



June 17, 2022

Advanced Clean Fleets  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814  
[zevfleet@arb.ca.gov](mailto:zevfleet@arb.ca.gov)

**Re: Comments – May 2, 2022 Version of the ‘Advanced Clean Fleets Regulation Proposed Draft Regulation Language – High Priority and Federal Fleet Requirements’**

Dear California Air Resources Board,

The California Construction and Industrial Materials Association (CalcIMA) appreciates the opportunity to provide comment regarding the May 2, 2022 version of California Air Resources Board’s (ARB) ‘Advanced Clean Fleets Regulation Proposed Draft Regulation Language – High Priority and Federal Fleet Requirements’ (Proposed ACF Requirements).

CalcIMA is the statewide voice of the construction and industrial materials industry. With over 500 local plants and facilities throughout the state, producing aggregate, concrete, cement, asphalt, industrial minerals, and precast construction products, our members produce the materials that build our state’s infrastructure, including public roads, rail, and water projects; homes, schools and hospitals; assist in growing crops and feeding livestock; and play a key role in manufacturing consumer products as well, including roofing, paint, low-energy light bulbs, and battery technology for electric cars and windmills. The continued availability of our members' materials is vital to California’s economy, as well as ensuring California meets its renewable energy, affordable housing, and infrastructure goals.

CalcIMA writes to express our concerns and recommendations regarding the Proposed ACF Requirements. We appreciate the time ARB staff spent meeting with us to discuss issues and answer our questions. We hope these comments help inform ARB’s decisions as you move to the formal rulemaking process. We have attempted to classify our comments into related segments.

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# Exceptions and Exemptions

As this is a black box, unknown technology rule for many fleets the construct of exemptions is critical to managing the unknowns. They will enable the protection of fleets, and therefore the economy, consumers, and workers. In addition, it will protect the environment as adapting to climate change is going to stretch budgets to the limit and wasted expenditures are damaging to successful adaptation. We believe the exemptions must have clear ministerial criteria that provides businesses and ARB quick analytical certainty of exemption applicability. This will ease administration for ARB and fleets.

## **NZEV and ZEV flexibility / Early Action Credit for Early Ultra-Low NOx:**

Early adopters are likely to pay more for the equipment than later adopters and are more likely to experience equipment deficiencies and costly operational impacts from those deficiencies. Their efforts will support further research and development needed to improve the equipment for later adopters. The alpha and beta testers of implementation warrant benefits from their leadership as do those who purchased lower NOx equipment voluntarily to create criteria pollution reductions early.

For these reasons, in order to provide equity to those impacted, CalCIMA is requesting ARB to include early action credits for all ZEV purchases with a 2035 model year or older as clarified below:

## **Suggested Amendment**

*“(e) NZEV and ZEV Flexibility. 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, and ZEVs with a 2035 model year or older are counted as double for the purpose of complying with the requirements of sections 2015.1 and 2015.2.”*

## **2015.1 and Alternative Compliance Requirements need to Enable Optional Exception Pathway for H2 Technology Fleets**

The general requirements and alternative compliance requirements outline compliance requirements related to ZEV equipment. It is indicated that BE vehicle applications will be more broadly available to fleets sooner than H2 applications, and that both types of applications encircle different attributes that may or may not satisfy a fleet’s needs on a case-by-case basis that may include, but are not limited to, down time for charging, load, mileage, infrastructure needs, etc. We would like to suggest ARB develop an alternative H2 compliance pathway for vehicles that project to transferring to H2. There is a great concern that being temporarily forced into the limitations of BE technology and double investment then being needed to transfer out to H2 will create a double technology transition cost for some fleets.

To the extent that H2 trucks are considered as an alternative for some vehicle uses and vehicles due to its higher suitability for long haul truck applications, can a fleet milestone model be adapted to create a pathway for fleets that commit to a more dedicated H2 fleet

when that technology becomes available? A best fit commitment to H2 implementation will also help inform those manufacturers and investors of future business availability. Fleet milestone adaption could be implemented in the form of an extension in compliance with the ZEV percent requirements. Objective mileage and other criteria could be developed, and with the data ARB has collected, you may already be able to see which vehicle uses may benefit from such an option.

