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California
Cotton
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ASSOCIATION
of WINEGRAPE
GROWERS


CNCDA
California New Car Dealers Association


CFCA
CALIFORNIA
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CONVENIENCE
ALLIANCE


COASTAL
ENERGY ALLIANCE


EST. 1946
FARWEST
EQUIPMENT DEALERS ASSOCIATION


CICC
Chemical Industry Council of California


Representing the Automotive Parts Industry
CAWA
EST. 1955


Kern County
Farm Bureau


Clean Energy


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COMMERCIAL REAL ESTATE
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ASSOCIATION

WESTERN GROWERS
Fresh produce from our families to yours

WAPA
WESTERN AGRICULTURAL PROCESSORS
ASSOCIATION

WSPA

WPHA
Western Plant Health Association

December 9, 2019

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Via Electronic Submittal

SUBJECT: COMMENTS ON THE PROPOSED ADVANCED CLEAN TRUCKS REGULATION—LARGE ENTITY AND FLEET REPORTING REQUIREMENT

The California Chamber of Commerce is the largest broad-based business organization in the state of California, representing 14,000 companies, both small and large. The 44 additional organizations who are aggregating their comments in this letter represent thousands of additional businesses, employing millions of Californians. This letter is in addition to the general concerns outlined in our November 27, 2019 letter and in conversations with CARB staff and leadership. We write to express concern over the Advanced Clean Truck rulemaking, including the Large Entity Reporting Requirement (LER) and subsequent plans for mandatory purchasing.

We do not object to the collection of data. However, CARB estimates that the LER alone will cost regulated businesses from $13.75 to $22 Million to comply.[1] In order to be meaningful, and to achieve CARB's goal of identifying trends to support future implementation of zero emission vehicles, the data must actually reflect real life businesses conditions. We appreciate the time staff has spent with us trying to make the rule workable and to reduce costs, including a commitment to work during a subsequent 15 day comment period to 1) narrow the time for data collection to one week; 2) more clearly define how businesses should choose that "representative" or "typical" week; and 3) to work through other vague terms in the regulation to ensure it is applied consistently and that the business community can adequately ensure that its responses both meet CARB's needs and provide clarity so that businesses can ensure they are in compliance. As noted in meetings, concerns with the rulemaking, and subsequent plans for mandated purchases, remain.

Our overarching comments reflect the reality of how businesses arrange for service contracts. In most cases, businesses contract for services, and these contracts do not dictate transportation means or methods. Sometimes services occur in the middle of the night, or when businesses have no employees present. Entities contract for services, and, in the large majority of cases, have no control over HOW these services are provided or information on which types of vehicles are used. In most cases, the answers to the questions may be "unknown," resulting in a lack of usable data.

As currently drafted, the rule instructs entities to "make good faith effort" or "use their best judgment"[2] to fill in the gaps. The rule remains subject to general civil penalties of up to $37,500 per day per violation, and does not contain any direction on how CARB will evaluate such subjective decision making. These fundamental flaws, if not corrected, will result in an incredibly burdensome reporting regulation that will result in non-verifiable and scattered data. Such a rule would not meet CARB's needs, and it would place the regulated community in an untenable position of not knowing if their answers are sufficient

[1] It is likely that these numbers are significantly underestimated. See fn. 5, infra.
[2] See Initial Statement of Reasons, at page IV-41.

Some assumptions appear to have been made in the drafting of the regulation. For the vast majority of entities, especially those without vehicles or those sought to be regulated by CARB for the first time, there are no tracking systems or procedures that would aggregate data on number of vehicles or deliveries to their facilities. Companies will be required to develop and institute tracking systems, as well as develop and institute record retention policies. CARB must recognize that these are more complex, and thus expensive endeavors, much more than the $200-$1,270 per entity estimated by staff. Moreover, the rule's compliance period begins January 1, 2020. Staff's timeline indicates the rule will be finalized in early 2020. This means businesses will have, at best a few weeks and at worst zero time to implement these procedures before the January 1, 2020 compliance period begins. Fleets also face timing issues. To determine end of year odometer readings, it must first take beginning of year odometer readings. We appreciate staff's willingness to work with us during a 15-day comment period to continue to fix the rule to address timing issues.

