

**BEFORE THE  
CALIFORNIA AIR RESOURCES BOARD**

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**WRITTEN COMMENTS ON PROPOSED AMENDMENTS TO THE AIRBORNE  
TOXIC CONTROL MEASURE FOR IN-USE DIESEL-FUELED TRANSPORT  
REFRIGERATION UNITS (TRUS) AND TRU GENERATOR SETS, AND  
FACILITIES WHERE TRUS OPERATE**

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**COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS, BNSF  
RAILWAY, AND UNION PACIFIC RAILROAD COMPANY**

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The Association of American Railroads (“AAR”), BNSF Railway, and Union Pacific Railroad Company (collectively, “the Railroads”) respectfully submit the following comments on the California Air Resources Board’s proposed amendments to the airborne toxic control measure for in-use diesel-fueled transport refrigeration units (“TRU”), TRU generator sets, and facilities where TRUs operate (“Proposed Rule”).

AAR is a non-profit industry association whose membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR also represents passenger railroads that operate intercity passenger trains and provide commuter rail service. BNSF and UP are two of the largest Class I freight railroads in North America. Both railroads own and operate intermodal freight railyards in California.

The Railroads submit these comments as part of the rail industry’s continuing efforts to work with CARB to find sensible and effective ways, consistent with federal law, to reduce emissions from rail operations.

**I. The Proposed Rule's Attestation Provision Is Unrealistic.**

CARB's proposed regulation requires that, beginning in 2024, "applicable facility owners or applicable facility owner/operators shall report information to CARB" on a quarterly basis. § 2477.17(e)(1)(B). Section 2477.20 then details the scope of information that regulated entities must provide to the agency. As part of this submission, the proposed regulation would require the individual preparing the information to "certify under penalty of perjury under the laws of the State of California that the information provided is true, accurate, and complete." § 2477.20(c).

Intermodal facilities process over 100,000 refrigerated cargo shipments each year and 100% reporting accuracy is close to impossible for reasons beyond the Railroads' control. For example, CARB's ARBER database is incomplete. Entries for over 900 trucks in the ARBER database reflect a license plate including the letters "TEMP." These license plate records are clearly not accurate, but they are the best information available to a facility owner in circumstances in which a plate is obscured when entering or leaving the facility gate. Under the proposed language of the certificate, the facility owner or operator reporting this information sourced from CARB's own database could potentially be cited for failure to report accurate information or for falsely attesting to the accuracy of the reported information.

Likewise, inaccurate information may be provided to a facility owner or operator by the shipper. Railroads rely on information provided by shippers for cargo transported through intermodal facilities within railyards. Some of this information (such as, for example, the equipment owner) cannot be readily confirmed. Under the proposed regulation, a facility owner that inadvertently passes along inaccurate information regarding a TRU (such as the trailer, container, or tractor owner name) due to inaccurate reporting by the shipper could be charged with perjury.

Information required for reporting under the proposed rule may be unavailable. For example, the CARB IDN or the license plate number are often unreadable when a TRU enters or leaves a facility and, as such, a clear photograph of the identifying characteristics may not be possible (see Figure 1 for an example of this scenario). If the vehicle transporting the TRU enters or leaves the intermodal facility by providing other, legally satisfactory information (such as a transponder signal), the facility owner may not be able to accurately report the obscured information. This presents a significant concern because under the Proposed Rule, a facility owner could be charged with perjury for being unable to accurately report information on the TRU.

Figure 1



CARB should revise the attestation component of the reporting requirement at § 2477.20(c) of the Proposed Rule to allow Facility Operators to report reasonably available information collected and

reported in good faith without threat of penalty, even if it later proves to be inaccurate. Further, Facility Operators should be able to report information as “missing” or “not available,” also without threat of penalty. To that end, the railroads propose the following change to 2477.20(c):

Statement of Accuracy. All information submitted to CARB as required under this TRU Regulation shall be accompanied by the following statement, signed by the TRU owner, applicable facility owner, or responsible official: “I certify under penalty of perjury under the laws of the State of California that the information provided is true, accurate, and complete **to the best of my knowledge and belief as of the date of this report.**”

This change will provide a reasonable “safe harbor” for intermodal facility operators operating in good faith.

