



Owner-Operator Independent Drivers Association

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Liane M. Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Comments and Exemption Proposals by the Owner-Operator Independent Drivers Association Regarding CARB's Proposed Advanced Clean Fleets Regulations

Dear Madame Chair,

The Owner-Operator Independent Drivers Association (OOIDA) is the nation's largest trade association representing the interests of independent owner-operators, small-business motor carriers, and professional truck drivers. OOIDA has over 150,000 members, located in all fifty states, that collectively own and operate more than 240,000 individual heavy-duty trucks.

I am writing to submit OOIDA's comments, and to request the opportunity to meet with members of your staff to address our concerns about the currently proposed Advanced Clean Fleets (ACF) Regulations, and in particular, the proposed new section 95692, title 17, of the California Code of Regulations (CCR), which broadly defines the persons or entities required to purchase zero emissions vehicles (ZEV) to potentially include every single truck owner in the United States who occasionally hauls cargo into or out of California.¹

As an initial matter, we note that there are significant federal constitutional and statutory prohibitions against the State of California's imposition of such an expansive and unprecedented burden on interstate commerce. Even putting such considerations aside, the regulations seek to impose requirements which are simply not feasible, which is required by the Governor's Executive Order N-79-20 ("It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations *where feasible...*"(emphasis added)).

The requirement that every trucker in the country purchase a ZEV to conduct business in California is economically and logistically infeasible. The zero-emission mandate would: (1) force small-business interstate owner-operators to purchase entirely new ZEV vehicles, adding over

¹ OOIDA's comments herein supplement its March 26, 2021, comments which were submitted before the proposed ACF regulations were published.

\$100,000 to the cost of each truck; (2) significantly lower the value of their non-ZEV vehicles; and (3) increase interstate trucking costs by billions of dollars. For example, a typical 2021 Class 8 diesel truck with sleeper costs between \$150,000-160,000. In contrast, early estimates for a comparable ZEV truck (if available) range between \$250,000-300,000—or nearly *double* the cost of a non-ZEV truck.

In addition, there is no interstate infrastructure available to recharge heavy duty ZEV trucks as they traverse the country to carry cargo into or out of California. This will inevitably lead to a devastating supply chain crisis.

OOIDA acknowledges California’s decarbonization goals. We also recognize that certain manufacturers are working to design efficient and affordable heavy-duty ZEV trucks. However, while CARB may be optimistic that these technological and logistical objectives may be realized at some point in the future, we submit that it is entirely premature to mandate ZEVs now when there is no way of knowing when, or even whether, there will be enough affordable and functional heavy-duty long-haul ZEV trucks, or the interstate infrastructure necessary to support them. Based on these considerations, OOIDA suggests that CARB restructure its proposed regulations as follows in order to balance its own local interests with the interests of the rest of the country’s truck owner-operators in a reasonable, measured, and constitutionally permissible manner.

I. The Currently Proposed ACF Definitions Should Expressly Exclude Small Truck Owners

At first glance, the current generalized definitions of entities affected by the ACF regulations appear to apply only to “entit[ies] with \$50 million or more in gross annual revenue,” or a “fleet owner with 50 or more vehicles,” or a “broker ... that ... dispatches 50 or more vehicles.”² Thus, the regulations seemingly apply only to the biggest carriers and brokers in the

² Section 95692. High Priority and Federal Fleets Applicability, Definitions, and General Requirements.

(a) Scope and Applicability. This regulation applies to any motor carrier, broker, federal governmental agency, person, or entity that hires affected fleets, or who operates or directs the operation of any vehicles subject to this regulation. Except as provided in section 95692(c), this regulation applies to any of the following entities that own, operate, or direct vehicles, as defined in section 95692(b)(43), in California with a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and meet any of the following criteria as of January 1, 2024, or at any point afterwards:

