

Joshua T. Bledsoe
Direct Dial: 714.755.8049
joshua.bledsoe@lw.com

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

LATHAM & WATKINS LLP

April 27, 2020

SUBMITTED ELECTRONICALLY

California Air Resources Board
Attn: Cari Anderson
Transportation and Toxics Division
1001 I Street
Sacramento, CA 95814

FIRM / AFFILIATE OFFICES
Beijing Moscow
Boston Munich
Brussels New York
Century City Orange County
Chicago Paris
Dubai Riyadh
Düsseldorf San Diego
Frankfurt San Francisco
Hamburg Seoul
Hong Kong Shanghai
Houston Silicon Valley
London Singapore
Los Angeles Tokyo
Madrid Washington, D.C.
Milan

File No. 053552-0069

Re: Transport Refrigeration Unit Regulation, Draft Regulatory Language for Stakeholder Review

Dear Ms. Anderson:

Lineage Logistics (“Lineage”) is the world’s largest temperature-controlled logistics company handling the storage and distribution of significant portions of the nation’s food supply from harvest to local distribution centers. Lineage’s business operations include cold storage, packaging solutions, and transportation management for over 5,000 customers. Lineage owns and/or operates over two hundred warehouse facilities globally, including over 40 facilities within the State of California.

Lineage is at the forefront of efficiency and technological advances in the logistics industry, striving to operate its facilities as efficiently and sustainably as possible. The Lineage Applied Sciences team, consisting of scientists, mathematicians and engineers, designs and applies cutting-edge technology at Lineage facilities. Lineage looks forward to working with the California Air Resources Board (“CARB”) on promulgation and implementation of the Transport Refrigeration Unit (“TRU”) Regulation and seeks an open and constructive dialogue with CARB Staff.

As part of the TRU Regulation rulemaking, CARB released Draft Regulatory Language for stakeholder review on March 12, 2020, and requested comments by March 27, 2020. Due to the ongoing COVID-19 crisis, the comment deadline was extended to April 27, 2020. Lineage would like to thank CARB for extending the comment deadline due to these unusual and trying circumstances. As the logistics industry is designated as one of a handful of critical infrastructure sectors, Lineage has continued its work in the face of this global pandemic to

ensure our customers' products are safely and efficiently stored and distributed, contributing to the security of the world's food supply chain.

CARB Staff also posed several questions to stakeholders in the slide deck presented during its "Transport Refrigeration Unit Regulation Updated Concept" Teleconference on March 19, 2020. Lineage respectfully submits the following comments on the Draft Regulatory Language and responses to the questions posed by CARB Staff. Suggested edits to the Draft Regulatory Language are provided in Attachment A.

I. APPLICABLE FACILITY REQUIREMENTS

All of Lineage's facilities in California would meet the draft definition of "Applicable Facility," as they are refrigerated warehouses or distribution centers with a building size greater than 20,000 square feet. Lineage owns and/or operates these facilities and thus likely would be subject to the TRU Regulation as an Applicable Facility Owner and/or Applicable Facility Operator.

A. Burden of Identifying Non-Compliant TRUs

Lineage is concerned that certain provisions may impose an undue burden on its facilities to ensure compliance. For instance, Draft Regulatory Language Section 2478.10(a)(2) requires that "[o]n or after December 31, 2023, an Applicable Facility Owner or Applicable Facility Operator shall not permit a Trailer TRU or TRU Gen Set with a manufacture date after December 31, 2023, to operate in a manner that exceeds a SOTL of 15 minutes within an Applicable Facility Geofence." The Stationary Operating Time Limit ("SOTL") of 15 minutes prohibits a subject TRU from operating in a mode other than Zero-Emission Operation for more than 15 minutes when stationary within the Applicable Facility Geofence ("SOTL Requirement"). For the period of December 31, 2023 through December 30, 2027, the SOTL Requirement only applies to units manufactured after December 31, 2023 ("new units"). Per Draft Regulatory Language Section 2478.10(a)(4), the SOTL Requirement applies to all Trailer TRUs and TRU Gen Sets starting on December 31, 2027.