We do strongly support CARB's willingness to study this issue more closely and are willing to work with staff to obtain the best data. However, we remain concerned about the ultimate goals of the advanced clean truck regulation. The rule's timeline and feasibility studies appear to be based upon situations that may not work in the real world. It seems illogical to mandate supply and demand of vehicles that our companies may not be able to use, on the hope that the technology will catch up during the short implementation period. For example, agricultural pickup trucks may not have access to charging infrastructure, and the batteries used in those trucks to support a feasibility determination may not support the payload and daily activities for which those trucks are typically purchased. While CARB staff has taken an important step in the right direction by recommending delaying the implementation of the rule for these pickups, the rule's production timeline is still incredibly ambitious in light of the current technology. Further, it seems uncertain whether the legislature's grant of statutory authority to CARB would include the ability to impose a regulatory purchase requirement on businesses that are indirect sources of emissions. Many of the businesses subject to this data gathering exercise do not own vehicles, do not control vehicles, and have never before been the subject of CARB regulation. We believe such an extension of regulatory power, if the state deems it appropriate, should be granted by the legislature, and not imposed through the regulatory process.

Finally, it is important to remember that many of our member companies are already heavily investing in zero-emission vehicles on a *voluntary basis*. This fact was pointed out in letters from environmental groups, such as the joint letter by EarthJustice, Union of Concerned Scientists, and Sierra Club California submitted in this docket,[3] and some have been suggesting that transportation emissions are already moving in a downward trajectory. Rather than demonstrating the need for more mandates, this voluntary adoption significantly undermines the necessity of such ambitious timeline, and for a supply and demand mandate, which will only force up the costs of equipment. These voluntary investments further demonstrate that the benefits of imposing mandatory reporting and subsequent purchase requirements upon 11,000 businesses are far outweighed by the costs of regulation.

Mandating additional regulatory burdens on top of these investments has the effect of dis-incentivizing the voluntary investments our member companies are making that are working to help California achieve its goals (1) faster and (2) cheaper. To that end, we recommend bifurcating the LER from the manufacturing portion of the rule, engaging with stakeholders to develop a plan to collect usable, useful data that will both reduce the regulatory burden and position CARB to support future regulations with valid, useful data that reflects the reality of on-the-ground contracting with service providers and

[3] See EarthJustice et al, Comments to Advanced Clean Trucks Regulation dated October 15, 2019 at pp. 5-8 for a listing of investments made by member companies. These entities suggest that it is necessary to make the rule stronger because the private sector is outpacing the targets. To the contrary, private sector voluntary investments demonstrate why a mandate is less necessary.

ensuring that any manufacturer mandate and deadlines reflect the reality of how these vehicles are used by our coalitions' members.

A. The Rule Lacks Clarity and Little Information is Provided on Why This Rule Is Necessary to Meet CARB's Stated Goals

We appreciate CARB staff's agreements to work on several issues that will make the rule a bit more workable. As set forth below, as currently drafted, the Large Entity Reporting (LRE) portion of the rule remains unclear, vague, and hard to manage. Given the severe civil penalties associated with violations, and the plan to use this data to support future rule, these issues must be resolved prior to finalization.

1. § 2012(b) Scope and Applicability

    - The regulation limits applicability to only those facilities that are "operated" by the reporting entity. Operation has many and broad definitions in the law. Does CARB mean an entity that is responsible for contracting with delivery services for the facility that it owns or leases? Is there another business structure that CARB is intended to get at here? Please revise the regulation to cite to a specific definition of operate so that entities can determine whether or not this regulation will apply.

    - Many businesses subject to the rule may have dozens of diffferent types of facilities, some with overlapping characteristics, but with significant differences in other aspects of operation. CARB should provide additional clarification in the rule on what it considers a "typical" or "representative" facility.

    - The definition of "broker" at § 2012(d)(2) as any entity "arranges or offers to arrange for the transportation of property by an authorized motor carrier" can be read to encompass anyone who orders delivery. We understand from conversations with staff that the intent is to cover third parties who are acting on behalf of an entity. Because this definition is not modified by § 2012(b)(1), without this revision, this category can be read to apply to thousands of additional businesses that order delivery services more than 100 times a year. Please revise this definition to reflect the intended target.

    - What is the regulatory basis for use of a $50 M Gross US-wide Revenue Requirement? This definition will likely capture many entities with very little presence in California.

    - What is the basis for the use of 100 vehicle requirement?

    - Overall, the only "necessity" stated by CARB is that "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] Given the confusion, vagueness, and likelihood of receipt of data that is not useful or reflective of real business conditions, additional information should be provided to specify why the regulation is necessary to achieve CARB's stated goal.