- (1) Is an entity with \$50 million or more in gross annual revenue in the prior year
- (2) Is a fleet owner with 50 or more vehicles
- (3) Is a fleet owner whose fleet in combination with other fleets operated under common ownership and control totals 50 or more vehicles

trucking industry, *i.e.*, those with the deepest pockets. However, upon closer examination, the definitions reveal that they do not focus on the fleet owners or brokers themselves, but instead target the trucks within the fleet, and require the actual truck owner to buy a new ZEV truck so long as they are “dispatched,” “managed,” or “controlled” by a large \$50 million motor carrier or broker.³ A vast majority of OOIDA’s members potentially fall within these broad definitions because they own trucks which they lease to, or broker loads through, larger—“\$50 million”—carriers or brokers. However, these truckers do not own 50 trucks and do not have revenues of \$50 million. Rather, they are typically small family run businesses who oftentimes struggle to stay ahead of their current truck payments, expenses, and ever-expanding regulatory obligations. *They do not have deep pockets!*

Similarly, the proposed ACF regulations would require small independent trucking companies to buy ZEV trucks if they operate their vehicle using a large carrier’s “state or federal operating authority or other registration.”⁴ OOIDA’s members might also be required to buy a new

(4) Is a broker or other fleet owner that in combination with other fleets owns, operates, or dispatches vehicles under common ownership and control that totals 50 or more vehicles; or

(5) Is any federal government agency that has one or more vehicles that operate in California.

³ Sec. 95692(b) *Definitions*. (8): “Common ownership or control” means being owned, dispatched, or managed on a day-to-day basis by the same person or entity.” Vehicles managed by the same directors, officers, or managers, or by distinct corporations that are controlled by the same majority stockholders are considered to be under common ownership or control, even if their titles are held by different business entities or they have different taxpayer identification numbers. Furthermore, a vehicle is considered to be under an entity’s control if that entity operates the vehicle using that entity’s state or federal operating authority or other registration. Vehicles owned by different entities but operated by using common or shared resources to manage the day-to-day operations by using the same motor carrier number, displaying the same name or logo, or contractors who represent the same company are considered to be under common ownership or control.

⁴ Section 95692(b)(8). CARB’s PowerPoint slide from the September 9, 2021, workshop states: “Common ownership definition currently is tied to day-to-day control over vehicles in the fleet, such as:

- Using the same motor carrier number
- Displaying the same name or logo....”

First, this ignores the fact that a small trucking company cannot obtain its own federal USDOT operating authority without gaining substantial industry experience and expending significant resources and time. Therefore, until they complete that process and obtain their own authority, federal law requires that they operate under another licensed carrier. Importantly, however, this does *not* diminish the owner-operator’s independent financial and legal obligations in any respect and does not place the owner-operator under the control of the carrier. Second, an owner-operator’s display of a carrier’s logo is merely a method by which the owner-operator can expand his/her marketing potential with a national carrier. But as far as the carrier is concerned, and as their contracts typically provide, the use of the carrier’s logo does not absolve the owner-operator from paying its own expenses or indemnifying the carrier from public liability and property damage claims. Again, the notion that these factors establish “control” is demonstrably contrary to industry custom and practice.

expensive ZEV truck so long as they are “dispatched” by a broker that “dispatches ... 50 or more vehicles.”⁵ Accordingly, the regulations are broad enough to include virtually every small trucking business in the country—the people who constitute the core majority of OOIDA’s membership—simply because they conduct business with a large \$50 million carrier or broker.⁶

Furthermore, so there is no misapprehension, independent truck owner-operators who engage in business with large carriers and brokers remain *solely* responsible for the following: (1) buying and financing their own trucks and equipment; (2) buying fuel for their trucks; (3) buying public liability and personal property casualty insurance; (4) paying truck taxes; (5) buying truck permits; (6) paying for tolls; (7) complying with state and federal operating and safety regulations; (8) paying their own operating and personnel costs; and (9) assuming the risk of the success or failure of their businesses. The carriers and brokers with whom they arrange for transportation of cargo assume *none* of these expenses or risks. Accordingly, CARB’s inclusion of owner-operators in its ACF, *i.e.*, truckers under the “control” of large carriers and brokers, should be revised to exclude independent owner-operators who do not *themselves* own 50 trucks or have revenues exceeding \$50 million.