It is unclear from Draft Regulatory Language Section 2478.12 ("TRU Registration and Compliance Label Requirements") whether the TRU manufacture date will be easily ascertained from the compliance label, which is to be affixed to the driver side of the TRU chassis in clear view. If the manufacture date is not on the compliance label, it is not clear how an Applicable Facility Owner or Operator is to obtain this information at the time a TRU enters the Facility. Dozens to hundreds (depending on Facility throughput) of different vehicles may enter a Lineage facility each day, and it would be unduly burdensome for Facility personnel to research each TRU's manufacture date. Such a requirement likely would require Lineage to hire additional fulltime employees at each of its California facilities to inspect and track TRUs. Some Lineage facilities do not have a staffed entry gate at which these inspections could occur. Accordingly, those facilities also would be required to install additional infrastructure in order to verify TRUs' compliance as they enter the Facility.

Even with additional personnel onsite, the burden of checking every TRU's manufacture date upon entry and manually tracking the TRU while at the Facility is likely to inhibit Facility operations and increase the total time required for each truck visit. Lineage constantly is working to minimize truck loitering and the time required to inspect and/or investigate each TRU's manufacture date could be counterproductive and potentially lead to increased emissions.

Furthermore, since the SOTL Requirement only applies to new units in the period of December 31, 2023 through December 30, 2027, the Applicable Facility Owner or Operator must somehow track and monitor only those new units while present within the Applicable Facility Geofence to ensure they do not violate the SOTL Requirement while on-site.

Lineage understands and supports a phase-in of rule requirements, as not all TRUs can be subject to the SOTL Requirement immediately. However, in order to make it feasible for the Applicable Facility to remain in compliance and ensure that new units comply with the SOTL Requirement, the TRU manufacture date should be made available to Facility Owners and Operators via more robust Electronic Telematics System ("ETS") requirements, as further described below.

Alternatively, if CARB declines to leverage the ETS to allow more accurate and efficient tracking by Applicable Facility Owners and Operators, Lineage requests that the CARB compliance label prominently display the TRU manufacture date, so that the Facility Operators can discern when the TRU arrives on-site whether it is subject to the SOTL Requirement. Further, during the period of December 31, 2023 through December 30, 2027, the compliance label for new units (manufactured after December 31, 2023) should be unique as compared to units manufactured on or before December 31, 2023. The new unit compliance labels could be a different color, larger, or have some other distinctive characteristic. A goal in designing the labels should be to enable Applicable Facility personnel to easily visually identify which units are subject to the SOTL requirement while they are at the Facility.

B. Need for More Robust ETS Requirements

Draft Regulatory Language Section 2478.11(e) specifies the ETS requirements under the TRU Regulation. ETS data could be extremely valuable in facilitating and ensuring compliance, not only because it allows CARB to track and audit TRU activity, but also because it could be used by Applicable Facility Operators in real-time to ensure they are able to comply with their own obligations under the TRU Regulation. As noted above, Applicable Facility Operators would be obligated to check the compliance status of TRUs as they enter on-site, and will be especially burdened by the need to track and monitor TRUs at the Facility to ensure they are in compliance with the SOTL Requirement.

These obligations could be streamlined and better enable the Applicable Facility Operators to ensure compliance if the necessary data was broadcast in real-time from the ETS itself and readable by the pertinent Applicable Facility. The TRU Owner already is required to submit information at the time of registration on the TRU and the engine,¹ and the ETS is

¹ Draft Regulatory Language Section 2478.12.

required to collect and transmit the TRU serial number.² Lineage requests that the TRU manufacture date be added to the list of required ETS data in Draft Regulatory Language Section 2478.11(e)(3), so that it is readily accessible and does not need to be separately investigated based on the TRU serial number. Further, if the ETS data is broadcast in a way that it can be accessed by Lineage as the vehicle enters the Facility, Lineage could quickly and efficiently check the TRU's compliance status.

