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Comments on May 2022 Draft Advanced Clean Fleet Regulations

Tesla appreciates the opportunity to submit these informal comments regarding the updated draft regulations issued by CARB staff in the Advanced Clean Fleets (ACF) Rulemaking. In early May of this year CARB issued revised materials including revised draft regulations covering High Priority and Federal Fleets, State and Local Government Fleets, Drayage Trucks and a 100% Zero Emission Vehicles (ZEVs) Sales requirement. In these informal comments we reiterate many of the issues we raised in our comments last year when the original set of draft ACF regulations were issued. Based on our review of the recently issued drafts, no changes were made to address the underlying concerns Tesla identified previously.

Tesla recommends the following changes to the latest draft of these regulations:

- The High Priority and Federal Fleets regulation should incorporate credit generation, banking and trading provisions to provide obligated entities additional compliance flexibility, as well as to promote early action and compliance beyond the floors set by the regulation.
- Near Zero Emission Vehicles should not be treated as equivalent to ZEVs for compliance purposes.
- The 100% sales mandate should be accelerated to 2035.

The High Priority and Federal Fleets regulation should incorporate credit generation, banking and trading provisions to provide obligated entities additional compliance flexibility, as well as to promote early action and compliance beyond the floors set by the regulation.

In updating the draft regulations applicable to High Priority and Federal Fleets, CARB staff included a new compliance pathway as an alternative to the milestone-based pathway that was initially proposed, and notably, greatly expanded the number of exemptions that covered fleets can invoke. While Tesla is not opposed to providing reasonable off-ramps for fleets that, for reasons outside of their control, would prevent them from meeting the ACF's compliance targets, the failure to incorporate compliance credit generation and trading provisions represents a significant missed opportunity to help ensure the overall ACF framework realizes the intended emissions reductions even in the face of some of the challenges that some fleets may face in transitioning to ZEVs.

An exemption, if granted, necessarily means that some amount of the deployment of ZEVs envisioned under the ACF will go unrealized for a given compliance period. However, if instead an entity can cover whatever deficit it faces that it is unable to directly address by deploying ZEV in its own fleet, by purchasing credits associated with another fleet's excess compliance, the overall regime will not see the same diminution of emissions benefits. It would seem far better from a policy standpoint to provide this brand of flexibility, with which ARB has substantial experience, as a first choice, rather than relying almost entirely on various exemptions that will necessarily and almost inevitably mean that the ACF framework will fall well short of its intended goals.

Tesla provided a detailed discussion of the benefits that credit generation and trading can provide in terms of encouraging early action, promoting compliance beyond regulatory minimums and reducing the overall costs of compliance in the formal comments we submitted last year. We also provided specific regulatory language through which the recommendation could be incorporated into the draft regulations while also ensuring that a crediting framework is mindful of the legitimate interests of disadvantaged communities in ensuring that covered fleets operating the most impactful vehicles can't abdicate their responsibility to deploy ZEVs. We incorporate those comments here by reference.[1]

Tesla wants to emphasize that we are not opposed to providing exemptions including those that staff has enumerated in the updated draft of the regulation, but we would argue that use of those off-ramps should be limited to those circumstances where compliance credits are not available. In other words, before any of the identified off-ramps can be invoked, covered fleets must demonstrate that compliance credits acquired from other entities are not available. This will ensure that demand for ZEVs that cannot be met through direct deployment into the fleet of a given entity is channeled to support ZEV deployment by other fleets where ZEVs are more feasible or available. This of course hinges on ARB incorporating a credit generation, banking and trading regime into the overall framework.

Near Zero Emission Vehicles should not be treated as equivalent to Zero Emission Vehicles for compliance purposes.