The inclusion of independent owner operators in the ACF definitions is also incompatible with the comprehensive body of federal statutory and regulatory provisions specifically designed to protect the independent owner-operator business model. First, lease agreements between carriers and owner-operators are strictly governed by federal statute under 49 U.S.C. § 14102(a). The federal government requires all motor carriers to engage owner-operators through a written lease agreement, as provided in 49 C.F.R. Part 376, commonly known as the federal “Truth-in-Leasing regulations.”⁷ These regulations not only require a written lease contract, but also specify mandatory terms to be included in any equipment lease agreement between carriers and owner-operators.⁸ In addition to specifying express compensation terms for owner-operators, in the interest of public safety, the regulations mandate that owner-operators operate exclusively under a carrier’s USDOT license and that the owner-operator be insured by the carrier (although the owner-operator must pay for that insurance). These requirements promote the federal government’s interest in maintaining public safety on America’s roadways by ensuring that all trucks are covered by adequate insurance and by facilitating the collection of safety data for carriers.⁹

⁵ Section 95692(a)(4).

⁶ As an illustration, certain large carriers do not “own” any trucks. Rather, their fleets are comprised of trucks owned by independent owner operators who each separately lease their trucks to the carrier. Thus, under the proposed ACF regulations, if the carrier’s fleet has 50 trucks which are independently owned by 50 different owner-operators, each owner-operator would be required to purchase a ZEV truck. *The \$50 million carrier would not be required to spend a dime!*

⁷ *Owner-Operator Indep. Drivers Ass’n v. Swift Transp. Co.*, 367 F.3d 1108, 1110 (9th Cir. 2004); *In re Arctic Express, Inc.*, 636 F.3d 781, 796 (6th Cir. 2011) (noting ICC promulgation of initial Truth-in-Leasing regulations in 1979).

⁸ *See, e.g.*, 49 C.F.R. §§ 376.11, 376.12, 382.601.

⁹ *See generally* Jessica Goldstein, *The Lease and Interchange of Vehicles in the Motor Carrier Industry*,

In sum, Congress has determined that the relationship between owner-operators and carriers is separate and independent. Any effort by CARB to interfere with these federal prerogatives by disregarding the separate identities of owner-operators and carriers in the ACF regulations is therefore contrary to, if not preempted by, federal law.

Based on the foregoing factors, OOIDA encourages CARB Staff to revise the currently drafted regulations to exclude small truck owner-operators from its definitions and applicability.

II. The Currently Proposed High Priority Fleet Requirements Should Exclude Interstate Truck Owners

OOIDA is also concerned that the proposed regulations are so broad as to require every truck owner-operator in the country to buy a new expensive ZEV merely because they intermittently haul cargo in or out of California. Section 95692(a) provides:

This regulation applies to any motor carrier, broker, ... or entity that hires affected fleets, or who operates or directs the operation of any vehicles subject to this regulation. [T]his regulation applies to any of the following entities that own, operate, or direct vehicles ...in California

(emphasis added). If CARB does not intend to extend the regulations to every truck owner in the country operating “in California” through an “affected” carrier, broker, or fleet, then it should revise the current definitions accordingly. On the other hand, if the proposed regulations are indeed intended to impose such burdens on interstate truck owners, then they are facially unconstitutional and prohibited by other pertinent federal statutes.¹⁰

A. The Commerce Clause Prohibits California from Burdening Interstate Commerce

“[A]lthough a state has power to regulate commercial matters of local concern, a state’s regulations violate the Commerce Clause if they are discriminatory in nature or impose an undue burden on interstate commerce.”¹¹ “[T]he purpose of the Commerce Clause is to protect the nation against economic Balkanization.”¹² If California can impose such burdensome standards for

32 Transp. L.J. 131 (Spring 2005).

¹⁰ OOIDA does not comment herein about, or concede the legality of, CARB’s regulation of persons or entities domiciled in California who are engaged exclusively in *intrastate* commerce.

¹¹ *Shamrock Farms Co. v. Veneman*, 146 F.3d 1177, 1179 (9th Cir. 1998) (citations and internal quotations omitted).