Broadcasting the ETS data also would enable an Applicable Facility Operator to electronically monitor TRU compliance with the SOTL Requirement while the units are within the Applicable Facility Geofence. Lineage could in real-time see which TRUs are on-site that are subject to the requirements of Draft Regulatory Language Section 2478.10(a)(2) and (a)(4), and could monitor the run-time of the TRUs once stationary to ensure the 15-minute limit is not exceeded. Lineage's understanding of the ETS technology is that enabling such broadcasting is not only entirely feasible, but it could be achieved at only a marginal cost, likely less than \$10 per ETS unit.

C. Need for Guidance on Charging Infrastructure

Applicable Facilities would be required to make massive capital investments in electric infrastructure in order to comply with the TRU Regulation. The cost of this infrastructure will increase dramatically if there is not an identified standard for TRU Plugs in the TRU Regulation. Otherwise, an Applicable Facility Owner or Operator may be required to install more than one type of charging system to accommodate various types of TRUs that may visit the Facility. This lack of standardization leads to operational difficulties, such as having to predict the population of TRUs that require each type of charging system so that adequate charging capabilities are provided for each type and the Facility is able to comply with its obligations under the SOTL Requirement.

Lineage requests that CARB specify in the TRU Regulation a technical standard for TRU Plugs, so that Facility Owners or Operators may appropriately plan for the necessary capital expenditures and infrastructure to be installed. Such a standard would streamline Facility upgrades as well as Facility operations if/when the TRU Regulation phases-in, as all TRUs would be capable of using the same TRU Plugs. Moreover, a lack of standardization dissuades early action by Facility Owners or Operators to install TRU Plugs.

If a standard for TRU Plugs cannot be formulated and/or incorporated into the TRU Regulation, Lineage requests at a minimum that CARB specify a voltage requirement for the TRU Plugs (aka "future-proofing"). A voltage specification would allow Applicable Facilities to plan for the necessary electrical upgrades, since if the requisite voltage is known, the facility could install the majority of the backbone infrastructure with certainty even if they must delay procuring the TRU Plugs. Without guidance on this fundamental aspect of the charging infrastructure, future-proofing is unlikely to occur and Applicable Facilities likely will take a wait-and-see approach.

² Draft Regulatory Language Section 2478.11(e)(3)(I).

D. Liability for the Actions of Third Parties Off-Site

Draft Regulatory Language Section 2478.10(a)(5) states that “an Applicable Facility Owner, Applicable Facility Operator, TRU Owner, or TRU Operator shall not move or divert any Trailer TRU or TRU Gen Set to locations outside an Applicable Facility Geofence in order to avoid the SOTL Requirement.” This provision would establish that “evidence that a TRU is stationary within one mile of the facility boundary for more than 15 minutes, or is mobile within one mile of a facility boundary for more than 30 minutes, shall be considered prima facie evidence that the TRU has been moved or diverted in order to avoid the SOTL requirement.” This section does not, however, clearly state which of the listed parties is responsible for a violation of this provision and under what circumstances.

Draft Regulatory Language Section 2478.27(a)(1) would hold an Applicable Facility Owner and Facility Operator strictly liable for violations of Section 2478.10(a)(4), which applies to violations of the SOTL Requirement within the Applicable Facility Geofence. Draft Regulatory Language Section 2478.27(a)(2) would hold a TRU Owner or TRU Operator strictly liable for violations of Section 2478.10(a)(5), which is the above-noted provision relating to operation of the TRU off-site, within one mile of the Applicable Facility Geofence.

Applicable Facility Owners or Operators should not be liable for violations of the SOTL due to the actions of third parties at all, particularly where those third-party actions occur outside of the Applicable Facility. The construct contained in the existing Airborne Toxic Control Measure (“ATCM”)³ of “Facility Control” should be retained in the TRU Regulation. It is both unjust and infeasible to make Applicable Facility Owners or Operators responsible for the actions of other parties they do not and cannot control. Suggested language to revise Draft Regulatory Language Section 2478.10(a)(5) is provided in Attachment A.

If CARB indeed seeks to hold Applicable Facility Owners or Operators liable for actions of third parties, then CARB should provide its rationale for why and how a Facility Owner or Operator could be held liable for the actions of third parties not under their control and not within the Applicable Facility Geofence.

