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## **AIR, ENERGY, AND MATERIALS SUSTAINABILITY**

### **DIVISION OF AIR QUALITY**

#### **Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards**

**Adopted New Rules: N.J.A.C. 7:27-34**

**Adopted Amendment: N.J.A.C. 7:27A-3.10**

Proposed: January 3, 2022, at 54 N.J.R. 7(a).

Adopted: December 29, 2022, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: January 3, 2023, as R.2023 d.014, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, and 26:2C-1 et seq.

DEP Docket Number: 08-21-11.

Effective Date: February 6, 2023.

Operative Date: February 27, 2023, in accordance with N.J.S.A. 26:2C-8.a.

Expiration Dates: Exempt, N.J.A.C. 7:27;

January 22, 2027, N.J.A.C. 7:27A.

This rulemaking concerns diesel-fueled mobile sources at ports and intermodal rail yards. Specifically, the Department of Environmental Protection (Department) is adopting rules based on California's regulation requiring diesel mobile cargo handling equipment at ports and intermodal rail yards to apply best available control technology, while zero-emission technology continues to advance for this equipment. The adopted rules will enable the State to reduce diesel engine emissions, including oxides of nitrogen (NO<sub>x</sub>) and particulate matter (PM). New Jersey is

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in nonattainment for the Federal ozone national ambient air quality standard (NAAQS) and must continue to reduce NO<sub>x</sub> emissions Statewide to attain and maintain the ozone NAAQS. In addition to Statewide benefits, the Department expects that communities near ports and intermodal rail yards in the State where cargo handling equipment is operated will particularly benefit from the reduced emissions. These include some communities identified as overburdened, as defined at N.J.S.A. 13:1D-158.

**Summary of Hearing Officer's Recommendation and Agency's Response:**

The Department held a virtual public hearing on this rulemaking on February 9, 2022, at 9:30 A.M., through the Department's video conferencing software, Microsoft Teams. Peg Hanna, Assistant Director for the Division of Air Quality, served as hearing officer. Sixteen people provided oral comments at the public hearing. After reviewing the comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed rulemaking with the modifications described below in the responses to comments. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection, in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

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This notice of adoption document can also be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

**Summary of Public Comments and Agency Responses:**

The Department accepted comments on the notice of proposal through March 4, 2022.

The following individuals provided timely written and/or oral comments:

1. Joseph Brosnan
2. Ray Cantor, New Jersey Business and Industry Association
3. Rachel Davis, Public Policy and Justice Organizer with Waterspirit and Ministry of the Sisters of St. Joseph of Peace
4. Michael Egenton, New Jersey State Chamber of Commerce (identical to the comments of the Port of New York/New Jersey Sustainable Services Agreement)
5. Kent Fairfield
6. Mike Fesen, Norfolk Southern Railway
7. Amy Goldsmith, Clean Water Action
8. Lisa Himber, Maritime Exchange for the Delaware River and Bay
9. Peter Inskeep, Gloucester Terminals LLC
10. Richard Kalish
11. Zachary Koslap, EMR (USA Holdings) Inc. (collectively with its subsidiaries, EMR)
12. Carol Lambos, Port of New York/New Jersey Sustainable Services Agreement
13. Agnes Marsala, People Over Pipelines and United Ratepayers of New Jersey
14. Olivia Martindale, Empower New Jersey

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15. Debra Murphy
16. John Nardi, New York Shipping Association
17. Thomas O'Dowd
18. Doug O'Malley, Environment New Jersey
19. Robert Palaima
20. Patricio Portillo, Natural Resources Defense Council
21. David Pringle, Empower New Jersey
22. Paula Rogovin, activist with Coalition to Ban Unsafe Oil Trains
23. Theresa Romanosky, Association of American Railroads
24. Jay Ruble, Maher Terminals LLC
25. Andrew Saporito, South Jersey Port Corporation
26. Andrew Sentyz, Delaware River Stevedores, Inc
27. Jonathan Smith, Coalition for Healthy Ports NY/NJ and Earthjustice, groups signing in agreement are Clean Water Action, Ironbound Community Corporation, Natural Resources Defense Council, New Jersey Environmental Justice Alliance, Sierra Club New Jersey Chapter, South Ward Environmental Alliance, Tishman Environment and Design Center of The New School University, Union of Concerned Scientists
28. Jonathan Smith, Earthjustice
29. Megan Steele, Sierra Club New Jersey Chapter

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

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**Conditional Support**

1. COMMENT: The Department's adoption of the cargo handling equipment rules is strongly supported. While it is a good first step, the objective should be zeroing out all pollution from this equipment. The Department should continue working closely with the Coalition for Healthy Ports (CHP) on all freight-related rules and regulations since the CHP represents the people disproportionately impacted by the goods movement industry and has the expertise to address pollution problems in their communities. (20)

2. COMMENT: These rules are a first step in the right direction, but they do not go far enough. (7, 21, and 22)

3. COMMENT: These rules should be seen as stepping stones to full electrification of port equipment. (18)

4. COMMENT: It is important to address the air pollution from cargo handling equipment and to protect our overburdened communities. Therefore, the Department's decision to move forward with the process is appreciated. However, the rules do not go far enough or fast enough. (29)

5. COMMENT: The proposed rules will significantly decrease emissions caused by cargo handling equipment in and around the State's marine ports and railyards. However, these rules are just a start since much more needs to be done. (27)

RESPONSE TO COMMENTS 1 THROUGH 5: The Department acknowledges the commenters' conditional support of the adopted rules. The Department recognizes that the commenters would like the Department to commit to a full transition to zero-emission equipment and/or shorten the compliance timelines for these rules. As discussed more thoroughly in the Response to Comments 97 through 108, the compliance schedule for the adopted rules is shorter than the schedule in the California cargo handling equipment regulation (on which the adopted

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discussed in the Response to Comments 80 through 89, zero-emission equipment is not yet mature for all models of cargo handling equipment. The Department continues to monitor the progress of the California Air Resources Board (CARB) as it develops a zero-emission cargo handling equipment regulation.

### **Legal Authority And Policy Priority**

6. COMMENT: The Department contends that its authority to implement the rules stems from: (1) the Global Warming Response Act, N.J.S.A. 26:2C-37 et seq. (GWRA), passed in 2007 and amended in 2019; (2) Executive Order No. 100 (2020) issued by Governor Murphy (EO No. 100); and (3) Administrative Order 2020-01 issued by former Department Commissioner Catherine McCabe. All three legal authorities seek to curtail the emissions of greenhouse gases and implement climate change resiliency efforts within the State, among other climate-related goals. These are not the express goals of the proposed rules, the preamble of which attempts to justify the costs imposed by the rules on the public health and economic impacts of human exposure to oxides of nitrogen (NO<sub>x</sub>) and fine particulate matter (PM<sub>2.5</sub>), which are criteria pollutants, and are not regulated as greenhouse gases. Accordingly, the Department's justification for implementing the New Jersey rules is arbitrary, capricious, and an abuse of discretion, because its justification is based on benefits that are not the purpose of the rules' authorizing legal authorities. Likewise, the Department made no cost/benefit justification for the rules founded on addressing the impacts of climate change, the stated purpose of the legal authorities to which the Department has cited for its rulemaking. Like the California Air Resources Board (CARB), the Department focuses almost exclusively on the adverse health

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impacts of direct exposure to ozone, NO<sub>x</sub>, and PM<sub>2.5</sub>, and cites studies CARB performed on

health risks associated with emissions from diesel-fueled engines. Given the lack of a cost/benefit analysis that relates to the primary purposes of the authorizing statute and orders, the Department's justification for the rules is arbitrary, capricious, and an abuse of discretion. (9)

7. COMMENT: The Department's website indicates that responding to climate change is its number one priority. However, these rules do not seem to make it a top priority. Instead of leading the way in addressing climate change, the Department appears to be following California. (15)

RESPONSE TO COMMENTS 6 AND 7: The notice of proposal discusses: (1) the GWRA; (2) EO No. 100; and (3) Administrative Order 2020-01 issued by former Department Commissioner Catherine McCabe; however, these are not the Department's sole authority to implement the rules. See 54 N.J.R. at 8. The notice of proposal referenced Administrative Order 2020-01, which directs the Department to propose regulations that "identify the rules and programs that should be updated to better respond to the challenges presented by climate change." *Ibid*. Climate change presents many challenges, including the heightened impact of ozone and PM due to the interaction between climate change and air quality. *Ibid*. To mitigate the effects of climate change on air quality, the Department must do more to reduce air pollutants, such as NO<sub>x</sub> and PM. The Department's authority to regulate NO<sub>x</sub> and PM is well established in the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., which the Department specifically cited as authority for the rulemaking. 54 N.J.R. at 7.

It is true that the Department is following California's model in regulating mobile cargo handling equipment; however, this does not mean that New Jersey is other than at the forefront of state efforts to reform and modernize regulations to mitigate the effects of climate change and to

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gather information to inform future climate-related rulemaking. The adopted rules are just one

step that the Department and other State agencies will take as part of a comprehensive scheme to mitigate the impacts of climate change by reducing pollutants that have an adverse impact on air quality and human health. The Department has made climate change a priority, which is why the Department is adopting this rulemaking. The Department will continue to evaluate strategies to address climate change pursuant to New Jersey's authority, pursuant to the Clean Air Act (CAA), 42 U.S.C. §§ 7547 et seq., and State law.

### **Port/Railyard Emissions**

8. COMMENT: Port and rail yard emissions are not the driver of New Jersey's ozone non-compliance. New Jersey does not have the same level of ozone non-compliance as California.

This rule will have no measurable impact on the State's compliance efforts. (2)

9. COMMENT: As the Department considers regulations for cargo handling equipment for the port and intermodal railyard sectors, it must be noted that the equipment for these sectors represents only a very small portion of the source of pollution attributed by the Department to the transportation sector. The cargo handling equipment utilized at these facilities are not like the trucks that traverse neighborhoods or which provide direct exposure to general populations. This equipment is primarily comprised of machines that do not leave the marine terminal site. Thus, any regulations should be commensurate with the actual contribution to the problem of CO<sub>2</sub> and short-lived climate pollutants. (4 and 12)

RESPONSE TO COMMENTS 8 AND 9: The Department's rules are intended to reduce diesel PM and NO<sub>x</sub> emissions from new and in-use cargo handling equipment at ports and intermodal rail yards. See 54 N.J.R. at 11. The Department regulates emissions of NO<sub>x</sub>, because NO<sub>x</sub> is a



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precursor of ground level ozone (ozone), and New Jersey is in nonattainment for the Federal ozone national ambient air quality standard (NAAQS). See 54 N.J.R. at 8. Likewise, the Department regulates emissions of PM, because particulate matter has been shown to have negative public health impacts and adverse environmental impacts. See N.J.R. at 22. Moreover, when PM<sub>2.5</sub> is discharged directly from combustion sources, such as diesel vehicles, it contains a component known as black carbon that is a short-lived climate pollutant with a high global warming potential. *Ibid.* As explained in the notice of proposal, particles in diesel engine exhaust (diesel particles) contain compounds that are potent mutagens and carcinogens. *Id.* at 11. Diesel PM, therefore, is a particular public health concern because these particles pose a lung cancer hazard and cause other noncancer respiratory effects, such as lung inflammation. *Ibid.* Nonroad diesel engine emissions contain substances known, or suspected, to have both carcinogenic and noncancer health effects, as well as the potential to cause health effects at environmental levels of exposure. *Ibid.* Thus, even though cargo handling equipment is not the largest contributor to diesel engine exhaust, NO<sub>x</sub>, or PM emissions within the State, as explained in the notice of proposal, the rules will particularly benefit the local communities near ports and intermodal rail yards where the cargo handling equipment is operated. 54 N.J.R. at 23.

### **General Comments On The Goal To Reduce Emissions**

10. COMMENT: The Department's rules fail to recognize the ongoing efforts by the railroads and the yard operators to reduce emissions. The rulemaking process should be extended for an open dialogue on this issue. (6)

11. COMMENT: Many in the regulated community share the Department's goal to lower overall emissions. Material handling equipment technology is evolving in revolutionary and

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12. COMMENT: Railroads have devoted significant resources to significantly reducing emissions in rail yards. Many have introduced zero-emission intermodal cranes, low-emitting hostlers, battery electric hostlers, and diesel switch locomotive filters in rail yards to reduce criteria pollutant emissions and the impacts on the communities in which rail yards operate. Tier 4 diesel engines reduce criteria pollutant emissions by implementing a number of design improvements that work well for over-the-road truck engines. At intermodal facilities, on the other hand, cargo handling equipment typically has low loads and is idle for extended periods. Under these low-load and/or longer idling conditions, selected catalytic reductions equipment gets clogged and does not function as designed. This will result in frequent downtime for engines and expensive repairs, which can contribute to higher overhead costs for yard operators. (23)

13. COMMENT: The Department's proposed rules appear to be a reasonable approach to achieving the goal of reducing PM and NO<sub>x</sub> emissions from port cargo handling equipment. However, our business has already mapped a plan to achieve net zero emissions by 2040. While this goal is achievable, it will almost certainly require State or Federal assistance to offset the greater expense associated with this equipment. (24)

14. COMMENT: The Department should consider working with port facilities directly on comprehensive compliance plans to reduce emissions beyond those from cargo handling equipment. The Department is aware that some facilities, such as the Port Authority of New York & New Jersey, have a comprehensive plan to reduce or eliminate much of the pollution at their facilities. (2)

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of the regulated community to reduce emissions. Though some entities are transparent about their inventory and plans to upgrade, in the absence of regulation, private entities are under no obligation to make a plan to lower their emissions or share any such plan with the public.

Accordingly, many of the plans mentioned by commenters are voluntary, aspirational, undisclosed, and unenforceable. Without rules, the Department has no mechanism to ensure that individual planning by the regulated community will result in actual emission reductions. The reporting and compliance requirements set forth in the rules will ensure that emission reductions are achieved by all of the covered entities through existing technology.

