



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: DECEMBER 7, 2010

FROM: CLEAN TRUCK PROGRAM

SUBJECT: TEMPORARY ORDER NO. _____ AND PERMANENT ORDER NO. _____ - AMENDING PORT OF LOS ANGELES TARIFF NO. 4, SECTION 20 – CLEAN AIR ACTION PLAN GENERAL RULES AND REGULATIONS

SUMMARY:

Staff requests that the Board of Harbor Commissioners (Board) approve three amendments to Port of Los Angeles (Port) Tariff No. 4 (Tariff No. 4) in connection with the Clean Truck Program (CTP) that would help reduce emissions from drayage truck operations. The first amendment would expand the definition of "Drayage Truck" to include Class 7 trucks and commencing on July 1, 2011, make Class 7 vehicles subject to the same CTP requirements as Class 8 vehicles, including the existing progressive ban schedule. The second amendment arises out of recent comments received from the Board and strengthens the enforcement of the Tariff's progressive bans. This amendment addresses the practice of switching cargo loads from compliant trucks to non-compliant trucks (dray-offs) by (i) requiring that Licensed Motor Carriers (LMCs) shall only operate Drayage Trucks that comply with the progressive bans in the Harbor District, and (ii) assessing the Clean Truck Fee on cargo that is switched from a fee-exempt Drayage Truck to a fee-assessable Drayage Truck while in the Harbor District. The California Air Resources Board (ARB) is considering similar action to amend its State Drayage Truck Rule to include regulation of Class 7 vehicles and to address dray-offs at the state level at its December 16, 2010 meeting. Finally, the third amendment changes the reference to "Day Pass" to "Temporary Access Permit" to reflect the actual name of the permit.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve an amendment to modify Items 2000, 2010, 2015, 2030, 2040, and 2041 in Port of Los Angeles Tariff No. 4, Section 20, Clean Air Action Plan – General Rules and Regulations (Transmittal 1), subject to California Association of Port Authorities (CAPA) review and approval, and authorize the Executive Director to work with CAPA to secure this approval or proceed to take independent action in accordance with CAPA procedure;

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2. Adopt Temporary Order No. 10-_____ (Transmittal 2) and Permanent Order No. 10-_____ (Transmittal 3) approved as to form and legality by the City Attorney, to amend Items 2000, 2010, 2015, 2030, 2040 and 2041 in Port of Los Angeles Tariff No. 4, Section 20, Clean Air Action Plan - General Rules and Regulations;
3. Authorize the Board Secretary to certify to the adoption of the Temporary Order by the Board and cause the same to be published once in a newspaper printed and published in the City of Los Angeles, to take effect prior to adoption by Ordinance for a period not to exceed 90 days pursuant to Charter Section 653(b);
4. Direct the Board Secretary to transmit to the City Council for approval the Permanent Order and proposed Ordinance approved as to form and legality by the City Attorney (Transmittal 4) approving and authorizing the amendment to Tariff No. 4 pursuant to City Charter 653(a); and
5. Authorize the Board Secretary to execute the Temporary Order, Permanent Order and Ordinance amending Tariff No. 4, and upon its publication, transmit the Order and Ordinance to the Chief Wharfinger for implementation of the tariff change and posting the amended Tariff No. 4 to the Port's website as regulated by the Federal Maritime Commission.

DISCUSSION:

Background - On November 20, 2006, the ports of Los Angeles and Long Beach Boards of Harbor Commissioners jointly adopted the Clean Air Action Plan (CAAP), a comprehensive program with separate initiatives designed to substantially reduce air emissions from major sources in the ports of Los Angeles and Long Beach over a five-year period. Emission sources targeted by the CAAP include ships, trains, cargo handling equipment, harbor craft, and heavy-duty trucks. The CTP is the CAAP initiative that targets emissions from heavy-duty trucks, specifically drayage trucks that move cargo in and out of marine terminals at the Port.

A key feature of the CTP is a series of progressive bans adopted by the City of Los Angeles Harbor Department (Harbor Department) that will gradually restrict older, more polluting drayage trucks from operating at port marine terminals until eventually all drayage trucks operating at port terminals will be required to meet U.S. Environmental Protection Agency (USEPA) 2007 On Road Heavy Duty emission standards on January 1, 2012. The Port's progressive truck ban has been in effect under the Tariff No. 4 since October 1, 2008, and applies only to Class 8 heavy-duty drayage trucks operating in the Harbor District.