E. Liability for the Actions of Third Parties On-Site

In addition to the above requirement relating to violations of the SOTL off-site, Draft Regulatory Language Sections 2478.10(a)(2) and (a)(4) impose liability on Applicable Facility Owners and Operators for violations of the SOTL Requirement within the Applicable Facility Geofence. Draft Regulatory Language Section 2478.27(a)(1) further subjects Applicable Facility Owners and Operators to strict liability for violations of Section 2478.10(a)(4). This liability would appear to attach even when the Facility Owner or Operator has done everything in its power to comply with the requirements of the TRU Regulation and operate the Facility in accordance with its Compliance Plan. For instance, a Facility Operator who has fully implemented its Compliance Plan by the deadline and installed all necessary infrastructure may nevertheless be faced with a TRU that arrives at the facility several hours before its scheduled

³ Title 13, Cal. Code Regs. Section 2477 et seq.

appointment time. Should the Facility Operator tell the driver that he or she cannot enter the Facility because there is no available TRU Plug, thus risking that they have “moved or diverted” the TRU off-site in violation of Draft Regulatory Language Section 2478.10(a)(5), or does it allow the TRU to enter the site despite the lack of a TRU Plug, and risk violating Draft Regulatory Language Sections 2478.10(a)(2) or (a)(4)?

Lineage requests that the structure of the Draft Regulatory Language be altered, such that an Applicable Facility Owner or Operator is not liable for violations of the SOTL Requirement by a Trailer TRU or TRU Gen Set that they do not control, so long as the Applicable Facility is operating pursuant to the Compliance Plan submitted to CARB. This type of “Safe Harbor” for Applicable Facility Owners and Operators would create a reasonable relationship between the Applicable Facility’s obligations to plan for and implement Operational and Efficiency Strategies and install Zero-Emission Fueling Infrastructure necessary to ensure compliance with the TRU Regulation, and the limited means of control that the Facility has over third-party TRU Operators. Such a Safe Harbor structure may require more robust engagement by CARB on Compliance Plans, possibly including plan approvals. Lineage welcomes discussions with CARB on this proposal, which Lineage believes would be a more equitable distribution of liability.

F. Clarification of Liability in Draft Regulatory Language Section 2478.13(d)

Applicable Facility Owners may comply with the requirement of Reporting TRUs in either subsection 2478.13(d)(1) or (d)(2). Both sections for Reporting TRU compliance include the following provision: “An Applicable Facility Owner may be held liable for any Trailer TRU or TRU Gen Set that violates the SOTL.”⁴ This provision is not specific to the location of the SOTL violation, nor the date of manufacture of the TRU, both of which are relevant to assigning liability. The prohibitions on an Applicable Facility Owner permitting a Trailer TRU or TRU Gen Set from operating in exceedance of the SOTL Requirement in Draft Regulatory Language Section 2478.10(a)(2) apply to TRUs with a manufacture date after December 31, 2023, and for operation within the Applicable Facility Geofence. Draft Regulatory Language Section 2478.10(a)(4) applies to TRUs of any manufacture date within the Applicable Facility Geofence.

Lineage requests that the provisions relating to liability in Draft Regulatory Language Sections 2478.13(d)(1)(E) and 2478.13(d)(2)(C) be deleted, as they are unrelated to the subject matter of those sections (“Reporting TRUs”), and are duplicative of Draft Regulatory Language Sections 2478.10(a)(2), 2478.10(a)(4), and 2478.27(a)(1).

If the aforementioned subsections are not deleted, Lineage requests that they clarify: (1) on what date the liability begins; (2) that they only apply to TRUs with a manufacture date after December 31, 2023, until December 31, 2027 when they may apply to any TRU; and (3) that Applicable Facility Owners are only liable for a Trailer TRU or TRU Gen Set that violates the SOTL if that violation occurs within the Applicable Facility Geofence. Such suggested language is provided in Attachment A.

⁴ See Draft Regulatory Language Sections 2478.13(d)(1)(E), 2478.13(d)(2)(C).

