extension was filed.

2. Compliance extension applications shall be submitted to ARB at:

CALIFORNIA AIR RESOURCES BOARD
DRAYAGE TRUCK PHASE 1 EXTENSION, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

or electronically through ARB's drayage truck website: <http://www.arb.ca.gov/drayagetruck>

3. If after the one-year extension ARB verified technology is still unavailable, the truck owner must comply with the regulation within 90 days of the expiration of the extension by replacing the existing heavy duty truck and/or engine with a truck or engine that meets or exceeds the Phase 1 requirements.

(4) Drayage Truck Operator Requirements

Drayage truck operators shall, upon request, provide the dispatching motor carrier's contact information as detailed in subsection (d)(5)(A)(4) to authorized enforcement personnel as set forth in subsection (i).

(5) Motor Carrier Requirements

(A) Each motor carrier shall:

1. provide a copy of this regulation or an ARB approved summarized version to each drayage truck owner that it contracts with for deliveries to ports and intermodal rail yards;
2. only dispatch drayage trucks to a port or intermodal rail yard that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in subsection (d),
3. only dispatch drayage trucks to ports and intermodal rail yards that are registered and in good standing with the Drayage Truck Registry (DTR) and are DTR compliant;
4. demonstrate that it has only dispatched drayage trucks whose operators have been informed to provide the motor carrier information

listed below, upon request, to enforcement personnel, as listed in subsection (i)

- a. the motor carrier's business name;
- b. contact person's name;
- c. motor carrier's street address, state, and zip code;
- d. contact person's business phone number

5. keep a record of all dispatched drayage trucks containing the information set forth in (a) through (d) below for a minimum of five years from the dispatch date. Dispatch records are to be made available to enforcement personnel within 72 hours of an official written or oral request.

- a. truck dispatch date and time;
- b. bill of lading or tracking number;
- c. truck license plate number and issuing state;
- d. Drayage Truck Registry number.

(6) Marine or Port Terminals and Intermodal Rail Yard Requirements

(A) Starting September 30, 2009, marine or port terminals and intermodal rail yards shall collect the following information for each drayage truck subject to this regulation that enters the facility that is not DTR compliant as determined by information contained within the Drayage Truck Registry.

1. Dispatching motor carrier:

- a. business name of dispatching motor carrier;
- b. contact person's name;
- c. street address, state, zip code of the dispatching motor carrier;
- d. phone number of the dispatching motor carrier;
- e. bill of lading or tracking number

2. Drayage truck:

- a. entry date and time;
- b. registered owner's name;
- c. operator's name;
- d. operator's license number;
- e. drayage truck's license plate number and state of issuance;
- f. drayage truck's vehicle identification number (VIN).

All information collected in subsection (d)(6) shall be kept for a period of not less than five years from the truck entry date and is to be made available to enforcement personnel within 72 hours of an official written or oral request.

(B) Marine or port terminals and intermodal rail yards shall report the information collected in subsection (A) above to their respective authorities according to schedule (A) below and in a format acceptable to their respective authority.

Schedule A. Terminal and Intermodal Rail Yard Reporting Schedule

| Date Truck Enters Terminal or Intermodal Rail Yard | Date by which Information is to be Reported to Port or Rail Authority |
|---|--|
| January 1 – March 31 | April 15 |
| April 1 – June 30 | July 15 |
| July 1 – September 30 | October 15 |
| October 1 – December 31 | January 15 |

(7) Port Authorities and Rail Yard Authorities Requirements

(A) Port and rail yard authorities shall respectively report the information collected by the port terminals and intermodal rail yards, as detailed in subsection (d)(6), to, and in a manner and format prescribed by, ARB according to Schedule B below. ARB reporting parameters are detailed on ARB's website <http://www.arb.ca.gov/drayagetruck>

Schedule B: Port and Rail Yard Authority Reporting Schedule

| Date by which Information is to be Reported to the California Air Resources Board |
|--|
| May 15 |
| August 15 |
| November 15 |
| February 15 |

(B) Port and rail yard authorities shall ensure their respective terminals and/or intermodal rail yards abide by all Schedule A reporting deadlines.

(C) Rail yard authorities operating rail yards located greater than 80 miles from the nearest port with less than 100 average daily drayage truck visits for each calendar month starting January 2008, must complete and submit quarterly verification reports according to Schedule B and in a format approved by ARB.