The Department recognizes that individual entities have specific operational needs and idiosyncrasies. However, flexibility is built into the rules through, *inter alia*, the availability of compliance extension options, fleet averaging plans, and alternate compliance options. These flexibilities will allow covered entities to move forward with their existing plans to reduce emissions, albeit with some potential modifications. Likewise, the Department is confident that intermodal facilities can address any concerns about the selected catalytic reductions equipment through operational adjustments.

### **Break-Bulk Port Facilities As Compared To Container Port Facilities**

15. COMMENT: The rules fail to recognize the differences between the operations of break-bulk port facilities and the container port facilities. Unlike container ports, where operations are a 24-hour business and the same equipment is used regularly, break-bulk facilities have far fewer ships to unload each week. As individual pieces of equipment in these ports are used less often, the equipment has a longer useful life and produces fewer emissions. Accordingly, the

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Department's rules will not get the same reductions in emissions from break-bulk operations as from container operations. (19)

16. COMMENT: The rules are based on a California regulation that reflects port operations in California. The operations of California ports are very different than the operations at break-bulk cargo facilities (for example, steel and other noncontainerized cargo) and project cargo (that is, heavy lift equipment). For this type of cargo, a port needs a vast array of equipment. The Department should consider a different approach, one that recognizes specific operational needs. The Department should increase the exemption for low use equipment used from 200 to 1,000 hours per year. Given the way certain equipment is used, this would go a long way toward easing the burden without dramatically diminishing the benefits. (8)

17. COMMENT: The container port industry in California has very little in common with break-bulk port operations in parts of New Jersey. The markets and purposes are different. Break-bulk (non-containerized) cargo loading and unloading operations are a stark contrast to automated container terminal operations. Handling break-bulk cargo requires a wider array of equipment, in terms of size, capacity, and attachments, than one would ordinarily expect because of the diversity of the commodities. For example, in Camden, the Delaware River Stevedores maintain a fleet of some 70 pieces of diesel equipment, but on average handle only four or five vessels per month, working two or three gangs, each assigned three or four pieces of equipment. Though break-bulk operations are required to maintain a large fleet, the equipment is used sporadically. As a result of the lower-than average hours, break-bulk equipment fleets tend to have longer useful lifespans. (26)

18. COMMENT: The rules will have a significant impact on the operations and budget of ports. By modeling its rules on a California mobile cargo handling regulation, the Department failed to

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take into account New Jersey's vastly different cargo. The California regulation addresses

operations at container ports, such as the Port of Los Angeles. However, the majority of the cargo handled at southern New Jersey ports is classified as break-bulk and bulk, which means the equipment used to load and unload the materials can vary widely. While a wide array of cargo handling equipment must be available, the individual pieces may be used only sporadically. That means our fleets are larger and older, and individual pieces have a longer useful lifespan. The rules will require our business to replace pieces of equipment based on their age, rather than their useful life, which will have a negative impact on our budget. (25)

RESPONSE TO COMMENTS 15, 16, 17, AND 18: The California regulation is based on more than the container port operations in that state. In its initial statement of reasons, California stated that cargo handling equipment at ports and rail yards is diverse and includes break bulk and dry bulk cargo. See CARB, Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards, October 2005 (2005 CARB ISOR), p. II-1. Though the port operations in California's largest port, the Port of Los Angeles, more closely resemble the operations at the Port Authority of New York & New Jersey container port facilities, the 2005 CARB ISOR based its economic impacts on "Survey data on the average number and type of equipment operated by a port container terminal, a port bulk handling terminal, and an intermodal rail yard." *Id.* at ES-8. More importantly, there are several provisions in the rules that address the particular needs of the break-bulk port operations. To begin, N.J.A.C. 7:27-34.11 provides three categories of compliance extensions: (1) low-use; (2) zero-emission replacement; and (3) manufacturer delay. Pursuant to the adopted rules, cargo handling equipment that is used less than 200 hours annually is eligible for a low-use compliance extension of up to two years. See 54 N.J.R. at 18. This

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provision may alleviate some of the economic burden by lengthening the time given to replace equipment that is used sporadically. For equipment that is used more than 200 hours per year, an owner or operator can take advantage of a two-year extension by choosing to over-comply with the rules by replacing in-use cargo handling equipment with zero-emission cargo handling equipment that may be offset by grants. In addition to including compliance extension provisions, the rules provide flexibility by allowing owners and operators to request to implement a fleet averaging plan in lieu of the requirements for new and in-use cargo handling equipment (both yard trucks and non-yard trucks). 54 N.J.R. at 17. For an owner or operator located at a break-bulk port facility that may have more specialized equipment needs and fewer purchase options, the fleet averaging plan option may provide the flexibility to keep a specific piece of equipment by offsetting those emissions with upgrades to another piece of equipment. The Department considered, and the rules adequately account for, the operational differences in container ports versus break-bulk ports.

## **Requests For Clarifications And Modifications**

### Applicability

19. COMMENT: The language of the proposed rules, particularly with respect to what is covered, is unclear and may have unintended consequences. (6)

RESPONSE: The commenter does not specify the language that the commenter considers unclear; accordingly, the Department can respond only generally. The rules apply to three general categories. First, the rules apply to any person who owns or operates a terminal or business at a port in the State and operates cargo handling equipment at that location. See 54 N.J.R. at 12; N.J.A.C. 7:27-34.2 and 34.4. Second, the rules apply to any person who owns or

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operates an intermodal rail yard in the State and operates cargo handling equipment at that

location. See 54 N.J.R. at 12-13; N.J.A.C. 7:27-34.2 and 34.4. Third, the rules apply to any person conducting business in the State who sells, offers for sale, leases, rents, or purchases any cargo handling equipment or engine that is used at any port or intermodal rail yard in the State. See 54 N.J.R. at 12; N.J.A.C. 7:27-34.2 and 34.4.

20. COMMENT: The proposed rules apply to any person who “owns or operates a terminal or business at a port in New Jersey *and* operates cargo handling equipment at that location.” Proposed N.J.A.C. 7:27-34.2(a)1 (emphasis added). Many businesses do not operate cargo handling equipment onsite, but rather contract cargo loading or offloading operations to a third party. Similar to sending finished goods from the manufacturing site to the market by truck or rail, many businesses located adjacent to waterways send finished goods by vessel. The import and export of goods is not the primary activity at the site of these businesses, but instead are the operations of the third parties. In these circumstances, the businesses do not “operate” cargo handling equipment at their place of business, even if the business is considered a “port” as defined. The third-party contractor who owns and operates the in-use cargo handling equipment is in the best position to manage the cargo handling equipment, as it is more familiar with cargo handling equipment in general and knows in greater detail whether its fleet would comply with the proposed rules. Accordingly, the Department should clarify that the rules do not apply to a port owner or operator if it does not own and operate the cargo handling equipment used onsite.

(11)

RESPONSE: As explained in the notice of proposal Summary, the rules apply to “a person who owns or operates a terminal or business at a port in New Jersey and operates cargo handling

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standards at N.J.A.C. 7:27-34 apply to a person who both: (i) owns/operators a terminal or business at a port; and (ii) operates cargo handling equipment at that location. The commenter is correct that if a terminal or business owner or operator at a port does not operate cargo handling equipment, the rules do not apply to the owner/operator. However, a third-party contractor that operates a business at a port, such as cargo handling offloading, and operates cargo handling equipment at that location, is subject to the rules.

21. COMMENT: The proposed rules include an exemption for low-throughput ports that are farther than 75 miles from an urban area and have a two-year average annual cargo throughput of less than one million tons excluding petroleum products. Given the size of New Jersey and the urbanization around the State’s commercial waterways that are most suitable for port locations, it is reasonable to conclude that there may never be a port located farther than 75 miles from an urban area. Proximity to urban areas, in fact, is what makes ports in the State competitive. Accordingly, it is arbitrary and capricious for the Department to include an exemption that no regulated entity satisfies now, or in the future, that was based entirely on conditions unique to California. The Department should include an exemption that is not subject to any geographical requirement. (9 and 11)

RESPONSE: As CARB explained, the low-throughput port exemption establishes cargo throughput and community population trigger levels that, if exceeded, would require all cargo handling equipment at the port to come into full compliance. See CARB, Final Statement of Reasons, Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards, September 22, 2011 (2011 CARB FSOR), p. 45. The fact that there are no ports in New Jersey



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that currently meet the geographic requirement does not mean that a port meeting this exemption will not be constructed in the future; the adopted rules accommodate this eventuality.

#### Definition Of “Port”

22. COMMENT: The Department should clarify the definition of “port” to exclude private facilities, such as scrap metal processing and recycling facilities, that load or unload cargo only as an ancillary activity to their primary manufacturing or process operations. Recycling operations reduce the amount of material being sent to landfills, reduce the need to mine and process new metals, and produce significant energy savings as compared to manufacturing with virgin metals. Unlike traditional port operations, recycling operations may arrange for the transport of their own goods from certain facilities by vessel. If the proposed rules are applicable to such private operations, private entities would be unfairly impacted by the significant costs imposed, and recycling operations in the State would be adversely impacted, compared to operations in other states along the East Coast. To address this concern, the Department should emphasize that only those facilities that operate on “property” that is “typically” or primarily used to load and unload water-borne commerce onto and from ocean-going vessels are considered “ports” pursuant to the rules. For example, facilities that classify themselves by NAICS Code 488310 (Port and Harbor Operations) would appropriately fit within the definition of port; however, facilities whose primary business function is not port operations and otherwise do not classify themselves with a port-related NAICS Code should fall outside the definition of port. Thus, private companies who only load their own products onto ocean-going vessels at facilities or sites that are not “typically” or primarily used as a port would not be considered “ports” pursuant to the rules.

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Private facilities who only load their own products would be unfairly disadvantaged relative to inland competitors who are able to transport their own products without the need to comply with the proposed rules. Due to the significant costs imposed by the proposed rules, private facilities, instead, could choose to transport goods by truck to the nearest out-of-State port, which would have an adverse impact on air quality in the State and would reduce demand for port services within the State. Accordingly, to be consistent with the language of the proposed definition and to minimize detrimental environmental and business impacts on the State, the Department should clarify that the definition of “port” excludes private facilities engaged in loading or unloading cargo only as an ancillary activity to their primary manufacturing or processing operations. (11)

RESPONSE: The rules apply to cargo handling equipment operated at ports and intermodal railyards in the State by an owner or operator of an intermodal railyard or a terminal or business at a port, regardless of whether the owner/operator is a public or private entity or the nature of the business. The definition of “port” includes publicly or privately owned property and includes all terminals and property within the port’s boundaries. See 54 N.J.R. at 12; N.J.A.C. 7:27-34.3. The Department explained in the notice of proposal that the rules apply to “privately owned port and marine terminals along the coast that handle liquid, bulk, or containerized cargo and privately operated businesses that lease property at a port.” 54 N.J.R. at 13. Therefore, if a private business leases port property and operates cargo handling equipment at that location, the rules apply to that business. The applicability is consistent with the Department’s intent to reduce emissions at ports and intermodal rail yards in the State, which will particularly benefit nearby communities. The applicability provision is also consistent with CARB’s rules, which are

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Recycling has benefits, but the benefits of recycling must be realized along with the reduction of diesel emissions at these facilities. As noted in the Responses to Comments 10 through 14 and 15 through 18, the rules have flexibility to accommodate the needs of different operations, including alternative compliance options and compliance extensions. Additionally, the Department is committed to ensuring that regulated entities are kept apprised of potential funding opportunities as discussed more thoroughly in the Response to Comments 48, 49, and 50.

#### Fleet Averaging Plan

23. COMMENT: The proposed rules authorize an owner or operator to implement a fleet averaging plan in lieu of the requirements at N.J.A.C. 7:27-34.5, 34.6, and 34.7, provided that the reductions in PM and NO<sub>x</sub> emissions will be equivalent to, or greater than, the combined emission reductions that would have been achieved upon compliance with N.J.A.C. 7:27-34.5, 34.6, and 34.7. The additional application requirements are nearly all objective requirements for which the Department is well equipped and experienced to evaluate. To that end, an additional requirement to receive public comments and potentially hold a public hearing is unnecessary and overly burdensome. In particular, the Department did not explain what role public comments may play in the Department’s evaluation of the fleet averaging plan. If the port owner or operator has satisfied all application requirements for the fleet averaging plan, it is unclear how public comments would contribute to the Department’s evaluation of the objective application criteria.

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Accordingly, the Department should eliminate the public comment requirements that are

associated with the fleet averaging plan alternate compliance option. (9)

24. COMMENT: The rules concerning fleet averaging should require fleet owners to prove reductions in both particulate matter and NO<sub>x</sub> separately. (29)

25. COMMENT: The Department should not allow an owner or operator to average PM and NO<sub>x</sub> emissions together to demonstrate a decrease in emissions for a fleet averaging plan. These emissions should be treated separately. (7)

26. COMMENT: The rules should require fleet averaging plans to demonstrate reductions in both particulate and NO<sub>x</sub> emissions separately, and not cumulatively. (18)

27. COMMENT: The Department should do away with the fleet averaging plan provisions because they create a complicated process that does not guarantee equivalent emissions reductions. If the Department continues to include these fleet averaging plan provisions, the Department should clarify and strengthen the language. Specifically, the rules broadly state that the fleet averaging plan must prove that PM and NO<sub>x</sub> reductions are equivalent to, or greater than, those that would otherwise be required, but does not explain whether the fleet averaging plan must show this through one figure that represents combined PM and NO<sub>x</sub> reductions (for example, 100 tons of PM and NO<sub>x</sub> reductions), or by separately showing the reductions of each pollutant (for example, 30 tons of PM reductions and 70 tons of NO<sub>x</sub> reductions). The Department should clarify that the second method (two separate figures) is required. Pursuant to the first method, a fleet averaging plan would pass muster, even if emissions of one pollutant do not sufficiently decrease – or even if they increase – so long as this is compensated by the change of emissions in the other pollutant. In addition, the proposed regulatory text is not clear whether

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the actual operating hours of each cargo handling equipment must be provided and used to

calculate the fleet averaging plan's PM and NO<sub>x</sub> reductions. Moreover, the rules contain no provisions concerning after-the-fact compliance inspections and investigations to confirm whether the emissions reductions calculated in the fleet averaging plan indeed equal or exceed those that would have come from regular compliance. To address this, the Department should require that the reports provided at N.J.A.C. 7:27-34.14 include calculations of both the ports' actual emissions reductions under the previous period and their estimated emission reductions had they chosen regular compliance instead. (27)

RESPONSE TO COMMENTS 23, 24, 25, 26, AND 27: The rules address the emission reductions necessary for a fleet averaging plan at N.J.A.C. 7:27-34.10(a)2 and 34.10B(b)3i. In both provisions, the Department used the term "combined" to refer to all of the cargo handling equipment at a facility, not to the combined emissions of PM and NO<sub>x</sub>. The Department acknowledges that this wording could be misconstrued. Upon adoption, the Department is modifying the fleet averaging plan provisions to clarify that the reductions in NO<sub>x</sub> and PM must be accounted for separately, and that emission reductions in one pollutant may not be substituted for the required emission reductions in the other pollutant.