G. Early Compliance Within 100 Feet of a Restricted Area

Lineage would like to bring to CARB's attention one area of the Draft Regulatory Language that could pose some practical difficulties for certain Applicable Facilities. Section 2478.10(a)(6) states that "[o]n or after December 31, 2023, an Applicable Facility Owner, Applicable Facility Operator, TRU Owner, or TRU Operator shall not operate or cause to be operated any Trailer TRU or TRU Gen Set in a manner that exceeds a SOTL of 15 minutes within 100 feet of a Restricted Area."⁵ This requirement applies to all Trailer TRUs and TRU Gen Sets, not just those manufactured after December 31, 2023. Thus, a large number of TRUs already in-use when this provision takes effect may not be capable of Zero-Emission Operation. Depending on a given Applicable Facility's configuration with respect to nearby Restricted Areas, it may not be feasible to physically locate older TRUs lacking a mode of Zero-Emission Operation more than 100 feet from Restricted Areas.

While Lineage understands and supports the desire to more rapidly protect populations in close proximity to Applicable Facilities, the overall Draft Regulatory Language appropriately recognizes the fact that there must be a connection between manufacture of TRUs capable of Zero-Emission Operation, and when Applicable Facility and TRU Owners and Operators must ensure that TRUs do not violate the SOTL Requirement. The TRU Regulation would require that on or after December 31, 2023, TRU manufacturers shall not manufacture for sale or use, and TRU Owners and Operators may not operate, in California a Trailer TRU unless it is capable of Zero-Emission Operation.⁶ There is no requirement that TRUs manufactured before December 31, 2023 must be capable of Zero-Emission Operation, yet as of that day Draft Regulatory Language Section 2478.10(a)(6) would require all Trailer TRUs and TRU Gen Sets operating within 100 feet of a Restricted Area to switch to Zero-Emission Operation after 15 minutes of becoming stationary.

An Applicable Facility has no control over which TRUs arrive at their facility, which is a matter wholly in the control of the truck owner or operator. It would not be physically or operationally feasible for an Applicable Facility to prevent a Trailer TRU or TRU Gen Set manufactured before December 31, 2023 from operating in a mode other than Zero-Emission Operation within 100 feet of a Restricted Area if: (1) the TRU is not capable of Zero-Emission Operation; and (2) it is not feasible to move the TRU in question more than 100 feet from the Restricted Area. Without control over how the TRUs are manufactured, which TRUs are sent to their facility, and limited by the physical configuration of their facility, compliance with Draft Regulatory Language Section 2478.10(a)(6) could be impossible for Applicable Facility Owners and Operators in some circumstances.

⁵ "Restricted Area" means any real property zoned for individual or multifamily housing units, schools, hotels, motels, hospitals, senior care facilities or child care facilities, that has one or more of such units on it.

⁶ Draft Regulatory Language Section 2478.9(a).

II. RESPONSES TO QUESTIONS POSED BY CARB STAFF IN MARCH 19, 2020 PRESENTATION

Staff's presentation for the March 19, 2020 Teleconference Meeting posed several questions to stakeholders relating to the preliminary cost analysis. Below are the CARB assumptions and questions, and Lineage's responses.

A. Assumption: Trailer TRUs will primarily use electric plug-in technology

1. Question: Have the costs related to plug-in infrastructure installation made you explore alternatives for regulatory compliance (e.g. onsite battery, fuel cell, cryogenic, etc.)?

Lineage Response: Lineage is unable to consider alternative measures from an engineering perspective without clear technical standards for TRU plug-in infrastructure.

2. Question: Would you consider alternative measures to limit TRU plug-ins during peak electricity demand hours?

Lineage Response: Lineage is unable to consider alternative measures from an engineering perspective without clear technical standards for TRU plug-in infrastructure.

B. Assumption: Current cost per plug at an applicable facility = \$12,300 (value of dock door and parking spot, including equipment, design, construction, and installation costs; assuming facility has adequate power and would not require upgrades)

1. Question: Does this cost seem accurate?

Lineage Response: Given the number of TRU units Lineage facilities interface with on a regular basis, facilities will require electrical upgrades in order to source sufficient power for operating these TRU units on top of the preexisting electrical demands of the facilities. Necessary upgrades will add considerable time and cost to infrastructure installation.