The first quarterly verification report shall include average daily drayage truck visits for each calendar month starting with the effective date of the regulation and submitted to ARB according to schedules A and B above. Subsequent quarterly verification reports shall include average daily drayage truck visits for the three calendar months prior to each reporting date. Quarterly verification reports shall include, but are not limited to, the following information;

- a. reporting rail yard authority contact information;
- b. rail yard name and address;

c. average daily drayage truck visits by calendar month.

Quarterly verification applications and additional guidelines can be obtained by contacting ARB at:

CALIFORNIA AIR RESOURCES BOARD
RAIL YARD DAILY TRUCK VERIFICATION, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

or electronically through ARB's drayage truck website;
[http:// www.arb.ca.gov/drayagetruck](http://www.arb.ca.gov/drayagetruck)

(e) Drayage Truck Registry Requirements.

(1) Truck Owner Requirements

(A) Owners of all drayage trucks doing business at a port or intermodal rail yard prior to September 30, 2009 and intending to continue operations after that date must register with the DTR database by September 30, 2009

(B) Drayage trucks intending to begin operations at a port or intermodal rail yard after September 30, 2009 must be registered with the DTR database prior to commencing operations.

(C) Owners of all drayage trucks covered by the regulation must provide the following information to ARB or its designee by mail to the address in subsection (e)(2) or electronically through ARB's DTR website [http:// www.arb.ca.gov/drayagetruck](http://www.arb.ca.gov/drayagetruck). The information shall include but may not be limited to:

1. truck owner name, address, and contact information (e.g. phone number, email address, fax number);
2. engine make, model, and model year;
3. vehicle identification number (VIN);
4. vehicle license number and state of issuance;
5. compliance status, which shall include:
 - a. identifying whether the drayage truck has complied with the requirements of Phases 1 and 2, set forth in subsection (d) above;
 - b. if so, how was compliance achieved (e.g. new compliant truck or description of the level 3 VDECS that was used), who did the installation work, and when was it completed;
 - c. if not, identifying when the drayage truck is scheduled to come into compliance under Phases 1 or 2.

(D) After filing the initial application, the drayage truck owner shall within 30 days of bringing a truck into compliance with Phase 1 or Phase 2, update the DTR with the vehicle's compliance status information and any other changes to the vehicle's ownership, DMV registration status, or participation status in IRP.

(2) Mailing Address for Filing Initial Applications and Updates. Drayage truck owners shall submit DTR applications and any updated information to ARB at:

CALIFORNIA AIR RESOURCES BOARD
C/O DRAYAGE TRUCK REGISTRY, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

(3) Failure to register with the DTR or submittal of false information is a violation of state law and subject to civil or criminal penalty.

(f) Annual Port or Rail Yard Exemption.

(1) Annual Exemption. An annual exemption may be granted, under limited circumstances, by the ARB Executive Officer to ports or rail yards. An exemption may cover a clearly defined portion or the entirety of a port or rail yard. The Executive Officer will exempt a port or rail yard that is able to demonstrate one or more of the following:

(A) port or rail yard land is not typically used for truck traffic and its primary function or location does not include or attract drayage trucks covered under this regulation (e.g. a shoreline animal sanctuary);

(B) the overwhelming majority of trucks accessing the port or rail yard are exempted under this regulation (e.g. a port where only dedicated auto transports are in service).

(2) The Exemption Request

(A) a port or rail yard requesting an exemption shall mail the request to:

CALIFORNIA AIR RESOURCES BOARD
PORT / RAIL YARD EXEMPTION, SSD
P.O. BOX 2815
SACRAMENTO, CA, 95812

or may send it electronically to ARBs' website [http:// www.arb.ca.gov/drayagetruck](http://www.arb.ca.gov/drayagetruck) using the request form available on the site.

(B) the request must be completed and submitted annually (via the same website or address listed above) no later than January 1 of the year prior to the exemption year (e.g. a 2010 year exemption application must be completed and submitted by January 1, 2009);

(C) the request will be approved or disapproved by the Executive Officer no later than July 1, of the year prior to the exemption year. The Executive Officer will then issue an exemption to be valid for the specified port or rail yard for the specified exemption year.

