

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY –
PETITION FOR DECLARATORY ORDER**

**REPLY SUPPLEMENTAL COMMENTS
OF BNSF RAILWAY COMPANY**

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Pursuant to the Board’s February 26, 2014 decision in this matter, BNSF Railway Company (“BNSF”) is submitting the following reply supplemental comments on the January 24, 2014 Petition for Declaratory Order (“Petition”) filed by the Environmental Protection Agency (“EPA”). BNSF filed initial comments on February 14, 2014 and supplemental comments on March 28, 2014. BNSF’s reply supplemental comments are supported by verified statements of BNSF’s General Director, Operating Practices, Aaron Ratledge, and BNSF’s Director, Environmental Permitting/Planning & Sustainability, Michael Stanfill. Mr. Ratledge responds to the erroneous claim by the South Coast Air Quality Management District (“SCAQMD”) that railroads should not be concerned about a patchwork of local regulation of locomotive idling. Mr. Stanfill addresses SCAQMD’s inaccurate and misleading summary of BNSF’s record of performance under a 2005 Memorandum of Understanding (“MOU”) with the California Air Quality Board (“CARB”).

I. Introduction

Despite the size of the record that has been developed in this proceeding, this is in fact a very simple preemption case under Section 10501(b) of ICCTA. The unique character of the rules and their procedural history allow the Board to resolve the EPA's request for a preemption ruling based on a straightforward ICCTA preemption analysis rooted in existing precedent. The SCAQMD rules violate the most fundamental interest underlying the statutory preemption provision in ICCTA – they are rules promulgated by a local government entity that, if allowed to become effective, would force railroads to conduct their operations in a particular manner. A federal district court has already found that the rules at issue here are “exactly the type of local regulation Congress intended to preempt . . .” *Ass'n of Am. R.R. v. South Coast Air Quality Mgmt. Dist.*, No. CV 06-01416-JFW (PLAx), 2007 U.S. Dist. LEXIS 65685, at *23-24 (C.D. Cal. Apr. 30, 2007) (“*Ass'n of Am. R.R.*”), and that determination was affirmed on appeal. *Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094 (9th Cir. 2010) (“*AAR v. SCAQMD*”).

EPA's incorporation of the rules into a SIP would not change the nature of the rules or the preemption result. Whether they are incorporated into a SIP or not, the rules would establish local operating requirements on railroads operating in a discrete region of one state, creating the risk of balkanized rail regulation that ICCTA preemption was intended to prevent. This is not a case that requires the Board to consider the deference that might be due under some circumstances to generally applicable rules adopted by a federal agency applying federal law. While EPA's incorporation of the rules into a SIP would make them federally enforceable, their essential character would not change—the rules would remain local government regulations that seek to regulate local rail operations. Moreover, the SCAQMD rules involve *direct regulation* of rail operations. Outside of limited areas where Congress expressly allowed federal agencies

other than the Board to regulate rail transportation, such as in the area of safety, ICCTA expressly prohibits local, state, *and federal* agencies from imposing direct operating requirements on rail transportation, a term that ICCTA specifically defines to include locomotives.

In its supplemental comments, CARB appears to recognize that the SCAQMD rules might go too far and suggests that the Board should provide the EPA with guidance on how the EPA could modify the SCAQMD rules to make them compatible with ICCTA. CARB's suggestion is based on a misapprehension of the EPA's role in the review and approval of local rules included in a state SIP and of the STB's role in this proceeding. But like a number of other issues relating to the interpretation of the Clean Air Act ("CAA"), the Board does not need to wade into the details of the CAA and EPA's role under that statute because, as explained below, there is nothing that could be done to the SCAQMD rules that would make them acceptable under ICCTA. The foundation of the SCAQMD rules is a requirement that railroads operate or equip their locomotives in a certain manner and that is not something that a local government can do under ICCTA in light of the strongly expressed concern of Congress to avoid balkanized regulation of rail transportation and to assign exclusive jurisdiction over rail transportation to the Board.

II. Unique Features Of The Rules At Issue Make This An Easy Case Of ICCTA Preemption.

This is the first time that the Board has been asked to address ICCTA preemption in the context of a potential conflict between ICCTA and local law provisions sought to be included in a SIP. However, to resolve the EPA's request in this case, the Board does not need to establish any new legal standard; three aspects of the SCAQMD rules at issue here make this an easy ICCTA preemption case under traditional ICCTA preemption standards and settled case law.

First, the rules conflict directly and irreconcilably with the fundamental objective of Congress in enacting the ICCTA preemption provision—to avoid balkanized regulation of rail transportation. Whether or not the rules can be enforced as federal law, they fall into the “sweet spot” of ICCTA preemption. The rules are non-safety related rules developed by a local government directing railroads how to operate or equip locomotives in a discrete region of the country. Such rules cannot stand. *Ass’n of Am. R.R.*, 2007 U.S. Dist. LEXIS 65685, at *21-22 (“Because the Rules directly regulate rail operations such as idling, they are preempted without regard to whether they are undue or unreasonable.”). Numerous other court and Board decisions, including the Board’s most recent pronouncement on ICCTA preemption, have made it clear that ICCTA expressly prohibits entities other than the STB (except in limited safety-related areas) from regulating the operations of railroads.¹ The law is well-settled on this point. Indeed, the

¹ See *Grafton & Upton R.R. Co.—Petition for Declaratory Order*, STB Fin. Docket No. 35779, slip op. at 6 (STB served Jan. 27, 2014) (stating that ICCTA preemption applies to federal environmental statutes if those statutes are being used “to regulate rail operations or being applied in a discriminatory manner against railroads.”); *CSX Transp., Inc. v. Georgia Public Service Comm’n*, 944 F.Supp. 1573, 1581-82 (N.D. Ga. 1996) (“Congress intended the preemptive net of [ICCTA] to be broad by extending exclusive jurisdiction to the STB over anything included within the general and all-inclusive term ‘transportation by rail carriers.’”); *Friberg v. Kansas City S. Ry.*, 267 F.3d 439, 443 (5th Cir. 2001) (“The language of the statute could not be more precise, and it is beyond peradventure that regulation of KCS train operations . . . is under the exclusive jurisdiction of the STB.”); *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010) (“[T]he language of section 10501(b) plainly conveys Congress's intent to preempt all state law claims pertaining to the operation or construction of a side track.”); *Tex. Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 533-36 (5th Cir. 2012) (finding preemption because “the City's ordinances manage or regulate rail transportation.”); *Guild v. Kan. City S. Ry. Co.*, No. 12-60731, 2013 U.S. App. LEXIS 18730, at *8 (5th Cir. Sept. 9, 2013) (holding that an attempt to compel a railroad to connect a spur track to the main line was expressly preempted by ICCTA because it was an attempt “‘to regulate the operations of rail transportation.’”) (quoting *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 413 (5th Cir. 2010) (en banc)); *CSX Transp., Inc.—Petition for Declaratory Order*, STB Fin. Docket No. 34662, slip op. at 3 (STB served May 3, 2005) (laws that place operational limitations on railroads are expressly preempted); *Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, No. C13-0066 EJM, 2013 U.S. Dist. LEXIS 135958, at *3, 13 (N.D. Iowa Sept. 18, 2013) (claims based on the placement of railcars loaded with ballast upon tracks preempted because “the parking of

Board has specifically found that rules regulating rail operations are preempted by ICCTA, citing the same SCAQMD idling rules at issue here as the paradigm example of such a preempted rule. *See Providence & Worcester R.R. Co.—Petition for Declaratory Order—Gardner Branch*, STB Fin. Docket No. 35393, slip op. at 4 (STB served May 26, 2011) (explaining that laws that directly target rail operations are preempted and citing *AAR v. SCAQMD*, 622 F.3d at 1098 as support for that proposition).

A second unique feature of the rules at issue here is that a district court reviewing the rules found that they are not lawful under California law. Given Congress’s broad and strongly expressed intent to preempt local regulation of rail transportation, Congress could not possibly have intended to allow local regulation of rail operations under local laws that are not even authorized by the state. The Board does not need to rule on the legality of the SCAQMD rules under California law; a U.S. District Court has already decided the issue. The argument by SCAQMD that the district court’s ruling would not be res judicata in any future litigation over the issue is beside the point. SCAQMD Supp. Comments at 16-17. There remains in place an injunction against implementation of the SCAQMD rules based on the district court’s conclusion

loaded cars on tracks to prevent them from washing away was a core operational activity, with ramifications on the continued operations of the network, governed by the ICCTA.”); *Burlington N. & Santa Fe Ry. v. Dep’t of Transp.*, 206 P.3d 261, 264 (Or. Ct. App. 2009) (finding preemption of a law regulating the blocking of rail crossings preempted because it was “not a law of general applicability” but “an ‘operating rule’ and a ‘regulation of rail transportation’”) (quoting *Friberg*, 267 F.3d at 443); *Solid Waste Transfer Facilities*, STB Ex Parte No. 684, slip op. at 7 (STB served Nov. 20, 2012) (“[S]tate and local bodies nonetheless retain police powers to protect the public health and safety, so long as the state and local regulations do not serve to regulate railroad operations or unreasonably interfere with interstate commerce.”); *cf. City of Auburn v. United States Gov’t*, 154 F.3d 1025, 1029 (9th Cir. 1998) (“Congress and the courts long have recognized a need to regulate railroad operations at the federal level.”).

that the rules are not lawful.² That decision is relevant to the preemption question that has been posed by EPA and it is entitled to respect.

Third, as a result of voluntary measures by BNSF and UP and the EPA's own national regulation of locomotive equipment, the fundamental emissions reduction objective of the SCAQMD rules has already been largely achieved.³ The clear objective of the SCAQMD rules was to force railroads to use locomotives with idling reduction devices by imposing onerous requirements on the use of older locomotives and exempting (or appearing to exempt) railroads from those requirements if they used locomotives with idling reduction devices. The record shows that over 90%, and perhaps as many as 95% of all BNSF and UP locomotives operating in Southern California are now equipped with idling reduction devices.

While SCAQMD continues to fight for the right to regulate railroads in Southern California, the rules are not essential to meet emissions reduction objectives that have already been met. However, the rules would have serious adverse effects. Since the SCAQMD rules are

² As BNSF noted in its February 14, 2014 Comments, the district court clearly does not share SCAQMD's and CARB's dismissive view of the relevance of the court's ruling. When the Court was informed that SCAQMD had made a formal representation to CARB in seeking inclusion of the rules in the SIP that the rules were authorized under state law, the Court responded that SCAQMD had "blatantly ignored the Court's determination that the District lacked authority to adopt the Rules" and stated that it was "confident that this misrepresentation will be raised . . . in any further proceedings relating to this matter." *Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, No. CV 06-01416-JFW (PLAx), Doc. No. 269 at 4 n.2 (C.D. Cal. Feb. 24, 2012) (Attached to EPA's Petition at Tab 5 of the October 19, 2012 Letter from Barbara Baird, District Counsel, SCAQMD to Jared Blumenfeld, Regional Administrator, U.S. EPA).

³ SCAQMD presents misleading data on BNSF's compliance with the 2005 MOU to suggest that BNSF's compliance efforts have not been satisfactory. BNSF's witness Mr. Stanfill explains that the SCAQMD data are inaccurate. As Mr. Stanfill explains, CARB has found that the railroads achieved 98% or higher levels of compliance with the 2005 MOU in the last four years for which data are available. Mr. Stanfill also explains that SCAQMD's claims are belied by CARB's explicit recognition that BNSF has fulfilled the terms of the 2005 MOU. Further, as BNSF witness Lovenburg explained in his statement submitted with BNSF's March 28, 2014 Supplemental Comments, BNSF has taken extensive steps not only to achieve compliance with its commitments, but to adopt additional means to improve fuel efficiency and reduce emissions.

inconsistent with EPA's own national locomotive requirements, they directly burden interstate rail transportation by effectively forcing SCAQMD's view of appropriate anti-idling equipment settings on operations outside California. Moreover, they would disrupt operations relating to the locomotives (including foreign power used by BNSF and UP) used in Southern California that are not equipped with anti-idling devices, which would in turn lead to congestion and inefficiencies in rail operations in Southern California and beyond the region; they would cause delays that could make higher-emission truck transportation more attractive to shippers of time-sensitive cargoes; they would create confusion over the inconsistencies between the local rules and EPA and FRA rules that cover the same activities; they would impose unnecessary, burdensome and distracting paperwork requirements; and they would encourage balkanized locomotive regulation by giving a green light to other jurisdictions to adopt their own set of idling restrictions.

III. "Federalization" Of The SCAQMD Rules Would Not Affect The Results Of A Preemption Analysis Here.

SCAQMD and CARB argue that the Board can disregard its long line of cases addressing ICCTA preemption because once the SCAQMD rules have become "federalized," they are entitled to a presumption against preemption. This presumption, according to SCAQMD and CARB, cannot be overcome here due to the strong environmental interests that are being advanced by the SCAQMD rules and the minimal impact on interests that ICCTA sought to protect. BNSF explained in its supplemental comments why this legal analysis and conclusion is flawed and incorrect.

Specifically, BNSF explained that the idea of a "presumption against preemption" flies in the face of Congress's explicit statutory language at 49 U.S.C section 10501(b) preempting regulatory actions by other authorities (whether state *or federal* authorities) that conflict with

core ICCTA interests. The Board and the courts have made it clear that a core interest protected by ICCTA is the promotion of uniform regulation of rail transportation and the avoidance of balkanized or patchwork regulation of railroad operations under local rules. Moreover, Congress's interest in avoiding balkanized regulation of rail transportation is particularly strong in the area of locomotives, which necessarily move through multiple jurisdictions. When a local government adopts rules that seek to tell railroads how to operate their locomotives, as here, the local rules are incompatible with ICCTA's core interest in avoiding balkanized regulation of rail operations and they are preempted.

SCAQMD and CARB argue that these ICCTA interests can be ignored if the EPA were to approve the rules in a SIP because the rules would then become "federalized," and federal laws are entitled to more deference in an ICCTA preemption analysis than state or local laws.⁴

SCAQMD and CARB point to the Ninth Circuit decision in *AAR v. SCAQMD*, 622 F.3d at 1097, which noted that as a general matter different considerations may apply in a preemption analysis when the potential conflict with ICCTA is created by a federal law rather than by a state or local law. In fact, Congress was particularly concerned in ICCTA about preempting state and local regulations affecting railroads due to the risk of patchwork regulation by multiple local

⁴ See SCAQMD Supp. Comments at 33; CARB Supp. Comments at 2-3. There are serious problems with this "federalization" theory under the CAA. First, as AAR explained in its February 14, 2014 Comments at 19-21, the CAA precludes federalization of a preempted state law. See 42 U.S.C. § 7410(a)(2)(E)(i) (requiring a State to provide assurances that it is "not prohibited by any provision of Federal or State law from carrying out" any rule proposed for inclusion in the SIP). AAR also explains in its April 14, 2014 Reply Comments at 20, that EPA's approval of a SIP does not transform the SIP into federal law but merely makes local regulations federally enforceable. In any event, for the reasons explained in this reply and BNSF's previous submissions, even if SCAQMD's rules for purposes of argument were evaluated as federal law for purposes of the preemption analysis, this would not change the results.

entities that would undermine the efficiency of the national rail network.⁵ Regulations by federal agencies under general federal environmental law are less likely to raise this concern, provided they do not directly regulate rail operations and are not applied in a discriminatory manner against the railroads. But this general observation about the differences between state and federal law in an ICCTA preemption analysis does not affect the outcome of the preemption analysis in this case for two reasons that are based on the specific characteristics of the rules at issue here.

First, with or without EPA approval, the rules continue to be local rules, adopted by a local government entity to regulate local rail operations. The rules would become federally enforceable if approved by the EPA, but they are a far cry from a typical federal rule enacted under federal law by a federal agency. Unlike a typical federal rule that is applied on a national basis, EPA's "federalization" of the SCAQMD rules for enforcement purposes would not change the nature of the rules as local rules regulating local rail operations or eliminate the risk of additional patchwork regulation that is at the heart of Congress's concern over state and local regulation of rail transportation. Indeed, as BNSF has explained, EPA's approval of the SCAQMD rules would only encourage other local governments to adopt their own locomotive idling restrictions, thus exacerbating the balkanized regulation of locomotives. Several other jurisdictions have already sought to regulate locomotive idling, and EPA's approval of the California SIP would surely accelerate those local efforts. Massachusetts has appeared in this proceeding urging the Board to allow states to adopt their own regulation of locomotive idling.

⁵ There are special concerns related to state and local regulation of interstate commerce, such as rail transportation, that are rooted in the Constitution. *See S. Pac. Co. v. Arizona*, 325 U.S. 761 (1945) (state law limiting the length of trains held unconstitutional because it imposed a heavy burden on interstate commerce).

Rhode Island has adopted regulations that address locomotive idling. As discussed in the attached verified statement of Mr. Ratledge, Maine, New Hampshire and Michigan have considered regulation of locomotive idling. Mr. Ratledge describes the numerous ways in which the SCAQMD rules conflict with other rules that have been adopted or proposed by EPA, FRA and the various states. Clearly, the concern over patchwork regulation of locomotives is amply justified.

Second, the rules at issue are not generally applicable to commercial enterprises inclusive of rail operations in Southern California but would separately and directly target and regulate locomotive operations. This is clearly preempted by ICCTA.⁶ ICCTA preemption is not limited to state and local regulation but expressly includes federal regulations that conflict with the Board's exclusive authority to regulate rail transportation. Even if some exercises of federal law authority are entitled to deference in an ICCTA preemption analysis, rules such as the SCAQMD rules would not benefit from that deference. Outside of the few and narrow areas where Congress has allowed limited regulation by an agency other than the Board, no agency other than the Board is entitled to impose direct operating requirements on railroads.

The Ninth Circuit never suggested that the SCAQMD rules could be saved from ICCTA preemption through EPA approval. The Ninth Circuit said that as a general proposition other federal laws should be "harmonize[d]" with ICCTA "if possible." *AAR v. SCAQMD*, 622 F.3d at

⁶ As BNSF noted in its supplemental comments, Congress has explicitly provided for limited regulation of rail transportation by agencies other than the Board in discrete areas. Congress expressly gave EPA authority to regulate emissions from new and remanufactured locomotives and Congress gave FRA authority to regulate rail safety, allowing limited state safety regulation to address local circumstances. But outside of discrete areas, Congress expressly left to the Board the exclusive authority to regulate rail transportation.

1097.⁷ And the Board, as recently as January of this year, acknowledged that actions under federal environmental statutes like the CAA are generally harmonized with ICCTA so long as they do not cross the line into direct regulation of rail operations or discriminate against railroads. *Grafton*, slip op. at 6 (STB served Jan. 27, 2014). But the Ninth Circuit never looked at the question whether it would be “possible” to “harmonize” a local rule directly regulating rail operations that was included in a SIP with Congress’s clear purpose in ICCTA to avoid balkanized regulation of rail transportation. As BNSF has explained, the SCAQMD rules cannot be reconciled with the core interests of ICCTA. The Ninth Circuit simply ruled that any harmonization analysis that would be applied to a purely federal law rule was irrelevant in the case before it because the SCAQMD rules at issue were local regulations that had no connection to federal law.

IV. SCAQMD Makes A Number Of Other Erroneous Legal Assertions.

In defending its presumption-against-preemption argument, SCAQMD advances a number of other legal propositions, each of which is wrong, as discussed below.

Proposition 1: The SCAQMD rules do not regulate rail transportation.

SCAQMD appears to recognize, as it must, that ICCTA expressly prohibits other authorities from directly regulating rail operations but it claims that the rules at issue do not seek directly to regulate rail transportation. SCAQMD Supp. Comments at 35. The claim is absurd on its face. As BNSF explained in its supplemental comments, SCAQMD has explicitly acknowledged, in defending against claims of preemption under the CAA, that the rules at issue seek to regulate the “‘use or operation’ of the locomotive.” BNSF Supp. Comments at 12-13.

⁷ The Ninth Circuit’s discussion of the preemption analysis that would be conducted where a federal law conflict existed with ICCTA did not consider, because it did not have to, the relevance of Congress’s explicit preemption language in 49 U.S.C. § 10501.

Moreover, the district court specifically held that the SCAQMD rules directly sought to regulate rail transportation and the Ninth Circuit upheld this finding. *Ass'n of Am. R.R.*, 2007 U.S. Dist. LEXIS 65685, at *21-22 (“Because the Rules directly regulate rail operations such as idling, they are preempted without regard to whether they are undue or unreasonable.”); *AAR v. SCAQMD*, 622 F.3d at 1098 (“The rules apply exclusively and directly to railroad activity ...”).

Indeed, SCAQMD’s own witnesses make no effort to hide the direct and adverse impact of the SCAQMD rules on rail operations. For example, SCAQMD’s witnesses Johnson and Beale posit an elaborate set of procedures and operating instructions for railroads using distributed power, which is increasingly common on intermodal trains, to comply with the SCAQMD rules. *See* Verified Statement of Thomas Johnson and Richard Beall at 14-21 (attached to SCAQMD’s Supp. Comments). Massachusetts acknowledges that the SCAQMD rules would require railroads to “adjust their schedules, add anti-idling or auto-shut off devices to their locomotives or make other changes to comply with the [SCAQMD] rules.” Comments of the Massachusetts Department of Environmental Protection at 9. BNSF’s witness Mr. Reilly detailed numerous other ways in which BNSF would have to overhaul its operating practices to comply with the SCAQMD rules, with adverse effects on safety and efficiency of rail operations. Verified Statement of Rob Reilly at 9-16 (attached to BNSF Supp. Comments). As Mr. Reilly explained, the delays caused by efforts needed to comply with the SCAQMD rules would create congestion in yards and on main line tracks that would have a widespread impact on rail operations in the region. As both he and BNSF witness Katie Farmer explain, delays in rail service could drive more traffic onto the highways, with the perverse effect of increasing diesel emissions.

The FRA has also expressed concerns that the SCAQMD rules would have an adverse impact on rail safety. *See* Letter from Joseph Szabo, Administrator, Federal Rail Administration to Jared Blumenfeld, Regional Counsel, Region 9, U.S. Environmental Protection Agency (Sept. 27, 2013) (attached to BNSF’s Feb. 14, 2012 Reply at Exhibit 14). SCAQMD’s dismissal of FRA’s concerns at page 40-41 of its supplemental comments as not being “objective” or well-informed merits no weight; FRA expressed legitimate concerns about the implications of the rules for air brake integrity and other matters as to which the testimony of the railroad witnesses is fully supportive.

Proposition 2: The rules are permissible because they do not intrude on matters directly regulated by the Board.

SCAQMD argues that the Board should “limit its inquiry to whether [the rules] intrude on matters ‘that are directly regulated by the Board (e.g., rail carrier rates, services, construction, and abandonment).’” SCAQMD Supp. Comments at 35. State and local rules that regulate matters such as rates or abandonment that are directly regulated by the Board are categorically preempted by ICCTA without any inquiry into the burden on interstate transportation. But ICCTA preemption goes beyond matters that are directly regulated by the Board. Other forms of regulation are also preempted without an inquiry into burden. The Board has not extensively regulated railroad operating practices and procedures, but as discussed above the case law is clear that direct attempts to regulate rail operations (outside of safety-related areas) are automatically preempted by ICCTA to the same extent as efforts to regulate in areas where the Board also directly regulates. *See* cases cited in footnote 1 above.⁸ The broad scope of ICCTA

⁸ Indeed, all of the cases cited in footnote 1 deal with practices that are *not* directly regulated by the Board, yet those cases found that the laws or regulations at issue were expressly preempted because they seek to manage rail operations or regulate operating practices. *See, e.g., CSX Transp., Inc. v. Georgia Public Service Comm’n*, 944 F. Supp. 1573, 1581-82 (N.D. Ga. 1996)

preemption, extending beyond the limited areas where the Board has actually regulated, is consistent with the statutory language, which broadly defines the “transportation” under the STB’s exclusive jurisdiction⁹ and with the legislative history.¹⁰ Indeed, the statute is quite clear that rail carrier “services” related to the movement of locomotives fall within the STB’s exclusive authority. *See* 49 U.S.C. § 10102(9)(B).

SCAQMD’s argument that the Board need only worry about regulation of matters that the Board directly regulates is based on a mistaken reading of Congress’s intent. Congress did not enact Section 10501(b) simply to protect the Board’s direct regulation of rail transportation from interference by other authorities. Congress enacted Section 10501(b) to avoid new regulatory burdens on partially deregulated railroads and balkanized regulation of rail transportation, whether or not that transportation was also directly regulated by the Board. *See*

(finding regulations regarding the closing of railroad offices expressly preempted); *Friberg v. Kan. City S. Ry.*, 267 F.3d 439, 443 (5th Cir. 2001) (finding statute regarding railroad blocking of intersections expressly preempted); *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010) (claims based on noise and emissions from trains expressly preempted); *Tex. Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 533-36 (5th Cir. 2012) (ordinances regulating the design of rail embankments and the paving of roads at a transloading facility expressly preempted); *CSX Transp., Inc.—Petition for Declaratory Order*, STB Fin. Docket No. 34662 (STB served May 3, 2005) (law regarding rail routing expressly preempted); *Ass’n of Am. R.R.*, 2007 U.S. Dist. LEXIS 65685, at *21-22 (local regulations regarding locomotive idling expressly preempted.).