¹² *Pac. Nw. Venison Producers v. Smitch*, 20 F.3d 1008, 1015 (9th Cir. 1994).

entering its borders, “so can every other state, and there is no guarantee that the standards will be similar.”¹³

In the leading case of *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), the Supreme Court held that an Illinois law requiring trucks to have certain mudguards was unconstitutional under the Commerce Clause. The Illinois statute required curved mud guards, instead of straight mudflaps which were legal in at least 45 states. The Supreme Court held that the Illinois law was unconstitutional under the Commerce Clause, concluding:

A State which insists on a design out of line with the requirements of almost all the other States may sometimes place a great burden of delay and inconvenience on those interstate motor carriers entering or crossing its territory. Such a new safety device-out of line with the requirements of the other States-may be so compelling that the innovating State need not be the one to give way. But the present showing-balanced against the clear burden on commerce-is far too inconclusive to make this mudguard meet that test.

Id. at 529. Here, California’s imposition of a ZEV mandate on interstate truck owners and operators far exceeds the costs of the mudflap requirement in *Bibb*. Such a requirement would be completely out of step with the requirements of other states, impose many billions of dollars in additional costs on truckers seeking to freely engage in interstate commerce in California, and place historically unprecedented burdens on the interstate trucking industry.

Based on the foregoing precedents, the State of California cannot justify the excessive burdens a ZEV mandate would place on interstate commerce, even when balanced against asserted local benefits. Accordingly, OOIDA proposes that CARB expressly exclude interstate truck owners from the ACF regulations.

B. The FAAAA Preempts the Proposed Regulations

The Federal Aviation Administration Authorization Act of 1994 (“FAAAA”), 49 U.S.C. § 14501(c)(1), prohibits states from “enacting or enforcing a law, regulation, or other provision . . . related to a price, route, or service” of any carrier with respect to the transportation of property.¹⁴ The courts have consistently held that the FAAAA preempts states from interfering with the business relationships of owner-operators.¹⁵ Here, the proposed ACF regulations are clearly

¹³ *Union Pac. R.R. v. Cal. Pub. Utils. Comm’n*, 346 F.3d 851, 871 (9th Cir. 2003). In *Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.* (2015) 239 Cal. App. 4th 983, 998, the California Court of Appeal embraced these same principles in concluding that an action to enjoin defendants from selling in other states beverage containers bearing California redemption markings violated the Commerce Clause, concluding “[s]uch cross border commercial compulsion is precisely the type of extraterritorial effect that the Commerce clause forbids.”

¹⁴ *Id.* In *Rowe v. New Hampshire Motor Transp. Ass’n*, 552 U.S. 364, 367-68, 370-71, 378 (2008), the Supreme Court ruled that FAAAA preemption must be construed broadly.

¹⁵ *See, e.g., American Trucking Ass’n, Inc. v. City of Los Angeles*, 596 F.3d 602, 604-05 (9th Cir. 2010) (local regulation developed in the guise of promoting port environmental policies prohibiting use of

“related to a price, route, or service” of carriers with respect to the transportation of property, and are therefore preempted by the FAAAA.

- **Price** – While CARB has not yet presented significant data regarding the economic impact the regulations will have on shipping prices, there can be no question that if owner-operators throughout the country are required to buy new ZEV trucks, they will need to recover their overhead costs through higher shipping rates. These are *real* costs, and they *will* impact prices. There is also the distinct probability that many owner-operators will choose not to buy a ZEV truck and will no longer be available to carry cargo into, or out of, California. At that point, freight rates will skyrocket, and the nation’s supply chain will be drastically disrupted, causing severe price increases. Indeed, if the current Los Angeles container ship pileup provides any guidance, the ZEV regulations may cause the most crippling shipping and economic crisis the country has ever experienced.
- **Route** – CARB has also not presented any substantive data discussing the effect its proposed regulations will have on routes. Those impacts are nevertheless readily apparent. Presently, there is no interstate infrastructure available to recharge heavy duty truck batteries for the hundreds of thousands of trucks crisscrossing the country every day. It is anyone’s guess when that infrastructure may come on-line. In the meantime, the ACF regulations shift this quagmire to interstate truckers to figure out which routes they will need to take to keep their batteries charged along the way to California and back. The detrimental impact the ACF regulations will have on routes is therefore undeniable.
- **Service** – The ACF regulations seek to impose historically unprecedented requirements impacting trucking services on a nationwide basis. No state has ever attempted to require truckers in other states to replace their trucks with new and expensive trucks in order to cross its borders. The forced purchase of a ZEV truck constitutes only one component of the impact on service. One must also take into account the infrastructure costs necessary to support those trucks on an interstate basis. Again, CARB has not addressed or offered solutions to these problems. And, again, the impact such a regulatory regime would have on trucking services cannot be denied.