The annual reports and the information in the approved fleet averaging plans will provide the Department with enough information (that is, annual hours of operation; equipment make, model, and rated brake horsepower; and fuel type and use) to estimate the actual emissions from the cargo handling equipment.

Given the localized impacts from diesel emissions, fleet averaging plans should be transparent and subject to public review, similar to the public notice and comment period for air pollution control permits for stationary sources. This transparency of the process is a benefit to the public

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#### Alternate Compliance Option For New Non-Yard Trucks

28. COMMENT: Proposed N.J.A.C. 7:27-34.10A provides an alternate compliance option for non-yard trucks to apply the best available control technology if they cannot meet the performance standards at N.J.A.C. 7:27-34.5 and 34.7, provided the owner or operator submits an application to the Department. As part of the application process, the owner or operator must provide an “analysis of all available control technologies and [a demonstration] that the alternative proposal will achieve the maximum possible PM and NO<sub>x</sub> reductions[.]” This requirement is vague and overly broad. The Department should place limits on what it means by “an analysis” of “all” control technologies and should define “availability” in terms of what is reasonably available for port owners and operators in New Jersey. (9)

RESPONSE: The Department agrees that the language pertaining to the requirement for an analysis was overly broad and should have been limited to commercially available control technologies that reduce PM and NO<sub>x</sub>. The Department is modifying N.J.A.C. 7:27-34.10A(b)4 upon adoption to clarify that the analysis is limited to all commercially available control technologies that reduce PM and NO<sub>x</sub>. With the addition of the qualifying term “commercially,”

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the Department does not believe it is necessary to define “availability” as the commenter suggests.

#### Transfer Of Non-Yard Trucks

29. COMMENT: The rules do not allow an owner or operator to “move” non-yard trucks to another port terminal controlled by the same owner or operator unless an application is approved by the Department pursuant to N.J.A.C. 7:27-34.12. Owners or operators who seek to transfer a small number of non-yard trucks that will not have any significant impact on public health at the other port terminal should be permitted without the need to obtain approval from the Department. This will allow port owners and operators to meet sudden needs that will not result in any significant impact on public health. If equipment is not new, the rule should not artificially treat it as if it is when there is no justification for doing so. In short, the Department should allow a *de minimis* exemption for non-yard trucks to be transferred among port terminals by the same owner or operator. Additionally, the Department should revise N.J.A.C. 7:27-34.12(h)3, such that the Department “will allow” a transfer provided it determines that the transfer plan does not result in a “significant” increase in public health impacts. Without the inclusion of “significant,” which is consistent with the California’s cargo handling equipment regulation, then the addition of **any** transferred non-yard truck runs the risk of an “increase” in public health impacts merely from its addition. Thus, to avoid the arbitrary and capricious finding that the mere addition of any non-yard truck constitutes some level of “increase” in public health impacts, which would nullify any proposed transfer of in-use non-yard trucks, the Department should insert “significant” in front of “increase in public health impacts” at N.J.A.C. 7:27-34.12(h)3. (9)

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RESPONSE: As explained in the notice of proposal, the purpose of the transfer plan approval requirement is two-fold: (1) to ensure that the transfer does not result in an increase in public health impacts; and (2) to ensure that owners and operators are not transferring equipment in order to avoid compliance with the in-use requirements. See 54 N.J.R. at 15. The Department cannot ensure these objectives will be met unless the owner or operator submits the relevant information, and the Department has been given an opportunity to evaluate whether the transfer plan complies with the requirements. The Department agrees that the term “significant” was included in California’s regulation and should have been included prior to the phrase “increase in public health impacts” since the purpose is not to prevent “any” increase, but to prevent a significant increase in public health impacts. N.J.A.C. 7:27-34.12(h)3, as modified upon adoption, includes the term “significant,” which is consistent with the intent.

### **Compliance**

30. COMMENT: The rules allow cargo handling equipment that are not registered motor vehicles, the option to comply by using an engine that meets the same emission standards as the rules’ diesel engine emission standards. This creates a pathway for compliance with the rules by using zero-emission cargo handling equipment. However, there is no similar provision for new cargo handling equipment that is registered as a motor vehicle. The Department should clarify that zero-emission cargo handling equipment is also a compliance option for cargo handling equipment registered as a motor vehicle. (27)

RESPONSE: The Department is modifying the rules upon adoption to expressly state that investment in a zero-emission equipment or engine is considered over-compliance with all of the



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## **Reporting**

31. COMMENT: The rules should require more frequent reporting, such as quarterly reporting, to facilitate enforcement and compliance. At the very least, the Department should require more frequent reporting during the pendency of the compliance schedule until the final turnover deadline, and perhaps for a few years after to confirm full compliance. (27)

32. COMMENT: The Department should create its own publicly available inventory of freight-related vehicles and emissions, using the cargo handling equipment fleet reports, the fleet reports required by New Jersey's Advanced Clean Trucks Rule, and other data that the Department should collect. This data would provide a more meaningful emission inventory. (27)

33. COMMENT: The Department should expedite the initial reporting to be due January 1, 2023, as of equipment from January 1, 2022. The rules should include a requirement that an "Emission Reduction Plan" be submitted with the annual report that summarizes the annual reduction of emissions and provides a dialogue on future action that will continue to reduce emissions. (1)

34. COMMENT: As part of the reporting requirements, the Department proposed to require an owner or operator of a port to include in its initial report the "annual hours of use in 2022" and "fuel type and annual fuel usage in 2022" for each piece of cargo handling equipment. See proposed N.J.A.C. 7:27-34.14(c). By requiring the collection of data in 2022, the Department is attempting to implement part of the rules prior to their adoption. Port facilities should not be expected to begin compliance until the rules are adopted. Accordingly, the Department should revise the rules so that the initial report covers a period of time no earlier than January 1, 2023.

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The reporting provision already requires that the initial report should reflect an owner's or operator's fleet as of January 1, 2023, which is inconsistent with requesting fleet information from 2022. Additionally, the recordkeeping requirements would begin on January 1, 2023, and require the collection and maintenance of "[a]ny documents that may be required to verify compliance with" the rules. See proposed N.J.A.C. 7:27-34.15(a)1. Therefore, it is arbitrary and capricious to require port owners and operators to report on data that is generated in 2022, prior to adoption of the rules. The Department should revise N.J.A.C. 7:27-34.14, so that the period of time covered by the initial report begins on January 1, 2023. (9)

35. COMMENT: The proposed rules require an owner or operator of a port to include certain information in the initial report sent to the Department, including for each piece of cargo handling equipment, "[a]nnual hours of use in 2022" and "[f]uel type and annual fuel usage in 2022." See proposed N.J.A.C. 7:27-34.14. Given that the proposed rules have yet to be finalized or implemented, the Department appears to be attempting to enforce a reporting provision for a year in which the rules have not yet been adopted. Such an attempt to enforce a regulation prior to its implementation is arbitrary, capricious, and an abuse of discretion. In the same provision, the Department requires port owners and operators to include information in its initial report that reflects its cargo handling equipment fleet "as of January 1, 2023." At proposed N.J.A.C. 7:27-34.15(a)1, the Department requires the collection and maintenance of "[a]ny documents that may be required to verify compliance with" the rule beginning January 1, 2023. To be consistent with other initial reporting and recordkeeping requirements, the Department should require reporting on annual hours of cargo handling equipment use and fuel type and annual fuel usage for the period beginning on January 1, 2023. (11)

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required an owner or operator to submit the initial report on or before August 1, 2023, reflecting its fleet as of January 1, 2023. The initial report is to provide general company and port or intermodal rail yard information and specific information about each piece of cargo handling equipment. As proposed, the rule requires the report to include hours of use, fuel type, and annual fuel usage in the preceding calendar year, 2022. If the equipment is seasonal, the owner or operator is to provide the actual months operated in 2023. 54 N.J.R. at 19. The Department recognizes that the adopted rules will not be operative until early 2023. A requirement to report information related to 2023 would mean that regulated entities would have to provide information that they may or may not have accumulated for calendar year 2023. Accordingly, the Department is modifying N.J.A.C. 7:27-34.14 upon adoption to require the first report to be due on or before August 1, 2024, reflecting the owner or operator's fleet as of January 1, 2024. For this same reason, an initial reporting date of January 1, 2023, reflecting the fleet as of January 1, 2022, is not appropriate.

The purpose of the annual reporting requirements, as the Department stated in the notice of proposal, is to gather information about the cargo handling equipment operated at ports and intermodal rail yards in the State, and to ensure compliance with the new chapter. 54 N.J.R. at 19. Reporting more frequently than annually or requiring additional reporting, such as an "Emission Reduction Plan," is not necessary and would not facilitate greater compliance. The Department requires recordkeeping through N.J.A.C. 7:28-34.15 as a useful enforcement and audit tool. The required records must be available to the Department upon request. If the Department determines that more frequent reporting is needed in the future, it will amend the rules.

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The information that the Department collects from the regulated community is public information, unless an owner or operator makes a request for confidentiality pursuant to existing N.J.A.C. 7:27-1. Should the Department develop a report that combines the data from these rules and other mobile source reporting, that report would be publicly available, as long as any confidential information was not included or was redacted.

### **Compliance, Enforcement, And Penalties**

36. COMMENT: The Department should increase the fines and penalties associated with all offenses and violations to at least double the proposed amounts. (1)

37. COMMENT: The rules indicate that the Department will use a smoke meter to test opacity limits for cargo handling equipment exhaust, but it does not specify how often the Department will do these tests. The comparable provision of California's rule says that opacity is tested "annually." The Department should amend the rules to specify that opacity tests will be conducted no less frequently than annually. (27)

RESPONSE TO COMMENTS 36 AND 37: As explained in the notice of proposal, the proposed penalties are consistent with existing penalties for similar violations of other Department rules, which is appropriate. See 54 N.J.R. at 19. Pursuant to this penalty framework, the Department treats comparable violations of various Air Pollution Control rules similarly. With regard to opacity testing, N.J.A.C. 7:27-34.8 indicates that the Department will test to ensure that the cargo handling equipment subject to the rules meets the opacity limits of Table 2 at N.J.A.C. 7:27-34.8. The Department intentionally did not specify the frequency of the testing, but indicated in the notice of proposal that the inspections would be "periodic." The Department will conduct inspections at locations and within timeframes that it deems appropriate, which may

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be more frequently than annually. To the extent members of the public have concerns about a particular entity, they may report those concerns through the Department's hotline for investigation: 877-WARN-DEP.

## **Identicality**

### Compliance Schedule And Fleet Size

38. COMMENT: The CAA authorizes California to adopt and enforce standards and requirements for nonroad engines other than those specifically preempted by the CAA, after the U.S. Environmental Protection Agency (EPA) authorizes California to do so. 42 U.S.C. § 7543(e)(2). Other states may adopt California's EPA-authorized emissions standards and other requirements for nonroad engines, provided "such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the [EPA][.]" 42 U.S.C. § 7543(e)(2)(B)(i). The identicality standard in Section 209 of the CAA "is found in the plain language" of the statutes. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York State Dep't of Env't Conservation*, 17 F.3d 521, 532 (2d Cir. 1994). The "most logical reading" of Section 209 is that New Jersey "may adopt only those standards that, pursuant to [Section 209(e)], California included in its waiver application to the EPA." *Ibid*.

The proposed rules fail to comply with the CAA because the standards, the means of implementing such standards, and the enforcement of such standards are not "identical" to the standards and the implementation and enforcement mechanisms for which CARB received authorization from the EPA pursuant to the CAA. California sought authorization and waiver from the EPA for the entirety of its cargo handling equipment regulation, including the compliance schedules for in-use cargo handling equipment that CARB characterized as

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Document, “California’s Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards,” Jan. 29, 2007, p. 2, 5-6, 8. EPA granted a “full authorization and a full waiver of preemption” for CARB’s “Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards.” 77 Fed. Reg. 9916, 9923 (Feb. 21, 2012). The proposed rules, however, include standards and provisions for the implementation and enforcement of those standards that do not pass the identity threshold requirement. For example, the Department’s proposed compliance schedule for in-use cargo handling equipment at N.J.A.C. 7:27-34.6 differs significantly from California’s regulation. For practically all model years, the Department’s proposed compliance deadlines are shorter than the deadlines in California’s regulation, for certain models, up to seven years shorter. Additionally, unlike California’s regulation, the Department makes no distinction between fleet sizes of three or less and four or more. By a significant degree, the Department’s proposed emissions “standards” and “implementation” of such standards (for example, its compliance schedule) differs from the standards and implementation methods in the California cargo handling equipment regulation. (9)

39. COMMENT: Section 209 of the CAA authorizes states to adopt California’s EPA-authorized emission standards for nonroad engines for which California received a preemption waiver from the EPA provided the state’s “standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the [EPA][.]” 42 U.S.C. § 7543(e)(2)(B)(i). The Department’s rulemaking differs from California’s regulation in several ways, none more significant than the proposed timeframe for in-use cargo handling equipment to be retired. In particular, the Department’s proposed timeframe for retiring non-Tier 4 cargo handling equipment is much shorter than the timeframe in the California’s regulation—

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RESPONSE TO COMMENTS 38 AND 39: Section 209 of the CAA authorizes certain states to adopt and enforce, after notice to the EPA Administrator, for any period, standards relating to the control of emissions from certain nonroad vehicles or engines, if the standards and implementation and enforcement are identical to the EPA-authorized California standards for the period concerned. 42 U.S.C. § 7543(e)(2)(B). Additionally, the state must adopt such standards at least two years before commencement of the period for which the standards take effect. *Ibid.* The Department is adopting California’s standards for nonroad vehicles and engines at ports and intermodal railyards with the required two-year lead time. The Department’s rules also adopt California’s standards relating to the control of emissions of such vehicles and engines, in accordance with the CAA’s identity requirement.