⁹ *See* 49 U.S.C. § 10102(9), which defines “transportation” to include: “(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.” As BNSF previously noted, the courts have stated that “[i]t is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” *City of Auburn v. U.S. Gov’t*, 154 F.3d 1025, 1030 (9th Cir. 1998) (quoting *CSX Transp., Inc. v. Georgia Public Service Comm’n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996)).

¹⁰ *See, e.g.*, S. Rep. No. 104-176, at 6 (1995) (“[N]othing in this bill should be construed to authorize States to regulate railroads in areas where Federal regulation has been repealed by this bill.”).

Borough of Riverdale—Petition for Declaratory Order, STB Fin. Docket No. 35299, slip op. at 2 (STB served Aug. 5, 2010) (“The purpose of the federal preemption—which applies without regard to whether the Board actively regulates the particular rail carrier transportation activity involved—is to prevent a patchwork of local and state regulation from unreasonably interfering with interstate commerce.”); *CSX Transp., Inc.—Petition for Declaratory Order*, STB Fin. Docket No. 34662, slip op. at 7 (STB served March 14, 2005) (citing *Friberg*, 267 F.3d at 443 for the proposition that a “state statute restricting a train from blocking an intersection [is] preempted, even though there is no Board regulation of that matter”); *CSX Transp., Inc. v. Georgia Public Service Comm’n*, 944 F. Supp. 1573, 1581-82 (N.D. Ga. 1996) (explaining that ICCTA preemption is not limited to those areas in which ICCTA provides for a federal remedy but extends to “anything included within the general and all inclusive term ‘transportation by rail carriers.’”); *Auburn and Kent, WA—Petition for Declaratory Order—Burlington N. R.R. Co.—Stampede Pass Line*, 2 S.T.B. 330, 341 (1997) (rejecting claim that states have residual regulatory authority in areas that are not regulated directly by the Board).

Indeed, SCAQMD’s crabbed, reductive and revisionist view of the scope of preemption would severely undermine Congress’s desire to avoid balkanized regulation of rail transportation. In seeking to deregulate railroads, Congress deliberately limited the scope of matters that the STB can directly regulate. If other regulatory authorities were able to fill the void created by Congress’s limited grant of powers to the STB, railroads would be subject to regulation by multiple entities in a wide range of activities related to rail operations. Congress recognized that an efficient, national rail network would not be possible under those circumstances and it expressly disallowed such a result through the broad preemption language

in Section 10501(b). Far from “grazing the periphery” of ICCTA, as SCAQMD claims, the SCAQMD rules cut to the heart of the ICCTA preemption provision.

Proposition 3: The Board does not need to worry about balkanized regulation of locomotive idling.

SCAQMD argues that the railroads’ concerns over balkanized regulation of rail transportation are overstated since states and local governments are likely to adopt regulations that are “similar” to the SCAQMD rules. SCAQMD Supp. Comments at 46. The record developed in this case belies SCAQMD’s claim. BNSF’s witness Mr. Ratledge notes that the SCAQMD rules overlap with rules developed by EPA and FRA, as well as with rules from other states. Mr. Ratledge describes the numerous ways in which the SCAQMD rules differ from and conflict with those other approaches to regulation of locomotive idling.

Mr. Ratledge makes clear the speciousness of SCAQMD’s claim that railroads’ concerns about the proliferation of idling regulation at the state level are mere speculation. The record shows that there have already been at least 5 state-level attempts to regulate locomotive idling, including several recently proposed measures. This is clearly an area readily susceptible to state or local regulation. If the Board through its decision here were to enable EPA to approve local regulation of locomotive idling, it is almost inevitable that there would be a flood of local efforts to regulate locomotive idling, and probably other aspects of train operations.

SCAQMD goes further and states that even if there are differences between various local attempts to regulate idling, railroads regularly deal with differences in local operating practices in areas such as speed limits and horn blowing. Mr. Ratledge explains that local operating requirements such as horn blowing limitations and speed limits are fundamentally different from SCAQMD’s idling, recordkeeping and reporting requirements. Unlike horn blowing restrictions and speed limits, which can easily be incorporated into routine operating practices, there is no

way to implement the SCAQMD rules in a way that would be transparent or easy to follow in the many different operating situations that arise in South Coast Basin.

Proposition 4: The rules do not discriminate against railroads.

SCAQMD argues that other commercial enterprises operating in Southern California must also take measures to reduce air pollution so SCAQMD is not discriminating against railroads in seeking reduced locomotive emissions. SCAQMD misunderstands the discrimination standard as applied in preemption analyses.

When a generally applicable regulation imposes unequal burdens on railroads as compared to other entities covered by the regulation, the regulation is considered to discriminate against railroads and is preempted under ICCTA. *See Joint Petition for Declaratory Order—Boston & Maine Corp. & Town of Ayer, MA*, STB Fin. Docket No. 33971, slip op. at 12 n. 35 (STB served May 1, 2001). But the fact that a generally applicable regulation does not discriminate against railroads does not save the regulation from preemption if the regulation otherwise burdens interstate rail transportation. A large number of preemption decisions involve local regulations that apply equally to railroads and other businesses and therefore are not discriminatory (e.g., construction permitting), but they are nevertheless preempted because they interfere with rail transportation. *See, e.g., Green Mountain R.R. v. Vermont*, 404 F.3d 638 (2d Cir. 2005) (generally applicable land use statute preempted); *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998) (local environmental laws preempted); *Norfolk S. Ry. Co.—Petition for Declaratory Order*, STB Fin. Docket No. 35701 (STB served Nov. 4, 2013) (generally applicable inverse condemnation law preempted).

More important, the SCAQMD rules are not generally applicable rules, but rather target railroads directly and expressly. The discrimination analysis is only relevant when applied to

regulation of activity engaged in by railroads and other entities.¹¹ When a regulation is fashioned to apply uniquely to railroad conduct, it necessarily discriminates as between railroads and other sectors not subject to the rule.

Moreover, as a practical matter, the non-discrimination prong of the ICCTA preemption analysis could only apply where the regulation at issue is addressed to an activity that is engaged in by multiple entities including railroads. There has to be a basis for comparing the application of the regulation to the railroad and to other parties to determine whether the regulation discriminates against railroads.¹² When the regulation pertains to operations or equipment that are unique to railroads, as here, there is no comparative sphere because the regulation is aimed only at the railroads and is inherently discriminatory in this regard.¹³ In those circumstances, the regulation is preempted precisely because it seeks to regulate rail transportation.

Proposition 5: Congress intended to reserve states' authority to regulate locomotive use.

In its supplemental comments, BNSF explained that Congress's concern over patchwork regulation of rail transportation was particularly strong in the area of locomotives. The CAA and Locomotive Inspection Act ("LIA") both reflect a concern that regulation of locomotives be

¹¹ See *Burlington N. & Santa Fe Ry. v. Dep't of Transp.*, 206 P.3d 261, 264 (Or. Ct. App. 2009) (holding that the discrimination analysis is only relevant where the law at issue is not specifically regulating rail transportation).

¹² For example, *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238 (3d Cir. 2007), addressed the regulation of solid waste handling, an activity engaged in by railroads and non-railroads. The court found that at least some of the regulations appeared not to be preempted because they were "sufficiently certain and identical to those applied to non-rail facilities." *Id.* at 256. The discrimination analysis was possible only because the railroad regulations could be compared directly to identical regulations of solid waste handling by other entities.

¹³ SCAQMD notes that CARB regulates truck idling. SCAQMD Comments at 49. But truck engines are fundamentally different from locomotives, and truck operations on state-maintained roads and highways are fundamentally different from train operations on limited and privately constructed rail infrastructure. Indeed, the burdens imposed on rail operations by locomotive shut-down requirements are unquestionably greater given the nature of the railroad infrastructure and the integration and coordination inherent in the rail network.

concentrated in the hands of federal regulators. SCAQMD disputes this claim and argues that Congress intended to reserve authority for states to regulate the use of locomotives, citing *Engine Mfrs. Ass'n*, 88 F.3d 1075 (D.C. Cir. 1996). SCAQMD Supp. Comments at 25-27. SCAQMD misreads that case and the law relating to the regulation of locomotives.

The court in *Engine Mfrs. Ass'n* upheld the EPA's regulations relating to nonroad engines, including EPA's view that the states' in-use regulation of nonroad engines would not be preempted by the CAA. However, the regulations at issue in that case excluded locomotives because EPA realized that regulation of locomotives would raise special concerns related to interstate commerce. *See* Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards, 59 Fed. Reg. 36,969, 36,972 n.8 (July 20, 1994) ("EPA recognizes that regulation of locomotives presents unique circumstances, including questions regarding interstate commerce, that require special attention."). Thus, the *Engine Mfrs.* decision does not address locomotives at all.

Further, EPA subsequently enacted regulations specifically for locomotives that expressly acknowledged Congress's special concerns over the regulation of locomotives by states and local authorities. EPA recognized that when Congress drafted legislation regarding emissions standards, it was particularly concerned with state regulation of locomotives and the effects such regulation would have on interstate commerce. *See* Emission Standards for Locomotives and Locomotive Engines, 62 Fed. Reg. 6,366, 6,397 (Feb. 11, 1997) ("The legislative history of section 209(e) indicates that Congress intended a broad preemption of any state regulation of emissions from new locomotives or new locomotive engines, in large part because of the significant interstate commerce concerns raised by state-by-state regulation of locomotives" and recognizing the "compelling factual and policy considerations relating to regulation of

locomotives as compared to regulation of motor vehicles and other nonroad vehicles and engines”). Accordingly, EPA’s regulations provide for a much greater preemptive scope of CAA preemption of state regulation of locomotives than state regulation of other nonroad engines.

BNSF is not asking the Board to decide whether section 209(e) of the CAA preempts the SCAQMD’s rules. Rather, BNSF pointed to section 209(e) as further evidence of Congress’s special concern with protecting locomotives from a patchwork of state and local regulation. As discussed above, EPA recognized this Congressional concern and created preemption rules specifically to protect locomotives from state regulation. There is no support for SCAQMD’s contention that the CAA reflects a Congressional intent to provide states with authority to regulate the use of locomotives.¹⁴

V. The SCAQMD Rules Could Not Be Modified To Make Them Compatible With ICCTA.

CARB’s supplemental comments explain that its interest in this matter derives from its responsibility for developing and implementing SIPs to ensure compliance with CAA requirements. CARB Supp. Comments at 1. A Board finding that the SCAQMD rules are

¹⁴ As BNSF explained in its supplemental comments at 15-16, the LIA also reflects Congress’s special concern with protecting locomotives from a patchwork of state and local regulation. The Supreme Court explained in *Kurns v. Railroad Friction Products Corp.*, 132 S. Ct. 1261 (2012), that the LIA broadly preempts local regulation of locomotives because in enacting the LIA, Congress intended to occupy the field regarding regulation of locomotive equipment. SCAQMD’s claim that *Kurns* is not applicable because the rules at issue here do not mandate the use of any particular equipment overlooks that in fact the rules influence, and by CARB’s admission are designed to influence, the use of particular equipment, i.e., anti-idling devices. See California Environmental Protection Agency Air Resources Board, June 2005 CARB/Railroad Statewide Agreement on Particulate Emissions from Rail Yards, Public Comments Raising Legal Issues and Agency Responses, October 24, 2005, at 1 (acknowledging that the rules have “the effect of making the railroads install idling reduction devices without actually mandating the devices”).

preempted by ICCTA does not undermine CARB's legitimate institutional concerns given the unique features of the SCAQMD rules at issue. As CARB previously recognized in a comprehensive legal analysis in 2005, rules that direct railroads how to operate locomotives are an extreme measure that even CARB recognized was highly questionable under the national scheme of rail regulation established by ICCTA.¹⁵ Preemption of the SCAQMD rules simply eliminates an extreme approach to controlling locomotive emissions that was never valid to begin with.

CARB's supplemental comments also appear to recognize that the SCAQMD rules may go too far, even if approved by the EPA. Therefore, CARB asks the Board to "use its expertise to advise EPA on how best to harmonize the rules at issue here with ICCTA in order to fulfill the federal mandates of both that statute and the Clean Air Act." CARB Supp. Comments at 3. CARB's request that the Board advise the EPA on how to revise the rules "in order to better avoid any ICCTA-related conflicts," *id.* at 5, exceeds the scope of this proceeding, in which EPA has requested the Board to determine whether the specific SCAQMD rules at issue would be preempted if approved by the EPA. Moreover, CARB misunderstands both the nature of the preemption analysis that the Board carries out when presented with a rule that conflicts with ICCTA and EPA's role in assessing and approving state SIPs.

CARB seems to think that a "harmonization" inquiry allows, or even requires, the relevant agencies to actively engage in the creation of new or modified rules that will satisfy potentially conflicting objectives of multiple statutes. There is no support whatsoever for such

¹⁵ See CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, AIR RESOURCES BOARD, JUNE 2005 ARB/RAILROAD STATEWIDE AGREEMENT ON PARTICULATE EMISSIONS FROM RAIL YARDS, PUBLIC COMMENTS RAISING LEGAL ISSUES AND AGENCY RESPONSES 9 (Oct. 24, 2005) ("[E]ven if an idling-reduction regulation could be worded in a way that avoids preemption under CAA section 209(e), there are still serious questions as to whether it would be preempted by the ICCTA ...") (attached at Exhibit 15 of BNSF's Reply to EPA's Petition).

an interpretation of the analysis that is carried out under section 10501(b). The question under section 10501(b) is whether a particular rule conflicts with the core interests of ICCTA, and if so the rule is preempted. Assuming *arguendo* that a non-preempted local locomotive idling rule could theoretically exist, it is not the Board's role to advise CARB or SCAQMD on how to construct any such rules regulating locomotives in a manner that would be acceptable under ICCTA.

CARB also misunderstands EPA's role in reviewing and approving SIPs under the CAA. Under the CAA, it is up to states to develop the SIP. EPA's role is limited to approving those SIPs that comply with the CAA statutory and regulatory requirements; there is no room for EPA to modify SIPs for purposes of harmonization. *See, e.g.*, Revisions to the Arizona State Implementation Plan, Maricopa County Area, 79 Fed. Reg. 17,878, 17,878 (March 31, 2014) ("Under the [CAA] . . . EPA's role is to approve State choices, provided that they meet the criteria of the [CAA]."). Notably, CARB does not cite any examples of where EPA has conducted harmonization analysis or rule adjustment in the context of SIP decisions, and for good reason. There are none because EPA lacks the authority to alter state rules submitted for SIP consideration and is, in any case, precluded by the CAA from accepting SIP rules from states that are prohibited by federal law. Given this initial barrier to SIP consideration, EPA has no role in trying to harmonize preempted state rules.¹⁶

In any event, there would be no way to modify the SCAQMD rules to make them consistent with ICCTA since the very thrust of the rules is to impose operating restrictions and

¹⁶ CARB also mischaracterizes the opportunities afforded entities like the STB in the SIP process. Unlike national rules like those EPA developed relative to locomotive engines, SIP approvals and disapprovals do not go through the interagency review process run by the Office of Management and Budget where other entities like the STB would have an opportunity to comment on EPA's choice whether to include rules like those at issue here in a SIP.

requirements on railroads providing rail transportation in Southern California. Outside of limited areas involving safety (as per the specific provisions of FRSA allowing some room for local safety regulations) and the non-discriminatory exercise of police powers with respect to generally applicable matters such as building codes, local government entities cannot establish rules governing or managing rail operations. Congress recognized that rail transportation is a national enterprise that cannot be carried out efficiently if local governments are allowed to impose their own parochial restrictions on rail operations.

This does not mean that important environmental interests cannot be protected. Congress determined that emissions from idling locomotives should be addressed through nationwide equipment requirements adopted and implemented by the EPA, not through a patchwork of local operating restrictions. EPA's efforts have been successful. Moreover, BNSF has every incentive to reduce fuel usage and thus emissions. Its voluntary agreements with CARB underscore that point. As noted above over 90% of BNSF's and UP's locomotives operating in Southern California now are equipped with idling reduction devices and that percentage will only increase as new and remanufactured locomotives are added to the railroads' locomotive fleet. Regulations by local governments that tell railroads how to operate their locomotives – the approach taken by SCAQMD – are an unacceptable and unauthorized way of dealing with the issue of locomotive emissions.

VI. Conclusion

For the reasons set out above and in BNSF's February 14, 2014 Comments and March 28, 2014 Supplemental Comments, the Board should advise EPA that the SCAQMD rules would be preempted by ICCTA even if they were included in an EPA-approved SIP.

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April 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April 2014, I caused a copy of the foregoing to be served by e-mail and first-class mail, postage prepaid, upon all parties of record in this case as follows:

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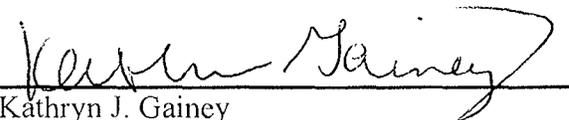
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**VERIFIED STATEMENT OF
AARON T. RATLEDGE**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35803

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY –
PETITION FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF AARON T. RATLEDGE

My name is Aaron T. Ratledge. I am General Director, Operating Practices, BNSF Railway Company. I supervise all aspects of BNSF's Operating Practices Department, including Air Brake and Train Handling, Train Make-up rules, Remote Audit and Energy Management Programs. I began my career working for Santa Fe Railway in New Mexico as a Conductor/Brakeman/Switchman in 1994. I became a locomotive engineer, where I operated various train types throughout New Mexico. Starting in 2000, I was promoted to the position of Assistant Trainmaster. I was then promoted to Trainmaster (St. Louis), a Road Foreman of Engines (Birmingham, Alabama), Senior Manager of Train Handling (Ft. Worth, Texas), Superintendent of Operating Practices (Kansas City), and Superintendent of Operations covering the Eastern half of BNSF's Kansas Division. In 2011, I was promoted to Director of Train Handling and Operating Practices, and I was subsequently promoted to my current position.

I am responsible for BNSF's operating rules and practices. These rules include everything from the engineer's function on a train to air brake inspections to locomotive operations, including locomotive idling for fuel conservation. I am also responsible for the Train Make Up/Train Handling Rules, which govern how to put trains together and the safe handling

of such trains mitigating the potential for derailments. I also oversee remote auditing to ensure BNSF employees follow the rules.

I am responding to three points made in the Supplemental Comments by South Coast Air Quality Management District (“SCAQMD”), California Air Resources Board (“CARB”), and Massachusetts Department of Environmental Protection (“DEP”). First, I address the claims of SCAQMD witnesses Johnson and Beall that the SCAQMD rules would not adversely affect rail operations. I explain that their own evidence reinforces the concerns that BNSF has over the impact of the SCAQMD rules on operations in Southern California, with effects likely extending beyond Southern California.

Second, I respond to the arguments of SCAQMD, CARB, and Massachusetts DEP that BNSF’s concerns that allowing SCAQMD to regulate locomotive operations will produce a patchwork of different local regulations are overstated. As I explain, the many differences between the SCAQMD rules and rules by other federal agencies and state governments relating to the same subject – i.e., locomotive idling – are proof that BNSF’s concerns over patchwork regulation are amply justified. I explain that allowing local governments like SCAQMD to adopt their own regulations of locomotive idling create enormous difficulties for a railroad to formulate uniform rules that are transparent and easy for our employees to follow, and by creating distractions and confusion, would undermine BNSF’s efforts to ensure safe operation of our trains.

Third, I address SCAQMD’s argument that compliance with locomotive idling rules are as simple as complying with local rules regarding horn blowing and speed limits. As I explain, SCAQMD’s regulation of locomotives is completely different from the local rules regarding safety-related operating requirements.

I. Johnson and Beall Recognize That Compliance with SCAQMD's Rule Would Burden Rail Operations.

Messrs. Johnson and Beall claim that compliance with the SCAQMD rules would not create any delays that would harm rail operations, but the evidence they present shows just the opposite.

First, Johnson and Beall recognize that it takes several minutes to manually shut down and restart each locomotive in a consist (they say seven and ten minutes respectively). Johnson/Beall VS at 9. Their estimates are consistent with those made by BNSF's witness Mr. Reilly. Since many of the operating problems created by the SCAQMD rules flow from the time it takes to manually shut down and restart locomotives, Messrs. Johnson and Beall have effectively confirmed BNSF's evidence as to the operating burdens associated with the SCAQMD rules.

In addition, while Johnson and Beall acknowledge that it would be time consuming to manually shut down and restart locomotives to comply with SCAQMD's rule, they understate the amount of time that would be required. They acknowledge that their estimates do not include the amount of time necessary to set and release hand brakes on rail cars. As Mr. Reilly explained, it can be very time consuming to walk back to the rail cars where brakes must be set and difficult to set brakes on certain rail cars or under weather conditions. Johnson and Beall also ignore delays that BNSF would incur from having to perform an air brake test, which is required by the FRA rules if a train is off air for four hours. This could occur for example, if locomotives have to be manually shut down to comply with SCAQMD's rules, and the train misses its window. These steps—hand brakes and air brake tests—would further increase the delays to BNSF trains to comply with SCAQMD's rules.

While acknowledging that operating delays could arise in manually shutting down and restarting locomotives, Messrs. Johnson and Beall argue that BNSF should not worry about these operating problems because 95% of locomotives operating in Southern California have automatic engine start/stop (“AESS”) devices. Johnson/Beall VS at 7. Even if their estimate were correct, 5% of locomotives in Southern California would still have to deal with the problems associated with manual shutting down and restarting of locomotives. Given the high volume of traffic in Southern California, the large number of locomotives operating in the region and the congestion in the region, the delays and distractions from having to deal with the SCAQMD rules even on a relatively small percentage of locomotives would have the potential for creating severe operating problems.

Moreover, Johnson and Beall ignore the use of foreign locomotives in run-through arrangements, which are routinely used in Southern California. Foreign locomotives may not have AESS installed, and even if they did have AESS, which is not guaranteed, it may not be set to shut down after 15 minutes of idling since EPA’s federal regulation permits the devices to be set to shut down after 30 minutes. BNSF has no control over equipment in foreign locomotives, and BNSF would not know in advance whether foreign locomotives have AESS and whether they were set to shut down after 15 minutes.

Johnson and Beall also appear to assume that the AESS devices will in all cases automatically shut down locomotives after fifteen minutes of idling. Johnson/Beall at 11. Even for locomotives with AESS that is set to shut down after fifteen minutes of idling, BNSF’s witness Mr. Reilly explained that there are situations when idling-reduction devices will not shut down a locomotive, such as when the limit on shutdowns has been reached. Reilly VS at 16-19. For each locomotive that does not shut down automatically by idling-reduction devices,

including foreign locomotives and those not equipped with AESS, Johnson and Beall recognize that compliance with the SCAQMD rules would require BNSF to manually shut down locomotives more often than our internal rules require. Johnson/Beall VS at 7, 21.

Johnson and Beall also confirmed the concern discussed by Mr. Reilly that compliance with the SCAQMD rules would be highly cumbersome for trains with distributed power. They acknowledge that SCAQMD's idling rule poses problems with distributed power trains since the software logic of AESS devices will not shut down the lead locomotive or the DP Remote locomotive in the remote consist in a distributed power train to maintain the radio signal. To deal with this problem, they propose major changes in BNSF's operating rules, suggesting that BNSF could delink the radio signal between the lead locomotive and remote unit so that AESS will shut down the two locomotives and then BNSF could relink the radio signal before the train proceeds. Johnson and Beall claim that the linking procedures "are not time consuming." Johnson/Beall VS at 19-20. Yet they recognize that their proposed change to BNSF's distributed power train operations to comply with SCAQMD's rules would add as much as 40 minutes of delay. These delays would affect a large number of trains operating in the South Coast Basin because BNSF uses distributed power on its time-sensitive intermodal trains.

Johnson and Beall claim that BNSF could reduce the distributed power delays to five minutes by fundamentally changing practices in yards, specifically by moving people and equipment around the rail yard. Johnson/Beall VS at 17. For example, they propose a totally infeasible approach for reestablishing the radio link to restart the locomotives—that a yard crew goes to the distributed power unit and that a road crew goes to the lead locomotive to prepare for distributed power service. Their proposed operating changes ignore the fact that crew and equipment in yards are limited. People and equipment are not just waiting around and available

to delink and relink distributed power trains solely to shut down two additional locomotives to comply with SCAQMD's rules. Diverting those crew and equipment resources would cause other delays to rail operations because the crew and equipment would not be available for other tasks that need to be performed. They also assume incorrectly that all crew members are qualified to shut down locomotives, since this may not be true for conductors. Moreover, they completely ignore the difficulties that would arise for trains that are outside of yards on congested main lines.

II. The SCAQMD Rules Would Contribute to an Unmanageable Patchwork of Different Locomotive Idling and Equipment Regulations.

