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Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814
Submitted electronically via http://www.arb.ca.gov/lispub/comm/bclist.php

RE: Proposed Advanced Clean Trucks (ACT) Regulation and Draft Environmental Analysis (Draft EA): Section 2012: Large Entity Reporting

Chair Nichols and Members of the Board,

On behalf of the California Council for Environmental and Economic Balance (CCEEB) we appreciate the opportunity to submit comments on the proposed ACT regulation. CCEEB and its members have a long history working in support of the State's climate and air quality goals, and CCEEB has played an active role in developing successful strategies at the state and regional level that reduce emissions from transportation and mobile sources. CCEEB recognizes that further significant reductions are needed, particularly for attainment of air quality standards in areas most impacted by air pollution.

CCEEB also understands the proposed ACT regulation – as well as future rules envisioned related to ACT– play an important role in ARB's overall strategy to accelerate the transition to cleaner fleets and energy, and we agree that quality data is needed to inform ARB rulemaking. However, we have concerns that the currently proposed language in Section (§) 2012 falls short of what is needed and has several unclear and ambiguous terms and requirements that need clarification. These shortcomings, if allowed to move forward, present unfortunate and serious compliance challenges to the many thousands of public entities and businesses that fall under § 2012.

In discussions with staff, CCEEB understands that ARB will seek 15-day changes meant to address these shortcomings, including clarifications that will limit data collection for each entity to a single representative facility over a single week's period of activity. CCEEB commits to working with staff on these and other refinements to the rule, and hopes to return to this board in the spring able to support a revised and improved regulation.

Our main concerns and comments are as follows:

- **Various sections of the rule imply that reporting entities would need to track and collate data on every facility and vehicle over the course of 2020.** From a timing perspective, this would mean entities would need to begin collecting information across hundreds of data points before the rule has even been adopted. We recently came to understand that this is not staff's intention and that a much narrower range of data would be required, and that data tracking would be limited to a single week's period, not an entire year. If this is indeed the case, then we ask ARB to direct staff to work with stakeholders to make needed clarifications and to develop guidance that can help entities accurately report and comply with the regulation.

- **ARB's purpose for collecting facility-level data and information about business contracting practices needs to be clarified in the rulemaking documents**. This would help reporting entities work with staff to refine what gets reported and identify the best data for the intended purpose. In general, collecting information directly from fleet owners and operators will be more effective than requiring third parties to report vehicular activity outside of their control.

- **The rule seriously underestimates the administrative burden and compliance challenges involved in fleet and facility reporting**. CCEEB believes many of these problems can be addressed while still returning the overall results ARB seems to seek. As staff works to address these problems, we ask that ARB also re-evaluate its estimates of compliance costs and administrative burden.

- **Data on existing and near-term investments and infrastructure for cleaner vehicles and fuels should be included in ARB's assessment.** This would include investments in near-zero technologies and advanced technologies in early development stages. While ACT is meant to focus on vehicle electrification, we believe this information would help ARB understand fleet and facility investment plans, and inform where and how future rules can best be targeted.

What follows is a more detailed discussion of each of these main points. We hope our comments provide a useful starting point for further discussions between staff and interested stakeholders.

Rulemaking Has Been Accelerated, 15-Day Changes Will be Critical

CCEEB continues to be concerned about the accelerated rulemaking schedule for large entity reporting given the numerous questions that remain over rule interpretation and potentially serious compliance challenges. Although § 1963 covering vehicle manufacturers has been under development since 2016, concepts for large entity reporting were only released on August 21, 2019 (the same day as the second and last

public workshop on reporting), followed soon after by 45-day rule language released on October 25. Staff has not yet responded to public comments made at the August workshop or during the informal comment period, and no effort was made to explore alternatives proposed by stakeholders. Indeed, in Section X of the Initial Statement of Reason (ISOR), ARB fails to discuss any alternatives to § 2012, despite the fact that CCEEB[1] and other stakeholders had proposed viable options during the informal comment period.