To meet the identity requirement, the Department may implement and enforce only those emission standards that California has implemented; it may not precede California’s phased regulatory approach, which was based on fleet size, age of engine, and type of equipment. All phases of California’s Tier 4 emission standards are in effect, and have been for more than 10 years; therefore, the Department may fully implement and enforce the Tier 4 standards. Identity is preserved.

#### Other Standards, Implementation, And Enforcement

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40. COMMENT: The proposed rules are modeled on CARB's rules, but they are not identical.

(6)

41. COMMENT: The Department's proposed rules regarding fleet averaging and requirements for transferring equipment between yards owned or operated by the same company differ from California's cargo handling equipment regulation. The Department states that it incorporated these differences because "[s]pecific provisions of the [California regulation] were based on conditions no longer pertinent" and "proposed other differences based on the state of technology and engine equipment availability at the time of this rulemaking." 54 N.J.R. at 11. However, the CAA expressly prohibits such differences. The Department is required to adopt standards that are identical to those adopted by California, regardless of the rationale behind the discrepancy. The Department is, therefore, urged to adopt identical regulations to those promulgated in California, as the CAA requires. The Department does not have the authority to alter or adjust the California standards. (23)

42. COMMENT: The Department has proposed other rule provisions, in addition to the compliance deadlines, that are standards or a method of implementing and enforcing a standard that are overly burdensome and also fail the CAA's identity standard and, therefore, cannot be implemented. As proposed at N.J.A.C. 7:27-34.10A, the Department would require documentation from representatives of equipment and/or engine manufacturers to support the applicant's claim of non-availability, whereas, the California regulation only requires an applicant to provide a list of manufacturers that have been contacted with their responses to a request to purchase. Also, at proposed N.J.A.C. 7:27-34.12(d) and (h), the Department would require an application to transfer a non-yard truck 60 days in advance of the proposed transfer date and require that the transfer does not result in an increase in public health impacts.



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California's regulation, however, requires only 30 days' notice. Accordingly, the proposed rules, as drafted, are preempted by the CAA and not authorized under the limited exception provided.

(9)

RESPONSE TO COMMENTS 40, 41, AND 42: To the extent that commenters suggest that differences between California's regulation and the Department's rules violate the identity provision of the CAA, but do not identify specific provisions or differences, the Department is unable to respond directly. The Department acknowledged in the notice of proposal that the proposed rules included some language that differs from the California's regulation and described those differences throughout the notice of proposal. The Department also discusses specific differences throughout this notice of adoption in the response to comments received. There are differences between New Jersey's proposed and California's implemented provisions for the alternate compliance option and transfer of non-yard trucks. Both the New Jersey and California provisions are intended to give owners and operators flexibility. 54 N.J.R. at 13. Proposed N.J.A.C. 7:27-34.10A required documentation from representatives of equipment and/or engine manufacturers to support the applicant's claim of non-availability for purposes of obtaining approval to use an alternate compliance option for a non-yard truck. California requires an applicant to provide a list of manufacturers that the applicant has contacted, and the manufacturers' responses to a request to purchase. In order to reduce the burden on the regulated community and on equipment and/or engine manufacturers (who would need to document their support for the application), the Department is modifying N.J.A.C. 7:27-34.10A upon adoption. An applicant for an alternate compliance option for a non-yard truck may provide a list of manufacturers contacted, rather than documentation from the manufacturer.

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Proposed N.J.A.C. 7:27-34.12 required an owner or operator to submit a request for transfer of a non-yard truck from one facility to another at least 60 days prior to the anticipated transfer date. The Department established the timing of the application based on its estimate of the time that it would require to review the application and determine whether the transfer will impact public health. As long as the applicant provides all of the information that the rule requires, the Department anticipates that it will be able to review the application within 30 days. Therefore, the Department is modifying N.J.A.C. 7:27-34.12 to reduce the lead time from 60 days to 30 days. The shorter time period will further the goal of providing flexibility to the regulated community.

43. COMMENT: The proposed rules prohibit the modification or alteration of cargo handling equipment from the design of the original cargo handling equipment manufacturer, which is not based on an equivalent provision in CARB's cargo handling equipment regulation. The lack of a similar provision violates the identicality requirement of Section 209 of the CAA. The Department claims that "[t]hese anti-tampering provisions apply to any person subject to N.J.A.C. 7:27-34 and are necessary to prevent and enforce against such violations, *which cause excess emissions*" (emphasis added). The Department has offered no support for the assumption that all alterations cause excess emissions. In some instances, port operators are required to make certain modifications of cargo handling equipment to effectively operate because the cargo handling equipment manufacturer cannot customize cargo handling equipment for every conceivable condition in ports. Although the provision exempts modifications done "temporarily for the purpose of diagnosis, maintenance, repair, or replacement," it is unclear what the Department considers temporary, or whether any repair of cargo handling equipment that results

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provision. Accordingly, the Department should remove this provision from the New Jersey cargo handling equipment rules or, in the alternative, prohibit only those modifications or alterations which cause material excess emissions. (9)

RESPONSE: The Department proposed, at N.J.A.C. 7:27-34.16, to prohibit modifying or altering any element or design of any cargo handling equipment or design of the original manufacturer, unless done in accordance with a CARB Executive Order or Federal regulation. The prohibition was based on the language at existing N.J.A.C. 7:27-14.3(e), General prohibitions, which prohibits tampering with diesel-powered motor vehicle emissions systems. The Department believes the proposed prohibition does not violate the identity requirement, since the CAA prohibits tampering with emissions control devices. Nevertheless, the Department is deleting N.J.A.C. 7:27-34.16(a) upon adoption, which will remove the prohibition. The Department is also deleting the corresponding violations at N.J.A.C. 7:27A-3.10(m)34. Other provisions of the adopted rules provide adequate protection. For example, at N.J.A.C. 7:27-34.8(a) and (b), cargo handling equipment subject to the new subchapter may not exceed the specified opacity limits. Thus, any piece of equipment or engine emitting excess emissions for any reason, including tampering, is subject to a violation. Further, pursuant to new N.J.A.C. 7:27-34.8(c), any cargo handling equipment that is a motor vehicle is subject to the anti-tampering provision at N.J.A.C. 7:27-14.3(e) governing air pollution from diesel-powered motor vehicles. Finally, an engine that is equipped with a defeat device not identified in an executive order issued pursuant to 13 CCR 2423, or an engine that has been altered beyond the parameters approved in an executive order pursuant to 13 CCR 2423, will not qualify as a Tier 4-certified engine.

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44. COMMENT: The CAA authorizes California to adopt and enforce standards and requirements for nonroad engines other than those specifically preempted by the statute, after the EPA authorizes California to do so. 42 U.S.C. § 7543(e)(2). Other states may adopt California's EPA-authorized emission standards and other requirements for nonroad engines, provided the state gives two years' lead time. 42 U.S.C. § 7543(e). Notably, however, other states may only "adopt and enforce" the California standards if "such standards and implementation and enforcement are identical, for the period concerned, to the California standards[.]" 42 U.S.C. § 7543(e)(2)(B)(i). The proposed rules are modeled on, but not identical to, California's rules and differ in substantive ways that could have significant impacts on the operation and maintenance of mobile cargo handling equipment. For example, the Department included a three-second smoke opacity provision that is not present in CARB's rules. California instituted an opacity monitoring procedure centered around a snap idle test. 13 CCR § 2479(e)(2)(A)(5). (23)

RESPONSE: Both the California regulation and new N.J.A.C. 7:27-34.8 refer to the Society of Automotive Engineers "Surface Vehicle Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles" (SAE J1667, February 1996) snap idle test for opacity. Both require use of a smoke meter in accordance with the Society of Automotive Engineers, Section 5.4.2 of SAE J1667. Compare N.J.A.C. 7:27-34.8(a) with 13 CCR 2497(e)(2)(A)(5). Thus, the required testing is identical under both the California regulation and the Department's new rule.

The Department proposed, at N.J.A.C. 7:27-34.16(b), a three-second visible smoke prohibition, which was modeled on the visible smoke prohibition at N.J.A.C. 7:27-14.4, General public highway standards, applicable to all diesel-powered motor vehicles. 54 N.J.R. at 19. Though the

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Department does not believe that this prohibition violates identicality, it is deleting N.J.A.C.

7:27-34.16(b) upon adoption to remove the prohibition and deleting the corresponding violations at proposed N.J.A.C. 7:27A-3.10(m)34 because the snap idle test for opacity at N.J.A.C. 7:27-34.8 is sufficient to determine compliance.

### **Economic Impact**

45. COMMENT: The cost to comply with these rules, especially the conversion or replacement of older equipment not near the end of their useful life, is substantial. These costs will be imposed not only on the governmental entities that own the largest ports, but also upon all the smaller, private businesses that operate at those ports. There will also be substantial costs incurred by the two Class I railroads that own and operate cargo handling equipment in the State. Has the Department analyzed what the economic impacts would be on all of these entities and businesses? What are the incremental benefits from adopting this accelerated implementation program compared to the benefits of a natural turnover of equipment and the implementation of existing plans? (2)

46. COMMENT: Although the Department acknowledged that “at least some, if not all,” of port owners or operators will incur costs to upgrade their in-use cargo handling equipment to comply with the proposed rules, the Department claimed that “[g]iven the variety of factors” that may be present at ports, it was “unable to estimate the average cost of compliance for a fleet or the cost of compliance for each individual owner and operator who will be subject to N.J.A.C. 7:27-34.” Yet, even with these supposed limitations, the Department “anticipate[d] minimal additional costs of compliance for new cargo handling equipment” because “all CI engines have had to be certified to Tier 4 final off-road engine standards as of 2015 and, thus, the availability of pre-Tier

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4 final engines is likely limited.” As explained more fully below, the Department’s decision to

skip conducting an “estimate [for] the average cost of compliance for a fleet”: (1) entirely underestimates the true cost of compliance with the rules as a whole; and (2) fails to identify the undue impact the proposed rules will have on private ports. The Department’s cost/benefit analysis is, therefore, arbitrary, capricious, and an abuse of discretion. The Department’s conclusion about the costs imposed on ports by the proposed rules is not consistent with estimates based on actual data from port operations. One of the main factors in CARB’s overall cost estimate of its proposed regulation was the cost associated with accelerated retirement of cargo handling equipment. The Department refused to do a sufficient analysis of the estimated cost of accelerated retirement for an average fleet, and instead, without any explanation, concluded that anticipated costs of compliance are minimal because of the existence of Tier 4 cargo handling equipment since 2015. Such an analysis is critical to estimate the costs of compliance, particularly because of the much shorter time period for compliance in the New Jersey rules compared to the California regulation. CARB’s assessment of annual costs to businesses used a 14-year period (2007-2020), in part due to the length of the proposed phase-in period. The shorter phase-in period in the New Jersey rules concentrates the total cost impact of the proposed rule over a shorter time period, making the financial burden much heavier on an annual basis.

The Department cites the existence of Tier 4 cargo handling equipment since 2015 as support for its conclusion that the rules will impose only minimal additional costs. The Department’s assertion does not account for in-use cargo handling equipment that was manufactured and purchased prior to 2015. The useful life of cargo handling equipment can be upwards of 25 years, which port owners and operators factor into their future projections of

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all pre-2015 cargo handling equipment and force conversion of that equipment much earlier than anticipated, which amounts to both a loss of the benefit of the initial cargo handling equipment expenditure and the incurred cost of purchasing replacement cargo handling equipment. Millions of dollars of investment will be lost in having to retire existing cargo handling equipment, which is significantly more than a “minimal” cost. When making purchases of cargo handling equipment prior to 2015, port owners and operators did not account for the sudden need to retire pre-2015 equipment as soon as required by the New Jersey rules. (9)

47. COMMENT: In the notice of proposed rules, the Department failed to provide any estimate for the average cost of compliance for a fleet of cargo handling equipment, citing myriad factors for why such an analysis would be too difficult. The Department did not even compile its own estimate for the average cost of certain cargo handling equipment. Nevertheless, the Department concluded there will be “minimal additional costs of compliance” with its proposed rules because of the availability of Tier 4 nonroad engines since 2015. The Department completely overlooks that many pre-2015 non-Tier 4 engines are still in-use, are meaningful contributors to ongoing operations, and in the normal course are expected to have a useful life of over 20 years. The proposed rules force port owners and operators to retire in-use cargo handling equipment earlier than projected and purchase new cargo handling equipment earlier than budgeted. These lost costs can be significant, particularly for smaller, private port and non-port facilities that are typically not eligible to receive Federal and State grant funding for equipment upgrades. (11)

RESPONSE TO COMMENTS 45, 46, AND 47: Pursuant to the requirements of the Administrative Procedures Act, and the Office of Administrative Law’s Rules for Agency Rulemaking, N.J.A.C. 1:30-5.1(c), the Department conducted an economic impact analysis that

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of the State, and particularly any segments of the public proposed to be regulated.” The Department appreciates that the cost to upgrade equipment is substantial. However, for the reasons discussed below, it is not appropriate for the Department to conduct an economic impact analysis that attributes to the new rules the full replacement costs for an entire fleet.

As explained in the notice of proposal, Tier 4 final has been the EPA standard since 2015. See 54 N.J.R. at 21. In 2025, when the Department’s first compliance date goes into effect, Tier 4 final equipment will have been the only option for new equipment for the preceding 10 years. Any new equipment that a regulated entity purchases from 2015 to the first compliance date of New Jersey’s rules should already be Tier 4 final compliant, which means that there should be no replacement costs associated with that equipment within a fleet. As commenters noted, any equipment that is 25 or more years old (meaning any equipment purchased new prior to the year 2000), is either beyond, at, or near the end of its useful life. For that portion of a regulated entity’s fleet, the owner/operator has received the benefit of the initial expenditure for those pieces of equipment and should have been planning for the expenditure to obtain new equipment. Thus, the full amount of those new equipment costs is not attributable to the rules.