SCAQMD and CARB argue that BNSF has exaggerated its concern that the SCAQMD rules would create an unacceptable patchwork of local locomotive idling regulations. *See* SCAQMD Supplemental Comments at 44; CARB Supplemental Comments at 8. In fact, the SCAQMD rules provide a good example of the difficulties that are created when local governments attempt to dictate rail operating practices. The rules create their own operating problems, which I discussed above and Mr. Reilly discussed in detail in his verified statement. In addition, SCAQMD's rules would interfere with rail transportation because they are very different in many ways from other rules by federal agencies and other state governments regarding the same subject matter—locomotive idling and equipment. As I discuss below, SCAQMD's rules differ from EPA's idle control device regulations, which govern the same devices that SCAQMD wants BNSF to install. SCAQMD's rules also differ from FRA rules relating to air brake pressure and securement of unattended trains. SCAQMD's rules also regulate idling in a completely different way than *five* other states. With these differences, an interstate railroad cannot feasibly develop system-wide operating rules. Nor can it effectively train employees to comply with the different rules.

I address the numerous ways in which SCAQMD has chosen to regulate locomotive idling that overlap and conflict with the regulations that have been adopted or proposed by other government entities. It is clear that BNSF's concerns about a patchwork of locomotive regulation are real and substantial.

(1) Shut-Down Time for AESS: EPA permits idling-reduction devices to be set to shut down after 30 minutes of idling. 40 C.F.R. § 1033.115. By contrast, SCAQMD requires devices to be set to shut down after 15 minutes of idling. Rule 3501(d)(3), (e)(2); Rule 3502(d). Shut down settings cannot be changed as a locomotive moves across state lines since the software logic cannot be reconfigured while the locomotive is in service. In effect, the SCAQMD rules would force railroads to conform to SCAQMD shut down standards across their networks. Moreover, the differences between the SCAQMD and EPA requirements would pose special problems with foreign locomotives that operate in Southern California in run-through arrangements. Those devices are likely set to shut down after 30 minutes as EPA permits, and BNSF has no authority to change software settings on AESS devices in foreign locomotives as they travel into the South Coast Basin.

(2) Which Locomotives are Regulated: EPA's idle control regulation applies only to new and remanufactured locomotives. 40 C.F.R. § 1033.115. SCAQMD's rules apply to the same locomotives as those governed by EPA's regulation (creating their own conflicts with respect to new and remanufactured locomotives), but they are much broader and apply to *all* locomotives that are operated in the South Coast Basin. Rule 3501(c)(10), (d), (e); Rule 3502 (c)(7), (d). The requirements differ based on locomotive type, thus creating the need to develop multiple sets of rules for different locomotives (as well as train employees and implement those rules).

(3) Idling to Maintain Air Brake Pressure: EPA's regulation of new and remanufactured locomotives expressly recognizes that locomotives with idling-reduction devices may continue idling to maintain air brake pressure. 40 C.F.R. § 1033.115(g)(2). It is necessary in some cases to continue idling to maintain brake pressure because pressure bleeds from the brake pipe when the lead locomotive is shut down. SCAQMD's rules do not contain an exemption that would permit continued idling to maintain air brake pressure. *See* Rule 3502(j). SCAQMD witness Susan Nakamura recognized that SCAQMD rules go beyond the requirement in the EPA's rules relating to air brake pressure, but she claimed that "no safety issue is presented" because "when the lead locomotive is shut down, the airbrakes continue to function for several hours." Nakamura VS at 18-19. SCAQMD's witness Paul Reistrup also acknowledged the difference between the SCAQMD and EPA rules on this important issue, which he dismissed as a "red herring." Reistrup VS at 11.

(4) Source of Compressed Air: The SCAQMD rules also conflict with FRA's concern that SCAQMD's rules would "negatively impact the integrity and operation of the brake system" because the rules would increase the amount of time that brakes are removed from a source of compressed air. This is important since FRA is responsible for rail safety and its responsibility, unlike SCAQMD's, is nationwide. BNSF clearly is required to follow FRA's lead on safety issues. SCAQMD's rules would require BNSF to manually shut down all locomotives in certain cases, which would remove the brakes from the source of compressed air until the lead locomotive is manually restarted. SCAQMD consultant Colon Fulk agreed that if the locomotive is shut down, the air compressors will stop, and "this would stop the supply of compressed air into the trains' air braking system." Letter from Colon Fulk to Barbara Baird, at 2 (Nov. 13, 2013) (attached to EPA's petition). However, Mr. Fulk disagreed with FRA about the negative

impact this would have on the brakes. SCAQMD's witness Reistrup appears to disagree with FRA's concern as well. Mr. Reistrup stated that "shutting down a locomotive after 30 minutes does not instantly disturb the integrity of the air brake system" and that "the system can remain charged for many hours without locomotive power." Reistrup VS at 11. This type of conflict between what a local government thinks is acceptable from a safety standpoint and what the FRA believes is required would put BNSF into an untenable position in dealing with the local government rules.

(5) Idling to Heat and Cool the Cab: SCAQMD and EPA differ regarding whether a locomotive may continue idling to provide heat and air conditioning in the cab. This issue arises in occupied locomotives on a train, which are not limited to the lead locomotive. Crew members may occupy other locomotives on a train, including a helper locomotive or trailing locomotives in a consist when crews deadhead (i.e., exceed the permissible hours of service or the movement of surplus crews from one on-duty location to another) on a train. SCAQMD's rules contain no exemption to continue idling to heat or cool the cab. *See* Rule 3502(j). The SCAQMD rules also appear to prohibit overriding the idling-reduction device in a way that would circumvent its normal operation to maintain heat or air conditioning. *See* Rule 3502(c)(14), (h); Rule 3501(i). By contrast, EPA's regulation expressly permits idling to heat or cool the cab. 40 C.F.R. § 1033.115(g)(5).

(6) Idling to Heat the Cab: FRA requires an occupied locomotive to maintain a temperature of 60 degrees or higher. 49 C.F.R. § 229.119(d). As discussed above, this differs from SCAQMD's rules.

(7) Idling to Maintain Battery Power: There is a narrow exemption in SCAQMD's rules that permits idling to "maintain battery charge or voltage at a level sufficient to start the

locomotive.” *See* Rule 3502(j)(3). EPA’s regulations more generally permit the idle-reduction device to restart or continue idling to “recharge the locomotive battery.” 40 C.F.R. § 1033.115(g)(2)(ii).

(8) Idling to Comply with Federal Regulations: EPA’s regulation provides that locomotives may continue idling to “otherwise comply with federal regulations.” 40 C.F.R. § 1033.115(g)(2)(iv). The SCAQMD rules do not.

(9) Idling to Perform Maintenance: EPA’s regulation provides that locomotives may continue idling to “perform necessary maintenance.” 40 C.F.R. § 1033.115(g)(2)(iii). In fact, an employee may need to disable AESS in some cases to ensure continued idling during maintenance. But the SCAQMD rules appear to prohibit disabling an idling-reduction device in a way that would circumvent its normal operation. *See* Rule 3502(c)(14), (h).

(10) Definition of “Unattended” Locomotive: FRA defines “unattended equipment” as “equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled.” 49 C.F.R. § 232.103(n). By contrast, the SCAQMD rules define an “unattended” locomotive as “where no crew member is on board a locomotive.” *See* Rule 3502(c)(16). FRA has acknowledged that SCAQMD’s definition is different and that the differences between the two approaches could create confusion. Letter from Joseph Szabo to Jared Blumenfeld (Sept. 27, 2013) (attached as Exhibit 14 to BNSF’s Reply to United States Environmental Protection Agency’s Petition for Declaratory Order (filed Feb. 14, 2014)).

(11) Circumvention: It is a violation of EPA’s regulation to “circumvent” the provisions of the idle control regulation. 40 C.F.R. § 1033.115(g). However, EPA does not provide a detailed definition of “circumvention.” SCAQMD’s idling rule defines “circumvention” as (1) “tampering” with an idling-reduction device; or (2) moving a locomotive “for the purpose of

preventing idling for more than the 30 minutes or to prevent an anti-idling device from shutting off” a locomotive are considered violations of the rule. *See* Rule 3502(h). Likewise, SCAQMD defines circumvention in connection with its recordkeeping rule as moving a locomotive “for the purpose of preventing idling for more than the length of time for which recordkeeping is required ... or to prevent an anti-idling device from shutting off” a locomotive is a violation. *See* Rule 3501(i). Given the importance of anti-circumvention provisions in any rule governing the use of locomotives, the existence of differences in how circumvention will be defined would create enormous difficulties in drafting (and implementing) rules that will give our employees adequate guidance on complying with different sets of rules. This problem would be compounded if other local jurisdictions could adopt their own idling rules for inclusion in a State Implementation Plan.

(12) Tampering: EPA’s regulation regarding tampering provides that a person may not “knowingly remove or render inoperative” an idling-reduction device. 40 C.F.R. § 1068.101(b)(1). There are exceptions, including making repairs. SCAQMD’s rules differ and define “tampered” as the “modification or disabling” of an anti-idling device so that the locomotive will not automatically shut off. *See* Rule 3501(c)(16); Rule 3502(c)(14). As in the case of anti-circumvention provisions, it is very important to be able to develop clear rules for our employees to know when they might be accused of having tampered with locomotive equipment.

(13) Engaged: SCAQMD’s rules require that idling-reduction devices be “engaged.” While SCAQMD’s idling rule does not define “engaged,” its recordkeeping rule defines it as the “condition in which a locomotive’s controls ... are set in such a way while idling that an

installed anti-idling device can automatically shut-off and restart” the locomotive. *See* Rule 3501(c)(5). EPA’s regulations have no similar provision.

(14) Recordkeeping and Reporting: SCAQMD’s rules contain specific and extensive recordkeeping and reporting requirements. *See* Rule 3501. For trains with locomotives that are not equipped with idling-reduction devices set to shut down after 15 minutes of idling, the SCAQMD rule would require BNSF employees to record and capture data each time a train stops in case it becomes an idling “event.” *See* Rule 3501. The rule also would require BNSF to maintain information about locomotives with idling-reduction devices “necessary to verify the installation ... and that the anti-idling devices were set at 15 minutes or less and were engaged while idling.” *See* Rule 3501(d)(3). The rule would further require BNSF to submit an annual report that includes information on each locomotive operated in the South Coast Basin, such as whether each locomotive was equipped with AESS and a statement that it was set at 15 minutes, “is engaged when idling, and will not be tampered with.” *See* Rule 3501(e)(2). SCAQMD argues that these recordkeeping requirements can be met by collecting data from event recorders. But FRA’s regulations list different types of data that must be collected by event recorders than the data that SCAQMD has specified to be collected. 49 C.F.R. § 229.135.

(15) Fines: SCAQMD’s rules have different provisions regarding fines for violations of the rules. SCAQMD’s rules permit fines from \$25,000 to \$75,000 for failure to comply with “any requirement of this rule,” which can be regarded as “a separate violation for each locomotive for each day of non-compliance.” *See* Rule 3502(i); Rule 3501(j). EPA’s regulation authorizes a civil penalty of up to \$3,750 for “each day an engine or piece of equipment is operated in violation.” 40 C.F.R. § 1068.101(b)(1). Since the SCAQMD fines are so large, BNSF would be required to come up with special practices and procedures applicable in

Southern California designed to avoid even the chance of a violation. For example, as Mr. Reilly and BNSF witness Mr. Roberts explained, the SCAQMD rules would require crews to start shutting down locomotives well in advance of the 30-minute limit simply to avoid the possibility of a very large fine. *See* Reilly VS at 9; Direct Trial Testimony Declaration of Chris A. Roberts, at 10 (attached as Exhibit 8 to BNSF's Reply to United States Environmental Protection Agency's Petition for Declaratory Order (filed Feb. 14, 2014)).

(16) Massachusetts: SCAQMD claims that Massachusetts' idling rule is "similar to Rule 3502" because it "limits idling to 30 minutes in specified circumstances." *See* SCAQMD Supplemental Comments at 46. But the Massachusetts rule has an entirely different approach. It provides, "No person owning or operating a diesel powered locomotive shall cause, suffer, allow, or permit said locomotive to be operated in a manner such as to cause or contribute to a condition of air pollution." 310 CMR 7.11(e). It further prohibits "the unnecessary foreseeable idling" of a locomotive for more than 30 minutes. While the Massachusetts rule presents its own problems as a result of the vague language used, it is clear that the two rules are not "similar," and they would present a very difficult challenge to a railroad seeking to come up with a uniform set of operating or equipment rules to comply with both.

(17) Rhode Island: Rhode Island has an idling rule pertaining to "non-road diesel engines," which is defined as including locomotives. The Rhode Island rule prohibits "unnecessary idling of non-road engines." *See* Exhibit 1 (Rule 45.4). The rule does not limit idling to a certain number of minutes, and it contains ten exceptions. The approach taken by the SCAQMD rules is entirely different.

(18) Michigan: Michigan proposed a bill last year that would have required a study of locomotive idling and promulgation of rules to "eliminate nonessential idling to the extent such

regulation is not preempted by federal law.” *See* Exhibit 2. It is worth noting that Michigan, unlike SCAQMD, recognized the conflict with ICCTA that is created by local regulations of locomotive idling. But it is also clear that it would be very difficult to develop operating and equipment rules for a national railroad that had to comply with such drastically different approaches by Michigan and SCAQMD to regulating locomotive idling.

(19) New Hampshire: New Hampshire last year considered a statute that proposed limiting locomotive idling. *See* Exhibit 3. It appears that New Hampshire’s proposed idling legislation would limit “unnecessary and foreseeable” locomotive idling to 30 minutes when the locomotives are within 1,000 feet of “any residential area, school, nursing home, day care, hospital, or sensitive receptor.” SCAQMD’s rules do not refer to unnecessary or foreseeable idling. The approach proposed by New Hampshire would give railroads some discretion to determine whether idling was “necessary” or “essential,” but SCAQMD has made it clear that its approach is to eliminate as much as possible any discretion that could be exercised by railroad operators. *Nazemi VS* at 6. Moreover, as difficult as it would be to comply with New Hampshire’s geographic limits, the SCAQMD rules contain no such limits.

(20) Maine: Maine proposed a provision relating to diesel-powered locomotives that contains a “pollution prohibition” and an “idling prohibition.” *See* Exhibit 4. The “pollution prohibition” provided that a locomotive owner or operator “may not operate the locomotive or allow the locomotive to be operated in a manner that causes or contributes to air pollution in the State.” The “idling prohibition” provided that a locomotive owner or operator “may not cause or allow the foreseeably unnecessary idling of the locomotive” for 30 minutes. Needless to say, SCAQMD’s rules have an entirely different approach.

The differences between SCAQMD's rules and other state regulations and proposed rules or legislation regarding locomotive idling are obvious and significant. They demonstrate that the SCAQMD rules would contribute to an unacceptable patchwork of local regulations of locomotive equipment and idling. BNSF's concerns are not theoretical. The disparity in approaches and specific requirements among the few local jurisdictions that have so far sought to regulate locomotive idling are apparent on their face. SCAQMD's rules also differ from federal regulations of EPA regarding idle controls and FRA regarding rail safety.

It would be very difficult for a national railroad like BNSF to accommodate such a vast diversity of regulatory approaches, even if particular approaches did not create unique operating problems. BNSF's line haul locomotives travel across BNSF's rail network, which covers 28 states and two Canadian provinces, and they also travel on tracks of other railroads as run-through locomotives. BNSF also operates foreign locomotives on its tracks, including those in the South Coast Basin. Locomotive equipment must be interchangeable for the interconnected rail network in the United States to function. To run a national railroad efficiently, uniform and national operating rules and practices are necessary.

Uniformity is also essential for safety. If employees are confused about the governing rule in a particular situation, due to the fact that the railroad must attempt to accommodate many different local regulatory approaches, the chances increase that the employees will make mistakes. To ensure the safest possible working environment, we try very hard to keep rules as direct and simple as possible. Compliance with a patchwork of local regulations relating to locomotives would undermine this objective and subject our employees to a less safe operating environment.

SCAQMD questions this need for uniformity in operating rules, arguing that BNSF has no difficulty complying with different local rules regarding horn blowing and speed limits. *See* SCAQMD's Supplemental Comments at 46-47. But those circumstances are completely different from the idling restrictions at issue in the SCAQMD rules.

For example, certain areas of track in BNSF's system are in a quiet zone, where horn blowing is restricted. A quiet zone is marked by a sign next to the line that says "QZ." As a train passes by the sign, the engineer adheres to the sign by not blowing the whistle. Nothing more needs to be done to deal with horn restrictions. Similarly, every stretch of line has to have a speed limit. Speed limits are set out in BNSF's time tables. The road crew must obey the given speed limit for each area, regardless of whether the limit has been imposed indirectly by local governments or by operating considerations at BNSF's headquarters. The crew does not know whether a particular speed reflects track geometry, a request from a local jurisdiction or another reason. Local rules regarding horn blowing and speed limits can be implemented without disrupting rail operations or risking safety.

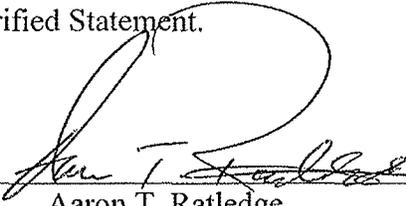
These local operating requirements are fundamentally different from SCAQMD's idling, recordkeeping and reporting rules. There is no way to implement SCAQMD's rules in a way that would be transparent or easy for employees to follow in the many different operating situations that arise in South Coast Basin. As Mr. Reilly explained in his verified statement, BNSF's employees would be confronted by difficult questions about the requirements under the SCAQMD rules to be resolved on a daily basis. Moreover, the efforts that would be required to comply with the SCAQMD rules go far beyond the practices that BNSF's employees undertake in the normal course of business. Shutting down a locomotive consist to comply with the

SCAQMD rules would be far different from simply observing a “QZ” sign or following a time table.

Finally, SCAQMD suggests that BNSF’s willingness voluntarily to enter into a Memoranda of Understanding (“MOU”) with CARB relating to locomotive idling shows that it would not be too difficult to comply with local idling restrictions. The simple answer to this claim is that BNSF agreed to the terms of the 2005 MOU because those terms were specifically tailored to avoid an adverse impact on rail operations and to be flexible and consistent with BNSF’s operating practices, SCAQMD’s rules try to deal with locomotive idling through mandates rather than voluntary measures that accommodate the demands of complex rail operations.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 7, 2014



Aaron T. Ratledge
General Director, Operating Practices
BNSF Railway Company

EXHIBIT 1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES

AIR POLLUTION CONTROL REGULATION NO. 45

RHODE ISLAND DIESEL ENGINE ANTI-IDLING PROGRAM



Effective 19 July 2007

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws § 23-23-29 and §31-16.1, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

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**RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES
AIR POLLUTION CONTROL REGULATION NO. 45**

45. RHODE ISLAND DIESEL ENGINE ANTI-IDLING PROGRAM

45.1. Definitions

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

45.1.1. "Diesel engine" means a compression ignition type of internal combustion engine.

45.1.2. "Diesel motor vehicle" means a vehicle powered by a diesel engine but shall not include non-road diesel engines, auxiliary power units on on-road motor vehicles, or stationary diesel engines.

45.1.3. "Idling" means the operation of the engine while the vehicle is stationary or the piece of non-road equipment is not performing work.

45.1.4. "Non-road diesel engine" means a diesel engine intended for use off public highways or in other similar applications, and include, but are not limited to, diesel engines in: farm vehicles, locomotives, aircraft, marine vessels, construction equipment, airport ground support equipment, commercial and industrial equipment.

45.1.5. "Unnecessary idling" means idling which does not meet one of the exemptions listed in 45.5.

45.2. Applicability

These regulations apply to any person, entity, owner or operator with control over the operations of diesel engines.

45.3. Diesel motor vehicle engine idling

No person, entity, owner or operator shall cause, allow or permit the unnecessary idling of the engine of a diesel motor vehicle while said vehicle is stopped for a period of time in

excess of five (5) consecutive minutes in any sixty (60) minute period, except as provided in the exemptions listed in section 45.5.

45.4. Non-road diesel engine idling

No person, entity, owner or operator shall cause, suffer, allow or permit the unnecessary idling of non-road diesel engines under its control or on its property.

45.5. Exemptions

Vehicles, diesel engines and non-road diesel engines are exempt from the requirement of this regulation in the following circumstances:

45.5.1. Vehicles that remain motionless due to traffic conditions or at the direction of a law enforcement official.

45.5.2. Vehicles idling when it is necessary to operate defrosting, heating, or cooling equipment to ensure the health or safety of the driver or passengers. In the case of providing heat, the exemption allows idling for up to 15 minutes per hour when temperatures are between 0 degrees and 32 degrees Fahrenheit. Idling for the purpose of providing heat will be allowed as needed when temperatures are below 0 degrees Fahrenheit. A passenger bus may idle a maximum of 15 minutes per hour to maintain passenger comfort while non-driver passengers are onboard whenever temperatures are below 50 degrees Fahrenheit.

45.5.3. Vehicles necessarily idling when the primary propulsion engine is needed to power work-related mechanical or electrical operations other than propulsion (e.g., mixing or processing cargo or straight truck refrigeration). This exemption does not apply when idling for cabin comfort or to operate non-essential on-board equipment.

45.5.4. Non-road diesel engines may idle when the engine idles for maintenance, servicing, repairing, or diagnostic purposes, if idling is required for such activity. In addition, a non-road diesel engine may idle as part of a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection..

45.5.5. An occupied vehicle with a sleeper berth compartment may idle for purposes of air conditioning or heating during federally mandated rest or sleep period. This exemption shall expire on July 1, 2010.

45.5.6. Vehicles may idle when the primary propulsion engine idles for maintenance, servicing, repairing, or diagnostic purposes, if idling is required for such activity. In addition, a vehicle may idle as part of a state or federal inspection to verify that all equipment is in good working order, provided idling is required as part of the inspection.

45.5.7. Police, fire, rescue, ambulance and other public safety vehicles, military vehicles, armored vehicles, other emergency or law enforcement vehicle, or any vehicle being used in an emergency capacity, may idle while in an emergency or training mode and not for the convenience of the vehicle operator. Also, an armored vehicle may idle when a person remains inside the vehicle to guard the contents, or while the vehicle is being loaded or unloaded.

45.5.8. Airfield maintenance vehicles while actively being used to achieve their intended purpose on a state-owned or operated airport.

45.5.9. Diesel powered engines or vehicles that must continuously operate while stationary in order to perform their intended function, in accordance with all applicable regulations (e.g., an electricity generator which is actively being used to power equipment on-site).

45.5.10. Operating a vehicle mounted auxiliary power unit or generator set as a means to heat, air condition or provide electrical power as an alternative to idling the vehicle's main engine is not considered idling.

45.6. Penalties

Any person who violates the provisions of this regulation shall be punished by a fine of not more than one hundred dollars (\$100) for the first offense, not more than five hundred dollars (\$500) for each succeeding offense, as stated in RIGLs § 31-16.1-3 and § 31-16.1-4. Penalties shall be assessed against the person, entity, owner or operator of any vehicle or non-road diesel engine found to be in violation of this regulation. Additionally, penalties may be assessed against any person who allows or permits unnecessary idling to occur on property under their control.

45.7. General Provisions

45.7.1. Purpose

The purpose of this regulation is to specify the requirements for Rhode Island's Diesel Engine Anti-Idling Program and to protect public health and the environment by reducing emissions that result from unnecessary idling while conserving fuel and to codify the requirements of RIGLs § 31-16.1 and § 23-23-29.

45.7.2. Authority

These regulations are authorized pursuant to R.I. Gen. Law § 31-16.1-2, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35

45.7.3. Application

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

45.7.4. Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

45.7.5. Effective Date

The foregoing regulation, "Rhode Island Motor Anti-Idling Program", as amended, after due notice, is hereby adopted and filed with the Secretary of State this 29th day of June, 2007 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23, 31-16.1, 42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

W. Michael Sullivan, PhD., Director
Department of Environmental Management

Notice Given on: May 15, 2007

Public Hearing held: June 15, 2007

Filing Date: June 29, 2007

Effective Date: July 19, 2007

EXHIBIT 2

HOUSE BILL No. 4499

April 9, 2013, Introduced by Reps. Tlaib and Irwin and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 69.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 69 DIESEL POLLUTION CONTROL

2 SEC. 6901. AS USED IN THIS PART:

3 (A) "AUXILIARY POWER UNIT" MEANS A PORTABLE, VEHICLE-MOUNTED
4 SYSTEM THAT PROVIDES CLIMATE CONTROL AND POWER FOR DIESEL VEHICLES
5 WITHOUT USING THE PROPULSION ENGINE.

6 (B) "BEST AVAILABLE CONTROL TECHNOLOGY" OR "BACT" MEANS LEVEL
7 3 CONTROLS OR ANOTHER EMISSIONS CONTROL DEVICE REQUIRED BY SECTION
8 6905, 6906, OR 6907 THAT DOES NOT RESULT IN A NET INCREASE OF
9 EMISSIONS OF NITROGEN OXIDES.

1 (C) "CARB" MEANS THE CALIFORNIA AIR RESOURCES BOARD.

2 (D) "CCV" MEANS A CLOSED CRANKCASE VENTILATION SYSTEM,
3 EQUIPMENT THAT COMPLETELY CLOSES THE CRANKCASE OF A DIESEL ENGINE
4 TO THE ATMOSPHERE AND ROUTES THE CRANKCASE VAPOR TO THE ENGINE
5 INTAKE AIR SYSTEM OR THE EXHAUST SYSTEM.