Another problem resulting from the accelerated schedule is the serious under-estimation of administrative costs. Staff made a minor adjustment in the ISOR analysis from its August 8, 2019 Standardized Regulatory Impact Assessment (SRIA), increasing the total average time needed to complete reporting from four hours in the SRIA to 25 hours in the ISOR. CCEEB would like to understand how these averages were calculated, since for many of our members, this seems to seriously underestimate time and resources needed for reporting. For example, the example survey in Appendix J spans 11 pages of detailed questions spanning hundreds of data points. For large entities with complex operations or multiple facilities, accurately reporting facility and fleet information would entail tracking data over the course of a year and then compiling, analyzing, and maintaining detailed records until December 31, 2024. This simply could not be done in 25 hours or at a cost of $50 per hour. CCEEB recommends that ARB, at a minimum, work with stakeholders to update it economic assessment; more beneficial would be refinements to the rule to reduce the significant administrative burden.

Finally, the rush to adoption has been compounded by a lack of notification to affected entities, as we first noted in our August 21 comments. Staff estimates that 12,000 businesses and public entities will be affected, but this only counts the corporate parent, rather than the subsidiary, branch, or division that would need to report data. For example, a major grocery retailer would be counted as only one of the 12,000, but has hundreds of individual stores and vehicles. Notifications were primarily targeted at fleet owners and operators through the ARB listservs “actruck” and “zevfleet” with a focus on § 1963. As such, most affected entities have not been able to participate in the rulemaking and likely are unaware of their compliance obligations. Because of these issues, CCEEB believes additional time for rule development and enhanced notification to affected entities are warranted.

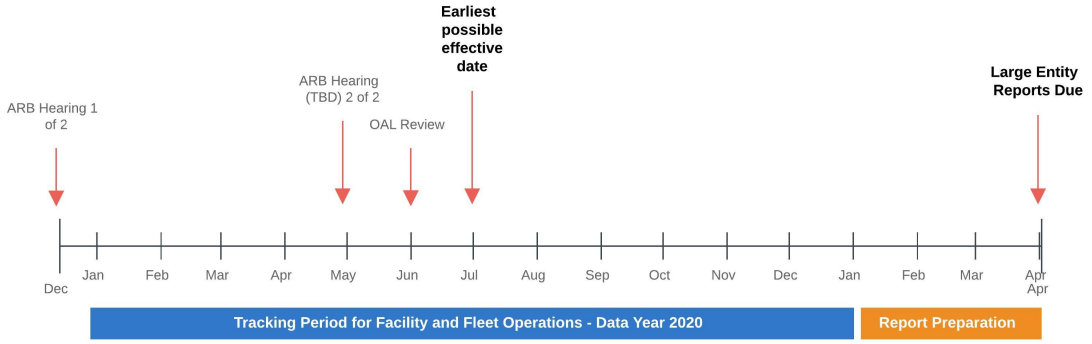
Reporting Implementation and Timeline

Page IV-33 of the staff report describes the implementation timeline set forth in § 2012(e)(1) of the rule: “regulated entities must report by April 1, 2021 *for their facility operation in 2020* and for any fleet as it was comprised as of January 1, 2021. Reporting

[1] See CCEEB comments to ARB staff on ACT Proposed Draft Language, August 21, 2019.

is required by April 1, 2021, to provide sufficient time for regulated entities to collect information *from the prior year*." [*Emphasis* added]

Figure 1: Estimated Timeline if Reporting Data for 2020



CCEEB is concerned that the implementation timeline and data period could mean a reporting entity must have a system in place to track and record data across its entire enterprise of facilities and vehicles starting no later than January 1, 2020 – only two weeks after the first of two ARB hearings and at least seven months before any adopted rule could go into effect. The "sufficient time" deemed by staff for implementation mistakenly confuses data collection and tracking, which would happen throughout 2020, with ex post data consolidation and verification and preparation of the final survey to submit to ARB by April 1, 2021.