(g) Penalties. Any person who fails to comply with the performance requirements of this regulation, who fails to submit any information, report, or statement required by this regulation, or who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained, or used for the purposes of compliance with this regulation may be subject to civil or criminal penalties under sections 39674, 39675, 42400, 42400.1, 42400.2, 42402, 2, and 43016 of the Health and Safety Code. In assessing penalties, the Executive Officer will consider factors, including but not

limited to the willfulness of the violation, the length of time of noncompliance, whether compliance was attempted, and the magnitude of noncompliance.

(h) Right of Entry. For the purpose of inspecting on-road vehicles covered in this regulation, and their records to determine compliance with these regulations, an agent or employee of ARB, upon presentation of proper credentials, has the right to enter any facility (with any necessary safety clearances) where on-road vehicles are located or on-road vehicle records are kept.

(i) Enforcement. Enforcement of this section may be carried out by authorized representatives of ARB, port and rail yard authorities; peace officers as defined in California Penal Code, Title 3, chapter 4.5, sections 830 et seq. and their respective law enforcement agencies; and authorized representatives of air pollution control or air quality management districts.

(j) Relationship to Other Law. Nothing in this section allows drayage trucks to operate in violation of other applicable law, including, but not limited to:

- (1) California Vehicle Code;
- (2) California Health and Safety Code;
- (3) division 3, title 13, California Code of Regulations;
- (4) any applicable ordinance, rule, or requirement as stringent as, or more stringent than, than the requirements of subsection (d) of this regulation.

(k) Severability. If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

Note: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2., 42410, 43013, 43016, 43018, 43023 and 43600, Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42402.2, 42410, 40717.9, 43013, 43016, 43018, 43023 and 43600, Health and Safety Code

HISTORY

1. New section filed 11-24-2008; operative 12-24-2008 (Register 2008, No. 48).
2. Amendment of subsection (b)(1), new subsections (c)(1)-(c)(1)(C), (c)(10) and (c)(21), subsection renumbering, amendment of newly designated subsections (c)(13) and (c)(15), amendment of subsection (d)(1), new subsection (d)(1)(A)-(C) and redesignation of former subsections (d)(1)(A)-(C) as new subsections (d)(1)(A)1.-3. filed 12-3-2009; operative 1-2-2010 (Register 2009, No. 49).

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| PORT OF LOS ANGELES - TARIFF NO. 4 | | Ninth Revised Page..... 185 Cancels Eighth Revised Page..... 185 And Circular No. 53 |
| SECTION TWENTY - Continued CLEAN AIR ACTION PLAN - GENERAL RULES AND REGULATIONS -- Continued | | Item No. |
| AUGUST 1, 2008 GATE ACCESS DEADLINE By August 1, 2008, at 8:00 a.m., all Terminal Operators shall have installed appropriate means, approved by the Port, of accessing the Port's Drayage Registry for the purposes of (i) obtaining relevant information to confirm Drayage Trucks' compliance with Terminal access requirements under this tariff, and (ii) enabling Terminal Operator to collect and remit the Clean Truck Fee. Acceptable alternative means include RFID or OCR readers at all truck processing gates or written consent to other alternative means from the Executive Director of the Port of Los Angeles. | | 2005 |
| OCTOBER 1, 2008 DRAYAGE TRUCK DEADLINE Beginning October 1, 2008, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Los Angeles to: (1) any Drayage Truck of model year 1988 or older, or (2) any Drayage Truck that cannot be verified as compliant with this Item 2010 deadline by reference to the Drayage Truck's records in the DTR, as set forth in Item 2005. This Item shall not apply to pre-1989 model year Drayage Trucks which are equipped or repowered with 1989 or newer model year engines, which shall be treated as subject to the deadlines applicable to their engine model year set forth in Items 2015 and 2020, below, following adequate demonstration to the Port of the installation of the newer engine. Pre-1989 model year Drayage Trucks meeting certain criteria may qualify for the Port of Los Angeles Scrap Truck Buyback Program. See www.portoflosangeles.org for details. See www.portoflosangeles.org for details. Pre-1989 model year Drayage Trucks which are registered in the DTR as being replaced by Early Replacement Drayage Trucks shall be permitted an extended deadline until January 1, 2009 if being replaced by diesel engine 2007 Drayage Trucks and until April 1, 2009 if being replaced by Alternative Drayage Trucks. | | 2010 |
| JANUARY 1, 2010 DRAYAGE TRUCK DEADLINE Beginning January 1, 2010, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Los Angeles to: (1) any Drayage Truck that is not equipped with: (a) a 1994 - 2003 model year engine certified to California or federal emission standards, and a level 3 VDECS which achieves a minimum 85% reduction in PM emissions and a minimum 25% reduction in NO _x emissions, or (b) a 2004 or newer model year engine certified to California or federal emission standards, or (2) any Drayage Truck that cannot be verified as compliant with this Item 2015 deadline by reference to the Drayage Truck's records in the DTR, as set forth in Item 2005. * A Pending Grant Drayage Truck shall be permitted an extended deadline to the earlier of: (1) the date of delivery and data entry into the state Drayage Truck Registry and Port DTR of the qualifying privately funded or grant-funded replacement Drayage Truck or retrofit that complies with the requirements of this Item 2015; or (2) April 30, 2010. | | [C] 2015 |
| See Item 10 for explanation of abbreviations and symbols. | | |
| Correction No. 554 | Order No. 09-7031 Adopted December 10, 2009 Ordinance No. 181126 Adopted March 12, 2010 | EFFECTIVE: April 29, 2010 |