6 (E) "CERTIFIED ENGINE CONFIGURATION" MEANS A NEW, REBUILT, OR
7 REMANUFACTURED ENGINE CONFIGURATION WITH RESPECT TO WHICH ALL OF
8 THE FOLLOWING REQUIREMENTS ARE MET:

9 (i) IS CERTIFIED OR VERIFIED BY USEPA OR CARB.

10 (ii) MEETS OR IS REBUILT OR REMANUFACTURED TO A MORE STRINGENT
11 SET OF ENGINE EMISSIONS STANDARDS, AS DETERMINED BY THE DEPARTMENT.

12 (iii) IF THE ENGINE CONFIGURATION REPLACES AN EXISTING ENGINE OR
13 VEHICLE, THE EXISTING ENGINE IS RETURNED TO THE SUPPLIER FOR
14 REMANUFACTURING TO A MORE STRINGENT SET OF ENGINE EMISSIONS
15 STANDARDS OR FOR SCRAPPAGE.

16 (F) "CMAQ PROGRAM" MEANS THE CONGESTION MITIGATION AND AIR
17 QUALITY PROGRAM ESTABLISHED UNDER 23 USC 149.

18 (G) "CONTRACTOR" MEANS A PERSON THAT ENTERS INTO A PUBLIC
19 WORKS CONTRACT WITH A PUBLIC AGENCY, OR ANY PERSON THAT ENTERS INTO
20 AN AGREEMENT WITH SUCH A PERSON, TO PERFORM WORK OR PROVIDE LABOR
21 OR SERVICES RELATED TO THE PUBLIC WORKS CONTRACT.

22 (H) "COST-EFFECTIVENESS" MEANS THE TOTAL DOLLAR AMOUNT OF AN
23 EXPENDITURE DIVIDED BY THE TOTAL NUMBER OF TONS OF PM REDUCTION
24 ATTRIBUTABLE TO THE EXPENDITURE.

25 (I) "DEFECTIVE" MEANS MALFUNCTIONING DUE TO AGE, WEAR,
26 MALMAINTENANCE, OR DESIGN DEFECTS.

27 (J) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL

1 QUALITY.

2 (K) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

3 (I) "FLEET" MEANS 1 OR MORE DIESEL VEHICLES OR MOBILE OR
4 STATIONARY DIESEL ENGINES OWNED, CONTROLLED, OR OPERATED BY THE
5 SAME PERSON OR BY ANY PERSON THAT CONTROLS, IS CONTROLLED BY, OR
6 HAS COMMON CONTROL WITH THAT PERSON.

7 (M) "FREIGHT FACILITY" MEANS A PORT, AIRPORT, RAILYARD, OR
8 INTERMODAL SHIPPING FACILITY WHERE PM EMISSIONS (AS TOTAL
9 PARTICULATES) FROM ALL ACTIVITIES ASSOCIATED WITH OPERATIONS OF
10 THAT FACILITY, INCLUDING, BUT NOT LIMITED TO, EMISSIONS FROM MARINE
11 VESSELS, CARGO HANDLING EQUIPMENT, AND TRUCK AND TRAIN TRAFFIC
12 ASSOCIATED WITH THE FACILITY, EXCEED 100 TONS PER YEAR.

13 (N) "FUND" MEANS THE DIESEL EMISSIONS REDUCTION FUND CREATED
14 IN SECTION 6910(1).

15 (O) "FUNDING PROGRAM" MEANS THE DIESEL EMISSIONS REDUCTION
16 FUNDING PROGRAM CREATED PURSUANT TO SECTION 6912.

17 SEC. 6902. AS USED IN THIS PART:

18 (A) "HEAVY-DUTY DIESEL VEHICLE" MEANS A MOTOR VEHICLE WITH A
19 GROSS VEHICLE WEIGHT RATING OF AT LEAST 14,000 POUNDS THAT IS
20 POWERED BY A DIESEL ENGINE.

21 (B) "INCREMENTAL COST" MEANS THE COST OF AN EMISSION REDUCTION
22 MEASURE LESS THE BASELINE COST AVOIDED BY THE EMISSION REDUCTION
23 MEASURE THAT WOULD OTHERWISE BE INCURRED IN THE NORMAL COURSE OF
24 BUSINESS. INCREMENTAL COSTS MAY INCLUDE ADDED LEASE, FUEL, OR
25 CAPITAL COSTS.

26 (C) "LEVEL 1 CONTROL" MEANS A VERIFIED DIESEL EMISSION CONTROL
27 DEVICE THAT ACHIEVES A PM EMISSION REDUCTION OF 25% OR MORE FROM

1 UNCONTROLLED ENGINE EMISSION LEVELS.

2 (D) "LEVEL 2 CONTROL" MEANS A VERIFIED DIESEL EMISSION CONTROL
3 DEVICE THAT ACHIEVES A PM EMISSION REDUCTION OF 50% OR MORE FROM
4 UNCONTROLLED ENGINE EMISSION LEVELS.

5 (E) "LEVEL 3 CONTROL" MEANS A VERIFIED DIESEL EMISSION CONTROL
6 DEVICE THAT ACHIEVES A PM EMISSION REDUCTION OF 85% OR MORE FROM
7 UNCONTROLLED ENGINE EMISSION LEVELS OR THAT REDUCES EMISSIONS TO
8 LESS THAN OR EQUAL TO 0.01 GRAMS OF PM PER BRAKE HORSEPOWER-HOUR.
9 LEVEL 3 CONTROL INCLUDES REPOWERING OR REPLACING THE EXISTING
10 DIESEL ENGINE WITH AN ENGINE MEETING USEPA'S 2007 HEAVY-DUTY
11 HIGHWAY DIESEL STANDARDS OR, IN THE CASE OF A NONROAD ENGINE, AN
12 ENGINE MEETING THE USEPA'S TIER 4 NONROAD DIESEL STANDARDS. LEVEL 3
13 CONTROL ALSO INCLUDES NEW DIESEL ENGINES MEETING THESE EMISSIONS
14 STANDARDS.

15 (F) "LOAD/UNLOAD LOCATION" MEANS A LOCATION WHERE VEHICLES
16 LOAD OR UNLOAD.

17 (G) "MDOT" MEANS THE STATE TRANSPORTATION DEPARTMENT.

18 (H) "MEDIUM-DUTY DIESEL VEHICLE" MEANS A MOTOR VEHICLE WITH A
19 GROSS VEHICLE WEIGHT RATING OF AT LEAST 8,500 POUNDS AND LESS THAN
20 14,000 POUNDS THAT IS POWERED BY A DIESEL ENGINE.

21 (I) "MOTOR VEHICLE" MEANS ANY SELF-PROPELLED VEHICLE DESIGNED
22 FOR TRANSPORTING PERSONS OR PROPERTY ON A STREET OR HIGHWAY.

23 (J) "NONCONFORMING" MEANS NOT IN COMPLIANCE WITH THE EMISSION
24 CONTROL REQUIREMENTS OF SECTION 6905.

25 (K) "NONROAD ENGINE" MEANS AN INTERNAL COMBUSTION ENGINE,
26 INCLUDING THE FUEL SYSTEM, THAT IS NOT USED IN A MOTOR VEHICLE OR A
27 VEHICLE USED SOLELY FOR COMPETITION AND THAT IS NOT A STATIONARY

1 SOURCE. HOWEVER, NONROAD ENGINE INCLUDES AN INTERNAL COMBUSTION
2 ENGINE USED TO POWER A GENERATOR, COMPRESSOR, OR SIMILAR EQUIPMENT
3 USED IN A CONSTRUCTION PROGRAM OR PROJECT.

4 (I) "NONROAD VEHICLE" MEANS A VEHICLE OR EQUIPMENT THAT IS
5 POWERED BY AN INTERNAL COMBUSTION ENGINE OF 50 OR MORE HORSEPOWER
6 AND GREATER, AND THAT IS NOT A MOTOR VEHICLE OR A VEHICLE USED
7 SOLELY FOR COMPETITION. NONROAD VEHICLE MAY INCLUDE AN EXCAVATOR,
8 BACKHOE, CRANE, COMPRESSOR, GENERATOR, BULLDOZER, OR SIMILAR
9 EQUIPMENT. UNLESS OTHERWISE INDICATED IN THIS PART, NONROAD VEHICLE
10 DOES NOT INCLUDE A LOCOMOTIVE OR MARINE VESSEL.

11 SEC. 6903. AS USED IN THIS PART:

12 (A) "OPACITY" MEANS THE PERCENTAGE OF LIGHT OBSTRUCTED FROM
13 PASSAGE THROUGH AN EXHAUST SMOKE PLUME.

14 (B) "PERSON" MEANS AN INDIVIDUAL OR A PARTNERSHIP,
15 CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL
16 ENTITY.

17 (C) "PM" MEANS PARTICULATE MATTER.

18 (D) "PM2.5" MEANS PM THAT IS 2.5 MICROMETERS OR SMALLER IN
19 DIAMETER.

20 (E) "PUBLIC AGENCY" MEANS THIS STATE; A CITY, COUNTY,
21 TOWNSHIP, VILLAGE, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION
22 OF THIS STATE; A STATE INSTITUTION OF HIGHER EDUCATION; A
23 DEPARTMENT, AGENCY, BOARD, OR COMMISSION OF ANY OF THESE; OR AN
24 AUTHORITY ESTABLISHED BY ANY OF THESE PURSUANT TO LAW.

25 (F) "PUBLIC WORKS CONTRACT" MEANS A CONTRACT WITH A PUBLIC
26 AGENCY FOR A PROGRAM OR PROJECT INVOLVING THE CONSTRUCTION,
27 DEMOLITION, RESTORATION, REHABILITATION, REPAIR, RENOVATION, OR

1 ABATEMENT OF ANY BUILDING, TUNNEL, EXCAVATION, ROADWAY, PARK,
2 BRIDGE, OR OTHER STRUCTURE; A CONTRACT WITH A PUBLIC AGENCY
3 REGARDING THE PREPARATION FOR ANY SUCH PROGRAM OR PROJECT; OR A
4 CONTRACT WITH A PUBLIC AGENCY FOR ANY FINAL WORK INVOLVED IN THE
5 COMPLETION OF ANY SUCH PROGRAM OR PROJECT.

6 (G) "REGULATED HIGHWAY DIESEL VEHICLE" MEANS ANY OF THE
7 FOLLOWING HEAVY-DUTY DIESEL VEHICLES, AS FURTHER DEFINED IN AN
8 INCLUSIVE MANNER IN RULES PROMULGATED UNDER SECTION 6920:

9 (i) COMMERCIAL AND TRANSIT BUSES.

10 (ii) GARBAGE TRUCKS.

11 (iii) SCHOOL BUSES.

12 (iv) TRUCKS OWNED BY OR OPERATED ON BEHALF OF PUBLIC AGENCIES,
13 INCLUDING, BUT NOT LIMITED TO, DUMP TRUCKS, GRADERS, AND SNOW
14 PLOWS.

15 (v) FREIGHT AND CARGO DELIVERY TRUCKS WITH CENTRAL FLEET
16 MAINTENANCE OR FUELING LOCATIONS WITHIN THIS STATE.

17 (vi) ON-ROAD CARGO HANDLING EQUIPMENT OPERATED AT PORTS,
18 AIRPORTS, AND RAILYARDS.

19 (vii) SUCH OTHER HEAVY-DUTY HIGHWAY DIESEL VEHICLES AS THE
20 DEPARTMENT MAY DESIGNATE BY RULE PROMULGATED UNDER SECTION 6920.

21 (H) "RETROFIT" MEANS TO EQUIP A DIESEL MOTOR VEHICLE OR
22 NONROAD VEHICLE WITH NEW PM-EMISSIONS-REDUCING PARTS OR TECHNOLOGY
23 VERIFIED BY USEPA OR CARB AFTER MANUFACTURE OF THE ORIGINAL ENGINE,
24 OR WITH A CCV.

25 (I) "SAE J1667" MEANS SOCIETY OF AUTOMOTIVE ENGINEERS (SAE)
26 RECOMMENDED PRACTICE SAE J1667 "SNAP-ACCELERATION SMOKE TEST
27 PROCEDURE FOR HEAVY-DUTY DIESEL POWERED VEHICLES", AS ISSUED

1 FEBRUARY 1996 ("1996-02").

2 (J) "SIGNIFICANT EXPANSION" MEANS ANY MODIFICATION, OR SERIES
3 OF MODIFICATIONS OCCURRING WITHIN A CONSECUTIVE 10-YEAR PERIOD, TO
4 A FREIGHT FACILITY OR OPERATIONS THEREOF, INCLUDING, BUT NOT
5 LIMITED TO, PHYSICAL CHANGES TO THE FACILITY OR AN INCREASE IN THE
6 HOURS OF OPERATION, THAT IS COMMENCED AFTER THE EFFECTIVE DATE OF
7 THE AMENDATORY ACT THAT ADDED THIS SECTION AND THAT WOULD RESULT IN
8 A MAXIMUM POTENTIAL NET INCREASE IN ANNUAL PM 2.5 EMISSIONS OF 10
9 TONS OR MORE FROM ALL ACTIVITIES ASSOCIATED WITH OPERATIONS OF THE
10 FACILITY UNDER USUAL BUSINESS CONDITIONS. "SIGNIFICANTLY EXPAND"
11 HAS A CORRESPONDING MEANING.

12 (K) "SOS" MEANS SECRETARY OF STATE.

13 SEC. 6904. AS USED IN THIS PART:

14 (A) "TAMPERED" MEANS MISSING, MODIFIED, OR DISCONNECTED.

15 (B) "TRUCKSTOP" MEANS A ROADSIDE SERVICE STATION ESPECIALLY
16 FOR TRUCKS.

17 (C) "ULTRA-LOW SULFUR DIESEL FUEL" MEANS DIESEL FUEL THAT HAS
18 A SULFUR CONTENT OF NOT MORE THAN 15 PARTS PER 1,000,000.

19 (D) "USEPA" MEANS THE UNITED STATES ENVIRONMENTAL PROTECTION
20 AGENCY.

21 (E) "USEPA'S 2007 HEAVY-DUTY HIGHWAY DIESEL STANDARDS" MEANS
22 REGULATIONS PROMULGATED BY USEPA AND PUBLISHED AT 66 FR 5002
23 (JANUARY 18, 2001).

24 (F) "USEPA'S TIER 4 NONROAD DIESEL STANDARDS" MEANS
25 REGULATIONS PROMULGATED BY USEPA AND PUBLISHED AT 69 FR 38958 (JUNE
26 29, 2004).

27 (G) "VERIFIED DIESEL EMISSION CONTROL DEVICE" MEANS EITHER OF

1 THE FOLLOWING:

2 (i) AN EMISSION CONTROL DEVICE OR STRATEGY THAT HAS BEEN
3 VERIFIED TO ACHIEVE A SPECIFIED DIESEL PARTICULATE MATTER REDUCTION
4 BY USEPA OR CARB.

5 (ii) REPLACEMENT OR REPOWERING WITH AN ENGINE THAT IS CERTIFIED
6 TO SPECIFIC PM EMISSIONS PERFORMANCE BY USEPA OR CARB.

7 (H) "VERIFIED TECHNOLOGY" MEANS A DIESEL EMISSION CONTROL
8 DEVICE, AN ADVANCED TRUCKSTOP ELECTRIFICATION SYSTEM, OR AN
9 AUXILIARY POWER UNIT, THAT HAS BEEN VERIFIED BY USEPA OR CARB.

10 SEC. 6905. (1) SUBJECT TO SUBSECTIONS (2), (3), AND (4),
11 BEGINNING JULY 1, 2016, A FLEET OWNER OR OPERATOR SHALL NOT OPERATE
12 A REGULATED HIGHWAY DIESEL VEHICLE UNLESS AT LEAST 1/2 OF THE
13 REGULATED HIGHWAY DIESEL VEHICLES IN THAT FLEET HAVE LEVEL 3
14 CONTROLS INSTALLED, PROPERLY MAINTAINED, AND FUNCTIONING. EXCEPT AS
15 PROVIDED IN SUBSECTIONS (2), (3), AND (4), BEGINNING JULY 1, 2017,
16 A FLEET OWNER OR OPERATOR SHALL NOT OPERATE A REGULATED HIGHWAY
17 DIESEL VEHICLE UNLESS THAT VEHICLE HAS LEVEL 3 CONTROL INSTALLED,
18 PROPERLY MAINTAINED, AND FUNCTIONING.

19 (2) FOR THE PURPOSES OF SUBSECTION (1), BOTH OF THE FOLLOWING
20 APPLY:

21 (A) UNTIL JULY 1, 2018, A REGULATED HIGHWAY DIESEL VEHICLE
22 THAT HAS LEVEL 1 CONTROL INSTALLED AND FUNCTIONING BEFORE THE
23 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL
24 BE CONSIDERED TO HAVE LEVEL 3 CONTROLS INSTALLED, PROPERLY
25 MAINTAINED, AND FUNCTIONING.

26 (B) UNTIL JULY 1, 2020, A REGULATED HIGHWAY DIESEL VEHICLE
27 THAT HAS LEVEL 2 CONTROL INSTALLED AND FUNCTIONING BEFORE THE

1 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL
2 BE CONSIDERED TO HAVE LEVEL 3 CONTROLS INSTALLED, PROPERLY
3 MAINTAINED, AND FUNCTIONING.

4 (3) AN OWNER OR OPERATOR OF A FLEET, INCLUDING ANY FLEET OWNED
5 OR OPERATED BY A RELATED PERSON, CONSISTING IN THE AGGREGATE OF 5
6 OR FEWER REGULATED HIGHWAY DIESEL VEHICLES HAS AN ADDITIONAL 2
7 YEARS TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (1).

8 (4) IF THE DEPARTMENT MAKES A WRITTEN FINDING THAT A VERIFIED
9 DIESEL EMISSIONS CONTROL DEVICE WITH LEVEL 3 CONTROLS DOES NOT
10 EXIST FOR A REGULATED HIGHWAY DIESEL VEHICLE, PROPERLY MAINTAINED
11 AND FUNCTIONING LEVEL 2 CONTROLS THAT ARE AVAILABLE AND APPROPRIATE
12 FOR THE VEHICLE AS DETERMINED BY THE DEPARTMENT MAY BE SUBSTITUTED
13 FOR LEVEL 3 CONTROLS FOR THE PURPOSES OF SUBSECTION (1).

14 (5) BEGINNING JULY 1, 2016, A PERSON SHALL NOT OWN OR OPERATE
15 A REGULATED HIGHWAY DIESEL VEHICLE THAT VENTS CRANKCASE EMISSIONS.
16 A VEHICLE WITH A CCV, OR OTHER EQUALLY EFFECTIVE MEANS OF
17 PREVENTING CRANKCASE EMISSIONS PERMITTED BY RULES PROMULGATED UNDER
18 SECTION 6920, COMPLIES WITH THIS SUBSECTION.

19 (6) SUBSECTIONS (1) AND (5) DO NOT APPLY TO ANY REGULATED
20 HIGHWAY DIESEL VEHICLE WHOSE PROPULSION ENGINE WAS OPERATED IN THIS
21 STATE FOR FEWER THAN 1,000 MILES AND LESS THAN 100 HOURS DURING THE
22 PRECEDING CALENDAR YEAR, AS CONFIRMED BY ENGINE OPERATION DATA FROM
23 A PROPERLY FUNCTIONING ODOMETER AND NONRESETTABLE HOUR METER.

24 (7) A PERSON SHALL NOT SELL, DELIVER, OR DISTRIBUTE DIESEL
25 FUEL FOR DIESEL MOTOR VEHICLES OTHER THAN ULTRA-LOW SULFUR DIESEL
26 FUEL. A PERSON SHALL NOT OPERATE A DIESEL MOTOR VEHICLE USING
27 DIESEL FUEL OTHER THAN ULTRA-LOW SULFUR DIESEL FUEL.

1 (8) BEGINNING JULY 1, 2017, THE OWNER OF ANY HEAVY-DUTY DIESEL
2 VEHICLE THAT DOES NOT HAVE BEST AVAILABLE CONTROL TECHNOLOGY
3 INSTALLED, THAT IS REGISTERED TO OPERATE IN THIS STATE, AND THAT IS
4 POWERED BY AN ENGINE 25 YEARS OR OLDER SHALL REBUILD OR REPLACE THE
5 ENGINE WITH A CERTIFIED ENGINE CONFIGURATION MEETING BACT AND
6 OBTAIN WRITTEN CERTIFICATION OF COMPLIANCE WITH THIS REQUIREMENT
7 FROM THE DEPARTMENT.

8 (9) A PERSON WHO VIOLATES THIS SECTION MAY BE ORDERED TO PAY A
9 CIVIL FINE OF NOT MORE THAN \$5,000.00 PER VIOLATION. EACH DAY OF
10 NONCOMPLIANCE FOR EACH VEHICLE CONSTITUTES A SEPARATE VIOLATION. IN
11 ADDITION, THE COURT MAY ORDER THE SOS TO SUSPEND THE REGISTRATION
12 OF A VEHICLE THAT VIOLATES THIS SECTION AND NOT TO ISSUE ANY NEW OR
13 RENEWAL REGISTRATION FOR THAT VEHICLE UNTIL THE DEPARTMENT NOTIFIES
14 THE SOS THAT THE VIOLATION HAS BEEN CORRECTED. IF REQUESTED BY THE
15 OWNER OR OPERATOR, THE DEPARTMENT SHALL INSPECT THE VEHICLE AND
16 DETERMINE IF THE VIOLATION HAS BEEN CORRECTED. THE DEPARTMENT SHALL
17 NOTIFY THE SOS IF THE VIOLATION HAS BEEN CORRECTED. BEFORE
18 DETERMINING THAT A VIOLATION OF THIS SECTION HAS NOT BEEN
19 CORRECTED, THE DEPARTMENT SHALL PROVIDE THE OWNER OR OPERATOR OF A
20 VEHICLE WITH AN OPPORTUNITY FOR AN EVIDENTIARY HEARING UNDER THE
21 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
22 24.328. CIVIL FINES COLLECTED UNDER THIS SUBSECTION SHALL BE
23 DEPOSITED IN THE FUND.

24 SEC. 6906. (1) BEGINNING JULY 1, 2015, A PERSON SHALL NOT DO
25 ANY OF THE FOLLOWING:

26 (A) SELL, DELIVER, OR DISTRIBUTE NONROAD DIESEL FUEL OTHER
27 THAN ULTRA-LOW SULFUR DIESEL FUEL.

1 (B) OPERATE A NONROAD DIESEL ENGINE, A DIESEL LOCOMOTIVE, OR A
2 DIESEL MARINE ENGINE CLASSIFIED BY USEPA AS A CATEGORY 1 OR
3 CATEGORY 2 MARINE ENGINE USING DIESEL FUEL OTHER THAN ULTRA-LOW
4 SULFUR DIESEL FUEL.

5 (2) WHILE TRAVELING IN WATERS OF THIS STATE TO OR FROM ANY
6 PORT IN THIS STATE, THE OPERATOR OF ANY OCEANGOING VESSEL POWERED
7 BY A MARINE DIESEL ENGINE CLASSIFIED BY USEPA AS A CATEGORY 3
8 ENGINE SHALL USE MARINE FUEL WITH A SULFUR CONTENT NOT GREATER THAN
9 0.5% (5,000 PARTS PER MILLION) FROM JULY 1, 2016 TO DECEMBER 31,
10 2016, OR 0.1% (1,000 PARTS PER MILLION) BEGINNING JANUARY 1, 2017.

11 (3) THE DEPARTMENT SHALL CONSIDER ADOPTING BY RULE, AS
12 EXPEDITIOUSLY AS POSSIBLE, ANY CARB REGULATION THAT REDUCES PM
13 EMISSIONS FROM NONROAD DIESEL ENGINES. THE DEPARTMENT SHALL NOT
14 ADOPT THE CARB REGULATION IF THE DEPARTMENT FINDS, AFTER NOTICE AND
15 HEARING, THAT ADOPTION OF THE REGULATION WOULD NOT BE CONSISTENT
16 WITH 42 USC 7543 OR WOULD YIELD ONLY DE MINIMIS DIESEL PM
17 REDUCTIONS OR HEALTH BENEFITS WITHIN THIS STATE.