If ARB instead intends to have facilities report a snapshot in time, such as the "typical week" of vehicles trips reported in § 2012.2(b)(2), then staff must clarify this in the rule language and provide guidance as to how a reporting entity is meant to determine what is the correct time period to track, as well as how it should document its decisions so as to be able to demonstrate compliance later. Would a typical week need to occur after the rule has become final (e.g., some period July-December), or would a facility need to count trips retroactively? What if a representative facility has it highest volume of deliveries outside this window? Should it report lower volumes, or would another facility need to be picked as "representative?" Many questions remain.

CCEEB recommends that ARB make changes to the rule to (1) explain precisely what time period must be reported, (2) allow entities sufficient time to develop tracking systems and collect data, not just time to collate and prepare surveys, and (3) adjust either the data period or report deadline so that it is practical and entities can comply.

ARB Should Clarify that It Is Exploring Facility-Level Regulatory Strategies

The purpose for large entity reporting in the proposed ACT regulation is broadly given as being generally supportive of, "future strategies on how to accelerate the zero-emission

vehicle market in California,"[2] and to gather, "more *fleet* specific information… needed to properly assess which strategy would be most effective to require the use of ZEVs to accelerate the market for medium and heavy-duty ZEVs in a wide range of fleet applications."[3] [*Emphasis* added] Thus, the stated purpose is gathering information on vehicles and fleets, which could, presumably, be reported by fleet owners and operators.

In later details about facility reporting, it is revealed that ARB is considering regulations aimed at any business, government body, or agency that receives services or deliveries from trucks and buses—that is, indirect sources. For example, page III-10 of the ISOR explains that, "The questions were selected to collect information needed to determine *if entities that hire truck fleets could become the point of regulation*," and page IV-23 explains that the rule applicability, "was selected to include a wide range of entities because nearly all rely on services that use trucks and buses, *and all are likely to be directly or indirectly affected by a future ZEV requirement*…." [*Emphasis* added] This regulatory focus on indirect sources is consistent with discussions at the June 20 and August 21 ACT workshops this year, where staff commented that facilities could "accelerate the market" for medium- and heavy-duty ZEVs by leveraging their contractual powers for services and deliveries, possibly implemented through "zero-emission zones" at the city or some other geographical level.[4]

CCEEB does not wish to further speculate as to ARB's purpose in collecting facility data. Instead, we ask staff to provide a clear discussion in the proposed rule and staff report and clearly state whether ARB is considering indirect sources as a point of regulation for future ACT regulations. Moreover, CCEEB strongly recommends that ARB seek input on whether a business or public entity could actually control the types of vehicles that visit its facilities. The ACT rule seems to assume businesses wield such contractual power, jumping straight into the details of specific services and deliveries. CCEEB believes this underlying assumption needs to be made explicit and tested with stakeholders, particularly as it applies to the relationship between facilities and subcontractors.

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[2] § 2012(a) Purpose: "The purpose of this article is to collect information to assess suitability of zero emission vehicles in multiple use cases and to inform future strategies on how to accelerate the zero-emission vehicle market in California. This article supports future measures to reduce emissions of oxides of nitrogen (NOx), fine particulate matter (PM), other criteria pollutants, toxic air contaminants, and greenhouse gases (GHG) from vehicles."

[3] Initial Statement of Reasons, Section II-D: Need to Gather Information on Vehicle Operations: "In August 2018, Governor Brown sent a letter to CARB Chair Mary Nichols directing the agency to assess the viability of new regulations to increase ZEV adoption in California fleets. While CARB has sufficient information for the proposed manufacturer ZEV sales requirement, more fleet specific information is needed to properly assess which strategy would be most effective to require the use of ZEVs to accelerate the market for medium and heavy-duty ZEVs in a wide range of fleet applications….The large entity reporting requirement included in the Proposed ACT regulation will provide key information staff needs to explore alternative methods to further increase the use of ZEVs where they are suitable while incorporating the appropriate flexibilities where needed."