| SECTION TWENTY - Continued CLEAN AIR ACTION PLAN – GENERAL RULES AND REGULATIONS -- Continued | | Item No. |
|---|---|---|
| <p>JANUARY 1, 2012 DRAYAGE TRUCK DEADLINE</p> <p>Beginning January 1, 2012, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Los Angeles to:</p> <p>(1) any Drayage Truck that is not a 2007 Drayage Truck, or Legacy LNG Truck, or</p> <p>(2) any Drayage Truck that cannot be verified as compliant with this Item 2020 deadline by reference to the Drayage Truck's records in the DTR, as set forth as in Item 2005.</p> | 2020 | |
| <p>DRAYAGE TRUCK REGISTRY</p> <p>1. Drayage Trucks seeking entry upon Port Property on or after October 1, 2008, shall have been registered on the Port DTR database prior to the time of entry. Registration on the Port DTR database shall be in electronic format or on forms with supporting documentation as may be required by the Port of Los Angeles to provide required information in verifiable form.</p> <p>2. In the event of a change in the information provided for registration on the Port DTR database with respect to a Drayage Truck, the registration shall be amended within ten (10) calendar days of the change in electronic format or on forms and with supporting documentation as may be required by the Port of Los Angeles.</p> | 2025 | |
| See Item 10 for explanation of abbreviations and symbols. | | |
| Correction No. 530 | Order No. 09-7008 Ordinance No. 180942 | Adopted August 13, 2009 Adopted October 27, 2009 |
| EFFECTIVE: December 17, 2009 | | |

Port of Long Beach - Tariff No. 004

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SECTION 2 - RULES

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Issued: 14Oct2010

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Future effective items are preceded with a > symbol.

RULE 34-3: SECTION 10 - CLEAN AIR ACTION PLAN

Effective: 05Oct2010 Thru:

Expires:

Publish 05Oct2010 Amend: C

ITEM: 1000

TERM: Drayage Trucks - Definitions

For purposes of Section 10, the following definitions shall apply:

"ARB" means the California Air Resources Board.

"Alternative Drayage Truck" means a Drayage Truck with a heavy-duty engine that is designed to operate on liquefied or compressed natural gas, electricity or hybrid technology that meets or exceeds 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emission standards. This includes heavy-duty pilot ignition engines where 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 any energy equivalent basis. An engine that can operate or idle solely on diesel fuel at any time does not meet this definition.

"Authorized Emergency Vehicle" is as defined in Vehicle Code Section 165.

"CARB Authorized Extension Truck" means a Drayage Truck granted a one-year extension of the CARB January 1, 2010 deadline through demonstrated compliance with all of the following conditions: (1) the engine is a California or federally certified 1994-2003 model year engine, (2) the truck is registered with the State's Drayage Truck Registry, and (3) there is no CARB verified Level 3 diesel emission control technology for use on that combination of truck and engine.

"CARB Diesel Fuel" is Diesel Fuel certified by ARB as meeting the fuel specification standards set forth at Title 13, California Code of Regulations (CCR) Section 2260 et seq.

"Compliance Label" is a tag issued by ARB under the Drayage Truck Registry for Drayage Trucks operated at the ports and intermodal rail yards that meet ARB requirements and compliance schedules.