Based on the foregoing factors, CARB is urged to categorically exclude interstate truck owners from the proposed ACF Regulations

C. OOIDA’s Proposed Exclusions to the ZEV Regulations for Interstate Truck Owners

In order to avoid the legal and practical problems presented by the current version of the ACF regulations, OOIDA suggests that CARB include the following provision, or a provision to similar effect:

independent contractor drivers at port was preempted); *Cal. Trucking Ass’n v. Su*, 903 F.3d 953, 964 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1331 (2019), observed that it was an “obvious proposition that an ‘all or nothing’ rule requiring services to be performed by certain types of employee drivers and motivated by a State’s own efficiency and environmental goals was likely preempted.”).

These regulations do not apply to any vehicle purchased for use and used in interstate or foreign commerce prior to its entry into this State, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

There is ample precedent under California law for such an interstate exemption. For example, 18 CCR § 1620(b)(2)(B) provides:

Interstate and Foreign Commerce.

In General. Use tax does not apply to the use of property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

Again, OOIDA would welcome discussions with CARB Staff to discuss modification of the currently proposed definitions in order to address the issues we have set forth above.

III. The Regulations Are Not Feasible

Even if the proposed ACF regulations could pass constitutional muster, in the final analysis, they are just not feasible—and certainly not on a nationwide basis. In this regard, CARB must adhere to the Governor’s Executive Order N-79-20 stating that “[i]t shall be a further goal ... that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations *where feasible*.”(emphasis added).¹⁶ Based upon the currently available data, and as many stakeholders have expressed at the workshops to date, the ACF regulations are hardly feasible in California, even considering its progressive efforts to develop infrastructure necessary to support a ZEV system within its own borders. In contrast, the other states have not even begun to develop any significant infrastructure, except perhaps for occasional electrical plug-in chargers for passenger cars at grocery stores, airports, and parking lots. But there is no infrastructure at all on a scale necessary to recharge heavy duty commercial trucks on an interstate basis. Such recharging stations would each need to have sufficient electrical power and apparatus to simultaneously recharge numerous heavy-duty trucks on an expeditious and continuous basis. As one industry product manager observed:

[I]f there were 10 electric heavy-duty trucks, all charging at 1 MW, that’s 10 MW—about the same as a semiconductor plant. So that’s kind of the scale that we’re looking at—when something that used to show up on our grid as a few hundred kilowatts, a truck stop, says, ‘Hey we’re gonna be installing two megawatt chargers,’ now that truck stop looks like a semiconductor plant. That means that the grid has to grow in different ways that might not be part of the plan yet. The

¹⁶ The Governor’s Order is clearly aspirational, and CARB is not compelled to immediately promulgate every regulation necessary to carry out these objectives by 2045. It is perfectly free to take incremental steps as technology and infrastructure continues to be developed, and feasibility can be realistically ascertained.

grid to support that demand might be in industrial parks, not at a fueling station next to the highway.¹⁷

Based on these formidable demands, and the lack of infrastructure necessary to support them, the ACF regulations are not feasible.

In addition, the OOIDA Foundation, a not-for-profit research organization,¹⁸ has gathered the following data demonstrating that it is neither logistically nor economically feasible to impose a zero-emission requirement for every interstate truck in the country in order to conduct business in California.

- The zero-emission mandate would (1) force small-business interstate owner-operators to purchase entirely new ZEV vehicles, adding over \$100,000 per truck; (2) significantly lower the value of their non-ZEV vehicles; and (3) increase interstate trucking costs by billions of dollars.
- For example, a typical 2021 Class 8 diesel truck with sleeper averages approximately \$150,000-160,000.¹⁹ In contrast, early estimates for a comparable ZEV truck (if available) range between \$250,000 – 300,000 – or nearly *double* the cost of a non-ZEV truck...
- At present, there are no actual costs known for class 8 ZEV trucks comparable to those that OOIDA's members typically use and own,²⁰ because they are not yet being manufactured to any significant degree. Accordingly, imposing such a requirement on interstate owner-operators should not even be considered until their actual market costs are established.
- OOIDA's members collectively own and operate more than 240,000 individual heavy-duty trucks. Accordingly, the estimated aggregate cost to replace those trucks with ZEV trucks (at \$250,000-300,000 per vehicle), could approach \$72 billion.²¹