## **II. The Provision Regarding Applicable Penalties Is Unclear.**

The Proposed Rule’s provision addressing potential penalties is in § 2477.19 (a)(1). It states:

For purposes of enforcement, if a TRU, TRU gen set, or applicable facility is cited for non-compliance with this TRU Regulation and neither the owner nor the operator can produce evidence of the party responsible for compliance with State laws, then the owner of the TRU, TRU gen set, or applicable facility in violation shall be liable for any non-compliance.

This provision lacks clarity and should be reworded to ensure all stakeholders understand how CARB envisions the penalty provision to operate.

The party subject to penalties under the Proposed Rule should be the Owner or Operator (as defined within the Proposed Rule) of the TRU or TRU gen set – not the applicable Facility Owner or Operator. As written, the proposed text suggests that if (for example) an applicable Facility Owner is unable, for reasons outside of its control, to provide evidence of the “party responsible for compliance

with State laws,” that Facility Owner may be found liable for any non-compliance. Such an outcome would be patently unjust.

The Railroads propose the following changes to this enforcement provision, with additions indicated in bold text and proposed deletions stricken:

“For purposes of enforcement, if a TRU **or** TRU gen set, ~~or applicable facility~~ is cited for non-compliance with this TRU Regulation and neither the owner nor the operator can produce evidence of the party responsible for compliance with State laws, then the owner of the TRU **or** TRU gen set, ~~or applicable facility~~ in violation shall be liable for any non-compliance.”

### III. The Definition of an “Intermodal Facility” and “Intermodal Railyard” Is Unclear.

CARB has not proposed changes to the term “Intermodal Facility” in this amendment.

However, this rulemaking presents an opportunity to clarify the current definition. We ask that CARB’s definition recognize that in some instances an “intermodal facility” may constitute only a portion of a railyard, and the TRU regulation only applies to the intermodal facility portion of that yard. CARB should make the following changes, indicated in bold text, with proposed deletions stricken, to the definition “Intermodal facility” in § 2477.4(a)(54) of the proposed regulation.

“Intermodal Facility” means a facility, **or a portion of a facility**, involved in the movement of goods in one and the same loading unit or vehicle which uses successively several modes of transport without handling of the goods themselves in changing modes. Such a facility **(or portion of a facility)** is typically involved in ~~loading and unloading~~ **the transfer of** refrigerated shipping containers and trailers to and from railcars, trucks, and ocean-going ships.

Similarly, the definition of an “Intermodal Railyard” should be modified to clarify that only the portion of a railyard where intermodal activities occur constitute an “Applicable Facility” for the purposes of this regulation. § 23477.4(a).

The inclusion of a “portion of a facility” and a “portion of a railyard” would make clear that the rule is applicable only to the portion of a railyard where intermodal activities occur (i.e., the “Intermodal Facility”), and not to other portions of the railyard. This is a critical distinction because some railyards include both intermodal activities (as defined above) and non-intermodal activities (such as classification and/or maintenance). Further, the proposed language highlights the fact that there is no “loading and unloading” of containers and trailers at an intermodal facility – rather the shipping containers are transferred from one mode of transport to another.

#### **IV. The Proposed Rule’s Reporting Requirements Are Unclear.**

##### *a. CARB Should Not Require Facilities to Report CARB IDNs or Detailed Driver Information.*

Under Section 2477.20(e)(6) of the Proposed Rule, the owner or operator of the TRU may use an “alternative unique equipment identification markings instead of affixing a CARB IDN” under certain conditions. The owner or operator can make the determination as to which identification number to report (CARB IDN, AAR/UMLER, BIC) and then report that information to CARB through ARBER.

As previously discussed with CARB staff, railyards, as part of their current normal course of business, only record the AAR/UMLER and BIC codes for all shipments (regardless of how TRU’s are registered by equipment owners through ARBER). Railroads do not capture the CARB IDN in the normal course of business. It would be extremely difficult for railroads to implement procedures to collect CARB IDNs accurately and completely for every TRU entering a railyard.

Given this, Facilities should be permitted to report AAR/UMLER or BIC codes to CARB for TRUs entering a railyard regardless of how the TRU owner has registered the TRU in ARBER. By providing the

AAR/UMLER or BIC code for each TRU, CARB could then consult its own registry to determine the CARB IDN for a unit.