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The United States Department of Transportation (DOT) has established eight weight classifications for commercial trucks. The classifications are based on Gross Vehicle Weight Ratings (GVWR), defined as the weight of the truck tractor together with its chassis, container and cargo. In general, according to the DOT truck categories, Classes 1 and 2 are considered light-duty trucks, while Classes 7 – 8 are considered heavy-duty trucks. Information for the light-heavy and heavy-duty DOT classifications are presented in the table below:

Weight Class	Minimum GVWR (lbs)	Maximum GVWR (lbs)	DOT Truck Category	Common Industry Usage
Class 6	19,501	26,000	Light-heavy	Medium-duty
Class 7	26,001	33,000	Heavy-duty	Heavy-duty
Class 8	33,001		Heavy-duty	Heavy-duty

The CTP under the Tariff No. 4 is drafted to be consistent with the ARB's State Drayage Truck Rule, though the Port's program has a slightly accelerated progressive ban schedule due to unique air quality conditions in this area. Both the State and Port programs focus only on Class 8 trucks, as typically very few trucks in lower DOT Truck Categories have operated in ports or railyards in the past. At the Port, for example, the average loaded container weighs approximately 30,000 lbs, making it impossible for Class 7 trucks to lawfully move most loaded containers because the weight of the loaded container, plus the weight of the truck tractor and chassis would exceed 33,000 lbs. Class 7 trucks have always been able to move empty containers and bare chassis, but until recently this activity was handled at the Port by Class 8 trucks as part of overall trucking services. For these reasons, Class 7 trucks have not been covered by, and are exempt from the State and Port drayage truck programs.

Over the last 10 months, use of Class 7 trucks at the Port has increased significantly. The increase in activity coincided with implementation of the most recent progressive ban date, January 1, 2010, when all trucks with engine model years older than 2004 were either banned outright or subject to an engine retrofit requirement. The effect of this ban was to remove nearly 80% of the pre-Clean Truck Program drayage fleet from operation at the Port. As a result, since Class 7 trucks are exempt from the Clean Truck Program, and not subject to the progressive bans, several LMCs have begun acquiring and utilizing older model year Class 7 trucks to operate at Port terminals, since they are cheap to purchase and operate and they can still be used to move bare chassis and empty containers. Staff has also found in recent months that Class 7 trucks have begun moving an increasing number of the lighter loaded containers.

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On January 1, 2010, when the most recent progressive ban went into effect, there were 28 Class 7 trucks operating in the Port, and they were making less than 0.3% of all gate moves – almost exclusively empty containers and bare chassis. By the end of January 2010, the number had grown to nearly 150 and, since then, the number of Class 7 trucks operating in the two ports has grown to approximately 550 as of November 2010. Currently, approximately 2% - 3% of all gate moves (empty, loaded and bare chassis) are being carried out by Class 7 trucks at both ports.

Use of these older Class 7 trucks results in increased emissions as the trucks are not required to meet the same emission standards as Class 8 trucks that are subject the State Drayage Truck Rule or the Port's progressive ban under Tariff No. 4. Use of Class 7 trucks is a way to operate in the Port without having to invest in cleaner, more expensive Class 8 trucks, which was not the intent of the CTP. Use of these older model year Class 7 vehicles also places LMCs with compliant Class 8 trucks at a competitive disadvantage, as the newer trucks require more capital investment. If Class 7 trucks are not held to the same standards as Class 8 trucks, the older Class 7 heavy-duty trucks will continue to be utilized at the ports with negative emissions impacts.

Progressive Ban Proposal - Staff at ARB has recently informed us they have also received reports of increased Class 7 truck usage at other ports and railyards around the State since the institution of their most recent progressive ban, also on January 1, 2010. As a result, ARB staff has proposed an amendment to ARB's State Drayage Truck Rule to add Class 7 trucks to the definition of "Drayage Truck" thereby regulating Class 7 trucks in the same manner as Class 8 trucks. The ARB Governing Board will consider and vote on this amendment at its December 16, 2010 meeting. The proposed amendment would require Class 7 trucks to have a Level 3 retrofit starting January 1, 2014. The Port's progressive ban schedule is stricter than the CARB ban schedule due to unique air quality conditions in the Port community.