¹⁷ https://www.greencarreports.com/news/1132019_first-charging-station-electric-semis-megawatt-fast-charging

¹⁸ The OOIDA Foundation, Inc. is a 501 (c) (3) Non-Profit Corporation, incorporated on March 28, 1991. The purpose for which the Corporation is organized are to fund and sponsor research concerning economic and safety issues affecting the motor carrier industry. See <https://www.ooida.com/foundation/>

¹⁹ OOIDA Claims Department sourcing TruckPaper Inc.

²⁰ 89% of OOIDA owner-operators drive class 8 trucks. See 2020 Owner-Operator Survey, OOIDA Foundation 2020.

²¹ The State of California could, of course, ameliorate this impact by subsidizing these costs.

- Requiring interstate truckers to purchase a ZEV truck would also require them to sell their non-ZEV trucks because they cannot afford to purchase or finance multiple trucks. This may also cause an interference with financing contracts for diesel trucks where the owner needs to back out of the contract in order to buy a ZEV.
- Mandating the replacement of non-ZEV trucks will lead to a drastic loss in resale value of prohibited trucks. For example, while the value of a traditional diesel truck normally remains high due to its long engine life, the resale value of such trucks, particularly in neighboring states like Arizona, Nevada, Utah, Colorado, Oregon, and Washington will plummet because the new purchaser *also* could not operate the truck in California.
- A truck owner relies heavily on the life expectancy of a diesel truck. For instance, Paccar says its 12.9-liter MX diesel has a B10 rating of 1 million miles. This engine standard implies that 90% of those engines will make 1 million miles before they will need rebuilding (10% will not). Detroit's Diesel says its DD13's B50 rating is 1 million miles with 50% making the 1 million marks without rebuilding. Thus, a requirement that truck owners prematurely replace their non-ZEV trucks would undermine their investments, savings, business models, and contractual commitments.
- CARB has not published any data regarding the availability of an interstate electrical infrastructure system sufficient to support ZEV trucking demands in *all* states. Although CARB has evaluated the cost/benefit impact based on its own ZEV infrastructure, *e.g.*, charging stations, CARB has not revealed any corresponding findings regarding the infrastructure available to interstate truckers in other states that a trucker must traverse in delivering cargo, or deadheading, to and from California.
- Data regarding the availability of recharging stations is demonstrably uneven. One-third of those stations are located in one state: California, with 22,620 stations, according to a recent study by Pew Trust. Other states have few, bordering on none. North Dakota has 36 public chargers, Alaska just 26.²²
- Currently, UPS predicts that it will take about eight hours to fully charge a tractor. While that may work fine for UPS it could easily put an owner-operator out of business just waiting to be fully charged and undoubtedly waiting while others charge. Although some fast chargers are available, the definition of a fast charge varies with each type of vehicle. And using fast chargers regularly, which would be

²² A recent study published in *Nature Energy* by a research team from the University of California at Davis found that about 1 in 5 EV owners—20 percent of plug-in hybrid vehicle owners and 18 percent of pure battery-electric vehicle owners—eventually switched back to gas-powered vehicles. The top reason cited was “dissatisfaction with the convenience of charging.”

the case for most owner-operators, accelerates deterioration of the battery life, as fast charges produce much more heat while charging.