To effect this change, AAR proposes the following modifications to the proposed rule:

2477.20(m)(2)(A) (Reporting – Trailer TRU or DSC TRU information)

CARB IDN (or ~~if one is used,~~ the alternative unique equipment identification number ~~reported to CARB under~~ **as defined in section 2477.20(e)(6)**).

2477.20(m)(4)(A) (Reporting –TRU gen set information)

CARB IDN (or ~~if one is used,~~ the alternative unique equipment identification number ~~reported to CARB under~~ **as defined in section 2477.20(e)(6)**).

*b. CARB Should Allow Facilities to Report Container BIC Numbers for TRU Gen Sets Rather than CARB IDNs.*

Similarly, with respect to TRU gen sets and the reporting requirements reflected in § 2477.20(m)(4), railroads do not track information regarding gen sets because they are customer-owned property.

Further, the BIC number is located on the container, not on the TRU gen set itself. TRU gen sets may be positioned at the front or rear of a container or chassis, or along the undercarriage of a chassis. Obtaining CARB ID numbers for TRU gen sets would be virtually impossible using cameras and would likely require an individual railroad employee to walk around the trailer to find the ID number – a solution that is neither practical nor environmentally sound, as it would substantially increase truck idling times at entry and exit gates.<sup>1</sup>

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<sup>1</sup> The Railroads respectfully disagree with CARB’s conclusion in its TRU Draft Supplemental Environmental Analysis that the reporting requirements are “administrative and would not result in any direct or indirect environmental impacts.” *TRU Rulemaking, Appendix D, TRU Draft Supplemental Environmental Analysis* at 11 (<https://ww3.arb.ca.gov/board/rulemaking/tru2021/appd.pdf>). These requirements are not administrative as they will require facility staff to manually search for required information on incoming and outgoing TRUs. This could slow down truck traffic through intermodal railyard facility gates – leading to increased truck idling and, therefore, increased

Rather than imposing unworkable regulations on Facilities, CARB should amend the regulation and require facilities to provide the container BIC number. As discussed in the preceding section, providing the container BIC number for TRU gen sets to CARB would allow CARB staff to trace the container and, if required, determine which TRU gen set was affixed to the container or chassis on that particular date.

*c. CARB Should Not Require Facilities to Report a Truck Company Name.*

The reporting requirements in the Proposed Rule include several references to a “company name” for trailer, container and gen set TRUs. The rule language should be revised to clearly allow for the “Motor Carrier” name to be provided in lieu of the “Company Name.” This will still provide information to enable CARB to identify a potentially responsible party in the event of an alleged violation. Proposed language to effect this change is as follows:

- 2477.20(m)(2)(C) (Reporting – Trailer TRU or DSC TRU information)
  - Trailer or container owner’s company name, **or motor carrier name.**
- 2477.20(m)(2)(E)(3) (Reporting – Trailer TRU or DSC TRU information)
  - Truck owner/tractor owner’s company name, **or motor carrier name.**
- 2477.20(m)(4)(C) (Reporting –TRU gen set information)
  - TRU gen set owner’s company name, **or motor carrier name.**
- 2477.20(m)(4)(D)(3) (Reporting –TRU gen set information)
  - Truck/tractor owner’s company name, **or motor carrier name.**

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emissions. As such, these reporting requirements may have a negative impact on air pollution at intermodal railyards and in nearby communities. This environmental impact has not been adequately considered by CARB as is required by CEQA.



*d. CARB Should Not Require Reporting for Non-operating TRUs.*

The Proposed Rule defines “operate” as “to start, cause to function, program the temperature controller, select an operating program or otherwise control, fuel, monitor to assure proper operation, or keep in operation.” § 2477.4. It continues, “[a] TRU that is operational (e.g., capable of being operated) shall be considered to operate if it is in California.” *Id.*

This definition could be interpreted to require dry boxes (containers/trailers that do not contain refrigerated goods) to be reported by intermodal yards if they have TRUs. The Proposed Rule should be clarified to make clear that reporting is only required for trailers/containers that contain refrigerated goods. To implement this change, the rule should be revised to include the bolded language below:

“‘Operate’ means to start, cause to function, program the temperature controller, select an operating program or otherwise control, fuel, monitor to assure proper operation, or keep in operation. **Except with respect to the reporting requirements of 2477.20(m), a** TRU that is operational (e.g., capable of being operated) shall be considered to operate if it is in California.”

