

## **ATTACHMENT B**

### **STATEMENT OF EMERGENCY**

The Executive Officer of the Air Resources Board hereby finds that an emergency exists and that an emergency regulation is necessary to address a situation that requires immediate action to avoid serious harm to the public peace, health, safety or general welfare. Failure to extend the specified registration deadline for “Option 2” of the large fleet compliance plan in title 17, California Code of Regulations section 95307(b)(3), and to amend associated compliance schedule and reporting requirements related to Option 2, would require owners of large trailer fleets to retrofit their entire fleets by January 1, 2013. The logistics associated with this requirement presents a significant problem that substantially reduces the number of compliant trailers to service the needs of California. Such a situation would result in financial hardship for those fleets, as well as California businesses and consumers that rely on those trailer fleets to bring goods into the state.

#### **Informative Digest**

##### **Background**

The California Global Warming Solutions Act of 2006 (Assembly Bill 32, AB 32, Núñez, Ch. 486, Stats. 2006) creates a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California. AB 32 requires the Air Resources Board (ARB or Board) to identify a list of discrete early action greenhouse gas reduction measures and to adopt regulations to implement those measures. One of the measures that the Board identified as a discrete early action was the reduction of GHG emissions from 53-foot and longer box type trailers and the tractors that haul such trailers on California highways.

On October 23, 2009, the Air Resources Board (ARB or Board) adopted the Heavy-Duty Vehicle Greenhouse Gas (GHG) Emission Reduction regulation (hereinafter “Tractor-Trailer GHG regulation”)<sup>1</sup> to reduce GHG emissions from 53-foot or longer box-type trailers and the tractors that haul such trailers on California highways. The regulation references a federal voluntary program, the United States Environmental Protection Agency (U.S. EPA) SmartWay Partnership Program, that is designed to improve the environmental performance associated with the ground freight delivery system in the United States. In particular, the SmartWay program approves technologies, such as aerodynamic equipment and low-rolling resistance tires, and certifies tractors and trailers that incorporate these technologies. The Board estimated that this regulation would reduce GHG emissions by approximately 7.8 million metric tons of CO<sub>2</sub>-equivalents (MMT CO<sub>2e</sub>) statewide from 2010 to 2020, and would also

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<sup>1</sup> Title 17, CCR sections 95300, 95301, 95302, 95303, 95304, 95305, 95306, 95307, 95308, 95309, 95310, 95311, and 95312.

reduce emissions of oxides of nitrogen (NOx) by 4.3 and 1.4 tons per day in 2014 and 2020 respectively.

The Tractor-Trailer GHG regulation established separate requirements applicable to 53-foot or longer box-type trailers and to the tractors that haul such trailers on California highways. 2010 and earlier model year 53-foot or longer box-type trailers pulled by a tractor on a California highway were required to either be SmartWay certified trailers or retrofitted with SmartWay approved technologies (i.e., low-rolling resistance tires and aerodynamic technologies) by January 1, 2013,<sup>2</sup> or alternatively, a trailer owner could elect to comply with an optional trailer fleet compliance schedule. The regulation established two optional trailer fleet compliance schedules that were based on the size of the trailer fleet, and provided owners of trailer fleets comprised of 21 or more 2010 or older model-year trailers an option to retrofit those trailers over several years (from January 1, 2011 through January 1, 2016) in lieu of fully complying with the trailer requirements by January 1, 2013<sup>3</sup> (Option 1 of the Large Fleet Compliance Plan, "Option 1"). Trailer fleet owners that wanted to utilize this option were required to provide specified information supporting their request by July 1, 2010.<sup>4</sup>

ARB staff proposed the trailer fleet compliance schedules because it recognized that the requirements applicable to 2010 and earlier model year trailers presented the largest potential cost impact of the regulation, given the large number of trailers that operate in California,<sup>5</sup> and believed that the trailer fleet compliance schedules would provide trailer fleet owners additional flexibility to better manage their capital expenditures for complying with the regulation. Staff estimated that the compliance costs associated with the trailer requirements ranged from approximately \$1900 to \$4200 per trailer,<sup>6</sup> and estimated the number of trailers impacted by the regulation as approximately 1,089,215 and 1,456,570 for calendar years 2010 and 2020, respectively.<sup>7</sup> The Office of Administrative Law approved the Tractor-Trailer GHG regulation on December 9, 2009, and the regulation became effective on January 1, 2010.