- The most significant maintenance cost in a ZEV truck is the replacement of the batteries which are predicted to last 5 years or less at present. Trucks based in states with extreme cold temperatures will likely require replacement batteries much sooner as cold temperatures adversely affect battery life.
- Wedbush Securities has estimated that at least \$60 billion will be needed to build 500,000 chargers by the end of 2030. Another analysis by industry consultant AlixPartners said \$50 billion would be needed to grow the US charging network to meet the demand within the next decade. That means that at least \$35 billion more is needed, either from private investments or state and local government matching funds, to meet that goal. CARB should await further developments on these crucial economic obstacles before considering an interstate ZEV mandate.
- CARB should await data regarding what the cost of electricity will be after utility companies add surcharges and cost of upgrades. Demand charges from utility companies tend to dominate charging companies' operating costs, further complicating the business case for building more charging stations. The total cost of electricity is higher based on the level of charging they provide. These calculations need to be rethought if the government wants to incentivize the EV charging industry.
- Installing EV chargers can be expensive, depending on the level of charging being offered. The higher the level, the quicker the charge and the more expensive it is to install. A public Level 2 charger might cost \$2,000 out of the box, but a DC fast charger of 150kW or more can cost between \$100,000 and \$250,000.
- The federal government could intervene in making those costs cheaper, but it won't be easy. That would require sitting down with utility companies and regulatory commissions in all 50 states, as well as the private EV charging companies, to bring down the capital investments for charging stations through "make ready" programs. These are programs in which public utilities and local governments identify sites that are intended for EV charging and allow companies to submit bids for installation. There is no federal "make ready" program, though, and only a few states employ this method of fast-tracking EV charger installation. Again, CARB should await data on the foregoing before considering an interstate ZEV mandate.
- Another complicating factor is the fact that charging stations are often dependent on the vehicle manufacturers' design. Tesla chargers work for Tesla but not on VWs or Chevrolets and Fords. CARB and EPA must also deal with manufacturers' proprietary information in surmounting these obstacles.
- Battery powered vehicles are heavier than diesel powered vehicles. The new Ford truck that is an EV weighs 150-200 lbs. more than the gas/diesel powered version. In a large truck that may be upwards of several hundred pounds to over a thousand

pounds. Tesla and others talk about GVW as being the same but that is not what is important. The gross vehicle tare weight (GVTW) is what is important.

- With the shortage of parking and the fact that recharging stations might be located primarily on the major interstates - suburban, rural, and arterial roads, serviced primarily by small carriers, will be adversely affected. Routes will also be affected as truckers will be forced to route themselves close to recharging stations. This will lead to added congestion along these corridors and more difficulty finding parking.
- At the present time each OEM of EVs has its own proprietary charging applications and devices so that you can only recharge if you own one of their vehicles. This must be addressed as manufacturers consider this as proprietary information.
- CARB should defer consideration of any interstate ZEV mandate pending development of safety data, including fire and operational hazards in operating HDV's on long-haul trucking routes.

IV. CARB Has Not Demonstrated That It Can Develop a Standardized Regulatory Impact Assessment Supporting the ACF Regulations

To date, CARB has not published any facts or data regarding the extraordinary economic impact the ACF regulations will have upon not only the California economy, but on the national economy as well. CARB is obligated to produce such data in the Standardized Regulatory Impact Assessment (SRIA) required by CCR tit. 1 § 2002, including, *e.g.*, “an identification of all costs and benefits due to the proposed regulatory change” as well as the “identification of each regulatory alternative for addressing the stated need for the proposed regulation.” Rather, CARB’s “Draft Advanced Clean Fleets Total Cost of Ownership Discussion Document” focuses exclusively on assessments of infrastructure, operating costs, and duty cycles within California. It contains no impact analysis of these factors in the other 49 states affected by the proposed regulations. Even so, the analysis it does provide is cursory and conclusory.²³

Moreover, CARB has failed to address the impact the regulations will have on its own industries and citizens given that out-of-state truckers will be prohibited from hauling cargo *into* California which its own businesses and citizens need to support industries ranging from manufacturing, agriculture, construction, petroleum, and electronics, on down to equipment needed to fight forest fires. At the same time, California businesses will be further harmed because interstate truckers will not be available to haul California products *out of* California to the rest of the country, including for example, the thousands of containers stacked on the flotilla of cargo ships currently anchored off the California coast waiting to be off-loaded onto trucks operated by the nation’s interstate owner-operators.

²³ When pressed on the generalities in the current TCO documents during a workshop, one CARB staffer stated that costs would be greater at the “front end” but should decrease over the course of time. This is hardly sufficient to provide stakeholders with a clear picture of the costs they may face under the current ACF regulations.