"Concession" means a written agreement between the Port of Long Beach and a Licensed Motor Carrier to allow Drayage Truck access on Port Property.

"Day Pass" means a right of access granted by the Port of

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RULE 14-J: SECTION 10 - CLEAN AIR ACTION PLAN (Continued)

Long Beach to a Licensed Motor Carrier for a limited period to allow Drayage Truck access on Port Property on terms and conditions specified by the Port.

"Dedicated Use Vehicles" are On-Road Vehicles that do not have separate tractors and trailers, including auto transports, fuel delivery vehicles, concrete mixers, mobile cranes and construction equipment.

"Diesel Fuel" means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons - organic compounds consisting exclusively of the elements carbon and hydrogen - that is sold or represented by the supplier as suitable for use in an internal combustion, compression-ignition engine.

"Diesel-Fueled" means a compression-ignition engine fueled by diesel fuel, CARB diesel fuel, or alternative diesel fuel in whole or part.

"Diesel Particulate Matter" or "PM" means the particles emitted in the exhaust of Diesel-Fueled compression-ignition engines.

"Drayage Truck" means any in-use On-Road Vehicle with a Gross Vehicle Weight Rating greater than 33,000 pounds operating on property owned by the Port of Long Beach for the purpose of loading, unloading or transporting cargo, including containerized, bulk, break-bulk and neo-bulk goods. Drayage Truck does not include Dedicated Use Vehicles, Authorized Emergency Vehicles, Military Tactical Support Vehicles, Yard Trucks, or trucks delivering goods manufactured on Port Property.

"Drayage Truck Registry" or "DTR" is a database that contains information on trucks that conduct business on Port Property at the Ports of Los Angeles and Long Beach, including:

Owner's name, address, phone numbers, email address, and fax number; Dispatching Licensed Motor Carrier(s); Concession number(s), or Registration Agreement number(s), or Day Pass number(s); Drayage Truck and engine make, model, model year, and fuel source; Vehicle identification number (VIN), license number and state of issuance; VDECS equipment

"Early Replacement Drayage Trucks" means 2007 Drayage Trucks which are replacing older Drayage Trucks and are (i) funded by Program Funds under grant applications which are approved by the Ports of Los Angeles and Long Beach prior

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RULE 14-J: SECTION 10 - CLEAN AIR ACTION PLAN (Continued)

contribution from the Ports or their respective Clean Truck Funds.

"Proposition 1B Funds" means State of California Goods Movement Emission Reduction Program Grant Funds administered by ARB under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, and implementing legislation (California Health and Safety Code, beginning with Section 39525)

"Registration Agreement" means a written agreement between The Port of Long Beach and a Licensed Motor Carrier to allow Drayage service on Port Property.

"Terminal" is any facility on Port Property used for the transfer of cargo from one mode to another, including container terminals, break-bulk terminals, dry bulk terminals and railyards.

"Terminal Operator" is the entity with contractual authority from the Port of Long Beach to operate a Terminal.

"Radio Frequency Identification Device" or "RFID" is an electronic device with a unique identification number, installed on a Drayage Truck which will enable the Terminal Operator to access the Drayage Truck's records in the DTR.

"Vehicle" is as defined in Vehicle Code Section 670.

"Verified Diesel Emission Control Strategy" or "VDECS" is an emission control strategy that has been verified pursuant to the "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions From Diesel Engines" in Title 13, California Code of Regulations, commencing with Section 2700, and incorporated by this reference.

"Yard Truck" means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as utility tractor rig (UTR), yard tractor, yard goat, yard hostler, or prime mover.

"2007 Drayage Truck" is a Drayage Truck that is equipped with an engine that meets or exceeds 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emission standards.

ITEM: 1005

TERM: August 1, 2008 Gate Access Deadline

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RULE 14-J SECTION 10 - CLEAN AIR ACTION PLAN (Continued)

California or federal emission standards, or (2) any Drayage Truck that cannot be verified as compliant with this Item 1015 deadline by reference to the Drayage Truck's records in the DTR, as set forth in Item 1005.

A Pending Grant Drayage Truck shall be permitted an extended deadline to the earlier of: (1) the date of delivery and data entry into the DTR of the qualifying grant-funded replacement 2007 Drayage Truck or retrofit; or (2) April 30, 2010.

A CARB Authorized Extension Truck shall be permitted an extended deadline of December 31, 2010.