### **Daily Mileage Exemption**

First thank you for including the concept of a daily mileage exemption, we would suggest several important changes to the structure to make it more manageable. Some criteria are inherently unworkable considering the unknown technology nature of this regulation, such as requiring a percentage of electric vehicles when such vehicles may not exist for any of your vehicles and uses. We also are not sure why ARB would limit this exemption to a subset of vehicles regulated by the rule. All vehicles subject to this rule need to be eligible for this exemption based on the benefit the vehicle was purchased to provide the business. That may be goods movement or, it may be to move and support people equipment and projects in remote locations.

We appreciate ARB includes both mileage and hours of service needs as ARB is not just regulating vehicles with a trade route but vehicles that operate in support of construction or service areas. In some cases, the vehicle must arrive on site and conduct work on site. It isn't just the miles travelled, it is also where the miles are travelled, and what, if any, work is performed at the destination. Especially initially it may also be where the miles are travelled on what type of highways and roads and urban or rural locations. We would note that ICEV's are defined as vehicles, and vehicles are defined as meeting the criteria of this regulation, 8500 lbs. GVWR. We have some suggested clarity amendments below and include "daily hours of service" from (b) in our renumbered (2) consistent with ARB's usage in (b).

### **Suggested Amendments**

*“(b) Daily Mileage Exemption. A fleet owner may apply for an exemption to replace an existing ICEV ~~vehicle with a GVWR greater than 14,000 lbs. with another ICEV if all the ZEVs that are commercially available to meet the primary intended function cannot meet the daily mileage or daily hours of service needs of any existing ICEV with a GVWR greater than 14,000 lbs. in the California fleet. The Executive Officer will grant the exemption to replace the existing vehicle with an ICEV if they determine that the conditions of this section have been met. In making the determination, the Executive Officer will rely on the information submitted in sections 2015.3(b)(1-62) below and their good engineering judgment:~~*

*(1) ~~More than 10 percent of the existing vehicles in the California fleet are ZEVs regardless of the compliance path used~~*

*(12) ~~No new NZEVs with a GVWR greater than 14,000 lbs. of the same configuration are available to purchase, as shown on the list of~~*

unavailable ZEVs kept on the ARB website as described in section 2015.3(e)

~~(23) The fleet owner submits documentation demonstrating how all commercially available ZEVs with a GVWR greater than 14,000 lbs. that meet the needed chassis and technical specifications of the ICEV to be replaced are not able to meet the operational daily mileage and daily hours of service needs of that vehicle configuration. any remaining ICEV in the California fleet. This documentation must include the following:~~

~~A) The daily mileage report must include data for each vehicle truck of that configuration. operated in the fleet for The daily mileage report should include at least 30 consecutive work days from within the last 12 months using telemetry data or other daily tracking method and show that for at least 3 days all commercially available ZEVs with the same primary intended function cannot meet the needs of the vehicle type to be replaced any of the ICEVs in the fleet. Fleet owners may also submit documentation from the ZEV manufacturer or data collected from ZEVs in actual service in the fleet to substantiate the claim~~

~~(4) The fleet owner submits the daily mileage report used to make the demonstration for each vehicle of the same configuration as the vehicle to be replaced in the existing California fleet. The mileage report must include daily vehicle mileage traveled for a period of at least 30 consecutive days from within the last 12 months using telemetry data or other daily tracking method~~

~~(5) Fleet owners can optionally submit measured vehicle energy use data to substantiate their exemption request from similar ZEVs already operated on daily assignments in the fleet's service. Optional information must include vehicle loading and weight data, route grades, and ambient temperatures to show typical energy usage over one month or more of regular service; and~~

~~(6) To facilitate review, fleets will submit a description of the daily work assignments or routes used by existing vehicle types with an explanation of why available ZEVs cannot be charged or fueled along the route or at the work location, or during the work day where ZEV fueling is available, or ZEV fueling would be installed by the fleet owner. The explanation must include a description of why charging or fueling could not be managed during driver rest periods or breaks during the work day without incurring additional labor cost and delays.~~

Fleets, in support of their exemption request, may submit optional measured vehicle energy use data to substantiate their exemption request from similar ZEVs in operation. Optional information must include vehicle loading and weight data, route grades, and ambient temperatures to show typical energy usage over one

month or more of regular service. Fleet owners may also submit documentation from the ZEV manufacturer or data collected from ZEVs in actual service in the fleet to substantiate the claim. Vehicles that lack stable routes, service rural routes without charging infrastructure, or require the capacity to do work at remote locations after travel may submit evidence of this when seeking this exemption.”