Perhaps the largest segment of the country's interstate commerce flows to, from, and through California. Thus, when California imposes a rule on trucks operating in California, that rule applies to tens of thousands of owner-operator truck drivers who reside outside of the State as well. For example, California is a leading consumer and producer of agricultural and manufacturing products, and significant portions of the country's imports and exports pass through California seaports.¹ However one chooses to measure economic significance, California's predominance is demonstrated by the followed data:

- 15% of United States gross domestic product;²⁴
- 23% of United States agriculture production;²⁵
- 15% of United States manufacturing;²⁶
- 40%-50% of United States import container trade;²⁷
- 2 busiest ports in North America;²⁸
- \$382 billion worth of goods (178 million tons) imported from other states and \$506 billion (90 million tons) exported to other states;²⁹
- \$179 billion worth of goods (37 million tons) imported internationally through California to the other 49 states;³⁰
- Trucks moved 82% (by weight) of all shipments originating in California;³¹

²⁴ Regional Data, Annual Gross Domestic Product (GDP) by State, SAGDP2N Gross Domestic Product by State (Percent of U.S.), Bureau of Economic Analysis, *available at* <https://apps.bea.gov/itable/iTable.cfm?ReqID=70&step=1#panel-1>.

²⁵ *Id.*; *see also* SER143-44 (Husing Decl.).

²⁶ *Id.*

²⁷ Draft California Freight Mobility Plan 2020, *supra* note 5, at 2.-4-5.

²⁸ U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges at 1, Federal Maritime Commission Bureau of Trade Analysis (July 2015), *available at* https://www.fmc.gov/wp-content/uploads/2019/04/PortForumReport_FINALwebAll.pdf; *see also* SER144-45 (Husing Decl.) (explaining that the ports of Los Angeles and Long Beach handled 35.9% of all U.S. imported containerized cargo in 2017).

²⁹ Draft California Freight Mobility Plan 2020, *supra* note 5, at 4.B.-8-10.

³⁰ *Id.* at 4.B.-33.

³¹ California, Bureau of Transp. Statistics, U.S. Dep't of Transp., *available at* https://www.bts.gov/archive/publications/commodity_flow_survey/2012/state_summaries/state_tables/ca

- Trucks carried 12 million tons of goods through California for the international market.
- Trucks carried 788 million tons of goods intrastate.³²

In sum, because many motor carriers across the United States rely upon cargo going into and out of California, and because the ACF regulations currently extend to every trucker in the country doing business in California, the regulations will have far-reaching and potentially cataclysmic consequences on the California and national economy overall. Based on these clearly foreseeable probabilities, they cannot be labeled as unintended or collateral consequences. CARB must address and solve these problems in its SRIA.

V. At Minimum, CARB Should Defer Any Attempt to Include Interstate Trucks in the ACF Regulations, or Otherwise Allow Reasonable Exemptions for Interstate Truck Owners

Given the legal and practical obstacles outlined above, OOIDA proposes that CARB should defer consideration of the applicability of the ACF regulations, at least as to interstate truck owners and operators of Heavy-Duty Vehicles (Classes 7-8, GVWR 26,001 lbs. or higher) pending further development of technology, infrastructure, and data regarding cost, feasibility, and safety of any such mandates.

Should CARB decide instead to press forward, and without waiving its other objections, OOIDA reserves the right to request additional exemptions, including but not limited to:

- (1) that CARB expressly exempt interstate truck owners and operators from compliance with any ZEV mandate for any HDV purchased prior to 2045; and/or,
- (2) that CARB promulgate an exemption for any interstate truck owner or operator of an HDV that will be operated fewer than 7,500 miles in California in any compliance year.³³

(last visit on June 6, 2021); *see also* SER143 (Husing Decl.) (explaining that California leads the nation in total value of all commodities exported by truck).

³² Draft California Freight Mobility Plan 2020, *supra* note 5, at 4.B.-14.

³³ *See, e.g.*, 13 CCR § 2025 (d)(41) (“Low Use Exemption”)

CONCLUSION

OOIDA remains ready to work with CARB in developing its ACF regulations so that interstate trucking is not unduly burdened, and the motor carrier industry remains a safe, robust, and reliable mode of transportation for our country and national economy.

Thank you for your consideration of OOIDA's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Spencer", with a long horizontal flourish extending to the right.

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.