That leaves those pieces of equipment within a fleet that fall between model years 2000 and 2014, for which a regulated entity may argue that the rules result in an accelerated retirement of equipment, leading to a loss of benefit of the initial investment. As stated in the notice of proposal, given the variety of factors the Department is unable to estimate the average cost of compliance for a fleet or the cost of compliance for each individual owner and operator. Any estimate would depend on the number and age of all of the equipment in the fleet, the type of equipment (forklift versus crane), the throughput or volume of cargo handled, as well as other



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compliance deadlines by using equipment that qualifies as low-use or by planning for a zero-emission purchase. Some owners may receive funding for over-compliance by purchasing zero-emission equipment, especially now that there are more market-ready models as compared to 2007 when California's first compliance date went into effect. In short, many factors may influence the costs for a particular fleet owner or operator.

One commenter did provide the Department with data showing the age of its equipment. Though it has a total of 51 pieces of equipment in its fleet, only four pieces of equipment will be less than 25 years old in 2030 when the rules are fully implemented. While that commenter may not receive the full benefit of its initial expenditure on those four pieces of equipment, the Department is confident that the commenter's costs associated with replacing those pieces of equipment can be mitigated. As described in detail in the Response to Comments 48, 49, and 50, the Department will work with regulated entities to advise of funding opportunities and to discuss opportunities for extensions, fleet averaging, and all other flexibilities built into the rules.

48. COMMENT: Private ports are at a more significant disadvantage in managing the costs of complying with the rules than are public ports. The vast majority of Federal and State grant funding available for infrastructure and equipment upgrades are and have been available only to public ports. Because of this inequity, the financial burden imposed by the rules is significantly greater for private ports than it is for public ports. Moreover, many public ports manage other transportation and distribution networks in conjunction with port operations, such as airports, bridges, and public transportation networks, which allows them to draw on different revenue sources for capital improvements and equipment purchases. The size of these ports and their

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economies of scale enable public ports to purchase new cargo handling equipment at more

favorable terms than private ports. Further, for many ports seeking to electrify in-use cargo handling equipment, additional improvements must be made to increase the capacity of the local electric grid to handle the increased load. All of this puts private ports at a significant competitive disadvantage. To account for the differing impacts and greater costs placed on private ports, the rules should provide for more flexibility and a longer phase-in period for private ports. At a minimum, the Department should not impose any time periods for compliance on private port operators that are greater than the length of time given to ports pursuant to California's regulation. (9)

49. COMMENT: The costs to upgrade equipment far exceed the ability of small companies to pay or to qualify for bank credit. There is no help for employers to make this conversion. (19)

50. COMMENT: The State must provide financial assistance to business owners to offset the costs of compliance with these rules. Clean air is a shared goal, and the State must share in its costs as well. (8)

RESPONSE TO COMMENTS 48, 49, AND 50: The Department acknowledges that the cost to upgrade equipment is substantial. However, the Department is committed to ensuring that regulated entities can successfully comply with the rules. As explained in the Response to Comment 30, the Department is modifying the rules upon adoption to clarify that the purchase and use of zero-emission engines or equipment is over-compliance with the performance standards. By upgrading to zero-emission cargo handling equipment, owners and operators can ask the Department for an extension of up to two years for compliance, which would allow the entity to spread its costs over a longer period of time. Additionally, owners and operators can use zero-emission equipment as part of a fleet averaging plan under an alternate compliance option.

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Further, the Department will work with entities to identify all potential funding strategies.

Multiple sources of public funding are available to assist with the equipment costs: there are Federal funds, such as the Port Infrastructure Development Program, Diesel Emission Reduction Act (DERA) funding, and Grants to Reduce Air Pollution at Ports under the Inflation Reduction Act. The vast majority of Federal funding opportunities do not restrict funding to public ports. They do, however, often have a requirement that private entities partner with public entities that are responsible for distribution of the funds. While this does require a private business to partner with a public entity, it is not a bar to Federal funding. The Department will also work to identify State funding opportunities for owners and operators who might be eligible to apply. The Department will post notifications on social media and the Department's website, as well as send email notifications as more funding opportunities become available.

51. COMMENT: Not only did the notice of proposed rulemaking understate the estimated costs, inflation and supply chain issues have increased those costs dramatically in the past six months. (12, 4, and 16)

52. COMMENT: The cost estimates used in the Department's analysis are not at all consistent with current market conditions. Costs are skyrocketing with some equipment listing well beyond the cap estimated in the proposed rules. (8)

53. COMMENT: Cost estimates used by the Department (\$40,000 to \$250,000 per piece) bear little resemblance to the costs the regulated entities are seeing in the current market where some of the heavier pieces of equipment costs are running \$385,000 to \$685,000. The costs to replace an entire fleet can run into the millions, which is a huge sum for a small company to undertake. (26)

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54. COMMENT: The cost of equipment replacement has increased at a rate far outpacing even the current inflation rate over the past year. The level of replacement in the timeline of the proposed rules will negatively impact business operations, as well as the State. To address these issues, the Department should consider a longer phase-in implementation timeframe and provide additional State-based funding. (25)

55. COMMENT: The proposed rulemaking potentially understates the estimated cost of compliance, and the costs of such equipment have increased dramatically in the past six months due to inflation and supply chain issues. (24)

RESPONSE TO COMMENTS 51, 52, 53, 54, AND 55: The Department understands and acknowledges that the recent unexpected period of high inflation has increased the nominal price for cargo handling equipment, including Tier 4 final compliant machinery. However, there is little reason to expect that prices will continue to increase at the current rate for years into the future. In fact, recent actions by the Federal Reserve show signs of already reducing inflationary pressure. Additionally, it is worth noting that: (1) regulated entities can and do adjust prices to respond to cost increases, such as those caused by inflation; and (2) while inflation increases the nominal costs of the new rules, it also increases the value of the health benefits of the rules. With respect to the comments concerning the overall cost of purchasing new Tier 4 final equipment to comply with the rules, the Department anticipates that some of the equipment that owners or operators will replace as a result of the new rules will be at or past the end of its useful life and, therefore, should be slated for replacement regardless of the Department's actions. See the discussion of equipment replacement in the Response to Comments 45, 46, and 47. To the extent that commenters believe there should be additional government funding prospects, the

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Department refers the commenters to the Response to Comments 48, 49, and 50, which includes a discussion of funding opportunities.

56. COMMENT: Though the rules may be modeled on the California cargo handling equipment regulation, the Department made a significant change when it compressed the compliance schedule. Under this schedule, an entity retiring in-use cargo handling equipment over the next five years will lose the value of their investment. Gloucester Terminals estimates an increased cost of approximately \$19 million to replace retired cargo handling equipment pursuant to the rules. (9)

57. COMMENT: The implementation period is far too short. Modernizing an entire fleet at once is cost prohibitive. The implementation period puts the very economic viability of ports and intermodal rail yards at risk. (8)

58. COMMENT: The aggressive timeframe will result in excessive costs. (2)

RESPONSE TO COMMENTS 56, 57, AND 58: As explained in the notice of proposal, the CAA directs the EPA to study emissions from nonroad engines and vehicles and to regulate nonroad sources of air pollution if the EPA finds that their emissions are significant contributors to ozone or carbon monoxide (CO) in more than one nonattainment area for these pollutants. 54 N.J.R. at 9. In 2004, the EPA finalized its Tier 4 standards for nonroad diesel engines, which the EPA anticipated would “achieve reductions in PM and NO<sub>x</sub> emission levels in excess of 95 percent and 90 percent respectively.” *Ibid.* To transition to Tier 4 final standards, the EPA established interim standards, which began between 2008 and 2012 for most engines, and final standards, which were effective for all off-road engines by 2015. *Id.* at 10. In short, Tier 4 engine technology has been available since the early 2000s and the EPA has required that new engines

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meet Tier 4 final standards since 2015. When the first compliance date is reached, 25 months

after the operative date of this rulemaking, Tier 4 final engines will have been the EPA standard for new engines for approximately 10 years. Based on this timeline and the Department's review of the inventory from the Port Authority of New York & New Jersey, it is unlikely that a regulated entity would have to modernize its entire fleet, unless it had not replaced any equipment since the Tier 4 final standard was phased in, beginning in 2015. The rules will require businesses to prioritize the turn-over of their old equipment to meet emission standards that have been in effect since 2015.

One commenter provided data showing the age and replacement costs for the equipment it says will be impacted by this regulation. The commenter estimated the total replacement costs of its equipment as approximately \$11.5 million. As noted in the Response to Comments 45, 46, and 47, it is not appropriate for an entity to ascribe the full replacement costs to the rules when the equipment being replaced is nearing or at the end of its useful life. In the case of this commenter, the inventory listed 51 pieces of equipment, including 23 pieces of equipment identified as pre-1990 (vehicle years dating from 1973 through 1989). Assuming the first compliance date for these rules takes effect in 2025, 23 pieces of the total fleet will be 35 or more years old. To the extent that regulated entities are running equipment more than two decades old, those entities have known for some time that modernizing this equipment to the EPA standards would result in significant emission reductions. More importantly, those entities should have been financially planning and preparing to replace this equipment within their fleet irrespective of the Department's rules because the equipment has reached or will soon reach the end of its useful life.

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59. COMMENT: The rules failed to consider pandemic-related operational difficulties, increased labor costs, supply chain bottlenecks affecting both port operations and the procurement of additional cargo handling equipment, and other newly implemented regulatory programs that are, or will, add even more costs. For example, supply chain issues have already forced port operators to place orders for certain cargo handling equipment 12 to 18 months in advance of the expected delivery date. Given the shorter time periods in the Department's compliance schedule, in comparison to California's version of the regulation, port owners and operators will be forced to place orders for compliant cargo handling equipment much sooner than the Department anticipates. Additionally, port owners or operators will be placing orders at the same time, which will further strain the supply chain and cause prices of cargo handling equipment to rise higher in the State. Implementation of the rules under these circumstances may interfere with port operations, such as supplying the northeast with fruit in winter months and staging and shipping large monopiles for wind farms located off the coast. (9)

60. COMMENT: The rulemaking understates the estimated cost and practicalities of compliance. While Tier 4 cargo handling equipment has become more commercially available and it uses proven technologies that can work in a typical operational scenario, the cost of such equipment and the timelines in which it can be put into service are a challenge. Even when such equipment is available, the cost of such equipment has increased dramatically in the past six months due to inflation and supply chain issues. (12, 4, and 16)

61. COMMENT: The 24-month timeline in the rules is not reasonable under current market conditions. Based upon calls to manufacturers, supply chain realities mean that some of the heavier pieces of equipment have lead times of 48 to 68 weeks. (26)

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62. COMMENT: Given the current shortage of chips and other parts, it will take between 12 and 18 months for delivery for some pieces of equipment. Thus, the rules should provide a longer phase-in implementation timeframe, perhaps out to 2030 or later. (25)

63. COMMENT: Consumer demand and supply chain backups have resulted in acquisition lead times that far exceed the implementation period envisioned in the proposed rule. The rules should include a longer phase-in period. This will allow owners/operators to begin the process in the short term while providing an opportunity to develop reasonable expenditure plans, take advantage of emergent technologies in the intermediate term, and overcome persistent delays associated with overheated consumer demand and supply chain disruptions. (8)

64. COMMENT: Given the ongoing multi-year COVID-related supply chain disruptions, sudden or dramatic changes in cargo handling equipment rules will not help the global supply chain regain its very important equilibrium. (6)

65. COMMENT: In light of current events, it bears noting that substantial changes in the regulations governing cargo handling equipment may negatively impact the global supply chain and may exacerbate efforts to help the global supply chain reach its equilibrium due to congestion and potential challenges to acquiring required equipment as a result of materials shortages. Global supply chain delays may also impact and delay the ability of railroads to upgrade and replace existing cargo handling equipment due to materials shortages. (23)

RESPONSE TO COMMENTS 59 THROUGH 65: The Department acknowledges that there are supply chain issues that may delay equipment delivery. However, this issue does not merit a longer phase-in period. The first compliance deadline is 25 months after the operative date of the rules, or approximately the beginning of 2025. It is not clear that the supply chain issues will persist over the next two years. If supply chain issues do persist, the rules adequately address that



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concern through the allowance of a compliance extension caused by manufacturer delay. As

noted in the notice of proposal, if new equipment was purchased, or a contractual agreement for purchase was entered into at least six months before the required compliance deadline, but the equipment is not delivered as a result of manufacturer delay, the Department will grant a compliance extension. See 54 N.J.R. at 18; N.J.A.C. 7:27-34.11A. Consequently, supply chain issues should not prevent an owner or operator from compliance with the rules, so long as the owner or operator has entered into a timely contract for the purchase of compliant equipment. See the Response to Comments 51, 52, 53, 54, and 55 for a discussion of the impact of inflation.

66. COMMENT: The Department has provided grants to entities for replacing or retrofitting this equipment. Enhancing these efforts is a better way to approach this problem. While the Department tends to “spread the money around” in various ways, if RGGI and Clean Energy money were significantly dedicated to cleaning up the ports, especially in the northeastern part of the State, the State would see tremendous environmental benefit and little economic cost and would ensure the economic viability of the State’s largest economic drivers. Sometimes regulations and command and control are not the most effective ways to solve a problem. (2)

RESPONSE: The Department recognizes that incentives and other funding options will facilitate the transition to newer technology. As discussed in the Response to Comments 48, 49, and 50, the Department will work with regulated entities to ensure that they are aware of potential funding opportunities as they become available. The Department also recognizes that funding without rules will not ensure equipment is updated.