Staff recommends that the Board approve a similar modification to the definition of "Drayage Truck" in Tariff No. 4 that would subject Class 7 trucks to the same restrictions as the Class 8 trucks under the Port's CTP. The existing Clean Truck Program progressive ban schedule that applies to Class 8 trucks only in Tariff No. 4 is as follows:

- Pre-1989 trucks banned: 10/1/2008
- Trucks with 1989-1993 engine model years banned: 1/1/2010
- Trucks with 1994-2003 engine model years without retrofit banned: 1/1/2010
- All trucks with engine model years pre-2007 banned: 1/1/2012

Approval of this order would also make Class 7 vehicles immediately subject to this ban schedule; however, in order to ease the transition into this ban schedule for operators of Class 7 vehicles, staff recommends that Tariff Items 2010 and 2015 include an extension of time to comply with the progressive bans currently in effect until July 1,

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2010, at which time the existing Class 8 ban schedule shall also apply to all Class 7 vehicles. The delayed compliance date will allow 180 days for Class 7 vehicle operators to purchase engine retrofits or a new vehicle, should they choose to do so.

Note that approval of this order would not in any way alter the existing Class 8 progressive ban schedule, which for Class 8 trucks shall remain unchanged and continue to remain in effect. Furthermore, both Class 7 and Class 8 trucks would be required to have 2007 model year engines or newer, starting January 1, 2012. Finally, during the period from the date of approval of this order to July 1, 2011, no additional Class 7 trucks with model years prior to 1993, or 1994-2003 without a retrofit would be allowed to register in the Drayage Truck Registry. This would immediately put an end to the uncontrolled growth of registration and operation of non-CTP compliant Class 7 vehicles at the Port.

Harbor Department staff therefore recommends that implementing this proposed Tariff Amendment will address the environmental consequences of operating the non-compliant Class 7 heavy-duty trucks at Port terminals and make the CTP a more consistent, fair and sustainable program. Moreover, Harbor Department staff has worked closely with Port of Long Beach (POLB) staff on this Tariff Amendment. The POLB Board of Harbor Commissioners will consider the same amendments to their tariff at their regularly scheduled December 20, 2010 meeting.

Dray-offs - Since the start of the CTP, staff has received increasing reports of a new practice that has been used to avoid the CTP progressive ban schedule. A CTP compliant truck (especially those exempt from the Clean Truck Fee) will enter a Port terminal to pick up a loaded container and then, immediately upon exiting the terminal, find a location to unhitch the container/chassis from the tractor and attach it to a non-CTP compliant truck tractor to take the loaded container the rest of the way to its final destination. This practice sometimes occurs on Port property, sometimes on public streets, and often on private property outside of the Harbor District. Staff has received reports that this practice, commonly referred to as a "dray-off", has been occurring with increasing frequency in recent months. Staff at ARB has also informed us that they have received similar reports of increased dray-off activity around the State in recent months.

As a result, ARB staff has proposed an amendment to ARB's State Drayage Truck Rule to address dray-off activity. The ARB Governing Board will consider and vote on this amendment at its December 16, 2010 meeting. The proposed amendment would redefine "Drayage Trucks" under the ARB Drayage Truck Rule to go beyond just drayage trucks operating on Port property or intermodal railyards, but also include those trucks operating off Port property or intermodal railyards, if hauling cargo, containers, or chassis that are either bound from or destined for a port or intermodal rail yard. Consequently, under ARB's proposed amendment, even when a container is switched,

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State's progressive bans. Exceptions are provided for truck tractors moving cargo that has been: (i) removed from the container that carried it from the originating port or rail yard, or (ii) transferred into or onto a different container before being delivered to a port or intermodal rail yard. These exceptions are designed to allow for legitimate switching that occurs are part of transloading or other legitimate logistics moves.

ARB's Drayage Truck Rule also requires that LMCs may only dispatch drayage trucks to move loaded containers (whether initially picked up or switched), empty containers or bare chassis that are in compliance with the State's progressive bans. It requires that truck owners may only operate drayage trucks to move loaded containers, empty containers or bare chassis that are in compliance with the progressive bans, and that truck operators (if they are not the owner) must be prepared to provide information about the LMC that dispatched the move, as well as "documentation on the origin and destination of the cargo, chassis, and intermodal equipment (container etc.)."