*e. Facilities Should be Allowed to Report Either the TRU Entry or Exit Date and Time.*

At intermodal railyards, some of the information required to be reported for TRUs is not acquired until the TRU leaves the yard via the exit gate. To improve clarity, the reporting language for this information should be modified to reflect this reality. Suggested edits are indicated in bold text below.

2477.20(m)(2)(B) Entry **or exit**\_date and time

**V. CARB’s CEQA Analysis Fails to Adequately Consider the Environmental Impacts of the Proposed Rule.**

California’s Environmental Quality Act (“CEQA”) requires the preparation of an environmental impact report (“EIR”) in order “to identify the significant effects on the environment of a project, to

identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” Cal. Pub. Res. Code (“PRC”), § 21002.1; *see also* 14 Cal. Code Regs. (“CEQA Guidelines”) §§ 15000-15387. The California Air Resources Board (“CARB”) implements this requirement through the preparation of an Environmental Analysis (“EA”) under its certified equivalent program. *See* 17 CCR §§ 60000-60008. Nonetheless, the underlying substantive requirements of CEQA must be met by CARB’s EA. 17 CCR 60004(b).

CARB’s Supplemental Environmental Analysis (“SEA”) is inadequate in several respects. First, as noted above, CARB asserts in the SEA that its proposed reporting requirements are “administrative and would not result in any direct or indirect environmental impacts.” *TRU Rulemaking, Appendix D, TRU Draft Supplemental Environmental Analysis* at 11

(<https://ww3.arb.ca.gov/board/rulemaking/tru2021/appd.pdf>) (hereafter “SEA”). These requirements are not simply administrative. In reality, if enacted as proposed, they will require facility staff to manually search for required information on incoming and outgoing TRUs. This could slow down truck traffic through intermodal railyard facility gates – leading to increased truck idling and, therefore, increased emissions. As such, these reporting requirements may have a negative impact on air pollution at intermodal railyards and in nearby communities. This environmental impact has not been adequately considered by CARB as is required by CEQA. Relatedly, CARB has failed to consider these reasonably foreseeable increased criteria emissions from truck idling at entrance and exit gates and the associated impacts on neighboring communities when identifying resource area impacts. *Id.* at 22 et seq. Nor has it considered the associated increases in greenhouse gas emissions associated with increased idling and the associated fuel consumption or the increased traffic congestion in communities neighboring intermodal railyards as a result of delays at in- and out-gates. *Id.*

CARB has also failed to account for the impact of additional likely compliance responses as a result of the need for construction of additional intermodal railyard facilities, the development and installation of hardware and software required to implement the Proposed Rule, and the need to hire additional employees to comply with the new reporting mandates for those railyards. *Id.* at 2. If it is necessary to construct additional facilities at intermodal railyards in order to capture the information required under the Proposed Rule, this construction would result in additional emissions as well as other environmental impacts (e.g. noise, aesthetics) that must be considered in CARB's SEA. *Id.* at 30.

Finally, CARB failed to consider more efficient methods for capturing the desired information from TRUs operating within California. As proposed, the draft TRU rule imposes burdensome requirements on intermodal railyards and requires collection of information currently unavailable to the railroads. Much of the information that the Railroads would be required to provide to CARB under this reporting regime is currently available to CARB through its ARBER database and could be readily access by CARB staff using less information than the Proposed Rule currently requires.

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Absent the incorporation of these recommendations by the Railroads, the timeline for enactment of the Proposed Rule is not feasible. As currently proposed, BNSF and UP would need to plan, design, and construct new facilities at the in- and out-gates of intermodal railyards in addition to hiring and training new employees and implementing significant software and hardware changes in order collect all of the requisite information in the Proposed Rule. It is not feasible to implement all of these changes prior to 2023. Additional time will be required.

We appreciate this opportunity to provide comments on CARB's Proposed TRU Rule. Please feel free to contact Theresa Romanosky at AAR with any questions.

Respectfully submitted,

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