Labor Recommendations to CARB Concerning the Advanced Clean Fleet Rule

Summarizing a presentation made to Chair Randolph and advisors on June 29, 2022 by BlueGreen Alliance, California Teamsters PAC, California Labor Federation, Los Angeles Alliance for a New Economy, IBEW Local 569, and Professor Steve Viscelli (UPenn)

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Background

The California Teamsters PAC, BlueGreen Alliance, Los Angeles Alliance for a New Economy, and now the California Labor Federation, among other labor and labor-affiliated groups, have worked in productive partnership over the last four years with CARB to pass a strong Advanced Clean Truck rule, pass record ZEV budgets, achieve strong workforce equity incentive standards as in AB 794, and defend the ACT rule from attack.

This labor-based political formation has risen to support CARB's mission and in turn CARB has supported a holistic approach to addressing misclassification and wider labor exploitation in the trucking industry through ACT and ACF rulemakings. This partnership is of immense value to advancing climate, economic justice, and environmental justice goals.

Needs in ACF Rulemaking

This group, along with the wider ACF coalition, has continually drawn focus to the need for companies, not drivers, to pay for the transition to zero emission trucks. Great work has been done so far by CARB to define "controlling companies" and make them the regulated entities in the ACF. ***However additional escape hatches for misclassifying firms to exploit drivers must be closed in the ACF regulation or exploitation will continue to proliferate at scale, unabated across the California for-hire trucking industry.***

Policy Asks

To address the goals and needs described above, our partners jointly ask that all fleets of more than 10 vehicles, not 50, be regulated in the high priority fleets section of the rule. The high priority fleets mechanism should transition work trucks, day cabs, and sleeper cabs to zero emission vehicles faster, beginning the ramp for each of these groups years earlier. All trucks sold in CA should be ZE by 2046, not 2040. These changes expand the efficacy of the rule, achieve goals set out in ACT resolution and EO regarding drayage trucks, eliminate deadly toxic pollution from EJ neighborhoods, and critically, reduce driver exploitation.

Regulating 10+ Truck Fleets is Essential

The California for-hire trucking industry is structured by ownership and control characteristics. At the smallest end of the trucking market exist independent contractors, which are defined by trucking industry analyst, Steve Viscelli from UPenn, as:

> The owner of a for-hire motor carrier who also works driving equipment they control. Independent owner-operators are responsible for all of the fixed and variable expenses of their operation and operate under their own legal authority to provide freight services to customers (which could include shippers, freight brokers, or other motor carriers).[1]

By definition, independent contractors cannot own and operate more than a handful of trucks (4-5) before effectively scaling up into the territory of a "fleet" that engages additional individuals to operate multiple trucks. Fleets of 10 or more trucks, therefore, are categorically different in nature from independent contractor businesses which control 1-5 active trucks. For purposes of conceptual clarity – and to quell concerns about who bears the financial hardship of fleet rules – ***legitimate, properly classified, independent contractors do not operate above the 10 truck threshold.***

In California, as in much of the rest of the US, there is a large segment of for-hire trucking operations (approximately 30% by truck count) between 5 trucks and thousands of trucks that engage independent contractors to perform the work of a company in *functional control* of the business. These trucking operations work on the misclassification business model, mixing functional control of a larger entity with deceptive engagement of drivers as 1099 contractors.[2]

Rightfully, CARB has adopted the "controlling company" language in the ACF rule draft to assign financial responsibility to misclassifying "controlling" firms, not the drivers they control.

In going down to a fleet cap size of 10 in the ACF rule, CARB must understand this – fleets of 10 or more trucks <u>are not</u> independent contractors. These are <u>companies</u>, whether they misclassify their drivers or not, that should be treated with the same assumptions about financial capacity, access to capital, planning abilities, and other business strategy as any other small to medium sized company with a significant line of business, multiple employees, and millions of dollars in capital investment.

These businesses stand to benefit from the overall beneficial TCO of ZE trucks that all other trucking companies stand to benefit from.[3] These are not firms that should be treated as if single individuals are planning and operating an independent business with too many capital, operational, and legal barriers to realizing the promise of beneficial ZEV TCO.