18 (4) EXCEPT AS PROVIDED IN SUBSECTION (5), ON AND AFTER JANUARY
19 1, 2019, ANY PUBLIC AGENCY THAT OWNS, OPERATES, OR LEASES ANY
20 DIESEL NONROAD VEHICLE SHALL INSTALL AND OPERATE LEVEL 3 CONTROLS
21 ON THE NONROAD VEHICLE. THE PUBLIC AGENCY SHALL OPERATE, MAINTAIN,
22 AND SERVICE THE EMISSIONS CONTROL TECHNOLOGY AS RECOMMENDED BY THE
23 MANUFACTURER. FAILURE BY A PUBLIC AGENCY TO MEET THIS CONDITION
24 SHALL SUBJECT THE AGENCY TO A REDUCTION OF STATE FUNDING OR A
25 DENIAL OF INCREASED STATE FUNDING IN ACCORDANCE WITH RULES TO BE
26 PROMULGATED BY THE DEPARTMENT OF TREASURY, IN CONSULTATION WITH THE
27 DEPARTMENT OF ENVIRONMENTAL QUALITY, PURSUANT TO THE ADMINISTRATIVE

1 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

2 (5) SUBSECTION (4) DOES NOT APPLY TO A DIESEL NONROAD VEHICLE
3 IF THE DEPARTMENT MAKES A WRITTEN FINDING THAT A VERIFIED DIESEL
4 EMISSIONS CONTROL DEVICE WITH LEVEL 3 CONTROLS DOES NOT EXIST FOR
5 THE VEHICLE AND THE AGENCY INSTALLS LEVEL 2 CONTROLS THAT ARE
6 AVAILABLE AND APPROPRIATE FOR THE VEHICLE AS DETERMINED BY THE
7 DEPARTMENT. HOWEVER, IF THE DEPARTMENT MAKES A WRITTEN FINDING THAT
8 A VERIFIED DIESEL EMISSIONS CONTROL DEVICE WITH LEVEL 2 CONTROLS
9 DOES NOT EXIST FOR THE VEHICLE, THE VEHICLE SHALL BE RETROFITTED
10 WITH LEVEL 1 CONTROLS THAT ARE AVAILABLE AND APPROPRIATE FOR THE
11 VEHICLE AS DETERMINED BY THE DEPARTMENT. ALL FINDINGS MADE PURSUANT
12 TO THIS SUBSECTION AND INFORMATION RELATING TO THE FINDINGS SHALL
13 BE MADE AVAILABLE TO THE PUBLIC, AND THE DEPARTMENT SHALL POST THE
14 FINDINGS AND INFORMATION ON ITS WEBSITE.

15 (6) A PERSON WHO VIOLATES SUBSECTION (1) OR (2) OR A RULE
16 PROMULGATED UNDER SUBSECTION (3) MAY BE ORDERED TO PAY A CIVIL FINE
17 OF NOT MORE THAN \$5,000.00 PER VIOLATION. EACH DAY OF NONCOMPLIANCE
18 OF EACH MISFUELED VEHICLE CONSTITUTES A SEPARATE VIOLATION. CIVIL
19 FINES PAID UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE FUND.

20 SEC. 6907. (1) BEGINNING SEPTEMBER 1, 2017, ANY SOLICITATION
21 FOR A PUBLIC WORKS CONTRACT, AND ANY PUBLIC WORKS CONTRACT, SHALL
22 INCLUDE THE FOLLOWING PROVISIONS AND ALL CONTRACTORS SHALL COMPLY
23 WITH THE PROVISIONS IN THE PERFORMANCE OF THE CONTRACT:

24 (A) ONLY ULTRA-LOW SULFUR DIESEL FUEL OR AN ULTRA-LOW SULFUR
25 DIESEL BLEND WITH A SULFUR CONTENT OF 15 PPM OR LESS SHALL BE USED
26 IN ALL DIESEL NONROAD VEHICLES AND HEAVY-DUTY DIESEL VEHICLES.

27 (B) CONTRACTORS SHALL NOT VENT CRANKCASE EMISSIONS FROM DIESEL

1 NONROAD VEHICLES AND HEAVY-DUTY DIESEL VEHICLES. A VEHICLE WITH A
2 CCV, OR OTHER EQUALLY EFFECTIVE MEANS OF PREVENTING CRANKCASE
3 EMISSIONS PERMITTED BY RULES PROMULGATED UNDER SECTION 6920,
4 COMPLIES WITH THIS SUBSECTION.

5 (C) CONTRACTORS SHALL NOT PERMIT NONESSENTIAL IDLING OF DIESEL
6 NONROAD AND HEAVY-DUTY DIESEL VEHICLES, AND SHALL NOT EXCEED THE
7 IDLE LIMITS FOR MOTOR VEHICLES SET FORTH IN SECTION 6909(2).

8 (D) ALL DIESEL NONROAD VEHICLES (NOT INCLUDING DIESEL
9 GENERATORS) ON SITE FOR MORE THAN 3 DAYS DURING THE PROJECT SHALL
10 HAVE INSTALLED AND OPERATE THE FOLLOWING, AS APPLICABLE:

11 (i) A MINIMUM OF LEVEL 1 CONTROLS BY JANUARY 1, 2018.

12 (ii) FOR ENGINES WITH A RATING OF 25 OR MORE BUT LESS THAN 75
13 HORSEPOWER, LEVEL 2 CONTROLS BY JULY 1, 2021.

14 (iii) FOR ENGINES WITH A RATING OF 75 HORSEPOWER OR MORE, LEVEL
15 3 CONTROLS BY JULY 1, 2021.

16 (E) ALL HEAVY-DUTY DIESEL VEHICLES AND DIESEL GENERATORS ON
17 SITE FOR MORE THAN 3 DAYS DURING THE PROJECT SHALL HAVE INSTALLED
18 AND OPERATE THE FOLLOWING, AS APPLICABLE:

19 (i) A MINIMUM OF LEVEL 1 CONTROLS BY JANUARY 1, 2018.

20 (ii) LEVEL 3 CONTROLS BY JULY 1, 2018.

21 (F) EACH DIESEL NONROAD VEHICLE, HEAVY-DUTY DIESEL VEHICLE,
22 AND DIESEL GENERATOR ON SITE SHALL DISPLAY A COMPLIANCE STICKER
23 CLEARLY AND CONSPICUOUSLY INDICATING ITS INSTALLED LEVEL OF
24 EMISSIONS CONTROL.

25 (G) ALL EMISSIONS CONTROL TECHNOLOGY SHALL BE OPERATED,
26 MAINTAINED, AND SERVICED AS RECOMMENDED BY THE MANUFACTURER.

27 (2) A PUBLIC WORKS CONTRACT SHALL PROVIDE FULL OR PARTIAL

1 REIMBURSEMENT FROM THE PUBLIC WORKS PROJECT FUNDS FOR INCREMENTAL
2 COSTS INCURRED BY CONTRACTORS THAT ARE NECESSARY TO BRING DIESEL
3 NONROAD VEHICLES AND HEAVY-DUTY DIESEL VEHICLES USED ON THAT
4 SPECIFIC PROJECT INTO COMPLIANCE WITH THE REQUIREMENTS OF
5 SUBSECTION (1) (D) (ii) AND (iii) AND (E) (ii) FOR THAT SPECIFIC PROJECT.
6 HOWEVER, REIMBURSEMENT SHALL NOT BE PROVIDED FOR COSTS INCURRED
7 MORE THAN 180 DAYS AFTER THE APPLICABLE COMPLIANCE DATE. EACH
8 RELEVANT AGENCY SHALL ESTABLISH ANNUALLY THE REIMBURSEMENT
9 PERCENTAGE TO BE APPLIED TO ALL OF ITS PUBLIC WORKS CONTRACTS FOR
10 EACH CALENDAR YEAR FROM 2017 THROUGH 2021. ELIGIBLE CONTRACTORS
11 APPLYING FOR SUCH REIMBURSEMENT SHALL PROVIDE SUCH INFORMATION AS
12 REQUIRED BY THE PUBLIC AGENCY. ONLY 1 REIMBURSEMENT SHALL BE
13 PROVIDED FOR EACH DIESEL NONROAD VEHICLE OR HEAVY-DUTY DIESEL
14 VEHICLE. EXPENDITURES ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER THIS
15 SUBSECTION TO THE EXTENT THAT THEY WERE INCURRED TO BRING A VEHICLE
16 INTO COMPLIANCE WITH A DIFFERENT PROVISION OF THIS ACT OR ANY OTHER
17 FEDERAL OR STATE LAW OR REGULATION, OR IF SUCH EXPENDITURES HAVE
18 BEEN PREVIOUSLY REIMBURSED USING FUNDS FROM ANY OTHER PUBLIC WORKS
19 CONTRACT OR ANY OTHER PUBLIC AGENCY. EACH APPLICATION FOR
20 REIMBURSEMENT SHALL INCLUDE APPROPRIATE CONTRACTOR CERTIFICATIONS
21 CONCERNING THESE ELIGIBILITY PROHIBITIONS.

22 (3) THE COSTS THAT ARE REIMBURSED BY THE PUBLIC AGENCY UNDER
23 SUBSECTION (2) SHALL NOT BE INCLUDED IN THE PROJECT BID OR
24 CONSIDERED BY THE PUBLIC AGENCY IN EVALUATING BIDS.

25 (4) A PUBLIC AGENCY ENTERING INTO A PUBLIC WORKS CONTRACT MAY
26 PROVIDE REIMBURSEMENT FOR RETROFITS OF PROJECT DIESEL NONROAD
27 VEHICLES AND HEAVY-DUTY DIESEL VEHICLES AUTHORIZED UNDER SUBSECTION

1 (2) IN THE FORM OF REBATES IF THE DEPARTMENT PROMULGATES RULES
2 UNDER SECTION 6920 GOVERNING THE REBATES. ANY SUCH RULES SHALL
3 ESTABLISH THE AMOUNTS OF REBATES FOR PARTICULAR TYPES OF VEHICLES
4 AND REBATE POLICIES, PROCEDURES, AND SAFEGUARDS THAT ARE
5 SUBSTANTIALLY SIMILAR TO THE PROVISIONS OF SECTION 6914.

6 (5) ANY PUBLIC WORKS CONTRACT SHALL PROVIDE FOR ENFORCEMENT OF
7 THE CONTRACT PROVISIONS REQUIRED BY SUBSECTION (1) AND PENALTIES
8 FOR NONCOMPLIANCE WITH SUCH PROVISIONS.

9 (6) SUBSECTION (1) (D) (iii) AND (E) (ii) DOES NOT APPLY TO A DIESEL
10 NONROAD VEHICLE OR HEAVY-DUTY DIESEL VEHICLE IF THE PUBLIC AGENCY
11 MAKES A WRITTEN FINDING THAT A VERIFIED DIESEL EMISSIONS CONTROL
12 DEVICE WITH LEVEL 3 CONTROLS DOES NOT EXIST FOR THE VEHICLE AND THE
13 FINDING IS APPROVED, IN WRITING, BY THE DEPARTMENT. IN THAT CASE,
14 THE VEHICLE MAY OPERATE ON THE PROJECT SITE ONLY IF IT HAS BEEN
15 RETROFITTED WITH LEVEL 2 CONTROLS THAT ARE AVAILABLE AND
16 APPROPRIATE FOR THE VEHICLE AS DETERMINED BY THE DEPARTMENT.
17 HOWEVER, IF THE PUBLIC AGENCY MAKES A WRITTEN FINDING THAT A
18 VERIFIED DIESEL EMISSIONS CONTROL DEVICE WITH LEVEL 2 CONTROLS DOES
19 NOT EXIST FOR THE VEHICLE AND THE FINDING IS APPROVED, IN WRITING,
20 BY THE DEPARTMENT, THE VEHICLE MAY OPERATE ON SITE ONLY IF IT HAS
21 BEEN RETROFITTED WITH SUCH LEVEL 1 CONTROLS THAT ARE AVAILABLE AND
22 APPROPRIATE FOR THE VEHICLE AS DETERMINED BY THE DEPARTMENT. ALL
23 FINDINGS MADE PURSUANT TO THIS SUBSECTION AND INFORMATION RELATING
24 TO THE FINDINGS SHALL BE MADE AVAILABLE TO THE PUBLIC, AND THE
25 DEPARTMENT SHALL POST THE FINDINGS AND INFORMATION ON ITS WEBSITE.

26 SEC. 6908. (1) A FREIGHT FACILITY SHALL NOT COMMENCE OR
27 OPERATE A SIGNIFICANT EXPANSION WITHOUT A PERMIT ISSUED BY THE

1 DEPARTMENT UNDER THIS SECTION. AN APPLICATION FOR A PERMIT SHALL BE
2 SUBMITTED ON A FORM PROVIDED BY THE DEPARTMENT AND SHALL INCLUDE OR
3 BE ACCOMPANIED BY ALL OF THE FOLLOWING:

4 (A) A BASELINE INVENTORY OF ANNUAL PM EMISSIONS FROM ALL
5 SOURCES ASSOCIATED WITH OPERATIONS OF THE FREIGHT FACILITY,
6 INCLUDING, AS APPROPRIATE, EMISSIONS FROM OCEANGOING VESSELS,
7 HARBORCRAFT, LOCOMOTIVES, CARGO HANDLING EQUIPMENT, AND COMMERCIAL
8 MEDIUM-DUTY AND HEAVY-DUTY TRUCKS SERVING THE FACILITY. THE
9 BASELINE INVENTORY SHALL BE BASED ON DATA COLLECTED BY THE FREIGHT
10 FACILITY FOR THE FULL CALENDAR YEAR IMMEDIATELY PRECEDING THE
11 COMMENCEMENT OF THE SIGNIFICANT EXPANSION.

12 (B) AN INVENTORY OF ANNUAL POTENTIAL PM EMISSIONS FROM ALL
13 SOURCES ASSOCIATED WITH OPERATIONS OF THE FREIGHT FACILITY FOR EACH
14 OF THE FIRST 5 YEARS FOLLOWING THE PROJECTED COMPLETION OF THE
15 PROPOSED EXPANSION.

16 (C) A PLAN TO REDUCE PM EMISSIONS FROM SOURCES ASSOCIATED WITH
17 OPERATIONS OF THE FREIGHT FACILITY TO PREVENT AN INCREASE OVER THE
18 BASELINE INVENTORY OF MORE THAN 10 TONS PER YEAR OF PM EMISSIONS
19 FROM ALL SOURCES ASSOCIATED WITH OPERATIONS OF THE FREIGHT FACILITY
20 DURING ANY OF THE YEARS FOLLOWING THE PROPOSED EXPANSION.

21 (D) DOCUMENTATION THAT THE FACILITY HAS PROVIDED OPPORTUNITY
22 FOR PUBLIC COMMENT, INCLUDING PUBLIC HEARINGS AS APPROPRIATE, ON
23 THE INVENTORY DATA AND THE PLAN TO REDUCE PM EMISSIONS AT THE
24 FREIGHT FACILITY. THE DOCUMENTATION SHALL INCLUDE A SUMMARY OF
25 SIGNIFICANT COMMENTS RECEIVED.

26 (2) THE DEPARTMENT SHALL ISSUE OR DENY A PERMIT BY NOT MORE
27 THAN 180 DAYS AFTER SUBMISSION OF AN ADMINISTRATIVELY COMPLETE

1 APPLICATION UNDER SUBSECTION (1). THE DEPARTMENT SHALL ISSUE THE
2 PERMIT IF THE PLAN UNDER SUBSECTION (1)(C) IS ADEQUATE TO LIMIT PM
3 EMISSIONS TO THE LEVEL SPECIFIED IN SUBSECTION (1)(C).

4 (3) ANY FREIGHT FACILITY THAT COMMENCES OR OPERATES A
5 SIGNIFICANT EXPANSION WITHOUT A PERMIT ISSUED BY THE DEPARTMENT
6 UNDER SUBSECTION (2) MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE
7 THAN \$25,000.00 FOR EACH DAY OF NONCOMPLIANCE. CIVIL FINES PAID
8 UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE FUND.

9 (4) A FREIGHT FACILITY ISSUED A PERMIT UNDER SUBSECTION (2)
10 SHALL SUBMIT TO THE DEPARTMENT BY MARCH 1 OF EACH YEAR A REPORT
11 THAT DESCRIBES THE FREIGHT FACILITY'S PROGRAMS AND EFFORTS TO
12 COMPLY WITH ITS EMISSION REDUCTION PLAN UNDER SUBSECTION (1)(C).
13 THE REPORT SHALL INCLUDE AN ANNUAL INVENTORY OF PM EMISSIONS FROM
14 ALL SOURCES ASSOCIATED WITH OPERATIONS OF THE FREIGHT FACILITY
15 DURING THE PRECEDING CALENDAR YEAR. NOT MORE THAN 90 DAYS AFTER
16 SUBMISSION OF A REPORT UNDER THIS SUBSECTION, THE DEPARTMENT SHALL
17 APPROVE, APPROVE WITH CONDITIONS, OR DISAPPROVE THE REPORT. UNLESS
18 THE REPORT IS APPROVED, THE FREIGHT FACILITY SHALL CORRECT ANY
19 REMAINING ERRORS, DEFICIENCIES, OR OMISSIONS IN THE REPORT
20 IDENTIFIED BY THE DEPARTMENT WITHIN 60 DAYS OF THE DEPARTMENT'S
21 ACTION AND RESUBMIT THE REPORT FOR FURTHER ACTION BY THE DEPARTMENT
22 UNDER THIS SUBSECTION.

23 (5) A FREIGHT FACILITY THAT DOES NOT HAVE A FULLY APPROVED
24 REPORT UNDER SUBSECTION (4) BY SEPTEMBER 1 OF ANY YEAR WITH RESPECT
25 TO PM EMISSIONS FOR THE PRIOR YEAR MAY BE ORDERED TO PAY A CIVIL
26 FINE OF NOT MORE THAN \$5,000.00 PER DAY OF NONCOMPLIANCE. CIVIL
27 FINES PAID UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE FUND.

1 (6) BEGINNING 2 YEARS FOLLOWING ISSUANCE BY THE DEPARTMENT OF
2 A FACILITY EXPANSION PERMIT UNDER SUBSECTION (2), IF ANNUAL
3 AGGREGATE PM EMISSIONS FROM THE FREIGHT FACILITY, AS SHOWN IN THE
4 MOST RECENT ANNUAL REPORT UNDER SUBSECTION (4) AS APPROVED BY THE
5 DEPARTMENT, EXCEED THE BASELINE INVENTORY ESTABLISHED PURSUANT TO
6 THIS SECTION BY MORE THAN 10 TONS PER YEAR, THE FREIGHT FACILITY
7 SHALL BE ORDERED TO PAY A CIVIL FINE IN AN AMOUNT EQUAL TO 125% OF
8 THE COST OF REDUCING AGGREGATE FACILITY PM EMISSIONS TO NOT MORE
9 THAN 10 TONS PER YEAR OVER THE BASELINE INVENTORY AS ESTIMATED BY
10 THE DEPARTMENT.

11 (7) CIVIL FINES COLLECTED UNDER THIS SECTION SHALL BE
12 DEPOSITED IN THE FUND.

13 (8) THIS SECTION DOES NOT LIMIT ANY OTHER AUTHORITY OF THE
14 DEPARTMENT WITH RESPECT TO ANY EMISSIONS SOURCE AT A FREIGHT
15 FACILITY.

16 SEC. 6909. (1) SUBJECT TO SUBSECTION (4), THE OWNER OF A
17 LOAD/UNLOAD LOCATION SHALL NOT CAUSE A MEDIUM-DUTY OR HEAVY-DUTY
18 DIESEL MOTOR VEHICLE TO IDLE FOR A PERIOD GREATER THAN 30 MINUTES
19 WHILE WAITING TO LOAD OR UNLOAD AT THE LOCATION.

20 (2) THE OWNER OR OPERATOR OF A MEDIUM-DUTY OR HEAVY-DUTY
21 DIESEL MOTOR VEHICLE SHALL NOT CAUSE OR PERMIT THE VEHICLE TO IDLE
22 FOR MORE THAN 5 MINUTES IN ANY 60-MINUTE PERIOD EXCEPT AS PROVIDED
23 IN SUBSECTIONS (1) AND (3) AND SUBJECT TO SUBSECTION (4).

24 (3) SUBSECTION (2) DOES NOT APPLY UNDER ANY OF THE FOLLOWING
25 CIRCUMSTANCES:

26 (A) A MEDIUM-DUTY OR HEAVY-DUTY DIESEL MOTOR VEHICLE IDLES
27 WHILE FORCED TO REMAIN MOTIONLESS BECAUSE OF ON-HIGHWAY TRAFFIC OR

1 AN OFFICIAL TRAFFIC CONTROL DEVICE OR SIGNAL OR AT THE DIRECTION OF
2 A LAW ENFORCEMENT OFFICIAL.

3 (B) A MEDIUM-DUTY OR HEAVY-DUTY DIESEL MOTOR VEHICLE IDLES
4 SOLELY TO PREVENT A SAFETY OR HEALTH EMERGENCY.

5 (C) ANY OF THE FOLLOWING APPLY:

6 (i) AN AMBULANCE OR A POLICE, FIRE, PUBLIC SAFETY, MILITARY, OR
7 OTHER EMERGENCY OR LAW ENFORCEMENT VEHICLE IDLES WHILE USED IN AN
8 EMERGENCY OR TRAINING CAPACITY AND NOT FOR CABIN COMFORT.

9 (ii) ANY OTHER VEHICLE IDLES WHILE BEING USED IN AN EMERGENCY
10 CAPACITY AND NOT FOR CABIN COMFORT.

11 (D) A VEHICLE'S PRIMARY PROPULSION ENGINE IDLES FOR
12 MAINTENANCE, SERVICING, REPAIRING, OR DIAGNOSTIC PURPOSES, BUT ONLY
13 TO THE EXTENT THAT IDLING IS REQUIRED FOR SUCH ACTIVITY.

14 (E) A VEHICLE IDLES AS PART OF A STATE OR FEDERAL INSPECTION
15 TO VERIFY THAT ALL EQUIPMENT IS IN GOOD WORKING ORDER, BUT ONLY TO
16 THE EXTENT THAT IDLING IS REQUIRED AS PART OF THE INSPECTION.

17 (F) IDLING OF THE PRIMARY PROPULSION ENGINE IS NECESSARY TO
18 POWER WORK-RELATED MECHANICAL OR ELECTRICAL OPERATIONS OTHER THAN
19 PROPULSION, SUCH AS OPERATING AN EXTENSION, LOADING OR UNLOADING,
20 MIXING OR PROCESSING CARGO, OR STRAIGHT TRUCK REFRIGERATION. THIS
21 SUBDIVISION DOES NOT APPLY TO IDLING FOR CABIN COMFORT OR THE
22 OPERATION OF NONESSENTIAL ON-BOARD EQUIPMENT.

23 (G) AN ARMORED VEHICLE IDLES WHEN A PERSON REMAINS INSIDE THE
24 VEHICLE TO GUARD THE CONTENTS OR WHILE THE VEHICLE IS BEING LOADED
25 OR UNLOADED.

26 (4) SUBSECTIONS (1) AND (2) DO NOT PROHIBIT OPERATING AN
27 AUXILIARY POWER UNIT AS AN ALTERNATIVE TO IDLING THE VEHICLE'S

1 PRIMARY PROPULSION ENGINE IF ALL OF THE FOLLOWING APPLY:

2 (A) THE VEHICLE IS EQUIPPED WITH A MODEL YEAR 2006 OR OLDER
3 ENGINE.

4 (B) THE VERIFIED PM EMISSIONS OF THE AUXILIARY POWER UNIT ARE
5 LESS THAN THOSE OF THE PRIMARY PROPULSION ENGINE.

6 (5) BEFORE 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
7 ACT THAT ADDED THIS SECTION, A PERSON WHO VIOLATES SUBSECTION (1)
8 OR (2) SHALL BE GIVEN A WRITTEN WARNING. BEGINNING 1 YEAR AFTER THE
9 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION:

10 (A) THE OWNER OF A LOAD/UNLOAD LOCATION WHO VIOLATES
11 SUBSECTION (1) IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND MAY
12 BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$750.00.

13 (B) THE REGISTERED OWNER OF A MEDIUM-DUTY OR HEAVY-DUTY DIESEL
14 MOTOR VEHICLE WHO VIOLATES SUBSECTION (2) IS RESPONSIBLE FOR A
15 STATE CIVIL INFRACTION AND MAY BE ORDERED TO PAY A CIVIL FINE OF
16 NOT MORE THAN \$750.00.

17 (C) THE OPERATOR OF A MEDIUM-DUTY OR HEAVY-DUTY DIESEL MOTOR
18 VEHICLE WHO VIOLATES SUBSECTION (2) IS RESPONSIBLE FOR A STATE
19 CIVIL INFRACTION AND MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE
20 THAN \$250.00.

21 (6) THE PROCEEDS OF FINES COLLECTED UNDER SUBSECTION (5) SHALL
22 BE DEPOSITED AS PROVIDED IN SUBSECTION (11).

23 (7) BY 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
24 THAT ADDED THIS SECTION, EACH TRUCKSTOP HAVING A CAPACITY OF 25 OR
25 MORE TRUCKS SHALL INSTALL TRUCKSTOP ELECTRIFICATION FACILITIES
26 COVERING AT LEAST 80% OF ITS PARKING SPACES THAT ALLOW DIESEL
27 TRUCKS TO CONNECT TO THE ELECTRICAL GRID TO OBTAIN POWER FOR ON-

1 BOARD COMPONENTS OR STATIONARY COMPONENTS FOR HEATING, COOLING, AND
2 OTHER NEEDS THAT OTHERWISE WOULD BE MET BY IDLING THE PROPULSION
3 ENGINES OF THE DIESEL TRUCKS.

4 (8) A PERSON WHO VIOLATES SUBSECTION (7) MAY BE ORDERED TO PAY
5 A CIVIL FINE OF NOT MORE THAN \$750.00 PER VIOLATION, WITH EACH DAY
6 OF NONCOMPLIANCE CONSTITUTING A SEPARATE VIOLATION. CIVIL FINES
7 PAID UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE FUND.