Thank you for considering our thoughts in this area. If CARB intended to limit the Daily Mileage Exemption to a subset of vehicles covered under the rule, those over 14,000 GVWR and not vehicles as defined in this rule, we would be interested in your reasons.

### **Infrastructure Construction Exemption Delay Modification Requested**

First, we appreciate the concept of having an exemption for the critical problem that one is unable to get charging permitted and installed within a reasonable time frame. Permitting and installing under CEQA can be quite time consuming in California. As such we think this exemption is far too narrow. It only applies where you can enter a contract to develop charging infrastructure and ordered the vehicles. What if the electrical capacity to power a charging station isn't available and you simply can't develop charging capacity yet? Further, ARB needs to provide for much more than a one-year delay in our regulatory environment. We would suggest ARB not limit the delay years at all. CEQA can be time consuming as can court challenges of CEQA. Businesses and permitting authorities must comply with the law and building fast doesn't always happen.

#### **Suggested Amendment**

*(c) Infrastructure Construction Delay Extension. A fleet owner that experiences construction delay for a project to install their own hydrogen vehicle fueling station or battery-electric vehicle charging station that is beyond its control may request an extension to delay delivery of a ZEV that needs the infrastructure to operate in the fleet if publicly available infrastructure cannot be used. The Executive Officer will grant a single extension to delay the vehicle delivery ~~for one year~~ if they determine the fleet owner satisfies the criteria for the delay, based on the information submitted below ~~and the exercise of good engineering judgment~~. The fleet owner may request an extension by submitting documentation showing each of the following requirements are met:*

### **ZEV Infrastructure Unavailability Exemption Requested**

We believe there should be an additional exemption as well. We would suggest adding a “ZEV Infrastructure Unavailability Exemption.” The current baseline is we lack the power we expect to need to support vehicle electrification, as well as charging capacity. We can all hope it comes, but the rule must consider and manage the reality that sufficient electricity may not be available in all areas and not unduly penalize or force fleets unable to support ZEVs to retire their ICEV vehicles should they not have suitable charging options available. The risk the grid doesn't expand to meet these new demands should not be carried on the owners of fleets and vehicles.

### **ZEV Unavailability Exemption – Add Proposed Definition**

The proper functioning of this exemption is critical due to the nature of this black box technology regulation and the reality that most businesses and uses do not have a single electric vehicle with a “needed configuration” available for purchase. We are also concerned that this black box regulatory nature unduly exposes the vehicle consumer to significant risk of fraud and monopoly market power manipulation. If a manufacturer can put a vehicle on the market, they can name the price if it is the first vehicle that meets a market segment need. Further if they claim the technology is ready and force us to order it or face non-compliance for not having ordered a year in advance, we must order it. One need only remember Theranos, Cleaire and Solyndra to know promises are not always fulfilled.

As misspent money would seriously harm emission reductions from the rule, as well as our businesses, employees and consumers, we believe ARB within this exemption needs to provide protections for vehicle consumers from the monopoly power ARB is granting manufacturers of new technology. We believe this can be constrained by adding a definition of “available to purchase” that incorporates specific measurable objectives of what, “available to purchase” entails that also provide fiscal protection and ensures that the technology has been evaluated. We provide a proposed definition below.

***Proposed “available to purchase” definition.***

*“Available to purchase” means a vehicle that comes in the needed configuration to do the work or perform the necessary services the fleet owner uses the vehicle to achieve which meets all of the following criteria: The vehicle is not more than 1.5 times more expensive than the ICEV technology it replaces; the vehicle fulfills the duty cycle and work needs of the vehicle it replaces without necessitating the purchase of additional vehicles or equipment; and the vehicle must meet the requirements of 13 CCR section 1956.8 and 17 CCR section 95663 as amended by the Zero-Emission Powertrain Certification regulation.*

The above definition would make it clear fleets have to replace fully functioning vehicles with equivalently functional property. It also ensures a price ceiling which enables ARB to manage and mitigate cost impacts to modeled costs. It ensures a vehicle whose powertrain has been certified by ARB, which hopefully provides some security for consumers. In granting the exemption, one must then review those three factors. As they are measurable and objective criteria, this can ensure the action of the executive officer is ministerial and not discretionary.