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[1] Viscelli, 2018. http://driverlessreport.org/files/driverless.pdf
[2] UCB Labor Center, 2019. https://laborcenter.berkeley.edu/pdf/2019/Truck-Driver-Misclassification.pdf
[3] Goldman School of Public Policy, 2035 Report. http://www.2035report.com/transportation/wp-content/uploads/2020/05/2035Report2.0-1.pdf?hsCtaTracking=544e8e73-752a-40ee-b3a5-90e28d5f2e18%7C81c0077a-d01d-45b9-a338-fcaef78a20e7

What Happens if the Cap Remains at 50

The ACF rule draft at present separates the functionally 'whole' drayage market into port and non-port-serving business operations. It does this by regulating the port-serving entities under the drayage mechanism and the non-port-serving under the high priority fleets mechanism. Within the high priority fleets mechanism, 10-50 truck fleets are carved out of regulation in the early years, and these fleets must electrify on a later and longer ramp than port-serving drayage trucks.

To clarify baseline assumptions, the drayage segment is similarly structured inside port gates and outside. POLA gate move data indicates that approximately 50% of drayage moves inside the port gates are done by firms of smaller than 50 trucks (and 53% of gate moves across San Pedro Bay Ports).[4] The incredibly low barrier to entry and the predominance of misclassification as a core business strategy in local for-hire, port and non-port freight operations strongly incentivizes this type of small, independent contractor fleet. We expect that a similar if not even larger percentage of for-hire trucking moves is done by <50 fleets outside of port gates.

Left as is, the current regulatory framework for non-port drayage weakens the controlling company language and worker equity outcomes (and climate and EJ goals) in a number of ways.

- If CARB does not regulate non-port drayage, companies will size and locate their operations to minimize regulatory impact and cost.

- Drop lots will proliferate outside port gates so that cargo can be transferred quickly and so that truck segments (high priority fleets under 50 trucks) with lesser regulations will log more miles. Such an outcome developed in the aftermath of the LA Clean Port program in the 2000s.

- Furthermore, companies of 50 trucks or more will split themselves to operate under two Motor Carrier authorities, to avoid the 50 truck threshold. When the industry is squeezed in one place, companies will size and reallocate operations to suit regulation.

The upshot of these compensatory strategies will be that fewer truck miles will be ZE, fewer workers will benefit from their controlling companies being held accountable for transition, and more toxic emissions will land on logistics-adjacent EJ communities.

How to Enforce and Help Drivers in 10-50 Truck Fleets

If the ACF fleet size cap is lowered to 10 trucks, 10-50 truck fleets will report their progress to CARB on achieving ACF ZE milestones on an annual basis. When fleets are found to be out of compliance, the controlling company will be tagged with fines, not drivers. Operating authorities and other permitting can be revoked if warranted.

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[4] POLA Gate Move Data. https://kentico.portoflosangeles.org/getmedia/452bad8c-4e16-490f-bab6-155b061866bb/POLA-Monthly-Gate-Move-Analysis

On the supply side of the equation, AB 794 will prevent companies with a history of misclassification from accessing state funds to subsidize their exploitative and illegal business model in the transition to ZE trucks. This incentive framework can and should be tightened.

CARB will have years of lead time to work to educate drivers, ideally in partnership with driver groups, on the pending enforcement of the high priority fleets mechanism. In this time, CARB should make clear to drivers and companies that *companies, not drivers* are on the hook for regulatory compliance.

By holding companies to account, directing investment to companies that do not misclassify, and educating drivers on their rights, CARB will create important industry structures that incentivize companies to absorb costs, reduce the incentive to misclassify, empower drivers to resist exploitation, and close escape hatches for misclassifying companies to push costs and responsibilities onto drivers.

All of this will further weaken the misclassification business model which leaves drivers destitute and will force more companies to absorb drivers as employees, thereby improving labor outcomes across the CA trucking industry.

In conclusion, while the ACF alone cannot entirely fix a broken for-hire trucking market riven by illegal misclassification, the rule *can and must* include frameworks that *support* and *improve* labor outcomes, even where comprehensive solutions to worker exploitation are still unavailable.