8 (9) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
9 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL CONDUCT AN
10 ANALYSIS OF IDLING PRACTICES OF LOCOMOTIVE AND COMMERCIAL MARINE
11 DIESEL VEHICLE OPERATORS AND THE EFFECTS OF SUCH PRACTICES. THE
12 OWNER OR OPERATOR OF SUCH A DIESEL VEHICLE SHALL PROVIDE
13 INFORMATION REQUESTED BY THE DEPARTMENT FOR THE PURPOSE OF
14 COMPLETING THE ANALYSIS. WITHIN 1 YEAR AND 26 WEEKS AFTER THE
15 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, BASED
16 ON SUCH ANALYSIS, THE DEPARTMENT SHALL PROMULGATE RULES UNDER
17 SECTION 6920 REQUIRING LOCOMOTIVE AND COMMERCIAL MARINE DIESEL
18 VEHICLES OPERATING WITHIN THIS STATE TO ELIMINATE NONESSENTIAL
19 IDLING TO THE EXTENT SUCH REGULATION IS NOT PREEMPTED BY FEDERAL
20 LAW.

21 (10) A PERSON WHO VIOLATES SUBSECTION (9) OR A RULE REQUIRED
22 UNDER SUBSECTION (9) IS RESPONSIBLE FOR A STATE CIVIL INFRACTION
23 AND MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$750.00.

24 (11) HALF OF THE PROCEEDS OF FINES COLLECTED UNDER SUBSECTION
25 (5) OR (10) SHALL BE DEPOSITED IN THE FUND. THE REMAINING 1/2 OF
26 THE PROCEEDS OF SUCH FINES SHALL BE FORWARDED AS FOLLOWS:

27 (A) IF THE LAW ENFORCEMENT OFFICER ISSUING THE CIVIL

1 INFRACTION CITATION IS EMPLOYED BY THIS STATE, TO THE STATE
2 TREASURER FOR DEPOSIT IN THE GENERAL FUND.

3 (B) IF THE LAW ENFORCEMENT OFFICER IS EMPLOYED BY A POLITICAL
4 SUBDIVISION, TO THE TREASURER OF THAT POLITICAL SUBDIVISION FOR
5 DEPOSIT IN ITS GENERAL FUND.

6 (12) THE DEPARTMENT, AFTER CONSULTATION WITH MDOT, SHALL
7 CREATE AND IMPLEMENT A PLAN TO DO BOTH OF THE FOLLOWING:

8 (A) PROVIDE INFORMATION TO DIESEL VEHICLE OPERATORS AND OWNERS
9 ON THE IDLE REDUCTION REQUIREMENTS OF THIS SECTION, THE ECONOMIC
10 AND ENVIRONMENTAL BENEFITS OF IDLE REDUCTION, AND THE TECHNIQUES
11 AND TECHNOLOGIES AVAILABLE TO REDUCE UNNECESSARY IDLING.

12 (B) PROVIDE INFORMATION AND TRAINING TO LOCAL AND STATE LAW
13 ENFORCEMENT OFFICERS ON THE REQUIREMENTS OF THIS SECTION AND HOW TO
14 EFFECTIVELY MONITOR COMPLIANCE WITH AND ENFORCE THOSE REQUIREMENTS.

15 SEC. 6910. (1) THE DIESEL EMISSIONS REDUCTION FUND IS CREATED
16 WITHIN THE STATE TREASURY.

17 (2) THE FUND CONSISTS OF THE FUNDS, CONTRIBUTIONS, FEES, AND
18 SURCHARGES AS PROVIDED UNDER SUBSECTIONS (4), (5), AND (6) AND
19 SECTION 6911, FINES AND FEES DEPOSITED IN THE FUND PURSUANT TO
20 SECTIONS 6905, 6906, 6908, 6909, 6913, 6914, AND 6916, AND SURPLUS
21 REVENUE FROM THE DIESEL REVENUE BOND RECEIVING FUND AS PROVIDED IN
22 SECTION 6911. THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
23 FROM ANY OTHER SOURCE FOR DEPOSIT INTO THE FUND. THE STATE
24 TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE
25 TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND
26 INVESTMENTS. MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR
27 SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

1 THE DEPARTMENT SHALL BE THE ADMINISTRATOR OF THE FUND FOR AUDITING
2 PURPOSES.

3 (3) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
4 APPROPRIATION, ONLY FOR THE FUNDING PROGRAM. HOWEVER, NOT MORE THAN
5 10% OF THE INSPECTION FEE REVENUE COLLECTED UNDER SECTION 6916 MAY
6 BE EXPENDED BY THE DEPARTMENT, UPON APPROPRIATION, FOR COSTS
7 INCURRED IN CARRYING OUT THE INSPECTION PROGRAM. IN ADDITION, NOT
8 MORE THAN 2% OF THE REMAINING MONEY DEPOSITED IN THE FUND MAY BE
9 EXPENDED, UPON APPROPRIATION, FOR ADMINISTRATIVE COSTS INCURRED BY
10 THE DEPARTMENT AND THE STATE TREASURER IN EXERCISING THEIR POWERS
11 AND DISCHARGING THEIR DUTIES UNDER THIS PART. MONEY ALLOCATED TO AN
12 ELIGIBLE DIESEL EMISSION REDUCTION MEASURE MAY BE DESIGNATED AS A
13 WORK PROJECT PURSUANT TO SECTION 451A OF THE MANAGEMENT AND BUDGET
14 ACT, 1984 PA 431, MCL 18.451A, AND IF NOT EXPENDED IN ANY FISCAL
15 YEAR MAY BE CARRIED OVER TO SUCCEEDING FISCAL YEARS.

16 (4) A SURCHARGE IS IMPOSED ON THE LEASE OR RENTAL OF DIESEL
17 NONROAD VEHICLES IN AN AMOUNT EQUAL TO 1% OF THE LEASE OR RENTAL
18 AMOUNT. THE STATE TREASURER SHALL ADOPT ANY PROCEDURES NEEDED FOR
19 THE COLLECTION, ADMINISTRATION, AND ENFORCEMENT OF THE SURCHARGE
20 AUTHORIZED BY THIS SUBSECTION AND SHALL DEPOSIT ALL SURCHARGES TO
21 THE CREDIT OF THE FUND.

22 (5) A SURCHARGE IS IMPOSED ON THE LEASE OR RENTAL OF HEAVY-
23 DUTY DIESEL VEHICLES THAT ARE OF A MODEL YEAR OF 2006 OR EARLIER
24 AND THAT ARE NOT EQUIPPED WITH LEVEL 3 CONTROLS. THE AMOUNT OF THE
25 SURCHARGE IS 2.5% OF THE TOTAL LEASE OR RENTAL AMOUNT. THE STATE
26 TREASURER SHALL ADOPT ANY PROCEDURES NEEDED FOR THE COLLECTION,
27 ADMINISTRATION, AND ENFORCEMENT OF THE SURCHARGE AUTHORIZED BY THIS

1 SUBSECTION AND SHALL DEPOSIT ALL SURCHARGES TO THE CREDIT OF THE
2 FUND.

3 (6) BEGINNING WITH THE 2014-2015 FISCAL YEAR, NOT LESS THAN
4 50% OF FUNDS EXPENDED ON AN ANNUAL BASIS FROM ACCOUNTS RELATED TO
5 THE CMAQ PROGRAM SHALL BE MADE AVAILABLE FOR THE PURPOSE OF FUNDING
6 ELIGIBLE DIESEL EMISSION REDUCTION MEASURES UNDER THE FUNDING
7 PROGRAM. NON-CMAQ-PROGRAM MONEY IN THE FUND MAY BE USED FOR
8 COMPLIANCE WITH THE 20% MATCH REQUIRED BY THE CMAQ PROGRAM.

9 SEC. 6911. (1) FOR THE PURPOSE OF FUNDING REVOLVING LOANS TO
10 FINANCE TRUCKSTOP ELECTRIFICATION FACILITIES AS REQUIRED BY SECTION
11 6909(7) AND OTHER DIESEL EMISSION REDUCTION MEASURES ELIGIBLE FOR
12 FUNDING UNDER THE FUNDING PROGRAM, THE DEPARTMENT MAY ISSUE REVENUE
13 BONDS PAYABLE FROM PRINCIPAL AND INTEREST PAYMENTS ON THE LOANS.
14 THE DEPARTMENT SHALL PROVIDE NOTICE TO THE APPROPRIATIONS
15 COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AT LEAST
16 30 DAYS BEFORE BONDS ARE OFFERED FOR SALE. A REASONABLE ALLOWANCE
17 FOR LEGAL AND CONSULTANT SERVICES, COST OF PRINTING AND ISSUING OF
18 THE BONDS, INTEREST ON THE BONDS BECOMING DUE BEFORE COLLECTION OF
19 THE FIRST AVAILABLE LOAN PAYMENTS AND FOR A PERIOD OF 1 YEAR
20 THEREAFTER, AND OTHER INCIDENTAL EXPENSES MAY BE INCLUDED IN THE
21 COST FOR WHICH BONDS ARE TO BE ISSUED. THE BONDS SHALL BE
22 AUTHORIZED BY THE DIRECTOR AND MAY BE ISSUED IN 1 OR MORE SERIES AS
23 SHALL BE DETERMINED BY THE DIRECTOR.

24 (2) THE DEPARTMENT MAY DO 1 OR MORE OF THE FOLLOWING WITH
25 RESPECT TO BONDS UNDER SUBSECTION (1):

26 (A) SELL AND DELIVER AND RECEIVE PAYMENT FOR BONDS.

27 (B) APPROVE INTEREST RATES, PURCHASE PRICES, DISCOUNTS,

1 PREMIUMS, MATURITIES, PRINCIPAL AMOUNTS, INTEREST PAYMENT DATES,
2 REDEMPTION RIGHTS AT THE OPTION OF THE DEPARTMENT OR THE HOLDER,
3 AND THE PLACE AND TIME OF DELIVERY AND PAYMENT FOR THE BONDS.

4 (C) DELIVER BONDS TO REFUND PRIOR BONDS OR PARTLY TO REFUND
5 BONDS AND PARTLY FOR OTHER AUTHORIZED PURPOSES.

6 (D) SELECT WHICH OUTSTANDING BONDS WILL BE REFUNDED, IF ANY,
7 BY THE NEW ISSUE OF BONDS.

8 (E) ANY OTHER MATTERS AND PROCEDURES NECESSARY TO COMPLETE THE
9 ISSUANCE AND DELIVERY OF THE BONDS.

10 (3) AN ORDER OF THE DIRECTOR AUTHORIZING THE ISSUANCE OF BONDS
11 SHALL CONTAIN ALL OF THE FOLLOWING:

12 (A) A DESCRIPTION IN REASONABLE DETAIL OF THE TRUCKSTOP
13 ELECTRIFICATION PROGRAM AND OTHER DIESEL EMISSION REDUCTION
14 MEASURES, FOR WHICH THE BONDS ARE TO BE ISSUED.

15 (B) THE FORM OF THE BONDS AND ALL OF THE FOLLOWING:

16 (i) THE MATURITY DATE OR DATES FOR THE BONDS, WHICH SHALL NOT
17 BE LATER THAN 30 YEARS AFTER THE ISSUANCE OF THE BONDS.

18 (ii) THE PRINCIPAL AMOUNT OF AND PRINCIPAL PAYMENT DATES FOR
19 THE BONDS.

20 (iii) THE INTEREST RATE OR RATES FOR THE BONDS OR A PROVISION
21 THAT BONDS WILL NOT BEAR ANY INTEREST.

22 (iv) THE REDEMPTION PROVISIONS, WITH OR WITHOUT PREMIUM, FOR
23 THE BONDS, IF ANY.

24 (v) THE AUTHORIZED DENOMINATIONS FOR THE BONDS.

25 (vi) WHETHER THE BONDS MAY BE SOLD AT A DISCOUNT OR FOR A
26 PREMIUM.

27 (vii) THE MANNER IN WHICH THE BONDS WILL BE EXECUTED.

1 (viii) ANY OTHER PROVISION CONCERNING THE BONDS OR THE SECURITY
2 FOR THE BONDS THAT THE DIRECTOR CONSIDERS APPROPRIATE.

3 (C) A PROVISION THAT PAYMENTS ON LOANS FOR TRUCKSTOP
4 ELECTRIFICATION OR OTHER DIESEL EMISSION REDUCTION MEASURES SHALL
5 BE PLEDGED FOR THE PAYMENT OF THE BONDS.

6 (D) A COVENANT THAT THE TERMS OF NEW LOANS SHALL BE REVISED
7 FROM TIME TO TIME WITHIN THE LIMITS PERMITTED BY LAW WHEN NECESSARY
8 TO ENSURE THAT REVENUES TO BE DERIVED FROM THE LOANS ARE SUFFICIENT
9 TO PAY THE PRINCIPAL OF AND INTEREST ON BONDS ISSUED PURSUANT TO
10 THIS SECTION AND OTHER OBLIGATIONS OF THE DEPARTMENT IN CONNECTION
11 WITH THE ISSUANCE OF BONDS.

12 (E) A PROVISION REQUIRING THE FISCAL AGENT TO SET ASIDE MONEY
13 FROM THE DIESEL REVENUE BOND RECEIVING FUND ESTABLISHED UNDER
14 SUBSECTION (9) INTO A FUND TO BE DESIGNATED AS THE DIESEL DEBT
15 SERVICE FUND IN A SUM PROPORTIONATELY SUFFICIENT TO PROVIDE FOR THE
16 PAYMENT OF THE PRINCIPAL OF AND INTEREST UPON ALL BONDS PAYABLE
17 FROM THE DEBT SERVICE FUND AS AND WHEN THE PRINCIPAL AND INTEREST
18 BECOME DUE AND PAYABLE IN THE MANNER PRESCRIBED BY THE DIRECTOR. IN
19 ADDITION, THE ORDER SHALL AUTHORIZE THE DIRECTOR TO PROVIDE THAT A
20 REASONABLE EXCESS AMOUNT MAY BE SET ASIDE BY THE FISCAL AGENT FROM
21 TIME TO TIME AS DETERMINED BY THE DIRECTOR IN THE DIESEL DEBT
22 SERVICE FUND TO PRODUCE AND PROVIDE A RESERVE TO MEET A POSSIBLE
23 FUTURE DEFICIENCY IN THE DIESEL DEBT SERVICE FUND. THE ORDER SHALL
24 FURTHER PROVIDE THAT OUT OF THE REVENUES REMAINING EACH QUARTER,
25 AFTER HAVING FIRST MET THE REQUIREMENTS OF THE DEBT SERVICE FUND,
26 INCLUDING THE RESERVE FOR THE FUND, THE DIRECTOR MAY BY DIRECTION
27 TO THE FISCAL AGENT SET ASIDE ADDITIONAL MONEY IN THE DEBT SERVICE

1 FUND FOR THE PURPOSE OF CALLING BONDS FOR REDEMPTION, SUBJECT TO
2 APPROVAL BY THE STATE ADMINISTRATIVE BOARD. THE RESOLUTION SHALL
3 ALSO CONTAIN A PROVISION FOR THE INVESTMENT OF FUNDS HELD BY THE
4 FISCAL AGENT.

5 (F) A PROVISION THAT MONEY ON DEPOSIT IN THE DIESEL REVENUE
6 BOND RECEIVING FUND AFTER SETTING ASIDE THE AMOUNTS FOR THE DIESEL
7 DEBT SERVICE FUND IS SURPLUS MONEY AND SHALL BE DEPOSITED QUARTERLY
8 BY THE FISCAL AGENT UPON THE ORDER OF THE DIRECTOR IN THE STATE
9 TREASURY IN THE DIESEL EMISSIONS REDUCTION FUND.

10 (G) THE TERMS AND CONDITIONS UNDER WHICH ADDITIONAL BONDS,
11 PAYABLE FROM PAYMENTS ON LOANS FOR TRUCKSTOP ELECTRIFICATION AND
12 OTHER DIESEL EMISSION REDUCTION MEASURES AND OF EQUAL STANDING WITH
13 A PRIOR ISSUE OF BONDS, MAY BE ISSUED.

14 (H) A PROVISION FOR DEPOSIT AND EXPENDITURE OF THE PROCEEDS OF
15 SALE OF THE BONDS AND FOR INVESTMENT OF THE PROCEEDS OF SALE OF THE
16 BONDS AND OF OTHER FUNDS OF THE DEPARTMENT RELATING TO BONDS
17 AUTHORIZED BY THIS PART.

18 (I) A PROVISION THAT IN THE EVENT OF A DEFAULT IN THE PAYMENT
19 OF PRINCIPAL OF OR INTEREST ON THE BONDS, OR IN THE PERFORMANCE OF
20 AN AGREEMENT OR COVENANT CONTAINED IN THE RESOLUTION, THE HOLDERS
21 OF A SPECIFIED PERCENTAGE OF THE OUTSTANDING BONDS MAY INSTITUTE 1
22 OR MORE OF THE FOLLOWING FOR THE EQUAL BENEFIT OF THE HOLDERS OF
23 ALL OF THE BONDS:

24 (i) AN ACTION OF MANDAMUS OR ANY OTHER SUIT, ACTION, OR
25 PROCEEDING TO ENFORCE THE RIGHTS OF THE HOLDERS OF THE BONDS.

26 (ii) AN ACTION UPON THE DEFAULTED BONDS OR COUPONS.

27 (iii) ANY OTHER ACTION AS MAY BE PROVIDED BY LAW.

1 (4) ANY BOND ISSUED UNDER THIS SECTION SHALL STATE THAT IT IS
2 NOT A GENERAL OBLIGATION OF THIS STATE, BUT IS A REVENUE BOND
3 PAYABLE ONLY FROM REPAYMENT OF LOANS FOR TRUCKSTOP ELECTRIFICATION
4 AND OTHER DIESEL EMISSION REDUCTION MEASURES. THIS PART DOES NOT
5 AUTHORIZE THIS STATE TO INCUR DEBT CONTRARY TO THE STATE
6 CONSTITUTION OF 1963 OR THE LAWS OF THIS STATE. THE HOLDERS OF THE
7 BONDS SHALL NOT HAVE ANY LIEN, MORTGAGE, OR OTHER ENCUMBRANCES UPON
8 ANY PROPERTY OF THIS STATE, REAL, PERSONAL, OR MIXED. BONDS SHALL
9 BE NEGOTIABLE INSTRUMENTS AS DEFINED IN SECTION 3104 OF THE UNIFORM
10 COMMERCIAL CODE, 1962 PA 174, MCL 440.3104.

11 (5) THE DIRECTOR MAY ISSUE BONDS FOR THE PURPOSE OF REFUNDING
12 ANY OBLIGATIONS ISSUED UNDER THIS PART OR MAY AUTHORIZE A SINGLE
13 ISSUE OF BONDS IN PART FOR THE PURPOSE OF REFUNDING SUCH
14 OBLIGATIONS. BONDS ISSUED UNDER THIS SUBSECTION MAY BE SOLD IN THE
15 MANNER OTHERWISE PROVIDED FOR THE SALE OF BONDS IN THIS SECTION. IF
16 SOLD, THAT PORTION OF THE PROCEEDS REPRESENTING THE REFUNDING
17 PORTION MAY BE EITHER APPLIED TO THE PAYMENT OF THE OBLIGATIONS
18 REFUNDED OR DEPOSITED IN ESCROW FOR THEIR RETIREMENT.

19 (6) THE MAXIMUM RATE OF INTEREST ON BONDS ISSUED UNDER THIS
20 SECTION SHALL BE THAT SET FORTH FOR BONDS IN THE REVISED MUNICIPAL
21 FINANCE ACT, 2001 PA 34, MCL 141.2101 TO 141.2821. THE SALE AND
22 AWARD OF BONDS SHALL BE CONDUCTED AND MADE BY THE DIRECTOR AT A
23 PUBLIC OR PRIVATE SALE. IF A PUBLIC SALE IS HELD, THE BONDS SHALL
24 BE ADVERTISED FOR SALE ONCE NOT LESS THAN 7 DAYS BEFORE SALE IN A
25 PUBLICATION WITH STATEWIDE CIRCULATION THAT CARRIES AS A PART OF
26 ITS REGULAR SERVICE NOTICES OF THE SALES OF MUNICIPAL BONDS AND
27 THAT HAS BEEN DESIGNATED IN THE RESOLUTION AS A PUBLICATION

1 COMPLYING WITH THESE QUALIFICATIONS. THE NOTICE OF SALE SHALL BE IN
2 THE FORM DESIGNATED BY THE DIRECTOR.

3 (7) EXCEPT AS PROVIDED IN SUBSECTION (6), BONDS ISSUED UNDER
4 THIS SECTION ARE NOT SUBJECT TO THE REVISED MUNICIPAL FINANCE ACT,
5 2001 PA 34, MCL 141.2101 TO 141.2821.

6 (8) THE ISSUANCE OF BONDS UNDER THIS SECTION IS SUBJECT TO THE
7 AGENCY FINANCING REPORTING ACT, 2002 PA 470, MCL 129.171 TO
8 129.177.

9 (9) ALL PAYMENTS ON LOANS FOR TRUCKSTOP ELECTRIFICATION OR
10 OTHER DIESEL EMISSION REDUCTION MEASURES SHALL BE DEPOSITED WITH
11 THE STATE TREASURER, WHO SHALL ACT AS THE FISCAL AGENT FOR THE
12 DEPARTMENT. THE STATE TREASURER SHALL ESTABLISH A SPECIAL
13 DEPOSITARY ACCOUNT TO BE DESIGNATED "DIESEL REVENUE BOND RECEIVING
14 FUND". THE NECESSARY EXPENSES OF THE FISCAL AGENT INCURRED BY
15 REASON OF HIS OR HER DUTIES UNDER THIS PART SHALL BE PAID FROM THE
16 DIESEL REVENUE BOND RECEIVING FUND. THE DIRECTOR MAY DESIGNATE
17 BANKS OR TRUST COMPANIES TO ACT AS PAYING AGENTS FOR BONDS ISSUED
18 PURSUANT TO THIS SECTION. THE PAYING AGENT SHALL BE PAID FROM THE
19 DIESEL DEBT SERVICE FUND.

20 SEC. 6912. (1) NOT MORE THAN 1 YEAR OF THE EFFECTIVE DATE OF
21 THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN
22 CONSULTATION WITH THE STATE TREASURER, SHALL ESTABLISH BY RULE A
23 DIESEL EMISSIONS REDUCTION FUNDING PROGRAM.

24 (2) THE FUNDING PROGRAM SHALL CONSIST OF A GRANT/LOAN PROGRAM
25 OR A REBATE PROGRAM, OR BOTH, AS DETERMINED BY THE DEPARTMENT IN
26 ITS SOLE DISCRETION. UNDER A GRANT/LOAN PROGRAM, THE DEPARTMENT
27 SHALL PROVIDE GRANTS AND LOW-COST REVOLVING LOANS FROM THE FUND, ON

1 A COMPETITIVE BASIS, FOR ELIGIBLE MEASURES TO ACHIEVE SIGNIFICANT
2 REDUCTIONS OF DIESEL PM EMISSIONS OR PROVIDED UNDER SECTION 6913.
3 UNDER A REBATE PROGRAM, THE DEPARTMENT SHALL PROVIDE REBATES FROM
4 THE FUND OR PROVIDED UNDER SECTION 6914.

5 (3) IN ADMINISTERING THE FUNDING PROGRAM, THE DEPARTMENT SHALL
6 DO ALL OF THE FOLLOWING:

7 (A) MANAGE FUNDING PROGRAM FUNDS AND OVERSEE THE FUNDING
8 PROGRAM.

9 (B) PRODUCE GUIDELINES, PROTOCOLS, AND CRITERIA FOR ELIGIBLE
10 EMISSION REDUCTION MEASURES.

11 (C) DEVELOP METHODOLOGIES FOR EVALUATING EMISSION REDUCTION
12 MEASURE BENEFITS AND COST-EFFECTIVENESS.

13 (D) DEVELOP PROCEDURES FOR MONITORING WHETHER THE EMISSIONS
14 REDUCTIONS PROJECTED FOR GRANTS OR LOANS AWARDED FOR EMISSION
15 REDUCTION MEASURES ARE ACTUALLY ACHIEVED.

16 (E) PREPARE REPORTS REGARDING THE PROGRESS AND EFFECTIVENESS
17 OF THE FUNDING PROGRAM.

18 (F) TAKE ALL APPROPRIATE AND NECESSARY ACTIONS SO THAT
19 EMISSIONS REDUCTIONS ACHIEVED THROUGH THE FUNDING PROGRAM MAY BE
20 CREDITED BY USEPA TO THE APPROPRIATE EMISSIONS REDUCTION OBJECTIVES
21 IN THE STATE IMPLEMENTATION PLAN.

22 SEC. 6913. (1) A GRANT/LOAN PROGRAM ESTABLISHED UNDER SECTION
23 6912 SHALL BE IMPLEMENTED AS PROVIDED IN THIS SECTION.

24 (2) SUBJECT TO LEGISLATIVE APPROPRIATIONS, THE DEPARTMENT
25 SHALL ANNUALLY ALLOCATE AT ITS DISCRETION SOME OR ALL OF THE MONEY
26 AVAILABLE IN THE FUND TO THE GRANT/LOAN PROGRAM. SUBJECT TO
27 LEGISLATIVE APPROPRIATIONS AND SECTION 6910(3), GRANT/LOAN PROGRAM

1 FUNDS NOT EXPENDED IN A GIVEN YEAR MAY BE TRANSFERRED TO THE
2 GRANT/LOAN PROGRAM OR ANY REBATE PROGRAM ESTABLISHED UNDER SECTION
3 6912 FOR THE FOLLOWING YEAR AT THE DEPARTMENT'S DISCRETION.