**Economic Hardship Exemption**

We strongly believe ARB should consider an economic hardship exemption. Just having \$50 million in revenue does not guarantee a profitable business capable of financing new equipment as forced retirements of working equipment occur. Such protection could be granted by the state simply by exempting the forced retirement of a vehicle the hardship fleet could not afford to replace.

We don't have the data yet to suggest what reasonable management numbers are but as ARB looks at the costs and potential impacts, we would encourage you to consider the economic realities of the different sectors within the rule in conducting your analysis. We know it is not ARB's goal to cause economic harm or displace jobs.

We would also suggest that setting clear measurable economic criteria for the threshold would enable businesses to know if they were eligible and enable development of an exemption not requiring executive officer administrative review and resources. We would therefore suggest such a rule provision be written as an exemption (not an application). Perhaps it is a debt to asset ratio that is considered fiscally responsible. We are continuing to consider methods but wanted to encourage ARB to do so as well.

### **Early NOx Reduction Pathway Exception**

We would like to suggest that ARB enable an early adopter low NOx pathway for fleets. Several construction fleets have been looking at and working to implement RNG low-NOx fleets as they reduce NOx emissions now, providing important reductions in impacted air basins and communities. In addition, they are doing so with vehicles that are expected to be very challenging to develop ZEV capacity in. This natural gas technology exists today, reduces criteria emissions and has the operating dynamics to function in our construction environment.

Where ARB has vehicle types it doesn't expect ZEV's to be available for, in the near term or medium term, ARB should encourage those fleets to take voluntary early actions which reduce criteria pollutants and GHG pollutants.

CalCIMA is requesting ARB to include early action exception/credits for alternative fuel vehicle purchases inclusive of but not limited to RNG. For these reasons, and because early adopters of RNG accepted financial risk to utilize a fuel previously endorsed by ARB taking action to mitigate climate change, and whereas the Governor's Executive Order N-79-20 states, "clean renewable fuels play a role as California transitions to a decarbonized transportation sector,"

### **Exceptions for vehicles that only rarely operate within California:**

It is recommended to include language that allow exceptions for vehicles subject to the rule that only rarely operate within California inclusive of allowing non-compliant vehicles that limit their miles within California to less than 1,000 miles in a calendar year defined as a 'low-use vehicle'. Or allow non-compliant trucks to apply for a three-day pass with ARB to allow a single non-compliant truck to operate within California for three days out of a single calendar year. Accordingly, it is recommended to modify the definitions section as follows:

*(b)(9) "California fleet" means the total number of vehicles operated in California during a calendar year, except rental vehicles as specified in section 2015.2(d), or low-use vehicles, or vehicles using a three-day pass. If a vehicle is operated in California at any time during a calendar year, it will be considered part of the California fleet for the entire calendar year.*

(b)(tbd) “Low-use vehicle” means a vehicle that will be operated fewer than 1,000 miles in California in any compliance year. If that vehicle has an engine that powers other equipment that can only be used while stationary, the engine or power take off (PTO) must also operate less than 100 hours in any compliance year. The hour limitation does not apply for vehicles where the engine is used to power an auxiliary mechanism that strictly loads and unloads cargo from the vehicle (examples include, but are not limited to, dump trucks, cement powder trucks, or trucks with attached lift devices).

(b)(tbd) “Three-day pass” means a once-a-year temporary permit to operate a vehicle in California for three consecutive days without meeting requirements.

## Other Items and Requests

### Effective Date Concerns – Adding Vehicles

The January 1, 2024, compliance obligation date is causing significant concerns. We know ARB’s timeline for adoption would place that action in late 2022 to early 2023. ARB will then need to compile the administrative record and prove the regulations through OAL. Finally, we believe you will need to have EPA review. In order to order vehicles in advance to trigger the safety of the Vehicle Delivery Delay Extension, ARB would need to have their website list available in 2023, probably before adoption considering likely adoption timeline.