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67. COMMENT: Intermodal rail terminals in New Jersey typically transfer freight from truck to rail. Though rail is typically cheaper and more environmentally friendly, rail faces fierce competition on price. Increased costs to cargo handling at rail yards will disfavor rail transportation overall throughout the United States. (6)

68. COMMENT: Rail is already the most efficient way to move people and freight over land. One train can carry the freight of hundreds of trucks, making freight railroads three to four times more fuel efficient on average than trucks. Railroads contribute only 1.9 percent of the transportation-related greenhouse gas emissions in the United States. The Department should consider the potential for the increased costs imposed by the rules to induce a modal shift from rail to truck for freight shipments. Intermodal railyards in New Jersey typically transfer freight shipments from trucks to rail. Rail is three to four times more fuel efficient than trucks, resulting in fewer emissions of criteria pollutants and greenhouse gases for the same ton of freight. The rail and trucking industries are fierce competitors and, as a result, increases to the cost of shipping freight by rail may lead to a modal shift from rail to trucks. Such a shift would result in increased emissions for each ton of freight moved, increased traffic and congestion, and increased wear and tear on Federally funded highways. (23)

69. COMMENT: Rail yards are highly competitive with other modes of transportation, such as trucking. If regulatory compliance at rail yards becomes too costly, the cargo they otherwise may have handled may be moved to long-haul trucking, which is not subject to these regulations on cargo handling equipment. (2)

RESPONSE TO COMMENTS 67, 68, AND 69: The rules do not regulate railroad locomotives or other rail-specific equipment; thus, there will be no direct impact on those costs. The rules regulate cargo handling equipment used at intermodal railyards and may increase some of those

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70. COMMENT: The Department should consider the potential wholesale loss of business to nearby competing ports if these rules are finalized. If the costs of doing business in New Jersey increase due to the requirement for such substantial capital investment, those port customers will take their cargo elsewhere. While California has all but a monopoly on certain trade lanes and has far fewer neighboring ports, the cargos currently handled in southern New Jersey can very easily move to ports across the Delaware River in Pennsylvania and Delaware. Facilities in northern New Jersey will not be immune either since the ports in Baltimore, Norfolk, Charleston, and Savannah will be only too happy to take this business away from New Jersey. (8)

71. COMMENT: By modeling its rules on a California mobile cargo handling regulation, the Department failed to take into account New Jersey's vastly different geography, cargo, and competition from neighboring ports. The Department's application of California standards to New Jersey ports discounts the fact that, while several hundred miles separates the Ports of Los Angeles and Long Beach from other west coast major port facilities, there is a major port every 90 miles along the east coast. The Port of Camden alone directly competes with the Port of Philadelphia and ports in nearby Wilmington, Delaware, the Ports of Newark and Elizabeth in this State, and the Port of Baltimore. While the Department anticipates increased costs due to this rulemaking, the notion that those costs could simply be passed on to customers does not consider

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the ease with which shipping companies can divert their shipments to several other port facilities

in the mid-Atlantic region alone. To remain competitive, New Jersey ports will need direct State appropriations to fund the acquisition of compliant equipment. (25)

72. COMMENT: The Department's rules are based on a California rule that is tailored to California's geography and economy. However, the geography and economy of New Jersey differ from California. The largest ports in California have no real competition because of geography, which allows those ports a greater ability to pass on costs. While the Port Authority of New York & New Jersey operates the largest port on the east coast, it does have competition. If costs are increased or operations made more difficult or logistics are limited in New Jersey, vessels have the option of frequenting other nearby ports. (2)

73. COMMENT: If implemented, the rules will increase costs for southern New Jersey port operations, which will be passed on to the customers. While California ports may be able to absorb those costs because the ports competing for their business are hundreds of miles away, increased costs in southern New Jersey ports means that customers may take their business across the river to ports in Pennsylvania, Maryland, or Delaware. This will harm employees and businesses in southern New Jersey. (26)

74. COMMENT: If costs get too high, it is pretty easy for cargo to move to competing facilities in other states, such as Pennsylvania, Delaware, or Maryland. (19)

RESPONSE TO COMMENTS 70, 71, 72, 73, AND 74: New Jersey ports are in closer proximity to out-of-State ports than are most of the ports located in California, and this presents a different competitive landscape for the State's shipping industry. However, there is little reason to assume that New Jersey's ports would experience a wholesale loss of business in response to the new rules' requirements. First, equipment modernization is a normal cost of doing business,

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which the out-of-State ports also incur. Second, regulated entities will be able to spread these costs out over many years, allowing firms to purchase new equipment in a way that minimizes the impacts on customers. Further, as noted in the Response to Comments 48, 49, and 50, the Department will work with regulated entities to ensure that they are aware of funding and financing opportunities.

### **Jobs Impact**

75. COMMENT: The Department dedicates only one paragraph of its preamble to the impact that the New Jersey cargo handling equipment rules will have on job retention or creation in the State. The analysis is based entirely on CARB's explanation that jobs were not expected to be eliminated as a result of the implementation of the California regulation. The Department violated the Administrative Procedures Act (APA) and its implementing regulations by failing to conduct a jobs impact analysis for the State, and its conclusion is arbitrary and capricious because it has factored in none of the unique pressures or market competition that ports in New Jersey face. If the Department did undertake such a jobs impact analysis, it would show that the New Jersey cargo handling equipment rules will have a material adverse impact on job creation and retention in the State. Even CARB identified the business disadvantage some of California's ports would face if the state implemented different compliance deadlines for different parts of the state, noting that "[r]equiring separate compliance dates for one area relative to another . . . could put some terminals in one area of the state at a business disadvantage relative to terminals in other parts of the state." The same effect will occur in New Jersey with the implementation of the proposed rules. New Jersey ports will be at a business disadvantage relative to out-of-State ports on the east coast and will shed jobs as a result. Accordingly, the Department's analysis of

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the impacts to jobs in the State is arbitrary, capricious, and an abuse of discretion because it

relied on the conclusion from a California state agency on job losses within California, a state with a vastly different port industry and market competition concerns than New Jersey. Under the APA, the Department must conduct a new analysis of the impact to jobs within the State from its proposed New Jersey cargo handling rules prior to its implementation. (9)

RESPONSE: The Department conducted “an assessment of the number of jobs to be generated or lost if the proposed rule takes effect,” as required by the Office of Administrative Law’s Rules for Agency Rulemaking at N.J.A.C. 1:30-5.1(c)5. Similar to California, the Department determined that it expects little to no impact on job creation in the State. 54 N.J.R. at 23. The Department reached this conclusion after determining that the assumptions made by CARB in its regulatory analysis were sufficiently reflective of New Jersey.

As explained in the notice of proposal Summary, 54 N.J.R. at 11, the Department’s rules require regulated entities to bring their cargo handling equipment into compliance more than a decade after California’s ports and railyards will have been fully compliant, using technology that has been available on the market for almost two decades. It is unlikely there will be direct job losses associated with the technology. For example, the equipment is not so efficient that fewer workers will be needed.

As the new equipment itself is not expected to result in fewer jobs at the ports and railyards, the Department concludes that the commenters’ statements about significant job losses are based primarily on the industry’s concerns about competitive ports in close proximity to regulated New Jersey ports and railyards. See the Responses to Comments 67, 68, and 69 and Comments 70, 71, 72, 73, and 74 for a discussion of whether the adopted rules will result in a modal shift from rail to truck or a wholesale loss of business to out-of-State ports.

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## **Environmental Justice**

76. COMMENT: The Department should practice what it preaches. These rules are not protective enough of environmental justice communities. (21)

77. COMMENT: The rules for diesel emissions are really an environmental justice issue here in New Jersey. In Port Newark, for example, the Ironbound, greater Newark and the surrounding communities are environmental justice communities that are already seriously overburdened with pollution. Allowing diesel exhaust to continue is wrong. (22)

78. COMMENT: The rules should reduce the burden of pollution unfairly placed upon the communities and neighbors we refer to as environmental justice communities. (10)

RESPONSE TO COMMENTS 76, 77, AND 78: The Department's primary goal in promulgating the new rules is to reduce emissions at ports and intermodal railyards. As stated in the notice of proposal, the Department expects that communities near ports and intermodal rail yards will particularly benefit from the reduced emissions that are directly attributable to the new rules. 54 N.J.R. at 8. These include some communities identified as overburdened, as defined at N.J.S.A. 13:1D-158. *Ibid.* As explained in the Response to Comments 80 through 89, mandating zero-emission cargo handling equipment is premature. However, the Department is monitoring the progress of California's rulemaking.

Separately, the Department has proposed rules pursuant to the Environmental Justice Law, N.J.S.A. 13:1D-157 et seq. See 54 N.J.R. 971(a), June 6, 2022. Those proposed rules will require the Department to evaluate environmental and public health impacts of certain facilities on overburdened communities when the Department reviews specific types of permit applications.

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79. COMMENT: The proposed rules would apply to marine ports within 75 miles of an urban area and define “urban area” as “a densely developed territory that contains 50,000 or more people, as reported by the latest U.S. Census Bureau census.” But this definition fails to specify the geographical boundary of a “territory” (metropolitan area, municipality, census tract, census block group). Nor is it clear what qualifies as a “densely developed” territory. The Department should clarify exactly how “urban areas” should be designated for the purpose of the rulemaking. In the alternative, the Department should use pre-existing geographic designations in New Jersey law, such as the “overburdened communities” defined in the recent New Jersey Environmental Justice Law, such that any facility within 75 miles of an overburdened community would be covered. Not only would this create clarity and continuity, it would also provide a definition that more directly protects overburdened communities.

In addition, the Department proposes a process by which the rules would start to apply to a port previously outside of the “urban area” range once “the port becomes part of an urban area.”

However, this language is too narrow; instead, the exemption should no longer apply whenever a port previously designated as exempt comes within 75 miles of a new or newly expanded urban area (or overburdened community). In the same vein, there is no provision that the Department must review census data on a certain timeline in order to see if an exempt port or railyard would have to start complying with the rules. The rules should include a process and timeline for the Department to periodically review demographic data in order to promptly determine when ports or railyards no longer qualify for this exemption. Also, to facilitate the prompt application of the rules, the definition of “urban area” should be amended to allow for the consideration of population data that comes more frequently than the decennial census. (27)



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low-throughput ports that are further than 75 miles from an urban area. See 54 N.J.R. at 13. As defined at N.J.A.C. 7:27-34.3, an “urban area” is “as reported by the latest U.S. Census Bureau census.” The U.S. Census Bureau compiles and reviews the census data every 10 years and determines the criteria to be used to delineate a geographic area as either urban or rural; this review makes a separate Department review process unnecessary.

<https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>. The adopted definition is consistent with California’s regulation.

### **Zero-Emission Cargo Handling Equipment**

80. COMMENT: The Department should not stop at adopting these rules. The Department should commit to the adoption of the forthcoming zero-emission California cargo handling equipment regulation in order to eliminate all tailpipe emissions, not just reduce emissions. In addition, the Department should commit to various other current and forthcoming California rules that will drive down emissions from trucks, transportation refrigeration units, harbor craft, ocean-going vessels, warehouse equipment, and other components of New Jersey’s goods-movement industry. The suite of rules is necessary to address the pollution that has burdened New Jersey’s port- and freight-adjacent environmental justice communities and workers for decades. (27)

81. COMMENT: The Department should eliminate, not just reduce emissions from cargo handling equipment. The Department should not stop at the current proposal. The Department should commit to adopting California's forthcoming rules that are expected to require zero-emission cargo handling equipment. Over half of global cargo handling equipment sales are

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not be shut out of the benefits of that transition. (28)

82. COMMENT: There is nothing in the rules that requires a transition to zero-emission cargo handling equipment, which is available now and has significantly lower operating costs than non-zero-emission cargo handling equipment. The final rules should prioritize zero-emission technology and infrastructure if the Department wants to address the public health and air quality crises caused by this equipment. (29)

83. COMMENT: Harmful air pollution and greenhouse gas emissions from the goods movement industry is on the rise, and it has an outsized impact on public health and our environment. While adopting the cargo handling equipment rules is a good first step, the Department's real objective should be zeroing out all pollution from this equipment. Zero-emission cargo handling equipment is a proven technology that is readily available and it has significant cost savings over the lifetime of the equipment. The Department should commit to adopting California's next set of cargo handling equipment rules, which is expected to include a 100 percent zero-emission pathway. (20)

84. COMMENT: These rules are an important first step. However, the rules do not mandate the purchase and use of zero-emission cargo handling equipment and vehicles. It is especially critical to mandate zero-emission cargo handling equipment and vehicles in already overburdened port-adjacent communities where goods movement and related operations are concentrated. Zero-emission cargo handling equipment is proven because it has been on the market for 15 years and has significantly lower operating costs. (7)

85. COMMENT: While the rules are a step in the right direction, they do not go nearly far enough fast enough. Despite viable, zero-emission cargo handling equipment technology, the

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rules do not require a transition. Without zero-emission technology, we will not reach the climate

goals of Governor Murphy's Executive Order No. 275 (2021), which calls for a 50 percent reduction in greenhouse gas emissions by 2030. (21)

86. COMMENT: Given that zero-emission technology already exists for cargo handling equipment and has proven to be more cost-effective, the Department should commit to strengthening these proposed rules by requiring zero-emission cargo handling equipment. (14)

87. COMMENT: The Department should require an immediate transition to zero-emission cargo handling equipment. Though zero-emission equipment might not be available in all cases, it is readily available in many cases. (10)

88. COMMENT: Zero-emissions technology is already commercially available. Identifying electric pathways for this sector is critical considering their local emissions impact and the anticipated growth in freight traffic. Compared with non-electric cargo handling equipment, the price of electric power trains can be more costly upfront, but lower fuel costs of electricity, reduced maintenance costs, and reduced equipment downtime can significantly decrease operating expenses for fleets. Therefore, the Department should consider adopting zero-emission regulations as part of the cargo handling equipment rules. (13)

89. COMMENT: Electrification is the single most effective way to prioritize our public health. Though the air pollution reductions that would be achieved by the proposed rules are not insignificant, those emission reductions are spread out over more than a decade. These rules should be seen as a stepping stone to full electrification of port equipment. The CARB is currently considering and assessing the availability of zero-emission technology as early as 2026. Therefore, the Department should move forward as quickly as possible on a full electrification rule once California has acted. (18)

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requiring zero-emission cargo handling equipment, although such rules are under development.