4 (3) SUBJECT TO SECTION 6910(3), THE DEPARTMENT SHALL
5 DISTRIBUTE FUNDS ALLOCATED FOR EACH FISCAL YEAR FOR ELIGIBLE
6 EMISSION REDUCTION MEASURES UNDER THE GRANT/LOAN PROGRAM IN
7 ACCORDANCE WITH THE FOLLOWING PRIORITY:

8 (A) FIRST, TO DIESEL FLEETS OWNED AND OPERATED BY A PUBLIC
9 AGENCY.

10 (B) IF FUNDS ARE REMAINING AFTER ALL ELIGIBLE EMISSION
11 REDUCTION MEASURES HAVE BEEN FUNDED UNDER SUBDIVISION (A), THEN TO
12 PRIVATELY OWNED DIESEL FLEETS OPERATED FOR THE BENEFIT OF THE
13 PUBLIC PURSUANT TO A CONTRACT WITH A PUBLIC AGENCY.

14 (C) IF FUNDS ARE REMAINING AFTER ALL ELIGIBLE EMISSION
15 REDUCTION MEASURES HAVE BEEN FUNDED UNDER SUBDIVISION (B), THEN TO
16 PRIVATELY OWNED DIESEL FLEETS OPERATING ON PRIVATE BUSINESS.

17 (4) TO RECEIVE A GRANT OR LOAN UNDER THE GRANT/LOAN PROGRAM,
18 THE APPLICANT SHALL SUBMIT TO THE DEPARTMENT AN APPLICATION AT A
19 TIME REQUIRED BY THE DEPARTMENT AND ON A FORM PROVIDED BY THE
20 DEPARTMENT. AN APPLICATION UNDER THIS SUBSECTION SHALL INCLUDE ALL
21 OF THE FOLLOWING:

22 (A) A DESCRIPTION OF THE AIR QUALITY OF THE AREA IN WHICH THE
23 EMISSION REDUCTION MEASURE FLEETS WILL OPERATE.

24 (B) A DESCRIPTION OF THE EMISSION REDUCTION MEASURE PROPOSED
25 BY THE APPLICANT, INCLUDING ANY CERTIFIED ENGINE CONFIGURATION OR
26 VERIFIED TECHNOLOGY PROPOSED TO BE USED OR FUNDED IN THE EMISSION
27 REDUCTION MEASURE AND THE MEANS BY WHICH THE EMISSION REDUCTION

1 MEASURE WILL ACHIEVE A SIGNIFICANT REDUCTION IN DIESEL EMISSIONS.

2 (C) AN EVALUATION USING METHODOLOGY APPROVED BY THE DEPARTMENT
3 OF THE QUANTIFIABLE AND UNQUANTIFIABLE BENEFITS OF THE EMISSIONS
4 REDUCTIONS OF THE PROPOSED EMISSION REDUCTION MEASURE.

5 (D) AN ESTIMATE OF THE COST OF THE PROPOSED EMISSION REDUCTION
6 MEASURE.

7 (E) A DESCRIPTION OF THE AGE AND EXPECTED EFFECTIVE LIFETIME
8 OF THE EQUIPMENT TO BE USED OR FUNDED IN THE PROPOSED EMISSION
9 REDUCTION MEASURE.

10 (F) A DESCRIPTION OF THE DIESEL FUEL AVAILABLE IN THE AREAS TO
11 BE SERVED BY THE PROPOSED EMISSION REDUCTION MEASURE, INCLUDING THE
12 SULFUR CONTENT OF THE FUEL.

13 (G) PROVISIONS FOR THE MONITORING AND VERIFICATION OF THE
14 EMISSION REDUCTION MEASURE.

15 (H) ANY OTHER RELEVANT INFORMATION REQUIRED BY THE DEPARTMENT.

16 (5) THE DEPARTMENT SHALL DETERMINE WHICH EMISSION REDUCTION
17 MEASURES ARE ELIGIBLE FOR GRANTS AND LOANS, FROM THE FOLLOWING
18 LIST:

19 (A) INSTALLATION OF A RETROFIT TECHNOLOGY, INCLUDING ANY
20 INCREMENTAL COSTS OF A REPOWERED OR NEW DIESEL ENGINE, THAT
21 SIGNIFICANTLY REDUCES PM EMISSIONS THROUGH DEVELOPMENT AND
22 IMPLEMENTATION OF A CERTIFIED ENGINE CONFIGURATION OR A VERIFIED
23 DIESEL EMISSION CONTROL DEVICE FOR A MEDIUM-DUTY OR HEAVY-DUTY
24 DIESEL MOTOR VEHICLE, A DIESEL NONROAD VEHICLE, A COMMERCIAL MARINE
25 ENGINE, OR A LOCOMOTIVE.

26 (B) INSTALLATION OF A CCV ON A VEHICLE OR EQUIPMENT DESCRIBED
27 IN SUBDIVISION (A).

1 (C) PROGRAMS OR EMISSION REDUCTION MEASURES TO REDUCE LONG-
2 DURATION IDLING USING VERIFIED TECHNOLOGY INVOLVING A VEHICLE
3 DESCRIBED IN SUBDIVISION (A). TRUCKSTOP ELECTRIFICATION FACILITIES
4 ARE ELIGIBLE FOR LOW-COST REVOLVING LOANS BUT NOT ELIGIBLE FOR
5 GRANTS.

6 (6) IN PROVIDING A GRANT OR LOAN UNDER THE GRANT/LOAN PROGRAM,
7 AND SUBJECT TO SUBSECTION (3), THE DEPARTMENT SHALL GIVE PRIORITY
8 TO OTHERWISE ELIGIBLE EMISSION REDUCTION MEASURES WITHIN EACH OF
9 THE 3 PRIORITY CATEGORIES DESCRIBED IN SUBSECTION (3) THAT, AS
10 DETERMINED BY THE DEPARTMENT, MEET ALL OF THE FOLLOWING
11 REQUIREMENTS:

12 (A) MAXIMIZE PUBLIC HEALTH BENEFITS.

13 (B) ARE COST-EFFECTIVE.

14 (C) SERVE AREAS THAT MEET 1 OR MORE OF THE FOLLOWING
15 REQUIREMENTS:

16 (i) HAVE THE HIGHEST POPULATION DENSITY.

17 (ii) ARE POOR AIR QUALITY AREAS, INCLUDING AREAS IDENTIFIED BY
18 THE DEPARTMENT AS IN NONATTAINMENT OR MAINTENANCE OF NATIONAL
19 AMBIENT AIR QUALITY STANDARDS FOR A CRITERIA POLLUTANT, FEDERAL
20 CLASS I AREAS, OR AREAS WITH TOXIC AIR POLLUTANT CONCERNS.

21 (iii) RECEIVE A DISPROPORTIONATE QUANTITY OF AIR POLLUTION FROM
22 DIESEL FLEETS, INCLUDING TRUCKSTOPS, PORTS, RAIL YARDS, TERMINALS,
23 AND DISTRIBUTION CENTERS.

24 (iv) USE A COMMUNITY-BASED COLLABORATIVE PROCESS INVOLVING
25 MULTIPLE INTERESTED PARTIES TO REDUCE TOXIC EMISSIONS.

26 (D) INCLUDE A CERTIFIED ENGINE CONFIGURATION OR VERIFIED
27 TECHNOLOGY THAT HAS A LONG EXPECTED USEFUL LIFE.

1 (E) WILL MAXIMIZE THE USEFUL LIFE OF ANY CERTIFIED ENGINE
2 CONFIGURATION OR VERIFIED TECHNOLOGY USED OR FUNDED BY THE PROJECT.

3 (F) CONSERVE DIESEL FUEL.

4 (G) USE ULTRA-LOW SULFUR DIESEL FUEL.

5 (7) EXCEPT FOR A MEASURE INVOLVING A MARINE VESSEL OR ENGINE,
6 NOT LESS THAN 75% OF VEHICLE MILES TRAVELED OR HOURS OF OPERATION
7 PROJECTED FOR A VEHICLE FOR THE 5 YEARS IMMEDIATELY FOLLOWING THE
8 AWARD OF A GRANT FOR THAT VEHICLE MUST BE PROJECTED TO TAKE PLACE
9 IN THIS STATE. FOR A PROPOSED EMISSION REDUCTION MEASURE INVOLVING
10 A MARINE VESSEL OR ENGINE, THE VESSEL OR ENGINE MUST BE OPERATED IN
11 THE WATERS OF THIS STATE FOR A SUFFICIENT AMOUNT OF TIME OVER THE
12 LIFETIME OF THE MEASURE, AS DETERMINED BY THE DEPARTMENT, TO MEET
13 THE COST-EFFECTIVENESS REQUIREMENTS OF SUBSECTIONS (8) TO (10). THE
14 OWNER OF ANY VEHICLE RECEIVING FUNDING FOR AN EMISSION REDUCTION
15 MEASURE THAT FAILS AFTER THE AWARD OF THE GRANT OR LOAN TO MEET THE
16 GEOGRAPHICAL REQUIREMENTS OF THIS SUBSECTION SHALL PAY A CIVIL FINE
17 TO THE DEPARTMENT EQUAL TO A PORTION OF THE GRANT OR LOAN FUNDS
18 REQUIRED BY THE DEPARTMENT PURSUANT TO RULES PROMULGATED UNDER
19 SECTION 6920 IN EFFECT AT THE TIME OF THE FAILURE. CIVIL FINES PAID
20 UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE FUND.

21 (8) FOR A PROPOSED EMISSION REDUCTION MEASURE BASED ON THE USE
22 OF A CERTIFIED ENGINE CONFIGURATION OR VERIFIED TECHNOLOGY, A GRANT
23 OR LOAN APPLICANT SHALL DOCUMENT, IN A MANNER ACCEPTABLE TO THE
24 DEPARTMENT, A REDUCTION IN PM EMISSIONS OF AT LEAST 50%, COMPARED
25 WITH THE BASELINE EMISSIONS ADOPTED BY THE DEPARTMENT FOR THE
26 RELEVANT ENGINE YEAR AND APPLICATION TO THE EXTENT NOT PROVIDED
27 PURSUANT TO THE RELEVANT CARB OR USEPA VERIFICATION PROCESS. AFTER

1 STUDY OF AVAILABLE EMISSIONS REDUCTION TECHNOLOGIES AND PUBLIC
2 NOTICE AND COMMENT, THE DEPARTMENT MAY REVISE THE MINIMUM
3 PERCENTAGE REDUCTION IN PM EMISSIONS REQUIRED BY THIS SUBPARAGRAPH
4 TO IMPROVE THE ABILITY OF THE FUNDING PROGRAM TO ACHIEVE ITS GOALS.

5 (9) THE DEPARTMENT SHALL ESTABLISH REASONABLE METHODOLOGIES
6 FOR EVALUATING EMISSION REDUCTION MEASURE COST-EFFECTIVENESS. IN
7 CALCULATING COST-EFFECTIVENESS, 1-TIME GRANTS OF MONEY AT THE
8 BEGINNING OF A PROJECT SHALL BE ANNUALIZED USING A TIME VALUE OF
9 PUBLIC FUNDS OR DISCOUNT RATE DETERMINED FOR EACH PROJECT BY THE
10 DEPARTMENT, TAKING INTO ACCOUNT THE INTEREST RATE ON BONDS,
11 INTEREST EARNED BY STATE FUNDS, AND OTHER FACTORS THE DEPARTMENT
12 CONSIDERS APPROPRIATE.

13 (10) EXCEPT AS PROVIDED BY SUBSECTION (12), AND EXCEPT FOR
14 INSTALLATION OF CCVS UNDER SUBSECTION (5) (B), THE DEPARTMENT SHALL
15 NOT AWARD A GRANT OR LOAN FOR A PROPOSED EMISSION REDUCTION MEASURE
16 UNDER THE GRANT/LOAN PROGRAM THE COST-EFFECTIVENESS OF WHICH,
17 CALCULATED IN ACCORDANCE WITH SUBSECTION (9) AND METHODOLOGIES
18 ESTABLISHED THEREUNDER, EXCEEDS \$135,000.00 PER TON OF PM10
19 EMISSIONS. THIS SUBSECTION DOES NOT RESTRICT ANY AUTHORITY OF THE
20 DEPARTMENT UNDER OTHER LAW TO REQUIRE EMISSIONS REDUCTIONS WITH A
21 COST-EFFECTIVENESS THAT EXCEEDS \$135,000.00 PER TON.

22 (11) THE DEPARTMENT SHALL NOT AWARD A GRANT OR LOAN THAT, NET
23 OF TAXES, PROVIDES AN AMOUNT THAT EXCEEDS THE INCREMENTAL COST OF
24 THE PROPOSED EMISSION REDUCTION MEASURE. THE DEPARTMENT SHALL
25 CONSIDER THE INCREMENTAL COST OF A PROPOSED NEW PURCHASE, RETROFIT,
26 REPOWER, OR ADD-ON EQUIPMENT EMISSION REDUCTION MEASURE TO BE
27 REDUCED BY THE VALUE OF ANY EXISTING FINANCIAL INCENTIVE THAT

1 DIRECTLY REDUCES THE COST OF THE PROPOSED MEASURE, INCLUDING TAX
2 CREDITS OR DEDUCTIONS, OTHER GRANTS, LOANS, REBATES, OR ANY OTHER
3 PUBLIC FINANCIAL ASSISTANCE.

4 (12) BASED UPON A STUDY OF AVAILABLE EMISSIONS REDUCTION
5 TECHNOLOGIES AND COSTS AND AFTER PUBLIC NOTICE AND COMMENT, THE
6 DEPARTMENT MAY CHANGE THE VALUES OF THE MAXIMUM GRANT OR LOAN AWARD
7 CRITERIA ESTABLISHED IN SUBSECTION (10) TO ACCOUNT FOR INFLATION OR
8 TO IMPROVE THE ABILITY OF THE GRANT/LOAN PROGRAM TO ACHIEVE ITS
9 GOALS.

10 SEC. 6914. (1) A REBATE PROGRAM ESTABLISHED BY THE DEPARTMENT
11 UNDER SECTION 6912 SHALL BE IMPLEMENTED AS PROVIDED IN THIS
12 SECTION.

13 (2) SUBJECT TO LEGISLATIVE APPROPRIATIONS AND SECTION 6910(3),
14 THE DEPARTMENT SHALL ANNUALLY ALLOCATE AT ITS DISCRETION SOME OR
15 ALL OF THE MONEY AVAILABLE IN THE FUND TO THE REBATE PROGRAM.
16 SUBJECT TO LEGISLATIVE APPROPRIATIONS, REBATE PROGRAM FUNDS NOT
17 EXPENDED IN A GIVEN YEAR MAY BE TRANSFERRED BY THE DEPARTMENT TO
18 THE REBATE PROGRAM OR ANY GRANT/LOAN PROGRAM ESTABLISHED UNDER
19 SECTION 6912 FOR THE FOLLOWING YEAR.

20 (3) A RETROFIT VENDOR OR OWNER OF AN ELIGIBLE VEHICLE WHO
21 MEETS THE REQUIREMENTS OF THIS SECTION IS ELIGIBLE TO RECEIVE A
22 REBATE UNDER THE REBATE PROGRAM. FOR PURPOSES OF THIS SUBSECTION,
23 "ELIGIBLE VEHICLE" MEANS A VEHICLE THAT MEETS THE REQUIREMENTS OF
24 THIS SECTION, THAT IS DESCRIBED IN SECTION 6913(5)(A), AND TO WHICH
25 1 OF THE FOLLOWING APPLIES:

26 (A) THE VEHICLE IS DESCRIBED IN SECTION 6913(3)(A).

27 (B) BEGINNING 2 YEARS AFTER THE EFFECTIVE DATE OF THE

1 AMENDATORY ACT THAT ADDED THIS SECTION, THE VEHICLE IS DESCRIBED IN
2 SECTION 6913 (3) (B) .

3 (C) BEGINNING 4 YEARS AFTER THE EFFECTIVE DATE OF THE
4 AMENDATORY ACT THAT ADDED THIS SECTION, THE VEHICLE IS DESCRIBED IN
5 SECTION 6913 (3) (C) .

6 (4) MONEY FROM THE FUND SHALL BE PROVIDED IN THE REBATE AMOUNT
7 TO DEFRAY THE COST OF PURCHASE AND INSTALLATION TO RETROFIT AN
8 ELIGIBLE VEHICLE WITH A LEVEL 3 CONTROL IN COMBINATION WITH A CCV.

9 (5) THE DEPARTMENT SHALL ESTABLISH THE INITIAL REBATE AMOUNT
10 FOR RETROFITS OF VARIOUS TYPES OF ELIGIBLE VEHICLES. THE DEPARTMENT
11 SHALL THEREAFTER REVIEW THE APPROPRIATENESS OF THE AMOUNT AT LEAST
12 ANNUALLY AND MAY CHANGE THE REBATE AMOUNT TO IMPROVE THE ABILITY OF
13 THE REBATE PROGRAM TO ACHIEVE ITS GOALS.

14 (6) IN ORDER TO RECEIVE A REBATE, AN ELIGIBLE VEHICLE OWNER OR
15 RETROFIT VENDOR SHALL DO ALL OF THE FOLLOWING:

16 (A) SUBMIT TO THE DEPARTMENT A COMPLETED REBATE RESERVATION AT
17 A TIME REQUIRED BY THE DEPARTMENT AND ON A FORM PROVIDED BY THE
18 DEPARTMENT.

19 (B) WITHIN 120 DAYS OF SUBMISSION OF A REBATE RESERVATION
20 FORM, COMPLETE THE RETROFIT PERTAINING TO THE REBATE RESERVATION
21 FORM AND SUBMIT TO THE DEPARTMENT ON A FORM PROVIDED BY THE
22 DEPARTMENT A COMPLETED REIMBURSEMENT REQUEST. THE REQUEST SHALL
23 INCLUDE CERTIFICATION OF RETROFIT COMPLETION AND COMPLIANCE WITH
24 ALL REQUIREMENTS OF THIS SUBSECTION AND SHALL CONTAIN ANY OTHER
25 RELEVANT INFORMATION REQUIRED BY THE DEPARTMENT.

26 (7) REBATES SHALL BE PROVIDED ON A FIRST-COME, FIRST-SERVED
27 BASIS, WITH PRIORITY ESTABLISHED BASED UPON THE DATE OF THE

1 DEPARTMENT RECEIPT OF A COMPLETED RESERVATION FORM PURSUANT TO
2 SUBSECTION (6) (A). HOWEVER, IF THE RETROFITS ARE NOT COMPLETED AND
3 THE REIMBURSEMENT REQUEST FORM IS NOT SUBMITTED TO THE DEPARTMENT
4 WITHIN THE 120-DAY PERIOD AS REQUIRED BY SUBSECTION (6) (B), THE
5 DEPARTMENT MAY REDUCE THE AMOUNT OF THE REBATE OR TAKE OTHER ACTION
6 AS PROVIDED FOR BY RULE.

7 (8) SUBJECT TO SUBSECTION (7), TO THE EXTENT OF AVAILABLE
8 FUNDS ALLOCATED TO THE REBATE PROGRAM, THE DEPARTMENT SHALL PAY THE
9 OWNER OR VENDOR THE REBATE WITHIN 60 DAYS OF RECEIPT OF A COMPLETE
10 AND ACCURATE REIMBURSEMENT FORM.

11 (9) THE OWNER OF AN ELIGIBLE VEHICLE FOR WHICH A REBATE IS
12 PAID SHALL DO ALL OF THE FOLLOWING:

13 (A) MEET THE REQUIREMENTS OF SECTION 6913(7).

14 (B) FUEL THE VEHICLE WITH ULTRA-LOW SULFUR DIESEL FUEL.

15 (C) MAINTAIN THE VEHICLE AND LEVEL 3 CONTROLS ACCORDING TO
16 MANUFACTURER SPECIFICATIONS.

17 (10) THE RETROFIT VENDOR TO ELIGIBLE VEHICLES FOR WHICH
18 REBATES ARE PROVIDED SHALL HONOR ALL WARRANTY PROVISIONS ACCORDING
19 TO THEIR VERIFICATION.

20 (11) A PERSON WHO RECEIVES A REBATE AND FAILS TO MEET ALL THE
21 REQUIREMENTS OF THIS SECTION SHALL BE ORDERED TO PAY A CIVIL FINE
22 TO THE DEPARTMENT IN THE FULL AMOUNT OF THE REBATE, PLUS INTEREST
23 AT THE RATE DETERMINED UNDER SECTION 23 OF 1941 PA 122, MCL 205.23.
24 FINES AND INTEREST PAID UNDER THIS SUBSECTION SHALL BE DEPOSITED IN
25 THE FUND.

26 SEC. 6915. (1) AN EMISSION REDUCTION MEASURE FUNDED UNDER THE
27 FUNDING PROGRAM MAY NOT BE USED FOR CREDIT UNDER ANY STATE OR

1 FEDERAL EMISSIONS REDUCTION CREDIT AVERAGING, BANKING, OR TRADING
2 PROGRAM. AN EMISSIONS REDUCTION GENERATED BY AN EMISSION REDUCTION
3 MEASURE FUNDED UNDER THE FUNDING PROGRAM SHALL NOT BE USED AS A
4 MARKETABLE EMISSIONS REDUCTION CREDIT OR TO OFFSET ANY EMISSIONS
5 REDUCTION OBLIGATION BUT MAY BE USED TO DEMONSTRATE CONFORMITY WITH
6 THE STATE IMPLEMENTATION PLAN. AN EMISSION REDUCTION MEASURE
7 INVOLVING A NEW MEASURE THAT WOULD OTHERWISE GENERATE MARKETABLE
8 CREDITS UNDER STATE OR FEDERAL EMISSIONS REDUCTION CREDIT
9 AVERAGING, BANKING, OR TRADING PROGRAMS IS NOT ELIGIBLE FOR FUNDING
10 UNDER THE FUNDING PROGRAM ESTABLISHED UNDER THIS SECTION UNLESS
11 BOTH OF THE FOLLOWING APPLY:

12 (A) THE MEASURE INCLUDES THE TRANSFER OF THE REDUCTIONS THAT
13 WOULD OTHERWISE BE MARKETABLE CREDITS TO THE STATE IMPLEMENTATION
14 PLAN.

15 (B) THE REDUCTIONS ARE PERMANENTLY RETIRED.

16 (2) AS PART OF THE BIENNIAL REPORT REQUIRED UNDER SECTION
17 6918, THE DEPARTMENT SHALL INCLUDE A REPORT ON THE FUNDING PROGRAM.
18 THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

19 (A) A REVIEW OF EACH EMISSION REDUCTION MEASURE FUNDED UNDER
20 ANY GRANT/LOAN PROGRAM, THE AMOUNT GRANTED OR LOANED FOR THE
21 EMISSION REDUCTION MEASURE, THE EMISSIONS REDUCTIONS ATTRIBUTABLE
22 TO THE MEASURE, AND THE COST-EFFECTIVENESS OF THE MEASURE.

23 (B) A REVIEW OF ANY REBATE PROGRAM, INCLUDING THE TOTAL
24 REBATES PAID, THE TOTAL RETROFITS INSTALLED, AND THE AGGREGATE
25 EMISSION REDUCTIONS ATTRIBUTABLE TO THOSE RETROFITS.

26 (C) A SUMMARY OF THE DEPARTMENT'S FUNDING PROGRAM
27 IMPLEMENTATION ACTIVITIES.

1 (D) AN ACCOUNTING FOR MONEY RECEIVED, MONEY DISBURSED AS
2 GRANTS, MONEY DISBURSED AS LOANS, MONEY RESERVED FOR GRANTS BASED
3 ON PROJECT APPROVALS, MONEY RESERVED FOR LOANS BASED ON PROJECT
4 APPROVALS, MONEY DISBURSED AS REBATES, AND ANY RECOMMENDED TRANSFER
5 OF MONEY BETWEEN ALLOCATIONS.

6 (E) AN ESTIMATE FUTURE DEMAND FOR GRANT AND REBATE FUNDS UNDER
7 THE FUNDING PROGRAM.

8 (F) A DESCRIPTION OF THE OVERALL EFFECTIVENESS OF THE FUNDING
9 PROGRAM IN ACHIEVING PM EMISSIONS REDUCTIONS AND OTHER EMISSION
10 REDUCTIONS AS CO-BENEFITS.

11 (G) AN EVALUATION OF THE EFFECTIVENESS OF THE FUNDING PROGRAM
12 IN SOLICITING AND EVALUATING PROJECT APPLICATIONS, PROVIDING AWARDS
13 IN A TIMELY MANNER, AND MONITORING PROJECT IMPLEMENTATION.