**Comparable Federal Regulations:** As described above, the Tractor-Trailer GHG regulation is based on the voluntary U.S. EPA SmartWay Partnership Program. Recently, U.S. EPA and the National Highway Traffic Safety Administration (NHTSA) adopted regulations to reduce GHG emissions and improve fuel efficiency of on-road

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<sup>2</sup> 17 CCR § 95303(b)(3)(A). The citations to footnotes 2-4 are to the version of the regulation that was approved by OAL on December 9, 2009.

<sup>3</sup> 17 CCR § 95307(b)

<sup>4</sup> Ibid.

<sup>5</sup> See pp. 77-78 "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Adoption of the Regulation to Reduce Greenhouse Gas Emissions from Heavy-Duty Vehicles", dated October 2008 ("hereinafter 2008 Staff Report");

<http://www.arb.ca.gov/regact/2008/ghghdv08/ghgisor.pdf>

<sup>6</sup> Table XII-1, p. 60, Staff Report.

<sup>7</sup> P. C-7 and C-8, Appendix C to 2008 Staff Report;

<http://www.arb.ca.gov/regact/2008/ghghdv08/ghgappc.pdf>

medium- and heavy-duty vehicles and engines<sup>8</sup> (hereinafter referred to as federal regulations). However, significant differences between the federal regulations and the Tractor-Trailer GHG regulation exist, both in terms of their applicability and the requirements.

The federal regulations establish separate GHG emission and fuel efficiency standards for model year 2014 and later new medium and heavy-duty engines and vehicles, including Class 2b through Class 8 trucks, heavy-duty pick-up trucks and vans, combination tractors, and all types and sizes of vocational trucks and buses.

In contrast, the Tractor-Trailer GHG regulation does not establish fuel efficiency standards, but only mandates the usage of SmartWay technologies that reduce aerodynamic drag of new and in-use box-type trailers and the tractors that haul those trailers on California highways. U.S. EPA lacks the authority to adopt emission standards relating to the control of in-use motor vehicles, and therefore the federal regulations do not apply to in-use tractors. Moreover, the federal regulations do not regulate the trailers that are subjected to the Tractor-Trailer GHG regulation. Therefore, the small subset of vehicles that may be subject to both the Tractor-Trailer GHG regulation and the federal regulations would be those 2014 and newer model year tractors that haul 53-foot and longer box-type trailers on California highways.

### **Finding of Emergency**

As ARB staff began implementing the Tractor-Trailer GHG regulation, it received substantially fewer requests from trailer fleet owners to participate in the optional compliance schedules than anticipated, which staff believed was due to the fact that many trailer fleet owners were simply unaware of the regulation, and may have therefore missed the opportunity to participate in the compliance phase-in option.<sup>9</sup> Staff also received comments from fleets and trucking associations that it would be difficult for fleets participating in a compliance option to report, at the time of registration for the phase-in, which trailers they would be bringing into compliance during each of the phase-in years, and that certain provisions of the regulation presented issues that

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<sup>8</sup> U.S. EPA and NHTSA. *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, Federal Register, Vol. 76, No. 179, September 15, 2011 (<http://www.gpo.gov/fdsys/pkg/FR-2011-09-15/pdf/2011-20740.pdf>)

<sup>9</sup> 95 fleets with approximately 180,000 trailers registered by the July 1, 2010 deadline. However, the total number of trailers impacted by the regulation in 2010 was estimated as approximately 645,000. Appendix F, "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Amendments to the Truck and Bus Regulation, the Drayage Truck Regulation and the Tractor-Trailer Greenhouse Gas Regulation," dated October 2010 ("hereinafter 2010 Staff Report") <http://www.arb.ca.gov/regact/2010/truckbus10/truckbusappf.pdf>

affected the ability of tractor owners, trailer owners, and fleets to comply with the regulation.<sup>10</sup>

Furthermore, the economic environment in California and in the nation had not substantially improved since the Board approved the Tractor-Trailer GHG regulation in December 2008.<sup>11</sup> The Board found that the recession had significantly impacted overall trucking activities, and specifically those companies that operate on-road heavy-duty vehicles in the normal course of business, and staff, after reviewing and updating its emissions inventory for heavy-duty on-road heavy-duty diesel vehicles and engines, determined that emissions from such vehicles are substantially lower than estimated in December 2008 when the Tractor-Trailer GHG regulation was initially adopted.<sup>12</sup>

On October 26, 2011, the Board, in consideration of the above mentioned findings, adopted amendments to the Tractor-Trailer GHG regulation that it found would provide affected fleets with additional flexibility to comply with the regulation's requirements without significantly affecting the GHG benefits of the existing regulation. One of the primary amendments established another compliance schedule for large trailer fleets (Option 2 of the Large Fleet Compliance Plan, "Option 2") that would allow large trailer fleet owners to phase in compliance from 2012 to 2016, provided that they provide specified information supporting their request by July 1, 2011.<sup>13</sup> Another significant amendment allowed fleets registered in the optional compliance phase-in plans to report compliance activity retrospectively, on an annual basis.<sup>14</sup> OAL approved the 2011 amendments on December 12, 2011, and the amendments became effective on January 11, 2012.