C. Assumption: Infrastructure would be installed at every dock door and an equal number of pedestal plugs in parking lots at refrigerated warehouses or distribution centers

1. Question: Would this assumption account for peak usage?

Lineage Response: Every Lineage facility is highly varied in dock design, yard layout, customer profile, and operational behavior. Additionally, many dock doors were originally installed to add flexibility, yet are rarely or never used in practice. There is inherent difficulty in making generalizable assumptions, since each facility is a highly specific case.

LATHAM & WATKINS^{LLP}

III. CONCLUSION

Lineage would like to thank the CARB for the opportunity to submit comments on the Draft Regulatory Language for the TRU Regulation. Lineage looks forward to continued collaboration with CARB on this rulemaking.

Best regards,

A handwritten signature in black ink that reads "Joshua T. Bledsoe". The signature is written in a cursive style with a long horizontal flourish at the end.

Joshua T. Bledsoe
Latham & Watkins LLP

cc: Dominic DiCarlo, Lineage Logistics (VP, Safety & Compliance)
Michael Daniels, Lineage Logistics (Senior Corporate Counsel)

Citation	Requested Action	Suggested Language
2478.12(c)	Ensure that the compliance label clearly identifies the TRU manufacture date, and at least for the period of December 31, 2023 through December 31, 2027, is differentiated in color, size, or other visually identifiable manner, between units manufactured before versus after December 31, 2023.	Not applicable.
2478.11(e)	Add a requirement that ETS data be broadcast in real-time from the ETS itself and readable by the pertinent Applicable Facility over the internet.	<u>The ETS data collected and transmitted at least once per minute pursuant to 2478.11(e)(3) shall be broadcast in real-time in a format that is readable by the Applicable Facility Owner or Applicable Facility Operator.</u>
2478.11(e)(3)	Add the TRU manufacture date to the list of required ETS data, so that it is readily accessible and does not need to be separately investigated based on the TRU serial number.	<u>(J) TRU manufacture date. Format: mm/dd/yyyy, where mm is month, dd is day of the month, and yyyy is the year.</u>
2478.10(a)(5)	Retain the existing ATCM’s concept of facility control and better delineate what actions would be violations of the SOTL requirement.	On or after December 31, 2023, an Applicable Facility Owner or Applicable Facility Operator <u>shall neither move or divert any Trailer TRU or TRU Gen Set under its control to locations outside an Applicable Facility Geofence, nor provide instruction to move or divert any Trailer TRU or TRU Gen Set not under its control, to locations outside an Applicable Facility Geofence in order to avoid the SOTL requirement. On or after December 31, 2023, a TRU Owner, or TRU Operator shall not move or divert any Trailer TRU or TRU Gen Set to locations outside an Applicable Facility Geofence in order to avoid the SOTL requirement. For purposes of this requirement, evidence that a TRU is stationary within one mile of a facility boundary for more than 15 minutes, or is mobile within one mile of a facility boundary for more than 30 minutes, shall be considered prima facie evidence that the TRU has been moved or diverted in order to avoid the SOTL requirement.</u>

Citation	Requested Action	Suggested Language
2478.13(d)(1)(E) 2478.13(d)(2)(C)	<p>Delete these subsections, as they do not relate to the rest of the section (“Reporting TRUs”), and are duplicative of other provisions in the rule.</p> <p>If these sections are not be deleted, Lineage requests they be clarified to remove any vagueness surrounding the precise circumstances when liability would be found, as in the suggested language provided here.</p>	<p><u>On or after December 31, 2023, an Applicable Facility Owner may be held liable for any Trailer TRU or TRU Gen Set with a manufacture date after December 31, 2023, that violates the an SOTL of 15 minutes within the Applicable Facility Geofence.</u></p> <p><u>On or after December 31, 2027, an Applicable Facility Owner may be held liable for any Trailer TRU or TRU Gen Set that violates the an SOTL of 15 minutes within the Applicable Facility Geofence.</u></p>