14 (H) A DESCRIPTION OF CHANGES MADE TO PROJECT SELECTION
15 CRITERIA AND RECOMMENDATIONS FOR ANY FURTHER NEEDED CHANGES TO THE
16 GRANT/LOAN PROGRAM, INCLUDING CHANGES IN GRANT OR LOAN AWARD
17 CRITERIA, ADMINISTRATIVE PROCEDURES, OR STATUTORY PROVISIONS THAT
18 WOULD ENHANCE THE FUNDING PROGRAM'S EFFECTIVENESS AND EFFICIENCY.

19 (I) A DESCRIPTION OF ANY ADJUSTMENTS MADE TO THE MAXIMUM COST-
20 EFFECTIVENESS AMOUNT AND AWARD AMOUNT.

21 (J) AN EVALUATION OF THE BENEFITS OF ADDRESSING ADDITIONAL
22 POLLUTANTS AS PART OF THE FUNDING PROGRAM.

23 (K) AN INCLUSION OF LEGISLATIVE RECOMMENDATIONS NECESSARY TO
24 IMPROVE THE EFFECTIVENESS OF THE FUNDING PROGRAM.

25 SEC. 6916. (1) A MEDIUM-DUTY OR HEAVY-DUTY DIESEL VEHICLE
26 POWERED BY AN ENGINE MANUFACTURED DURING THE FOLLOWING TIME PERIOD
27 SHALL NOT EXCEED THE FOLLOWING PERCENTAGE SMOKE OPACITY WHEN TESTED

1 IN ACCORDANCE WITH THIS SECTION UNLESS ITS ENGINE IS EXEMPTED UNDER
2 SUBSECTION (2):

3 (A) BEFORE 1990, 40%.

4 (B) FROM 1990 TO 1996, 30%.

5 (C) AFTER 1996, 20%.

6 (2) THE DEPARTMENT SHALL EXEMPT FROM THE REQUIREMENTS OF
7 SUBSECTION (1) (A), (B), OR (C), AS APPLICABLE, ANY ENGINE FAMILY
8 THAT IS FOUND BY THE DEPARTMENT TO EXHIBIT SMOKE OPACITY GREATER
9 THAN THE LIMITS IN SUBSECTION (1) (A), (B), OR (C), AS APPLICABLE,
10 WHEN IN GOOD OPERATING CONDITION AND ADJUSTED TO THE MANUFACTURER'S
11 SPECIFICATIONS. SUCH AN ENGINE FAMILY SHALL COMPLY WITH ANY
12 TECHNOLOGICALLY APPROPRIATE, LESS STRINGENT OPACITY STANDARD
13 IDENTIFIED BY THE DEPARTMENT BASED ON A REVIEW OF THE DATA OBTAINED
14 FROM ENGINES IN GOOD OPERATING CONDITIONS AND ADJUSTED TO THE
15 MANUFACTURER'S SPECIFICATIONS. A MANUFACTURER SEEKING AN EXEMPTION
16 UNDER THIS SUBSECTION SHALL PROVIDE THE DEPARTMENT WITH THE ENGINE
17 EMISSIONS DATA NEEDED TO EXEMPT THE ENGINE FAMILY AND DETERMINE
18 TECHNOLOGICALLY APPROPRIATE, LESS STRINGENT OPACITY STANDARDS.

19 (3) WITHIN 1 YEAR AND 120 DAYS AFTER THE EFFECTIVE DATE OF THE
20 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN
21 CONSULTATION WITH MDOT AND THE DEPARTMENT OF STATE POLICE, SHALL
22 PROMULGATE RULES UNDER SECTION 6920 REQUIRING OWNERS OR OPERATORS
23 OF MEDIUM-DUTY AND HEAVY-DUTY DIESEL VEHICLES TO SUBMIT TO REGULAR
24 INSPECTIONS OF THEIR VEHICLES FOR SMOKE OPACITY LEVELS AND SHALL
25 CREATE AND IMPLEMENT A PROGRAM OF RANDOM ROAD OPACITY INSPECTIONS
26 OF MEDIUM-DUTY AND HEAVY-DUTY DIESEL VEHICLES OPERATING ON HIGHWAYS
27 OF THIS STATE. THE RULES SHALL SPECIFY AT LEAST ALL OF THE

1 FOLLOWING:

2 (A) INSPECTION PROCEDURES FOR BOTH PERIODIC AND RANDOM
3 ROADSIDE INSPECTIONS. SMOKE OPACITY SHALL BE DETERMINED IN
4 ACCORDANCE WITH SAE J1667 OR ANOTHER EQUALLY EFFECTIVE AND RELIABLE
5 METHOD ADOPTED BY THE DEPARTMENT.

6 (B) PERIODIC INSPECTION FREQUENCY, WHICH SHALL BE AT LEAST
7 ANNUAL.

8 (C) ACTION THE OWNER OR OPERATOR IS REQUIRED TO TAKE TO REMEDY
9 ANY EXCEEDANCES OF THE OPACITY STANDARDS IN SUBSECTION (1).

10 (4) A MEDIUM-DUTY OR HEAVY-DUTY DIESEL VEHICLE SHALL NOT BE
11 OPERATED WITH TAMPERED, NONCONFORMING, OR DEFECTIVE EMISSION
12 CONTROL COMPONENTS. WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE
13 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN
14 CONSULTATION WITH MDOT, SHALL PROMULGATE RULES UNDER SECTION 6920
15 TO CREATE AND IMPLEMENT A PROGRAM OF INSPECTION OF MEDIUM-DUTY AND
16 HEAVY-DUTY DIESEL VEHICLES TO DETERMINE WHETHER EMISSION CONTROL
17 COMPONENTS ARE TAMPERED, NONCONFORMING, OR DEFECTIVE. THE RULES
18 SHALL SPECIFY AT LEAST ALL OF THE FOLLOWING:

19 (A) INSPECTION PROCEDURE.

20 (B) PERIODIC INSPECTION FREQUENCY, WHICH SHALL BE AT LEAST
21 ANNUAL.

22 (C) ACTION THE OWNER OR OPERATOR IS REQUIRED TO TAKE TO REMEDY
23 ANY DEFECTIVE, NONCONFORMING, OR TAMPERED EMISSION CONTROL
24 COMPONENTS.

25 (5) THE FOLLOWING SANCTIONS APPLY TO VIOLATIONS OF THIS
26 SECTION OR RULES PROMULGATED TO IMPLEMENT THIS SECTION:

27 (A) THE OWNER OF A MEDIUM-DUTY OR HEAVY-DUTY DIESEL VEHICLE

1 THAT IS CITED FOR THE FIRST TIME FOR FAILING AN OPACITY TEST OR FOR
2 TAMPERED, NONCONFORMING, OR DEFECTIVE EMISSION CONTROL COMPONENTS
3 IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND SHALL BE ORDERED TO
4 PAY A CIVIL FINE OF \$750.00. HOWEVER, IF THE OWNER CORRECTS THE
5 VIOLATION AND PAYS THE FINE WITHIN 45 DAYS OF RECEIPT OF THE
6 CITATION, THE FINE SHALL BE REDUCED TO \$250.00.

7 (B) THE OWNER OF A MEDIUM-DUTY OR HEAVY-DUTY DIESEL VEHICLE
8 THAT IS CITED FOR A SECOND OR SUBSEQUENT TIME FOLLOWING EXPIRATION
9 OF THE 45-DAY COMPLIANCE PERIOD SET FORTH IN SUBDIVISION (A) AND
10 WITHIN A 12-MONTH PERIOD OF THE ORIGINAL CITATION FOR FAILING AN
11 OPACITY TEST OR FOR TAMPERED, NONCONFORMING, OR DEFECTIVE EMISSION
12 CONTROL COMPONENTS FOR THE SAME VEHICLE IS RESPONSIBLE FOR A STATE
13 CIVIL INFRACTION AND SHALL BE ORDERED TO PAY A CIVIL FINE OF
14 \$1,500.00 AND SHALL CORRECT THE FAILURE WITHIN 45 DAYS OF THE
15 RECEIPT OF THE CITATION.

16 (C) THE OWNER OF A MEDIUM-DUTY OR HEAVY-DUTY DIESEL VEHICLE
17 THAT FAILS TO HAVE A REQUIRED OPACITY OR EMISSIONS CONTROL
18 INSPECTION IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND SHALL BE
19 ORDERED TO PAY A CIVIL FINE OF \$750.00 FOR A FIRST VIOLATION AND
20 \$1,750.00 FOR A SECOND OR SUBSEQUENT VIOLATION.

21 (6) CIVIL FINES PAID UNDER THIS SECTION SHALL BE DEPOSITED IN
22 THE FUND. HOWEVER, 1/2 OF THE PROCEEDS OF FINES COLLECTED AS A
23 RESULT OF A RANDOM OPACITY INSPECTION UNDER RULES DESCRIBED IN
24 SUBSECTION (3) SHALL BE FORWARDED AS FOLLOWS:

25 (A) IF THE LAW ENFORCEMENT OFFICER ISSUING THE CIVIL
26 INFRACTION CITATION IS EMPLOYED BY THIS STATE, TO THE STATE
27 TREASURER FOR DEPOSIT IN THE GENERAL FUND.

1 (B) IF THE LAW ENFORCEMENT OFFICER IS EMPLOYED BY A POLITICAL
2 SUBDIVISION, TO THE TREASURER OF THAT POLITICAL SUBDIVISION FOR
3 DEPOSIT IN ITS GENERAL FUND.

4 (7) THE OWNER OF A MEDIUM-DUTY OR HEAVY-DUTY DIESEL VEHICLE
5 INSPECTED UNDER RULES DESCRIBED IN SUBSECTION (3) OR (4) SHALL PAY
6 THE DEPARTMENT A \$40.00 FEE FOR THE INSPECTION. THE DEPARTMENT
7 SHALL DEPOSIT INSPECTION FEES IN THE FUND.

8 SEC. 6917. (1) THE DEPARTMENT SHALL CONDUCT A STUDY OF
9 INVENTORIES OF DIESEL MOTOR VEHICLES AND DIESEL NONROAD VEHICLES IN
10 THIS STATE, IN CONSULTATION WITH MDOT, THE SOS, USEPA, AND OTHER
11 STATE AND FEDERAL AGENCIES AS THE DEPARTMENT CONSIDERS APPROPRIATE.
12 THE STUDY SHALL INCLUDE, BUT NOT BE LIMITED TO, SURVEYS OF DIESEL
13 MOTOR VEHICLE AND DIESEL NONROAD VEHICLE OWNERS. THE DEPARTMENT
14 SHALL COMPLETE THE STUDY AND REPORT THE RESULTS, ALONG WITH ANY
15 RECOMMENDATIONS RESULTING FROM THAT INVENTORY, AS PART OF THE FIRST
16 REPORT REQUIRED BY SECTION 6918. THE DEPARTMENT SHALL PROVIDE
17 UPDATED INFORMATION REGARDING THE DIESEL INVENTORY IN SUBSEQUENT
18 BIENNIAL REPORTS REQUIRED BY SECTION 6918.

19 (2) THE SOS SHALL, IN CONSULTATION WITH THE DEPARTMENT, REVIEW
20 THE INFORMATION OBTAINED THROUGH THE REGISTRATION OF DIESEL MOTOR
21 VEHICLES. AFTER THE REVIEW, AND NOT LATER THAN 1 YEAR AFTER THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE
23 SOS SHALL REQUIRE SUCH ADDITIONAL INFORMATION UPON THE REGISTRATION
24 OF A DIESEL MOTOR VEHICLE THAT IS APPROPRIATE TO SUPPORT A RELIABLE
25 AND COMPLETE INVENTORY OF DIESEL MOTOR VEHICLES IN THIS STATE. THE
26 INFORMATION SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE TYPE OF
27 FUEL FOR WHICH THE VEHICLE IS DESIGNED, THE GROSS VEHICLE WEIGHT

1 RATING, THE ENGINE CLASS, INCLUDING WHETHER THE ENGINE IS
2 ELECTRONICALLY CONTROLLED, THE USE FOR WHICH THE VEHICLE IS
3 DESIGNED, AND ANY INSTALLED EMISSION CONTROLS. THE SOS SHALL, IN
4 CONSULTATION WITH THE DEPARTMENT, PROVIDE THE INFORMATION TO THE
5 DEPARTMENT IN A FORM THAT WILL SUPPORT A RELIABLE AND COMPLETE
6 INVENTORY OF DIESEL MOTOR VEHICLES IN THIS STATE.

7 (3) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
8 ACT THAT ADDED THIS SECTION, THE SOS, IN CONSULTATION WITH MDOT AND
9 THE DEPARTMENT, SHALL PROMULGATE RULES PURSUANT TO THE
10 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
11 24.328, TO DEVELOP A PROGRAM FOR REGISTRATION OF DIESEL NONROAD
12 VEHICLES, LOCOMOTIVES, AND DIESEL MARINE VESSELS AND SHALL
13 IMPLEMENT THE PROGRAM BEGINNING 180 DAYS AFTER THE RULE
14 PROMULGATION DEADLINE. THE PROGRAM SHALL BE DESIGNED, AMONG OTHER
15 THINGS, TO SUPPORT A RELIABLE AND COMPLETE INVENTORY OF DIESEL
16 NONROAD VEHICLES IN THIS STATE.

17 SEC. 6918. (1) NOT LATER THAN DECEMBER 1, 2017, AND EVERY ODD-
18 NUMBERED YEAR THEREAFTER, THE DEPARTMENT SHALL SUBMIT TO THE
19 LEGISLATURE, MAKE AVAILABLE TO THE PUBLIC, AND POST ON THE
20 DEPARTMENT WEBSITE A REPORT OF THE IMPLEMENTATION OF THIS PART,
21 INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

22 (A) A DESCRIPTION OF ACTIVITIES OF THE DEPARTMENT AND OTHER
23 STATE AGENCIES TO IMPLEMENT THIS PART.

24 (B) AN ESTIMATE OF RESULTING DIESEL EMISSION REDUCTIONS AND
25 OTHER APPROPRIATE MEASURES OF PROGRESS.

26 (C) A DESCRIPTION OF PROBLEMS ENCOUNTERED, IDENTIFICATION OF
27 OPPORTUNITIES FOR ADDITIONAL REDUCTIONS IN DIESEL EMISSIONS, AND

1 RECOMMENDATIONS FOR ANY STATUTORY CHANGES.

2 (D) THE REVIEW OF THE FUNDING PROGRAM AS REQUIRED IN SECTION
3 6915(2) AND INFORMATION REGARDING THE DIESEL INVENTORY AS REQUIRED
4 IN SECTION 6917(1).

5 (2) BEFORE PREPARING A FINAL BIENNIAL REPORT, THE DEPARTMENT
6 SHALL PREPARE A DRAFT BIENNIAL REPORT AND PROVIDE NOTICE AND AN
7 OPPORTUNITY FOR A PUBLIC HEARING AND COMMENT ON THE DRAFT BIENNIAL
8 REPORT. IN PRODUCING A FINAL BIENNIAL REPORT, THE DEPARTMENT SHALL
9 CONSIDER AND RESPOND TO ALL SIGNIFICANT COMMENTS RECEIVED.

10 SEC. 6919. (1) PERSONS SUBJECT TO THIS PART, INCLUDING OWNERS
11 AND OPERATORS OF DIESEL MOTOR VEHICLES, DIESEL NONROAD VEHICLES,
12 LOCOMOTIVES, AND DIESEL MARINE VESSELS, SHALL PROVIDE SUCH
13 INFORMATION, REPORTING, AND MONITORING AS THE DEPARTMENT MAY
14 REQUIRE BY RULE FOR THE PURPOSE OF IMPLEMENTING THIS PART.

15 (2) IN ADDITION TO OTHER REMEDIES PROVIDED IN THIS PART, THE
16 DEPARTMENT MAY SEEK INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT
17 JURISDICTION TO ENFORCE ANY PROVISION OF THIS PART.

18 SEC. 6920. WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL
20 PROMULGATE RULES TO IMPLEMENT THIS PART PURSUANT TO THE
21 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
22 24.328.

EXHIBIT 3

HB 508 – AS AMENDED BY THE HOUSE

20Mar2013... 0424h

2013 SESSION

13-0220
08/01

HOUSE BILL **508**

AN ACT relative to idling by diesel locomotives.

SPONSORS: Rep. Major, Rock 14; Rep. DeSimone, Rock 14; Rep. Friel, Rock 14

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill prohibits the idling of a diesel locomotive except in certain circumstances.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 508 – AS AMENDED BY THE HOUSE

20Mar2013... 0424h

13-0220
08/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to idling by diesel locomotives.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Idling by Diesel Locomotives. Amend RSA 125-C by inserting after section 10-c
2 the following new section:

3 125-C:10-d Idling by Diesel Locomotives.

4 I. For purposes of this section “commuter rail” means urban passenger train service
5 consisting of local short distance travel operating between adjacent cities and towns, or between a
6 central city and adjacent suburbs, using either locomotive hauled or multiple unit railroad passenger
7 cars.

8 II. No person shall cause or permit the unnecessary and foreseeable idling of a commuter
9 rail diesel locomotive for a continuous period of time longer than 30 minutes. This section shall not
10 apply to commuter rail diesel locomotives being serviced, provided that idling is essential to the
11 proper repair of said locomotive and that such idling does not cause or contribute to a condition of air
12 pollution. Diesel locomotives other than commuter rail shall not be subject to the idling restriction
13 in this section, unless the location where a locomotive idles is less than 1000 feet from any
14 residential area, school, nursing home, day care, hospital, or other sensitive receptor.

15 III. Local law enforcement may enforce the provisions of this section. Any person who
16 violates any provision of this section shall be guilty of a violation and may be assessed by local law
17 enforcement, after notice and hearing, a fine for the first offense not to exceed \$500 and for each
18 subsequent offense not to exceed \$2000 which shall be paid to the clerk of the town or city where the
19 violation occurred.

20 IV. Nothing in this section shall be construed to limit the authority of a municipality or the
21 department of health and human services to prevent and remove nuisances and protect public health
22 in accordance with RSA 147, or of a municipality to adopt and enforce land use ordinances and
23 regulations pursuant to RSA 674 and RSA 675 relative to idling of locomotives. A municipality shall
24 not establish quantifiable emission limits, require testing, monitoring, or certification, or specify the
25 types of fuels used. In exercising its authority under this section, a municipality shall not
26 unreasonably limit the operation of locomotives.

27 V. This section shall not apply to diesel locomotives used for amusement railroads. The term
28 “amusement railroad” shall have the same definition as in RSA 82:1, III.

29 2 Effective Date. This act shall take effect July 1, 2014.

EXHIBIT 4



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 28

S.P. 17

In Senate, January 15, 2013

An Act To Reduce Air Pollution from Trains

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.
Cosponsored by Representative DION of Portland and
Senators: COLLINS of York, CRAVEN of Androscoggin, DUTREMBLE of York, HASKELL
of Cumberland, HILL of York, MAZUREK of Knox, Representatives: GIDEON of Freeport,
PRIEST of Brunswick.

**VERIFIED STATEMENT OF
MICHAEL G. STANFILL**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35803

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY –
PETITION FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF MICHAEL G. STANFILL

My name is Michael G. Stanfill. I am Director, Environmental Permitting/Planning & Sustainability for BNSF Railway Company. I have worked for BNSF or a predecessor railroad for 36 years. I have been involved in environmental work for 27 years, and I have held the positions of Environmental Engineer, Manager Environmental Program Development; Manager Environmental – Leases, Manager Environmental Operations; Director Environmental Operations; Director Environmental Engineering and Program Development. I have been very involved in implementing the 2005 statewide agreement with the California Air Resources Board (“CARB”), including the semiannual CARB inspections of BNSF facilities and locomotives. I have a Bachelor of Science in Civil Engineering from Texas Tech University.

I am responding to SCAQMD’s false claim that there was a “high rate of non-compliance with the 2005 MOU on a consistent basis.” *See* SCAQMD Supplemental Comments at 21. BNSF’s witness in this proceeding Mr. John Lovenburg described in his verified statement the 2005 Memorandum of Understanding between BNSF, Union Pacific Railroad and CARB. I do not repeat that background information here.

Contrary to SCAQMD's assertion, CARB's annual enforcement reports have concluded that the railroads have had a 97% or higher compliance rate since 2006, and for the years 2009 through 2011, the compliance rate was 99% or higher. As CARB recognized, the railroads have met or exceeded their obligations under the 2005 voluntary agreement. I am submitting this verified statement to explain that SCAQMD ignored CARB's conclusions and instead reinterpreted the rail yard inspection data to give the false impression that the railroads have failed to take effective measures to address emissions from idling locomotives.

In the most recent report available from CARB's website, which is for the year 2012, CARB concluded that the railroads had a 98% compliance rate. *See* CARB Enforcement Division, 2012 Annual Enforcement Report, at 38 (May 2013). For the years 2009 through 2011, the compliance rate was even higher. In 2011, CARB found a 99% compliance rate in more than 2,400 rail yard inspections. *See* CARB Enforcement Division, 2011 Annual Enforcement Report, at 34 (July 2012). This was also true for 2010, when CARB concluded that the railroads' "overall compliance rate exceeds 99 percent." *See* CARB Enforcement Division, 2010 Annual Enforcement Report, at 30 (June 2011). CARB likewise concluded that the railroads' "overall compliance rate is an excellent 99.3%" for the year 2009. *See* CARB Enforcement Division, 2009 Annual Enforcement Report, at 44 (Aug. 2010).

Based on this consistently high compliance rate, CARB has recognized on multiple occasions that BNSF has fully complied with and exceeded its obligations in the 2005 Agreement. In late 2013, CARB stated that "[o]ver the past fifteen years, the Railroads have in good faith continued to meet or exceed obligations and responsibilities under the 1998 and 2005 Railroad/ARB Agreements." Letter from Richard Corey of CARB to Carl Ice, BNSF and Lance Fritz, Union Pacific, at 1 (Dec. 4, 2013); *see also* Letter from Richard Corey to Mary Nichols, at

1 (Dec. 4, 2013) (recognizing that “the railroads consistently met or exceeded each and every obligation they signed on to” in both agreements) (attached to BNSF’s Reply to United States Environmental Protection Agency’s Petition for Declaratory Order as Exhibits 3 and 5).

SCAQMD tries to create the false and misleading impression that BNSF’s compliance efforts have not been satisfactory by using a selected subset of data, focusing on older data, and manipulating the CARB’s audit results. There are several flaws in the calculations underlying the SCAQMD chart on page 22. For example, SCAQMD determined a compliance ratio by comparing the number of non-complying locomotives to the number of idling locomotives. This approach is inconsistent with the approach used by CARB’s Enforcement Division, and it makes no sense. CARB compares the number of non-compliant locomotives to the total number of locomotives observed during the inspections, including non-idling locomotives. Non-idling locomotives should be included in any calculation of a non-compliance rate since non-idling locomotives indicate that a railroad is fulfilling its commitment to reduce non-essential idling. To look at a specific example, SCAQMD claims that BNSF’s non-compliance rate for 2008 in BNSF’s Commerce Yard was 27.7%. But the actual rate was 4%, as shown in the chart below.

BNSF Rail Yard	Notices of Violation (2008)	Total Number of Locomotives	Actual Non-Compliance Rate	SCAMD’s Non-Compliance Rate
Commerce Eastern	4	99	4.0%	27.7%

SCAQMD also used a misleading approach to determine the average compliance rate at particular yards. To use the 2008 Commerce Yard example again, there were two inspections of BNSF’s Commerce Eastern rail yard in 2008. In the May inspection, there were 5 idling locomotives, 31 non-idling locomotives, and 2 Notices of Violation (“NOVs”). In the October

inspection, there were 13 idling locomotives, 50 non-idling locomotives, and 2 NOV's. As noted in the above chart, in the 2008 inspections, there were 4 NOV's out of a total of 99 locomotives. But SCAQMD tried to create the false impression of a much higher non-compliance rate by focusing only on idling locomotives, and then calculating an average of the May inspection, an average of the October inspection, and averaging the averages. Thus, for May, SCAQMD claims that 2 NOV's divided by 5 (the number of idling locomotives, not the number of total locomotives) produces a non-compliance rate of 40%. For October, SCAQMD claims that 2 NOV's divided by 13 (idling locomotives) produces a non-compliance rate of 15%. To come up with the annual rate, SCAQMD added 40% and 15% and divided by 2, which is 27.5%. The result is a complete distortion of BNSF's performance.

SCAQMD also ignored rail yards where BNSF had high levels of compliance, even in the early years after entering into the 2005 MOU. For example, SCAQMD omitted BNSF's rail yards in Bakersfield, La Mirada, Fresno, La Mirada, Pittsburg, Riverbank, San Diego, and Stockton. In 2009, these BNSF rail yards had zero Notices of Violation for idling. Instead, SCAQMD included inspections in 2010 of LAXT, which is a facility at the Port and is operated by a contractor.

CARB has recognized that BNSF's efforts to comply with the 2005 MOU "have yielded significant emission reductions and environmental benefits, especially in Southern California." Letter from Richard Corey of CARB to Carl Ice, BNSF and Lance Fritz, Union Pacific, at 1 (Dec. 4, 2013). SCAQMD tries to cloud the very successful results of these voluntary measures with misleading data that distorts the record.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 11, 2014

A handwritten signature in black ink, appearing to read "Michael Stanfill", written over a horizontal line.

Michael G. Stanfill
Director Environmental Permitting/
Planning & Sustainability
BNSF Railway Company