ITEM: 1020

TERM: January 1, 2012 Drayage Truck Deadline

Beginning January 1, 2012, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Long Beach to (1) any Drayage Truck that is not a 2007 Drayage Truck or a Legacy LNG Truck, or (2) any Drayage Truck that cannot be verified as compliant with this Item 1020 deadline by reference to the Drayage Truck's records in the DTR, as set forth in Item 1005.

ITEM: 1025

TERM: Drayage Truck Registry

1. Drayage Trucks seeking entry upon Port Property on or after October 1, 2008, shall have been registered in the DTR prior to the time of entry. Registration in the DTR shall be in electronic format or on forms and with supporting documentation as may be required by the Port to provide required information in verifiable form.

2. In the event of a change in the information provided for registration in the DTR with respect to a Drayage Truck, the registration shall be amended within ten calendar days of the change in electronic format or on forms and with supporting documentation as may be required by the Port of Long Beach.

ITEM: 1030

TERM: Clean Truck Fee

1. Beginning February 18, 2009 at 8:00 a.m., the following Clean Truck Fees shall be assessed:

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RULE 34-J: SECTION 10 - CLEAN AIR ACTION PLAN (Continued)

\$35.00 on merchandise in containers with an outside length of 20 feet or less;

\$70.00 on merchandise in containers with an outside length of more than 20 feet.

The Clean Truck Fee shall be assessed once in these amounts on all containerized merchandise entering or leaving the Ports by Drayage Truck with the exception of merchandise qualifying for the exemptions set forth in paragraph 2 below. The Clean Truck Fee shall be paid by the cargo owner, notwithstanding anything to the contrary in Items 701 or 705 of Tariff No. 4.

2. The Clean Truck Fee will not be assessed on containerized merchandise that:

- (a) enters or leaves the Ports by rail
- (b) moves between two terminals within the Ports.
- (c) is shipped under contract to the United States Transportation Command, any branch of the United States military, or the Department of Defense.
- (d) enters or leaves the Ports by Alternative Drayage Truck, Legacy LNG Truck, Gateway Cities Truck or Grant Vanguard Truck
- (e) enters or leaves the Ports by 2007 Drayage Truck which is obtained without Program Funds.
- (f) enters or leaves the Ports by 2007 Drayage Truck for which the sole source of public funding is Proposition 1B Funds

ITEM: 1035

TERM: Clean Truck Fund

The first Terminal Operator to handle containerized merchandise subject to the Clean Truck Fee shall collect and remit the Clean Truck Fee to the Port of Long Beach, and the monies shall be used by the Board of Harbor Commissioners exclusively for replacement and retrofit of Drayage Trucks serving the Ports of Los Angeles and Long Beach.

ITEM: 1040

TERM: Concessions, Registration Agreements and Day Passes

Beginning October 1, 2008, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Long Beach to any Drayage Truck unless such Drayage Truck is registered in the DTR under a Concession, a

**PORT AUTHORITY MARINE TERMINALS
PAMT FMC NO. PA-10**

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

FMC Schedule No. PA 10

**Naming
Rules and Regulations
Applying At**

Port Authority Marine Terminals

And

**Rates and Charges
Applicable**

For the Use of Public Areas

At

Port Authority Marine Terminals

ADOPTION NOTICE

The Port Authority of New York and New Jersey hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, terminal tariff PAMT FMC NO. PA10 including all revisions thereto.

NOTICE TO TARIFF USERS

This document is compiled to reflect FMC Schedule No. PA10.

Issued by:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
225 Park Avenue South
New York, New York 10003

SECTION G

DRAYAGE TRUCK REGISTRY

SUBRULE 34-1000 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
DRAYAGE TRUCK

Drayage Truck means any On-Road Vehicle with a Gross Vehicle Weight Rating of greater than 33,000 pounds serving Port Authority Terminals for the purpose of loading, unloading, or transporting cargo including containerized, bulk, break-bulk, and neo-bulk goods. For purposes of this Subrule, Dedicated Used Vehicles, Military Tactical Support Vehicles and Yard Trucks are excluded from the definition of Drayage Truck.

SUBRULE 34-1010 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
ON-ROAD VEHICLE

"On-Road Vehicle" means a vehicle that is designed to be driven on public highways and roadways and that is registered or capable of being registered with the controlling motor vehicle agency within the vehicle owner's state of residence.