[4] See staff June 20, 2019 ACT workshop presentation, slide 23.

Page III-10 of the staff report lists a wide range of facilities affected, including, "retailers, manufacturers, refiners, accounting firms, hotels, drayage terminal operators, utility providers, refuse companies, federal, state, and local government agencies and other types of large employers." Facility types covered under the rule — offices, stores, warehouses, restaurants, hotels and motels, equipment yards, medical centers and hospitals, campuses, and military bases—suggest that nearly all industrial, commercial, and institutional facilities could be subject to future ACT rules, regardless of whether they operate any vehicles or are considered a large entity. As we've previously commented, these businesses and agencies should be properly notified so they can participate in ARB decisions that affect their facilities and operations.

ARB Must Fix Compliance Traps, Make Streamlining Work as Intended

Fleet and facility requirements in Section 2012 take a one-size-fits-all approach to data collection, using the same basic template for all entities. This oversimplifies the administrative burden for complex businesses and public agencies—that are, by definition, "large entities" typically with operations across many facilities and, possibly, with a range of vehicles in the state. Further complicating the rule are certain ambiguous terms open to misinterpretation, which could result in inadvertent violations.

At the same time, efforts to streamline the rule, while appreciated, are not always effective. For example, determining what could be a "representative facility" in § 2012.2(b) would depend largely on information collected from each individual facility. While the rule makes a nod at use of "best judgment" in one part of this subsection, record retention requirements in § 2012(e)(3) imply that a reporting entity would need to document the basis for reported data through actual records, logs, and historical contracts. Unfortunately, ARB does not provide examples of what would constitute as a "common" or "otherwise typical" facility within a category, nor does it explain what documentation would be needed should an entity's judgment later be called into question.

Facility category reporting in § 2012.2(a) presents even greater challenges. Counts needed for each data point on facility characteristics and ground transportation needs must be done at the individual facility level, even if grouped and reported by category. Most of this data is not currently gathered, so new tracking and record retention systems would need to be developed. Unfortunately, the rule does not provide adequate time to collect and validate reported data, creating more problems that can't easily be resolved using "best judgment" alone. Taken together, CCEEB believes this creates unreasonable challenges for good-faith actors wanting to comply, while also increasing costs and administrative burden, which, as previously noted, are already seriously underestimated.

Finally, CCEEB believes there may be opportunities to reduce double counting caused by reporting the same activity by fleets and facilities. Further streamlining could also be achieved by incorporating data already (or soon to be) collected by ARB, such as reporting done for the drayage truck and truck and bus rules. As staff assesses data reported under the ACT regulation, it will also need to explicitly acknowledge there will be some degree of under-counting of certain data, such as activity and operations at smaller entities not covered by § 2012(b) and vehicles operated by subcontractors or those without one-year or longer contracts with facilities.

Below, we provide additional detailed examples of problems with the rule language. These are meant to be illustrative, not exhaustive. CCEEB believes a more thorough list of improvements should be developed through discussions with stakeholders.

Facility Category Reporting

§ 2012.2(a)(1) requires reporting of characteristics by facility group. However, to come up with a count for each characteristic, one must know information for every facility. For example, to know how many facilities within a group have cold storage, you must survey each facility. This appears to go well beyond the intention of collecting information on a single representative facility, and could amount to significant surveying costs for entities with many facilities spread across the state. For example, the Department of Motor Vehicles would need to survey about 180 different locations, gathering information about how each DMV ships various items and contracts for services ranging from maintenance to waste collection, among other things.

§ 2012.2(a)(1)(I) – it is unclear why information on light-duty vehicles is being sought if the purpose of the ACT rule is to regulate medium- and heavy-duty vehicles; this question appears irrelevant.

§ 2012.2(a)(2) requires descriptions of typical ground transportation needs by facility category, without defining “typical” or describing how it should be determined when multiple responses could apply. For example, to answer § 2012.2(a)(2)(G) about whether items are shipped to residences, a reporting entity would first have to identify all individual facilities within a category (for example, office buildings), survey each building to see whether or not items are shipped from there to a residence, and then collate and analyze this data to decide what could be judged to be most typical across various responses.