2. §2012(c) Exemptions

    - Emergency Vehicles designed to respond during power outages cannot rely on all electric power. Please include an exemption for these vehicles.

[4] CARB Initial Statement of Reasons at II-7.

- CARB should consider an exemption for the manufacturer mandate for vehicles such as agricultural light duty trucks, which will likely face challenges with infrastructure.

3. §2012(d) Definitions

- §2012(d)(2). See discussion of "broker" definition above.
- §2012(d)(13)(B). Partnerships or sole proprietorships may still be large and include multiple facilities. Please revise definition to include "A general partner or the proprietor, respectively, *or their delegate or designee.*"
- §2012.2(a)(3) "Managed." What does CARB mean by "managed at the facility"? Is CARB referring to how the third party's contracts are managed? Does it mean how contracts are selected and implemented? Does it mean how contracts are overseen and by whom? Additional clarification in the language is needed so that regulated entities understand how to respond to this provision.
- §2012 (15). CARB uses the definition "subcontractor" and refers to work done on behalf of a contractor to fulfill the terms of the agreement the contractor has with its customers. In many cases, the facility itself will be the customer, and has no ability to obtain data on subcontractors. References to subcontractors of the regulated entity therefore make no sense. Revisions should be made throughout the rule to reflect this. Otherwise, answers to almost all of the questions will be "does not apply."
- § 2012 (d)((18), (20)(A), §2012.2(a)(1)(D), (E), (I). This rule concerns zero-emission vehicle requirements for medium and heavy-duty vehicles (*see* § 1963(a)-(b)). Why is the regulation asking about light duty passenger cars, SUVs, and minivans? Impacts on the light duty market were not evaluated by CARB in its economic analysis or otherwise in connection with this rule. Please delete the provisions requiring entities to report on vehicles that do not qualify as medium or heavy duty. CARB should define the vehicles subject to the rulemaking consistent with §1963(c)(19) from the main section of the proposed rule.
- §2012.1(a)(2); §2012.2(a)(2), §2012.2(b), §2012(b), §2012.2(b), §2012.2(b)(2), §2012.3(b)(3). CARB must define "typically." Otherwise, responses will be wildly inconsistent and result in unusable data.

4. Facility-Specific Reporting

- §2012.2(a)(1)(A) suggests that CARB is intending to require that entities report on vehicles that are not used within the state of California. The regulation should be revised to reflect that an entity must only report on facilities and vehicles operated in the state of California.
- §2012.1(a)(2); §2012.3(b)(3). See above re defining "typical."
- §2012.3(b)(4). For vehicles acquired prior to the 2020 reporting year in this rule, entities will not have data upon which to base their responses. Entities should not be required to guess as to how long they will maintain their vehicles. CARB should delete this question.
- The rule fails to request data on use of low-emission vehicles, the adoption of which has historically been incentivized by the legislature and by CARB. Failing to account for the environmental benefits these vehicles achieve, and failing to provide credit to those who followed directions and upgraded their vehicles early wastes millions of taxpayer dollars, as well as the millions invested by companies who were doing their best to upgrade their

vehicles and lower emissions. Industry compliance with technology mandates has proven elusive in previous CARB rulemakings, particularly around zero emission vehicles. Performance standards that are technology neutral are generally more effective and encourage innovation. For example, § 2012.3 asks for information on refueling infrastructure for fleets, but not for other facilities subject to the rule. CARB should amend the rule to take care not to disturb the investments these companies have already made in non-battery electric vehicles, such a hydrogen, biodiesel, and low NOx vehicles, all of which are contributing to the downward trajectory in transportation emissions.

5. Timing of Reporting and Record Keeping

- §2012(e). CARB estimates that this rulemaking will be finalized in the late spring of 2020, after the spring CARB Board Meeting, yet the compliance and record retention period begins on January 1, 2020, and facilities are required to report information for their facilities for the entirety of 2020. For fleet requirement portions of the rule, starting odometer readings will have to be obtained on January 1, 2020 in order to estimate average mileage for 2020. Retroactive rulemaking is not in compliance with due process, and the compliance period cannot begin before the rule is in place. The rule should be revised to allow facilities at least 1 year after rulemaking is final to prepare for implementation of the rule.
- §2012(e)(3). The record retention section states that it applies to fleet owners or a "responsible person." This term is not defined by the regulation. Which entities are subject to record retention requirements? CARB should delete or define "responsible person."
- §2012(e). Regulated entities have no control over the records of subcontractors or subhaulers that contractors hire to perform services, and therefore will not be able to obtain or maintain these records.