ARB staff believes that these charges will help curb dray-off activity throughout the State. Violation of ARB's new dray-off requirement will result in a \$1,000 fine, and any false information provided to the State regarding truck activity will result in a \$500 fine. Harbor Department staff supports these amendments and believes they will help address dray-offs occurring in this area. Staff has also initiated discussions with the Port Police to determine how it could assist ARB with enforcement. However, in light of comments received from the Board at the December 2, 2010 Board meeting, and to further strengthen the enforcement of the Tariff's progressive bans, staff proposes to supplement ARB's proposed amendments with similar changes to Tariff No. 4.

Similar to ARB's proposed amendments, staff proposes to modify Tariff No. 4 to make it a violation of the Tariff to switch a loaded container, empty container or bare chassis from a CTP-compliant truck to a non-CTP compliant truck anywhere on property or public streets within or immediately adjacent to the Harbor District. The proposed changes would, like the ARB's rule, also require that LMCs may only operate drayage trucks to move containers or chassis that are in compliance with the CTP's progressive bans, and goes beyond ARB's rule to require that truck operators (drivers), in addition to truck owners, may only operate drayage trucks in the Harbor District to move containers or chassis that are in compliance with the CTP's progressive bans. The proposed changes would also include the same exceptions for legitimate switching that occurs are part of transloading or other legitimate logistics moves.

The reason staff has proposed these changes is to address the situation where a CTP-compliant truck switches a load to an ARB compliant truck within the Harbor District. Because the CTP progressive bans are stricter than the ARB progressive bans, an ARB-compliant truck might not be a CTP-compliant truck. Consequently, the proposed changes would prevent switching to any non-CTP compliant truck anywhere in the Harbor District.

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changes would prevent switching to any non-CTP compliant truck anywhere in the Harbor District.

Finally, to deter dray-offs for the purpose of avoiding the Clean Truck Fee, staff recommends amending Tariff Item 2030, Clean Truck Fee, to provide that any cargo that received a fee exemption because it was hauled by a 2007-compliant truck at a Port terminal, will lose that exemption if there is a subsequent dray-off to a non-compliant or otherwise fee-assessable Drayage Truck while on Port Property or public streets within or immediately adjacent to Port Property.

Under Tariff No. 4. Item 220, Penalties for Violation, all violations under the Tariff are punishable as misdemeanors with fines of up to \$1,000 and imprisonment in the County Jail for up to six months, or by both such fine and imprisonment.

Temporary Access Permit - A clerical change is proposed to replace all references to "Day Pass" with "Temporary Access Permit" in Items 2000 and 2040 of the Tariff No. 4, in order to reflect that actual name of the document used by the Port.

ENVIRONMENTAL ASSESSMENT:

The proposed action is amendments to Port Tariff No. 4 to make Class 7 trucks subject to CTP requirements, to address dray-offs, and to clarify references to Temporary Access Permits issued by the Port. As administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action would amend Tariff No. 4 to make Class 7 trucks subject to CTP requirements, including the progressive ban schedule, address dray-offs, and clarify references to Temporary Access Permits issued by the Port. Class 7 trucks are exempt from the CTP, and therefore exempt from the Clean Truck Fee. Adding them to the Tariff No. 4 would now make them subject to the fee, thereby generating a small amount of additional revenue for the Harbor Department. For instance, there were 719 gate moves made by Class 7 trucks at the Port in September of 2010 and assuming all moves made by Class 7 trucks were 20-ft containers, the potential revenue would have been approximately \$25,165. If they were all 40 foot containers, the potential revenue would have been twice that amount or \$50,330. The other amendments would not have an impact on revenue.

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ECONOMIC BENEFITS:

This Board action will have no direct job impact within the five-county region.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved as to form and legality, the proposed Tariff, Orders and Ordinance.

TRANSMITTALS:

1. Tariff No. 4
2. Temporary Order
3. Permanent Order
4. Ordinance

FIS Approval: 

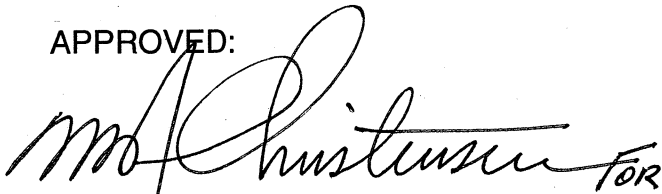


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BOARD MEETING: 12/16/2010

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