SUBRULE 34-1020 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
GROSS VEHICLE WEIGHT RATING

"Gross Vehicle Weight Rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

SUBRULE 34-1030 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
DEDICATED USE VEHICLES

"Dedicated Use Vehicles" are uni-body On-Road Vehicles that do not have separate tractors and trailers, including but not limited to auto transports, dedicated fuel delivery vehicles, concrete mixers, mobile cranes, and construction equipment.

SUBRULE 34-1040 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
MILITARY TACTICAL SUPPORT VEHICLES

"Military Tactical Support Vehicles" are vehicles that meet military specifications, are owned by the U.S. Department of Defense and/or the U.S. military services, and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

SUBRULE 34-1050 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
YARD TRUCKS

"Yard Trucks" are off-road mobile utility vehicles used to carry cargo containers with or without chassis, also known as utility tractor rigs (UTRs), yard tractors, yard goats, yard hostlers, or prime movers.

SUBRULE 34-1060 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
ALTERNATIVE DRAYAGE TRUCKS

"Alternative Drayage Trucks" are Drayage Trucks with heavy-duty engines operating on liquefied or compressed natural gas, electricity or hybrid technology. Included are heavy-duty pilot ignition engines using an alternative fuel where diesel fuel is used for pilot ignition for an average ratio of no more than one part diesel fuel to ten parts total fuel on any energy equivalent basis. Engines that can operate or idle solely on diesel fuel at any time do not meet this definition.

SUBRULE 34-1070 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
DIESEL FUEL

"Diesel Fuel" means any fuel that is commonly or commercially known, sold or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons – organic compounds consisting exclusively of the elements of carbon and hydrogen – that is sold or represented by the supplier as suitable for use in an internal combustion, compression-ignition engine.

SUBRULE 34-1080 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
DRAYAGE TRUCK REGISTRY

Drayage Truck Registry or DTR is a database that contains information on trucks that conduct business at Port Authority Terminals including:

- a) Owner's name, address, phone numbers, email address and fax number;
- b) Drayage Truck vehicle make, model year, engine make, engine model, engine model year, vehicle identification number (VIN), Gross Vehicle Weight Rating, license number and state of issuance.

SUBRULE 34-1090 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
VOLUNTARY COMPLIANCE STICKERS

Voluntary Compliance Stickers are non-transferable stickers issued by the Port Authority to owners of Drayage Trucks with engine model years compliant with Subrule 34-1100 and registered in the DTR. The Voluntary Compliance Stickers, if used as instructed, will facilitate and expedite the drayage trucks' transit onto, through and out of Port Authority Terminals.

SUBRULE 34-1100 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
REGISTRATION IN DRAYAGE TRUCK REGISTRY (DTR)

Beginning January 1, 2011, all Drayage Trucks seeking entry onto any Port Authority Terminal shall have been registered in the DTR prior to the date of entry. Registration in the DTR shall be in electronic format via the Port Authority website (www.portny.nj.info) or on forms with supporting documentation as may be required by the Port Authority for verification purposes. In the event of a change to a registered vehicle, the information provided for registration in the DTR with respect to that vehicle shall be amended within ten (10) calendar days of the change either via the Port Authority website or on forms and with supporting documentation as may be required by the Port Authority.

SUBRULE 34-1110 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
VOLUNTARY COMPLIANCE STICKER OPTION

Beginning January 1, 2011 at 12:00 AM, any Drayage Truck seeking entry onto any Port Authority Terminal shall be subject to inspection by Port Authority Police for purposes of determining whether such

vehicle is registered in compliance with Subrule 34-1100. A Drayage Truck may voluntarily display a Voluntary Compliance Sticker to indicate compliance with Subrule 34-1100. Display of a Voluntary Compliance Sticker in the manner prescribed will be accepted as a demonstration that the Drayage Truck bearing such sticker is in compliance with Subrule 34-1100.

**SUBRULE 34-1120 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
VOLUNTARY COMPLIANCE STICKER EXPIRATION DATES**

Voluntary Compliance stickers will expire in accordance with the following schedule:

| <u>Engine Model Year</u> | <u>Expiration Date</u> | <u>Color</u> |
|----------------------------|------------------------|--------------|
| 1994 – 2006 | December 31, 2016 | Blue |
| 2007 and Newer | No Expiration | Green |
| Alternative Drayage Trucks | No Expiration | Green |

**SUBRULE 34-1130 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
JANUARY 1, 2011 DRAYAGE TRUCK DEADLINE**

Beginning January 1, 2011 at 12:00 AM, the following Drayage Trucks will not be permitted to pick up, deliver or move cargo on any Port Authority Terminal:

Any Drayage Truck equipped with an engine of model year 1993 or older, or
Any Drayage Truck that cannot be verified as compliant by reference to the records in the DTR.