§ 2012.2(b)(2) – tracking all service and delivery vehicles during a “typical week” at a “representative facility” presents a number of interpretation questions, as discussed in other sections. This requirement poses even greater administrative challenges at large complex facilities with multiple access points and 24-7 operations, like a military base or refinery, or for a distant facility with variable

hours and limited staff – in either instance, counting delivery and service vehicles over a week's period is a labor-intensive task that seems minimized in the rule.

Subcontractor information is required, but by definition, not available

§ 2012(d)(15) correctly defines "subcontractor" as an entity who is contractually obligated to the contractor, not the contractor's customers. Yet § 2012.1(13) asks the customer to report the number of subcontractors "with whom you had a one year or longer contract" to perform work. By definition, this would be zero since the contractor holds the contract with the subcontractor. Staff should remove this question or discuss with stakeholder what is actually intended.

Definition of "Vehicle" from § 1963(c)(19) should be repeated in § 2012(d)

This ensures internal consistency and relates back to the stated purpose of reducing emissions from medium- and heavy-duty vehicles. Subsections 2012.2(a)(1)(I) and (J) should be removed or clarified, as it is unclear what relevancy light-duty vehicles hold given the ACT regulation is limited medium- and heavy-duty vehicles with a gross vehicle weight of 8500 pounds or more.

Vehicle Usage Reporting in § 2012.3(b)

§ 2012.3(b)(2) and (3) – reporting vehicle usage per day and per year requires exhaustive mileage tracking and logging across the entire fleet, starting January 1, 2020. As we discuss below, the implementation timeframe does not allow adequate time to collect needed data.

§ 2012(b)(4) – most entities do not keep historical records on vehicle turnover, and given the short timeframe allowed to collect data, reporting entities could not reasonably answer how long vehicles within a class are kept in service.

ACT Should Do More to Assess Investments in Cleaner Vehicles and Fuels

CCEEB notes that the Purpose stated in § 2012(a) is to support, "future measures to reduced emissions of oxides of nitrogen (NOx), fine particulate matter (PM), and other criteria pollutants, toxic air contaminants, and greenhouse gases (GHG) from vehicles". To this end, facility information should include near-zero medium and heavy-duty trucks currently in fleets or expected to be in fleets so that a comprehensive evaluation can be done within the bounds of the Purpose statement.

§§ 2012.3(a)(6) and (7) ask for information about existing fueling infrastructure at facilities, including near-zero technologies like natural gas and zero-emission technologies for electricity and hydrogen. CCEEB believes this information could be enhanced and allow inclusion of near-term investments for cleaner fuels and vehicles so as to better understand the full scope of entities' transportation planning.

Relatedly, Page I-11 of the ISOR states: "For the purpose of this regulation, near-zero-emission vehicles (NZEV) are plug-in hybrid electric vehicles powered by both an internal combustion and battery-electric powertrain that are capable of operating like as a zero-emission vehicle for some distances." CCEEB is concerned that this new definition is inconsistent with the Health & Safety Code §§ 39719.2(g) and 44258(c), as well as the State Implementation Plan as it relates to the South Coast Air Quality Management Plan (2016). For consistency and continuity, CCEEB believes that ARB should retain the statutory definition of "near-zero," and recognize the common understanding of near zero includes low-NOx engines that meet the 0.02 g/bhp-hr standard.

CCEEB and its members look forward to working with ARB towards solutions to our concerns and clarifications to our questions as the proposed ACT regulation and § 2012 continues to be refined. We also wish to suggest public process improvements, particularly in regards to ARB notifications and engagement with stationary and indirect sources, so that affected stakeholders can effectively engage with ARB and participate in rule development and policy decisions. This will be critically important as ARB moves forward with ACT and other rules targeting non-traditional businesses and operations.

Sincerely,

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