The draft regulation indicates that "NZEVs with a 2035 model year or older are counted the same as ZEVs for the purpose of complying with the requirements of sections 2015.1 and 2015.2." (Section 2015.e). Tesla strongly opposes this equivalent treatment. While not entirely unreasonable to allow an entity to deploy a NZEV as an alternative solution in the event that a full ZEV (or compliance credit per the discussion above) cannot be purchased, the notion that a NZEV would simply be treated as equivalent to a ZEV is wrongheaded. As the regime does not contemplate imposing any requirements or monitoring to ensure that entities that elect to purchase NZEVs operate those vehicles to maximize use of their all-electric range combined with the fact that the required all-electric range needed to be an eligible NZEV are quite low, allowing entities to utilize NZEVs in lieu of supporting pure ZEVs will dilute the emissions benefits of the ACF. It also sends the wrong signal to the market, essentially encouraging manufacturers to develop NZEV vehicles, rather than focusing on the pure ZEVs that are necessary to accelerate and fully realize the transition to zero emission vehicles and achieve the ultimate goal of dramatically reducing emissions associate with medium and heavy-duty vehicles.

Consistent with the discussion in the section above, the use of NZEVs should be limited to circumstances where an entity is unable to purchase a ZEV or a ZEV compliance credit. This further suggests a hierarchy of compliance where ZEVs (or compliance credits generated by ZEVs) are the default and expected means of compliance, followed by NZEVs if ZEVs or ZEV compliance credits are not available. Exemptions should only be granted in cases where these preferred compliance options are not available.

[1] "Comments on Draft Regulations and Cost Study Issued in the Advanced Clean Fleets Rulemaking"; submitted on October 27, 2021; available for download at https://www.arb.ca.gov/lists/com-attach/93-acf-comments-ws-UiYFZgR2AD8EYwVa.pdf

The deadline for meeting a 100% ZEV sales requirement should be moved to 2035.

Tesla reiterates the perspective we provided in the comments we submitted last year on this issue when the draft regulations were initially issued. In relevant part:

Tesla strongly supports ARB's efforts to establish a stringent sales requirement on manufacturers of MD and HD vehicles and applauds ARB staff for pushing this further by proposing to modify the Advanced Clean Truck regulation to include a 100% sales requirement. Given the gravity of the climate crisis including the fact that the impacts of climate change appear to be manifesting sooner and with greater severity than anyone has anticipated[2], coupled with ARB's cost study which shows that zero emission vehicles across the spectrum of MD and HD vehicles will be cost effective sometime between 2025 and 2030, Tesla believes there is a strong case for accelerating the 100% sales mandate to 2035 if not earlier. Such an acceleration can also help further address some of the concerns expressed by stakeholders that are subject to the ACF regulation that there may be insufficient supply to meet the demand for ZEVs that the ACF creates. This mandate would also provide the appropriate signal to manufacturers that they need to entirely shift to ZEVs and double down on current efforts. As indicated on CALSTART's Zero-Emission Technology Inventory, across vehicle categories there appears to be growing representation of incumbent and new manufacturers pursuing ZEVs, with an increasing number of models available or in the pipeline. However, given the scale of the transition that is required, it is reasonable for ARB to push for accelerated action to drive manufacturer product roadmaps more emphatically and quickly toward ZEVs.

Tesla thanks ARB staff for the work that has gone into this latest draft of the regulations and for the opportunity to provide feedback. We are disappointed that CARB staff has not incorporated any of the ideas we proposed in our earlier comments, in particular the continued absence of any credit generation, banking and trading provisions. Such provisions would dramatically increase the flexibility that entities have to meet their obligations under the regulations, encourage early action, promote ZEV deployment above regulatory minimums while at the same time helping ensure that the overarching emission reduction goals of the ACF are realized at least cost.

Sincerely,

/s/ Andy Schwartz
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[2] "The West is Burning, Climate Change is Making it Worse", Cameron Peters, Vox, July 25, 2021, https://www.vox.com/2021/7/25/22592004/wildfires-climate-change-reconciliation-bill; "Study: Northwest heat wave impossible without climate change", Seth Bornstein, OPB, July 7, 2021, https://www.opb.org/article/2021/07/07/study-northwest-heat-wave-impossible-without-climate-change/; Climate Change Indicators in the United States, US Environmental Protection Agency, https://www.epa.gov/climate-indicators; "Climate change indicators and impacts worsened in 2020", April 19, 2020, https://public.wmo.int/en/media/press-release/climate-change-indicators-and-impacts-worsened-2020;