**SUBRULE 34-1140 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
JANUARY 1, 2017 DRAYAGE TRUCK DEADLINE**

Beginning January 1, 2017 at 12:00 AM, the following Drayage Trucks will not be permitted to pick up, deliver or move cargo on any Port Authority Terminal:

Any Drayage Truck equipped with an engine not meeting or exceeding federal Environmental Protection Agency on-road emission standards for 2007 model year heavy-duty diesel-fueled engines, or
any Drayage Truck that cannot be verified as compliant by reference to the records in the DTR.

**SUBRULE 34-1150 ISSUED 15 OCTOBER 2010 EFFECTIVE 15 OCTOBER 2010
VIOLATION OF DRAYAGE TRUCK REQUIREMENTS - ACTIONS**

Any trucks not complying with the requirements of Subrule 34-1100 shall be considered to be in violation of the Port Authority Rules and Regulations under the Port Authority Marine Terminals FMC Schedule No. PA 10 and the party that owns such non-compliant vehicle will be subject to a suspension of access privileges for a specified period of time, including the coordinated suspension of their SEA LINK® registration, if any, in accordance with the following schedule:

- 1st violation – warning
- 2nd violation within 12-month period – suspension for 2 calendar days
- 3rd violation within 12-month period – suspension for 7 calendar days
- 4th violation within 12-month period – suspension for 30 calendar days
- 5th violation, or more, within 12-month period – suspension for 90 calendar days

For the period of January 1, 2011 to February 28, 2011, only warnings will be issued. Commencing March 1, 2011, warnings and suspension of access privileges will be in effect.



TERMINALS TARIFF NO. 5

(Cancels and replaces Terminals Tariff No. 4)

ITEM 1 **TITLE PAGE**

NOTICE

The electronic form of the Terminals Tariff will govern in the event of any conflict with any paper form of the Terminals Tariff. If you have printed an older version of this tariff, you need to print this version in its entirety.

Naming: Rates, Charges, Rules and Regulations for Services Performed by and at the Port of Seattle and at Terminals of Participants

ISSUED BY:

Port of Seattle
2711 Alaskan Way
Seattle, Washington 98121
FMC Organization #002095

ISSUING AGENT:

Scott Pattison
Telephone (206)787-3723
FAX (206)787-3280
e-mail pattison.s@portseattle.org

**Approved by Port of Seattle Commission
Effective January 1, 2010**

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SECTION NINE – MARINE TERMINAL TRUCK PROGRAM

ITEM 9000

DRAYAGE TRUCK OPERATIONS

In accordance with the Port's desire to achieve the air quality goals described in the Northwest Ports Clean Air Strategy, the Port seeks to reduce diesel emissions from drayage truck operations at its international container terminals ("Container Terminal" or "Container Terminals"). Accordingly, the following will apply to all Container Terminal tenants ("Tenants") that have incorporated by reference this tariff item in their leases or use agreements:

- (1) Effective on January 1, 2011, all trucks entering a Tenant's Container Terminal for the purposes of draying containers ("Drayage Trucks") to or from the Container Terminal must be engine model year 1994 or newer. Tenants will bar noncompliant Drayage Trucks from entering the Container Terminals.
- (2) The Port desires that by January 1, 2016, eighty percent (80%) of all Drayage Trucks entering a Tenant's Container Terminal will be engine model year 2007 or newer. Tenants will cooperate with the Port in collecting information regarding the progress being made to achieve the eighty percent (80%) goal.
- (3) Effective on January 1, 2018, all Drayage Trucks entering a Tenant's Container Terminal must be engine model year 2007 or newer. Tenants will bar noncompliant Drayage Trucks from entering the Container Terminals.
- (4) The Port will be responsible for providing the identifying mechanisms to enable the Tenants to identify Drayage Trucks that comply with standards of this Tariff Item. The Port may allow for non-compliant trucks at its discretion.

[End of Terminal Tariff return to top](#)