The suggested amendment below would change the applicability to “purchased and added” from “added” to account for vehicles ordered before the effective date. Such vehicles would be able to be added as a result.

### **Suggested Amendment**

*2015.1 (a)*

*(a) ZEV Additions. All vehicles purchased and added to the California fleet must be ZEVs.*

### Public Fund Vehicles

CalCIMA appreciates that ARB is clarifying statutory and constitutional obligations for the use of different funding pool sources and ensuring proper accounting of the same. CalCIMA believes it is important that ARB make a strong statement about the necessity for public funds to support businesses adapting to address climate change. Making it explicit in the rule that ARB accepts this is symbolically and functionally important. To meet the targets of 2045, we are going to have to work together as a society. Everyone’s resources are finite as is the time to accomplish our goals. We would ask that ARB make it clear where the program guidelines do not prohibit use for compliance, it is allowed.

### Suggested Amendment:

*“(m) Vehicles Acquired with Public Funds. If a fleet owner receives California State-provided incentive funding for ZEVs or NZEVs and the funding program guidelines specify the vehicle cannot be used to count toward determining compliance with the general requirements section of 2015(d), the vehicle will not be counted as a compliant vehicle during the funding contract period. The fleet owner must meet the reporting requirements specified in section 2015.4(c)(2)(O). If the funding program guidelines do not prohibit the use of the incentive funds for compliance, they shall be allowed for compliance credit.”*

### **Definitions of Milestone Group 1, Milestone Group 2, Milestone Group 3:**

Regarding definitions Milestone Group 1, Milestone Group 2 and Milestone Group 3, the vehicle classifications seem very broad and inclusive of many different weight classes and applications. Accordingly, CalCIMA would like ARB to provide guidance related to the method that will be implemented to validate that fleet vehicles are categorized correctly, regarding how/why ARB determined each vehicle type to be associated with the specific groups (e.g. VIN, etc.), and clarification regarding the applicable vehicle type for each market segment identified within the ‘Advanced Clean Truck Market Segment Analysis’ of the ‘Advanced Clean Truck’ ‘Appendix E: Zero Emission Truck Market Assessment.’

Additionally, CalCIMA requests for the term “Work Truck” to be further refined to separate out specialty trucks and long-haul trucks that are not sleeper cabs and divide up the remaining work trucks based on weight class and application. This will allow truck manufacturers to stagger production schedules, increase manufacturing efficiency, and lower cost. We would also suggest trucks with power take off should be placed within group 3.

ARB should also exempt vehicles from inclusion that do extensive work at remote locations away from charging infrastructure. Such as drill rigs that perform work at remote locations.

## **General Items and Requests**

### **Hire Compliant Fleets – Please Delete**

We strongly suggest removal of this rule component. This section of the rule could prevent business working with small entities that we cannot prove are legally compliant. It will be far easier to track compliant fleets which will be larger businesses. Should ARB elect to attempt to regulate commercial relationships as well as emissions from vehicles with this rule ARB needs to carefully specify exactly what hiring a fleet means. If we must verify every business we hire, contract with, or do business with, is either not eligible or in compliance with the rule ARB will be adding a huge administrative and tracking burden to every fleet. The benefit of this provision is also unclear.

We believe ARB should delete this proposal section entirely. Please let us worry about our own vehicles and businesses.

### **Minimum Useful Life**

We are very concerned with the application of Minimum useful life and its impacts on domestic vehicles engaged within the construction economy. Utilizing this definition as the trigger for maximum allowed lifespan of these vehicles in California is problematic. Vehicles that remain serviceable provide significant value and economic efficiency to

operations and have a significant value to companies. They are also important safety nets in economic downturns as they are paid off. Forced retirement necessarily increases costs as well as exposure to financial risk in financing acquisitions and recessions. We also encourage additional flexibility be added to the legislatures concepts of minimum lifespan as discussed below.