### **Specific Facts Showing the Need for Immediate Action**

Subsequent to OAL's approval of the 2011 amendments, ARB staff became aware that due to an oversight, the 2011 amendments specified a registration deadline for Option 2 (July 1, 2011) that preceded the effective date of the amendments (January 11, 2012), and compliance schedules and annual reporting deadlines also preceded the January 12, 2012 effective date.<sup>15</sup> This oversight constitutes a fact requiring immediate action because it immediately and adversely affects trailer fleet owners who waited for

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<sup>10</sup> Such issues included the incompatibility of certain trailer configurations with existing verified aerodynamic devices, the need to transport certain trailers from one location to another without requiring the trailers to comply with the aerodynamic device and/or low rolling resistance tire requirements, the unavailability of SmartWay verified retread tires, and issues related to the existing reporting requirements.

<sup>11</sup> Resolution 10-46, dated December 17, 2010.  
<http://www.arb.ca.gov/regact/2010/truckbus10/reso1046.pdf>

<sup>12</sup> Ibid.

<sup>13</sup> 17 CCR § 95307(b)(3).

<sup>14</sup> 17 CCR § 95307(f).

<sup>15</sup> Option 1 large fleet phase-in participants were given until December 31, 2011, to report activity during the first two phase-in years; Option 2 large fleet phase-in participants were given until December 31, 2011 to report activity during their first year of the phase-in.

OAL's approval of the 2011 amendments before submitting their registration requests, as well as any fleet owners who had not timely submitted registration requests, by requiring them to retrofit their entire trailer fleets by January 1, 2013. ARB has received comments that a number of large fleets desired to utilize Option 2 but were nonetheless unwilling to register their trailer fleet until the amendments were formally approved by OAL. Trailer fleet owners have also stated that the logistics associated with retrofitting thousands of trailers by January 1, 2013 poses a difficult problem and may significantly reduce the number of available trailers to service the needs of California. In addition, this oversight entirely vitiates the Board's intent in adopting Option 2, which was to provide economic relief to an industry that is experiencing the adverse effects of the prolonged economic recession, and would allow large trailer fleets to spread their compliance costs across 5 years, rather than requiring full compliance by January 1, 2013.

To date, ARB has received requests from eight large trailer fleet owners seeking to participate in the Option 2 compliance plan, but had failed to submit registration requests by the July 1, 2011 deadline. As of the effective date of the amendments, these owners collectively operate over 73,000 trailers, which represent approximately 182% of the number of trailers currently registered in Option 2, and 11% of the total number of trailers projected to be impacted by the regulation in calendar year 2010. Several of these large trailer fleet owners have stated that their preclusion from Option 2 would impose severe problems associated with having to ensure their entire trailer fleet complies with the regulation's requirements by January 1, 2013. Specifically, those fleet owners would need to ensure that each trailer in their fleets will be out-of-service for the time needed to retrofit it with required equipment, and such retrofitting will therefore substantially reduce the number of available trailers available to service the needs of California.<sup>16</sup> Such a situation will likely result in financial hardship for those fleets, as well as California businesses and members of the public that rely on those trailer fleets to bring goods into the state. Consequently, ARB believes the proposed emergency regulatory action that would extend the registration deadline for Option 2 until June 1, 2012, and to amend associated compliance schedules and reporting requirements related to Option 1 and Option 2 would effectuate the Health and Safety Code provisions identified below in the authority and reference section of this rulemaking, and would also address only the demonstrated emergency.

### **Authority and Reference**

The authority for these amendments is set forth in sections 39600, 39601, 38510, 38560 and 38560.5 of the Health and Safety Code. The amendments implement, interpret, and make specific sections 39600, 38560, 38560.5 and 38580 of the Health and Safety Code.

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<sup>16</sup> One trailer fleet owner that operates approximately 7000 trailers states that any and all of its trailers may be operated in California due to motor carriers' operations, which involves point-to-point operations throughout the entire country.

Sections 39515 and 39516 of the Health and Safety Code, and Executive Order 78-10, dated February 23, 1978, authorize the Executive Officer to take action under the present circumstances.

### **Disclosures Regarding the Proposed Action**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the emergency amendments are presented below.

The Executive Officer has determined that the emergency amendments will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary costs or savings to local agencies.