6. Reporting

- §2012.1 (a) (13). The regulation asks entities to report "the number of subcontractors with whom you had a one year or longer contract to perform work in California to serve your customers." First, regulated entities that do not own fleets are typically the customer. They have no control over which subcontractors their service providers use. Second, the regulation is completely silent on what "work" is covered, or how all work performed for their customers is related to vehicle usage. Entities obtain the services of many, many companies in many different ways. Data obtained from this question will not be useful in informing vehicle trips or deliveries, and the burden of reporting is significantly outweighed by the requirement that entities report all contracts for any work with any entity, regardless of transportation emissions. Please revise to clarify what CARB is seeking and how it relates to transportation.
- Some vehicles may be assigned or stored at an employee's home. Please revise the rule to ensure that an employee's personal home address is not required to be disclosed.
- §2012.1(15)-(16) Please provide clarity on what CARB believes is a "written sustainability plan."
- The reporting fails to request information on existing fueling infrastructure, use of low or near zero emission vehicles, or other carbon reduction measures already implemented.

B. Costs to Regulated Entities and the State Are Substantial For Little Benefit

As currently drafted, CARB has vastly underestimated the costs associated with compliance with the record keeping and reporting aspects of the rule. Although CARB attempts to simplify reporting by allowing grouped or batched responses, grouping does not change the burden. Data and contracts are maintained in a centralized location or manner, especially for large industrial facilities with 24/7 operations with many points of entry onto the facility. Facilities will be required to develop and institute a tracking procedure to meet CARB's requirements, as well as institute and create a records retention policy to satisfy the terms of this rule.

Grouping also does not help because entities are still required to gather and retain all data, and are now required to also group them. Violations of the rule are subject to civil penalties of up to $37,500 per day, per violation. Given the penalties associated with violations, the vagueness of the rule, and the intended use of this data to support future rulemaking, it is unreasonable to assume that diligent businesses will not retain consultants and attorneys to (1) create and implement a system for collecting the data subject to this rule; (2) conduct a thorough evaluation of each question; (3) establish and create a record retention system to ensure no violations of the 4 year record retention requirement set forth in this rule; and, considering the vagueness of the rule (4) evaluate whether or not their "guesses" or "estimates" will be good enough to survive CARB scrutiny during this compliance period. CARB's suggestion of $1,270 for compliance costs is therefore significantly underestimated.[5] Member companies have estimated that it will take at least one full time employee several months just to determine and compile the data prior to reporting.

C. Conclusion

In light of the inherent flaws in the currently draft, we request that CARB bifurcate the LER into its own separate rulemaking and hold a series of workshops to determine the actual impact on the regulated community. At minimum, the flaws outlined above must be fixed prior to implementation, and businesses should be given at least 6 months to a year lead time to implement data collection procedures and record retention policies. Like the delay in implementation for pickup trucks based on on the ground conditions, CARB has shown a willingness to adjust timelines where appropriate. We believe all stakeholders would benefit from additional time to refine the LER. We are happy to discuss these concerns in more detail prior to the December 12 board meeting and look forward to continuing to work with staff to provide useful, meaningful data.

Thank you,

Leah Silverthorn, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

African-American Farmers of California
Agricultural Council of California
American Pistachio Growers
Auto Care Association
Brawley Chamber of Commerce

[5] To support this number, CARB cited to a 2008 evaluation of a fleet-specific reporting rule. The data requested is different, and much more broad across multiple industries. Information requested in the LER is not maintained or kept in the same manner by non-vehicle owning entities. This rule also requests substantially more information.

Building Owners and Managers Association of California
Calforests
California Association of Winegrape Growers
California Attractions and Parks Association
California Automotive Wholesalers Association – Representing the Automotive Parts Industry
California Business Properties Association
California Business Roundtable
California Cattlemen's Association
California Citrus Mutual
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Fuels and Convenience Alliance
California New Car Dealers Association
California Retailers Association
CARE - Californians for Affordable and Reliable Energy
Chemistry Industry Council of California
Clean Energy Fuels
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NAIOP of California
NAIOP Southern California Chapter
Nisei Farmers League
Orange County Business Council
Personal Insurance Federation of California
Trillium
Ventura County Taxpayers Association
West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western Plant Health Association
Western States Petroleum Association
Wine Institute

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