The Minimum useful life in statute, was the minimum life. It was not a maximum life but a threshold. ARB has turned that Threshold into an expiration date for all vehicles and uses subject to this rule. Several of our members invested in Natural Gas vehicles and fueling infrastructure to provide pollution reduction now and expecting the longer lifespan and utility of RNG climate emission reductions as well. Now that technology is being treated the same as diesel. The technology was purchased at greater cost than diesel technology based on the understanding of lower emissions and longer technology lifespan plus community emission benefits now, offsetting the cost difference.

ARB should recognize the natural gas technology was purchased with the expectation of longer lifespans from the use cycle of the vehicle. We would suggest 25 years for ultra-low NOx ICEV's. This would also let fleets invest in early NOx reductions today while no ZEV technology exists for their uses creating health benefits now and investment certainty for the fleet. And certainly, those fleets that invested in Low-NOx vehicles and infrastructure yesterday deserve consideration of early reduction benefits.

In addition to annual lifespan concerns for RNG vehicles, we also have fleets that target achieving 1.2 million miles from a vehicle purchase. Not every vehicle but certain vehicles. Applying the legislative minimum as a maximum lifespan is very concerning for these fleets as they would potentially lose a third of their expected economic opportunity when they purchased the property.

We would also suggest that for all technology ARB should consider how fleets have used their vehicles and let fleets with vehicle classes with demonstrated long lifespans due to advanced maintenance be granted up to their actual fleet lifespan in mileage up to at least 18 years. That is, give them their achieved in practice when greater than the minimum 800,000 hours. Such vehicles would still be retired by 2045 and fleets wanting to try and wait for other than BE technology could achieve criteria reductions today, benefitting communities. Where we have identified such usage, it is for higher annual use vehicles and this measure would also provide resiliency to a recession. ARB undoubtedly has access to DMV records and could analyze how many vehicles in the relevant weight classes have such usages.

We would also note the State's HDVIP regulation ensures the maintenance of emissions control systems. Further use of RNG fuels is necessary to support agricultural and other industry climate emission reduction efforts. ARB has accounted for there being some RNG usage in our economy for years to come for agricultural reductions alone. Finally, the legislature to our knowledge performed no analysis of actual vehicle and property lifespans in setting the thresholds ARB is effectively turning from minimums into maximums. Please provide additional flexibility to miles used under 18 years of service

life based upon what a fleet has achieved in practice. In addition, please consider an expanded minimum lifespan in years for RNG.

## **Issues from our October 29, 2021 comment letter:**

### **Add ‘Purpose’**

CalCIMA recommends ARB include a ‘Purpose’ section within the Proposed ACF Requirements to clarify the specific statutory goal(s) the regulation is designed to support as ARB has demonstrated in other heavy-duty vehicle focused regulations.

### **Conduct Technology Assessment**

CalCIMA recommends ARB to further assess alternative fuel and advanced technology vehicle applications by implementing a technology assessment. It should include ‘bridge’ technologies such as renewable natural gas (RNG) and renewable diesel (RD) that reflect the potential future ARB on intensity of each fuel and resulting life cycle emission reductions that could be achieved. BE and H2 vehicles may both be unsuitable for all categories of vehicles in the construction materials industry that operate diverse fleets of vehicles, including of operating vehicles for long distance, in remote areas, on difficult terrain, for extended operational timeframes. Accordingly, quantifiably understanding how ‘bridge’ technologies can support GHG reductions while BE and H2 vehicular technology continues to advance is in the state’s best interest.

Implementation of an alternative fuel and advanced technology assessment that considers near-term air quality benefits may conclude that allowing fleets to retain the ability to procure a “mixed fleet” of vehicles capable of responding to different demands and events, and ultimately bolster the State’s long-term climate change goals. Ensuring all viable technologies can compete will be critical to a successful adaptation effort.

We want to thank ARB for considering and evaluating our input. How to adopt rule provisions that fit the complexity of sectors and businesses included as well as manage the uncertainties ahead. We look forward to ARB’s ISOR, analysis and adjustments. COVID has only added to the complexity before us. We would also request you review our attached comments on the Initial Statement of Reasons Analysis you are undoubtedly developing right now.

Respectfully,



Adam Harper  
Director of Environmental & Land Use Policy