As discussed in the notice of proposal, 54 N.J.R. at 9, the CAA gives states the option of adopting the Federal emissions standards or California's emission standards. Therefore, New Jersey cannot require zero-emission cargo handling equipment until either the EPA or California establishes the standards. The Department is monitoring the progress of California's regulations and once they are promulgated, will evaluate them to determine if they are appropriate for New Jersey and, if so, what would be a suitable timeline to implement the standards.

Further, mandating a complete transition to zero-emission cargo handling equipment at this time would be premature. While some zero-emission cargo handling equipment models are readily available, some models are still in development and not produced at market scale. Nevertheless, the new rules do encourage owners and operators to replace existing equipment with zero-emission equipment. For example, N.J.A.C. 7:27-34.11C provides up to a two-year compliance extension for an owner or operator who wishes to replace in-use cargo equipment with zero-emission equipment. The Department discussed the compliance extension in detail at 54 N.J.R. at 18-19. An owner or operator can also make use of a fleet averaging plan that includes zero-emission equipment, as part of an alternative compliance option pursuant to new N.J.A.C. 7:27-34.10A. Further, the Department has funded nearly \$20 million in port electrification projects to date pursuant to its distribution of the funds in the Volkswagen Environmental Mitigation Trust. See <https://dep.nj.gov/vw/spending-information/>.

90. COMMENT: Regulators and other stakeholders need to fully understand the various emerging and rapidly evolving products before making major investments in new equipment and

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environmental impact, and the technical and logistical challenges prior to implementing new regulations. It is imperative that we find an approach to air emissions regulations that fits an individual port, its vessel operations, and its available infrastructure. (16)

91. COMMENT: It may be too early to mandate complete transition of all cargo-handling equipment used at port terminals or intermodal yards. Capital acquisitions of this nature are expected to yield 15- to 20-year lifetimes. Clean-engine technology is advancing rapidly; if entire fleets are converted at this time, port owners and operators will be unable to take advantage of newer, cleaner equipment that will soon become available. (8)

92. COMMENT: Current deployments of zero-emission cargo handling equipment are on a very limited basis and operate in very controlled situations. Such equipment is not in full production, does not meet the current duty cycles of high-volume facilities, and other operational requirements of most of the cargo handling operations in New Jersey. Moreover, such equipment requires significant and costly upgrades to the State's already precarious electrical infrastructure, as well as significant government or third-party grant funding sources. (12 and 4)

93. COMMENT: This rulemaking is driven by the Energy Master Plan's total electrification policies. It is not the time to push for an electrification-only type of policy. Given the current state of the science, the Department should not act precipitously. The Department could wait to allow technologies and other policies to develop. (2)

RESPONSE TO COMMENTS 90, 91, 92, AND 93: The Department recognizes that certain zero-emission cargo handling equipment models are readily available, some models are in production, and some models are being developed. Thus, an across-the-board zero-emission requirement is not practical at this time. However, cleaner diesel models have been available for

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#### **Disposition Of Cargo Handling Equipment**

94. COMMENT: The Department’s rules do not address the transfer of this equipment to entities not owned or controlled by ports or rail yards and, thus, are not subject to this regulation. Given this loophole, the environmental and social benefits are uncertain. (2, 7, and 29)

95. COMMENT: The rules should be applied to warehouses as well. Cleaning up all aspects of the goods movement industry is the priority, not just pieces of it. By excluding warehouses, the rules create a potential risk that the old, highly polluting equipment could be shifted from ports to warehouses, which would run counter to the objectives. (20)

96. COMMENT: While warehouses mostly forego using diesel cargo handling equipment indoors in order to avoid air quality issues, warehouses do use diesel cargo handling equipment outdoors. If the Department’s rules do not require cargo handling equipment at warehouses and other facilities to meet the same emission standards as cargo handling equipment at ports and rail

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yards, the rules may result in having noncompliant cargo handling equipment merely move from ports and rail yards to facilities like warehouses and scrap yards in the same community. The rules should require scrappage. (27)

RESPONSE TO COMMENTS 94, 95, AND 96: The Department's rules are based on a California regulation that addresses emissions from cargo handling equipment at ports and rail yards only. To the comments expressing concerns about emissions from other types of facilities, those comments are beyond the scope of this rulemaking. As for concerns that the equipment from ports and rail yards will migrate to other facilities to which the adopted rules do not apply, the Department recognizes that there is some risk that this could happen. In order to monitor whether this actually occurs, the Department's rules require entities to provide information on the disposition of equipment as part of their annual reporting. N.J.A.C. 7:27-34.14(d)3. From this information, the Department will continue to assess emissions within the State and the Department's authority to regulate those emissions and protect human health.

### **Compliance Timeline**

97. COMMENT: The replacement of Tier 0 cargo handling equipment should be effective one month after the operative date of this rulemaking. All other tiers should be effective less than 25 months after the operative date of this rulemaking. (1)

98. COMMENT: The Department's rules are not protective enough. The timeframe for compliance should be shortened. All in-use equipment should be required to comply within two years. This would meet the requirements of the CAA. There is no reason to allow five years for compliance when the Tier 4 standard is over two decades old. According to the EPA's 2016 National Port Strategy, EPA estimated that normal fleet turnover would result in 74 percent of

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Tier 4 in 2020. New Jersey lags behind these national numbers. Thus, the Department's five-year timeline would do little to push New Jersey's Tier 4 cargo handling equipment adoption rates past the national, natural turnover rates, which will already reach near 100 percent around the same time. (27)

99. COMMENT: The Department should speed up its timeframe, so that all in-use equipment must comply within two years, which is as soon as the CAA allows. After all, the Department is only proposing to require Tier 4 diesel engines, which have been around for a decade and a half, and ports and rail yards should already be using these better engines by now. Five years is too long to require the Tier 4 standard, which is over two decades old. (28)

100. COMMENT: The Department's rules should include a more aggressive timeline. (29)

101. COMMENT: It is imperative that the rules accelerate the implementation of the emission limitations. Five years is too long to wait. (5)

102. COMMENT: The Department should implement the rules sooner. The rules should eliminate diesel emissions at a faster pace for the health of the workers and those in the local communities. (22)

103. COMMENT: As the rules require conversion to better, but still old technology that has already been in commercial use for over a decade, it is unnecessary to allow extensive time. The Department can require the turnover to happen within two years. Additionally, if the rules maintain the long conversion period, it may interfere with the Department's ability to adopt California's new rules (for zero-emission equipment) once they are released. (20)

104. COMMENT: The Department should require this turnover in two years since this is an old rule imposing cleaner, rather than clean technology. (21)



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105. COMMENT: The Department should phase out the old cargo handling equipment within a time frame of two years at the most. Five years is too long in light of the irreversible effects of climate change. (14)

106. COMMENT: The five-year timeline is simply too long. The rules should require a two-year timeline. (10)

107. COMMENT: The Department should implement a more aggressive adoption of Tier 4 engines that is faster than the existing five-year timeline. A two-year timeline is aggressive, but certainly makes sense considering the age of Tier 4 engines and the length of time that they have been available. (18)

108. COMMENT: The Department should use a two-year implementation schedule. (7)

RESPONSE TO COMMENTS 97 THROUGH 108: The Department adopted a compliance period for in-use cargo handling equipment that is shorter than the California regulation because the California regulation has been in effect for more than a decade, and because the Tier 4 final emission standard has been in effect since 2015. See 54 N.J.R. at 11. When California adopted its cargo handling equipment regulation, the Tier 4 final emission standard was still being phased in and, thus, a longer compliance timeframe was appropriate. These were not the only factors that the Department considered when it proposed a five-year compliance timeline. The Department took into account the economic impact that the new rules will have on owners and operators of this equipment. A more aggressive two-year timeframe would limit an owner or operator's flexibility to explore zero-emission options or financing opportunities, given the length of time that it takes to plan for such a major purchase. The adopted five-year period, while not leisurely, allows an owner or operator to evaluate alternative compliance options, as

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### **Treatment Of Yard Trucks Versus Non-Yard Trucks**

109. COMMENT: The rules would require non-yard trucks transferred to a different terminal to meet the requirements of new equipment, but the rules do not impose that requirement on yard trucks. The Department should make clear that when a yard truck changes terminals, it too must meet the requirements for new equipment. (27 and 28)

110. COMMENT: Non-yard trucks and yard trucks should be treated equally. (18)

RESPONSE TO COMMENTS 109 AND 110: The Department's rules, like California's regulation, provide limited flexibility for in-use non-yard trucks with the transfer provision at N.J.A.C. 7:27-34.5. As explained in the notice of proposal Summary (54 N.J.R. at 15) and below, a yard truck may not be transferred without meeting the performance standards for a new yard truck. The transfer provision does not allow an owner or operator to transfer a non-yard truck in order to delay or avoid compliance. Rather, the transfer provision allows an owner or operator to transfer an in-use non-yard truck from one port terminal or intermodal rail yard to another port terminal or intermodal rail yard under the same ownership or control without the piece of equipment being considered new, so long as the equipment meets the applicable in-use requirement. See 54 N.J.R. at 15. The Department must approve the transfer request. *Ibid.*; see N.J.A.C. 7:27-34.12. Thus, the rules provide flexibility for an owner or operator to utilize an in-use non-yard truck at the port terminal or intermodal rail yard where it is needed, rather than have to purchase a new piece of equipment. However, as explained, this provision is limited, since the equipment must still meet the in-use requirements.

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For example, under the compliance schedule, a Tier 3 piece of equipment has the latest

compliance date. If an owner or operator does not need its Tier 3 equipment at terminal A, but needs it at terminal B, it may transfer that equipment, subject to Department approval, and use that equipment at terminal B without upgrading to Tier 4 (as it would need to do if it were a new piece of equipment). However, the equipment will need to meet the Tier 4 standard in accordance with the compliance schedule. Consistent with California’s regulation, this transfer option is not available for yard trucks. A yard truck that is newly brought onto a port terminal or intermodal rail yard is considered new pursuant to this rulemaking and must meet the performance standards at N.J.A.C. 7:27-34.5 on or after the first day of the 25th month after the operative date (approximately the beginning of 2025).

#### **Tier 4 Alternate PM Standard**

111. COMMENT: The rules would allow in-use non-yard trucks to comply without meeting the Tier 4 standards by using a “Tier 4 Alternate PM” standard with the highest level of emission control device (VDECS Level 3). The Department should remove this loophole from the cargo handling equipment rules and require all cargo handling equipment to meet Tier 4 or higher standards. The Tier 4 Alternate PM standard was originally developed from the California regulation’s “family emission limits” provisions designed to give manufacturers flexibility. But this flexibility to manufacturers is little consolation to environmental justice communities if only the dirtiest engines of that fleet “family” end up at the facilities in environmental justice communities. If the Department keeps the Tier 4 Alternate PM standard, the Department must include deadlines to ensure that Tier 4 Alternate PM engines swiftly transition to the Tier 4 Final standard. (27)

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112. COMMENT: The Department is proposing to allow in-use non-yard trucks to comply with the rules by having Tier 4 alternate PM engines. However, in 2011, the CARB declared that these engines are essentially Tier 3 engines that will not achieve the same emission reductions as Tier 4 engines. Therefore, the Department should require Tier 4 engines and not allow these higher emitting Tier 3 equivalent engines. (28)

RESPONSE TO COMMENTS 111 AND 112: As noted in the notice of proposal, California included the “Tier 4 Alternate PM” compliance option because engine manufacturers have an option to produce a percentage of Tier 4 engines built to alternative and less stringent PM and NO<sub>x</sub> emission limits under the Family Emission Limit (FEL) program. See 54 N.J.R. at 16. An FEL is specifically defined as an emission level that a manufacturer declares is an emission standard for certification purposes and for California’s averaging, banking, and trading program. As FEL engines are certified to less stringent standards than a Tier 4 final engine, California required that Tier 4 Alternate PM standard engines (which are produced as part of the FEL program) be equipped with a Level 3 VDECS, which is the highest level VDECS available. See 54 N.J.R. at 17. The Department’s rules similarly include this compliance option specific to Tier 4 FEL engines to be consistent with California and because manufacturers are allowed to produce these engines and meet California’s standards.

## **Warehouses**

113. COMMENT: Warehouses are multiplying across New Jersey at an alarming rate. Despite being a massive source of air pollution that brings thousands of polluting trucks through New Jersey neighborhoods every day, the industry is largely still unregulated and allowed to operate under a business model that prioritizes its profits over residents’ health and safety. The

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Department should address this issue by including warehouses in the final cargo handling

equipment rules. (29)

114. COMMENT: Reducing carbon emissions in the State is not only feasible, but it is urgent.

The collective emissions from cargo handling equipment around the State adds up, and warehouses are increasing. (5 and 10)

115. COMMENT: The Department should commit to further rules to address pollution at other freight facilities, including warehouses. (7)

116. COMMENT: The proposed rules should be amended to include warehouse facilities in addition to ports and intermodal rail yards. All of the warehouses that are popping up in suburbs and rural locations in New Jersey become a new source of pollution and greenhouse gases in those communities. The Department should protect the air quality in those communities and improve the air quality in communities with existing warehouses. (13, 14, 20, and 21)

117. COMMENT: The rules should include warehouses. Many black and brown workers, as well as the surrounding communities, are impacted by the emissions from warehouses. (22)

118. COMMENT: The emission standards and sales prohibitions of the Department's rules apply to cargo handling equipment at marine ports and intermodal railyards, but not when the same equipment is used at a different type of facility. This restriction limits the emission-reduction benefits of the rules. The Department should focus on reducing emissions from cargo handling equipment at warehouses, in particular, because New Jersey is experiencing a dramatic increase in warehouse construction, leasing, and activity. (27)

RESPONSE TO COMMENTS 113 THROUGH 118: To the extent that the commenters express the desire for the Department to regulate cargo handling equipment at warehouses or other freight-related facilities, those facilities are beyond the scope of this rulemaking. Though

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warehouses are not addressed as part of this rulemaking, the Department will continue to assess emissions within the State and the Department's authority to regulate those emissions and protect human health.

### **General Opposition**

119. COMMENT: These rules fall short of what should be a major investment in people, power, time, and money to engineer solutions to our ongoing emissions-related sick care. (3)

RESPONSE: Neither a single rulemaking nor a single State agency can address every aspect of the State's needs as it works to address air pollution. Thus, the Department and other State agencies must continue to work collaboratively across sectors to address emissions.

120. COMMENT: The Department should not adopt California's rules in light of the negative conditions in California. (17)

RESPONSE: The Department is unable to respond, as the comment does not identify the negative conditions to which the commenter refers.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend State rules to which the EO and statute apply, to provide a Federal standards statement. If those rules exceed any Federal standards or requirements, the agency must also include in the rulemaking document a Federal standards analysis. Pursuant to section 209 of the Federal CAA, 42 U.S.C. § 7543, certain states may adopt California's standards authorized by the USEPA, as long as the state gives two-years' lead time. 42 U.S.C. § 7543. As explained in the notice of proposal, the USEPA authorized California's Regulation for Mobile Cargo Handling Equipment

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**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

## CHAPTER 27

### AIR POLLUTION CONTROL

#### SUBCHAPTER 34. MOBILE CARGO HANDLING EQUIPMENT AT PORTS AND INTERMODAL RAIL YARDS

##### 7:27-34.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“In-use cargo handling equipment” means cargo handling equipment or a diesel-fueled CI engine installed in cargo handling equipment that is purchased, rented, leased, or otherwise brought onto, and in operation at, a port or intermodal rail yard in New Jersey before **\*[(the first day of the 25<sup>th</sup> month after the operative date of this rulemaking)]\* \*March 1, 2025\***.

...

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“New cargo handling equipment” means cargo handling equipment or a certified diesel-fueled CI

engine installed in cargo handling equipment that is purchased, rented, leased, or otherwise brought onto and operated at a port or intermodal rail yard in New Jersey on or after \*[(the first day of the 25<sup>th</sup> month after the operative date of this rulemaking)]\* **\*March 1, 2025\***.

...

#### 7:27-34.4 General provisions

(a)-(e) (No change from proposal.)

**\*(f) A zero-emission engine or equipment shall be considered over-compliance with the performance standards of this subchapter.\***

#### 7:27-34.5 Performance standards for new cargo handling equipment

(a) On or after \*[(the first day of the 25<sup>th</sup> month after the operative date of this rulemaking)]\* **\*March 1, 2025\***, any new cargo handling equipment that is a registered motor vehicle shall be equipped with a certified on-road engine for the model year in which the cargo handling equipment and engine is newly purchased, leased, or rented.

(b) Except as otherwise provided, on or after \*[(the first day of the 25<sup>th</sup> month after the operative date of this rulemaking)]\* **\*March 1, 2025\***, any new cargo handling equipment that is not a registered motor vehicle shall be equipped with one of the following:

1.-3. (No change from proposal.)

(c)-(d) (No change from proposal.)



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7:27-34.6 Performance standards for in-use yard trucks

(a) In accordance with the schedule at Table 1, any in-use yard truck shall be equipped with one of the following:

1.-3. (No change from proposal.)

Table 1: Compliance Schedule for In-Use Cargo Handling Equipment

<b>Cargo handling equipment with an on-road engine</b>	<b>Cargo handling equipment with an off-road engine</b>	<b>Compliance deadline</b>
Pre-1998 model year	Tier 0	*[(the first day of the 25th month after the operative date of this rulemaking)]* <b>*March 1, 2025*</b>
1998-2003 model year	Tier 1	*[(the first day of the 37th month after the operative date of this rulemaking)]* <b>*March 1, 2026*</b>
2004-2006 model year	Tier 2	*[(the first day of the 49th month after the operative date of this

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		rulemaking)]* <b>*March 1, 2027*</b>
2007-2009 model year	Tier 3 and Tier 4 interim	*[(the first day of the 61st month after the operative date of this rulemaking)]* <b>*March 1, 2028*</b>

#### 7:27-34.8 Opacity limits

- (a) Except as provided at (c) below, on or after \*[(the first day of the 25th month after the operative date of this rulemaking)]\* **\*March 1, 2025\***, for new cargo handling equipment and on or after the compliance deadlines at Table 1 above for in-use cargo handling equipment, or any approved compliance extension(s), any cargo handling equipment subject to this subchapter shall not exceed the opacity limits at Table 2 below. Compliance with the opacity limits will be determined by the Department with a smoke meter that meets, and is used in accordance with, the Society of Automotive Engineers "Surface Vehicle Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Powered Vehicles" (SAE J1667, February 1996).

- (b)-(c) (No change from proposal.)

#### 7:27-34.10 Alternate compliance option, generally

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(a) An owner or operator may request that the Department approve an alternate compliance

option if it cannot meet the performance standards at N.J.A.C. 7:27-34.5 through 34.7, as

applicable. The compliance options are:

1. (No change from proposal.)

2. A fleet averaging plan, provided the fleet averaging plan \*[results in no greater emissions, expressed in pounds, of PM and NO<sub>x</sub> from all cargo handling equipment in the fleet combined, during each calendar year, relative to the combined emissions that would have occurred pursuant to]\* **\*establishes that:**

**i. Reductions of PM emissions as expressed in pounds, from the entire fleet of cargo handling equipment included in the fleet averaging plan will be equivalent to, or greater than, the reductions of PM emissions that would have been achieved upon compliance with N.J.A.C. 7:27-34.5, 34.6, or 34.7, as applicable; and**

**ii. Reductions of NO<sub>x</sub> emissions as expressed in pounds, from the entire fleet of cargo handling equipment included in the fleet averaging plan will be equivalent to, or greater than, the reductions of NO<sub>x</sub> emissions that would have been achieved upon compliance with\* N.J.A.C. 7:27-34.5, 34.6, \*[and]\* **\*or\*** 34.7\*, as applicable\*.**

(b) - (g) (No change from proposal.)

7:27-34.10A Alternate compliance option - non-yard truck

(a) (No change from proposal.)

(b) The Department will grant the application if the owner or operator:

1. (No change from proposal.)

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2. Provides \*[documentation from representatives of equipment and/or engine manufacturers supporting the claim of non-availability]\* **\*a list of manufacturers that the owner or operator has contacted and the manufacturers' responses to a request to purchase\***;
3. (No change from proposal.)
4. Provides an analysis of all **\*commercially\*** available control technologies **\*that reduce PM and NO<sub>x</sub>\*** and demonstrates that the alternative proposal will achieve the maximum possible PM and NO<sub>x</sub> reductions for the particular engine or non-yard truck.

7:27-34.10B Alternate compliance option - fleet averaging plan

- (a) (No change from proposal.)
- (b) The following requirements apply to an application for approval of a fleet averaging plan:
  - 1.-2. (No change from proposal.)
  3. The application for a fleet averaging plan shall include:
    - i. Documentation, calculations, emissions test data, or other information that establishes **\*[the]\*** **\*that reductions of\*** PM **\*[and NO<sub>x</sub> reductions]\***, expressed in pounds, from the **\*entire fleet of\*** cargo handling equipment **\*[combined]\*** **\*included in the fleet averaging plan\*** will be equivalent to, or greater than, the **\*[combined]\*** emission reductions **\*of PM\*** that would have been achieved upon compliance with N.J.A.C. 7:27-34.5, 34.6, or 34.7, as applicable; **\*[and]\***
    - \*ii. Documentation, calculations, emissions test data, or other information that establishes that reductions of NO<sub>x</sub> emissions as expressed in pounds, from the entire fleet of cargo handling equipment included in the fleet averaging plan will be equivalent to, or greater than, the reductions of NO<sub>x</sub> emissions that would have been achieved upon compliance with N.J.A.C. 7:27-34.5, 34.6, or 34.7, as applicable; and\***

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\*[ii.]\* **\*iii.\*** (No change from proposal.)

4. (No change from proposal.)

5. Emission reduction calculations demonstrating equivalence with the requirements at N.J.A.C.

7:27-34.5, 34.6, or 34.7, as applicable, shall:

i. (No change from proposal.)

ii. Not include reductions that are otherwise required by any local, State, or Federal rule, regulation, or statute, or any agreement or final administrative or court order to resolve an enforcement action, or agreed to as part of a local, State, or Federal grant, incentive, or voucher program. **\*Except that reductions achieved as a result of funding from local, State, or Federal grant, incentive, or voucher programs for zero-emission equipment, which would result in over-compliance, may be included in the emission reduction calculations demonstration.\***

(c) - (f) (No change from proposal.)

7:27-34.12 Department approval to transfer non-yard trucks between two facilities

(a) - (c) (No change from proposal.)

(d) The owner or operator shall submit its application to the Department at least \*[60]\* **\*30\*** days prior to the proposed transfer date on a form available from the Department at

[www.stopthesoot.org](http://www.stopthesoot.org). The application shall include:

1. - 5. (No change from proposal.)

(e) - (g) (No change from proposal.)

(h) The Department will allow the transfer of non-yard truck cargo handling equipment between two port terminals or intermodal rail yards, if the owner or operator submits its request and

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prior to the applicable transfer date, provided:

1. - 2. (No change from proposal.)
3. The Department determines that the transfer plan does not result in **\*[an]\* \*a significant\*** increase in public health impacts.

#### 7:27-34.13 Equipment at a low-throughput port

If a port that has been exempt from this subchapter in accordance with N.J.A.C. 7:27-34.2(a)7 because it is classified as a low-throughput port subsequently exceeds the two-year average annual cargo throughput limit, or the port becomes part of an urban area, each owner or operator at that port subject to this subchapter shall submit a plan for compliance to the Department within six months after the exceedance. The compliance plan shall demonstrate how the owner or operator will achieve compliance with this subchapter within two years after the exceedance, and shall include the information at N.J.A.C. 7:27-34.14(c) and (d), on the form available **\*[on]\* \*at\*** [www.stopthesoot.org](http://www.stopthesoot.org).

#### 7:27-34.14 Reporting requirements

- (a) (No change from proposal.)
- (b) An owner or operator shall submit the initial report to the Department on or before August 1, **\*[2023]\* \*2024\***.
- (c) An owner or operator shall include the following information in its initial report of the cargo handling equipment reflecting its fleet as of January 1, **\*[2023]\* \*2024\***:
  1. – 4. (No change form proposal.)

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5. For each piece of cargo handling equipment:

i. – vii. (No change from proposal.

viii. Annual hours of use in \*[2022]\* **\*2023\***;

ix. Fuel type and annual fuel usage in \*[2022]\* **\*2023\***; and

x. If seasonal, actual months operated in \*[2022]\* **\*2023\***.

(d) (No change from proposal.)

\*[7:27-34.16 Prohibitions

(a) No person subject to this subchapter shall cause, suffer, allow, or permit any of the following, unless it is performed in accordance with a CARB Executive Order (information on devices or modifications approved by a CARB Executive Order may be obtained from the California Air Resources Board, 1001 "I" Street, PO Box 2815, Sacramento, CA 95812 or at [www.arb.ca.gov](http://www.arb.ca.gov)) or 40 CFR Part 1068, Subparts C and D:

1. The disconnection, detachment, deactivation, or any other alteration or modification from the design of the original equipment manufacturer or an element of design installed on any cargo handling equipment with a certified configuration or cargo handling equipment engine with a certified configuration, except temporarily for the purpose of diagnosis, maintenance, repair, or replacement;

2. The sale, lease, or offer for sale or lease, of any cargo handling equipment with a certified configuration or cargo handling equipment engine with a certified configuration in which any element of design installed on such equipment has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original equipment manufacturer; or

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3. The sale, or offer for sale, of any device or component as an element of design

intended for use with, or as part of, any cargo handling equipment with a certified configuration or cargo handling equipment engine with a certified configuration that is not designed to duplicate the function and performance of any element of design installed by the original equipment manufacturer.

(c) No person shall cause, suffer, allow, or permit the operation of cargo handling equipment at a port or intermodal rail yard in the State if the cargo handling equipment emits visible smoke of any color in the exhaust emissions for more than three consecutive seconds when the engine is at normal operating temperature.]\*

## CHAPTER 27A

### AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

#### SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) – (l) (No change from proposal.)

(m) The violations of N.J.A.C. 7:27, whether the violation is minor or non-minor in accordance with (q), (r), (s), or (t) below, and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter at N.J.A.C.

7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.



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1. – 33. (No change from proposal.)

34. The violations of N.J.A.C. 7:27-34, Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards, and the civil administrative penalty amounts for each violation, per vehicle or piece of equipment, are set forth in the following table:

		Fourth and Each				
<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Subsequent Offense</u>
N.J.A.C. 7:27-34.4(b)	Violating sales prohibition	NM	\$2,500	\$5,000	\$12,500	\$30,000
N.J.A.C. 7:27-34.5, 34.6, and 34.7	Failure to meet performance standards	NM	\$2,500	\$5,000	\$12,500	\$30,000
N.J.A.C. 7:27-34.8	Failure to meet opacity standards	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-34.10	Failure to comply with alternate compliance options	NM	\$2,500	\$5,000	\$12,500	\$30,000
N.J.A.C. 7:27-34.11	Failure to submit a compliance extension in a timely manner	NM	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-34.11	Failure to meet the terms of a compliance extension	NM	\$2,500	\$5,000	\$12,500	\$30,000
N.J.A.C. 7:27-34.11	Failure to maintain operation records for engines with a compliance extension	M	\$400	\$800	\$2,000	\$6,000

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N.J.A.C. 7:27-34.13	Failure to submit a compliance plan for equipment at low-throughput ports	M	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-34.12	Failure to meet terms of transfer approval	NM	\$2,500	\$5,000	\$12,500	\$30,000
N.J.A.C. 7:27-34.14	Failure to submit reports	M	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-34.15	Failure to keep records	M	\$400	\$800	\$2,000	\$6,000
*[N.J.A.C. 7:27-34.16(a)1	Violating tampering prohibition	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-34.16(a)2	Violating tampering prohibition	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-34.16(a)3	Violating tampering prohibition	NM	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-34.16(b)	Violating visible smoke prohibition	NM	\$250	\$500	\$1,000	\$2,500]*

(n) – (u) (No change from proposal.)