California Food Producers

*We Help Bring California's Goodness to the World*

April 27, 2020

Lea Yamashita, Lead Staff
Cari Anderson, Chief,
Freight Transport Branch
California Air Resources Board
1001 I Street
Sacramento, CA

Dear Ms. Yamashita,

The California League of Food Producers (CLFP) appreciates the opportunity to provide comments on the March 19, 2020 workshop on the proposed Transport Refrigeration Unit regulation. CLFP incorporates by reference its previously submitted comments dated October 2019.

CLFP represents 47 industrial food processors in California. Food and beverage processing in California accounts directly for $25.2 billion in value added and 198,000 direct full- and part-time jobs. Food processing reverberates through local and regional economies. On average for every $1 of value added in food and beverage generated results in $3.25 dollars in additional economic activity. Each job in food and beverage processing generates 3.84 jobs in total.

CARB's stated goal is to reduce public health risk from Transport Refrigeration Units (TRU) near distribution centers and other facilities where TRUs and TRU generator sets congregate. Through this regulation, CARB also seeks to address transit emissions, especially near the most impacted communities.

The impact from COVID-19 has provided new perspective on both the importance of maintaining a healthy goods movement infrastructure and has revealed a heretofore unsuspected susceptibility of markets, transport infrastructure, and food supply to unanticipated events. In other words, the issues are no longer just about the environment.

CLFP members have significant concern over the proposed concepts as, even under the best of circumstances, a regulation of this magnitude, coming at this time, has the potential to further damage industry competitiveness and production over and above the damage already caused by COVID-19.

The current issues surrounding the impacts of COVID-19 on growers/dairies, harvesting, transport, processing, and delivery must all be considered in the development of most, if not all, regulations concerning food production going forward. This is not to downplay the documented health risks associated with TRU-related emissions, but they must be put in perspective.

The timing of this regulation is now in question as the current Updated Concept, presented by staff on March 19, 2020, was developed absent the COVID-19 pandemic. Additional new factors must be considered before implementing this regulation. In addition to the standard factors of time, cost, and production, the state has an obligation to consider the impacts of this proposed regulation against a hoped for economic recovery of the affected industries and the infrastructure in which they operate.

CLFP believes the first step toward a recovery is to determine, through a serious economic analysis, the economic impacts of COVID-19 and how this particular regulation, if implemented prematurely, may affect the ability of the refrigerated goods markets to recover. There may be a more efficient way to realize the state's environmental goals concerning TRUs while providing sufficient leeway for industry to recover -- even if it means a longer implementation schedule.

The goal is emission reductions, but not at the cost of jobs through production curtailments due to inability of companies to meet regulatory deadlines imposed during a virus-induced economic crisis or in its aftermath. This last is especially true for the Central Valley which is prone to higher unemployment and longer recovery periods than the rest of the state due, in part, to the nature of its industries and employment demographics.

There is a vast amount of uncertainty surrounding any economic recovery despite the post-COVID-19 predictions of economists. Many industries are dependent on both national and international markets -- almost all of which have been impacted by Covid-19. Many refrigerated food industries are likely to find their recovery is dependent upon the recovery of a whole different sector, such as the food service sectors, before they begin to see progress toward normal production.

The opposite side of the coin is true, as well. For instance, cheese manufacturing is a highly competitive industry relying on TRU services. California production competes one-on-one with manufacturers in surrounding states and across the nation as well as internationally. States and nations choosing to forego additional regulatory burdens until local industries recover will have provided their industry with an economic advantage denied California-based industries to "carry on" with business as usual.

It is clear that a revised economic study is called for, one that will incorporate the economic impacts of COVID-19 on this industry. While this may push back the original timelines, the current situation provides ample justification. The steady overall emissions reductions in the Central Valley lend support to postponing implementation in order to reassess economic impacts:

**2019-2020 PM2.5 Season was Cleanest on Record –** *San Joaquin Air Pollution Control District*
https://www.valleyair.org/achievements.htm

CLFP recommends that CARB consider the following points as the development of the regulation progresses:

1. Revise the Economic Analysis
    - The proposed economic analysis must account for COVID-19 impacts.
    - Consider the likelihood of drastic cuts in incentive dollars due to the aftermath of California's fiscal response to the crisis.
    - Account for impact of a virus-induced recession and the ability of industry to meet current compliance obligations, much less newly minted regulatory deadlines.

2. Additional Considerations Regarding Economic Impacts
    - How will downstream businesses be impacted, such as restaurants, schools, and low-income food providers?
    - Currently, one in five Californians are living in poverty. This rate is greater for Central Valley residents. As most of the state's food production facilities are located in the Central Valley, the proposed changes may significantly impact the many disadvantaged communities through a variety of avenues -- employment, higher food costs, etc.

    - The proposed timeline, if implemented, will increase food costs more than the changes to infrastructure through requiring additional monitoring, staffing, reporting, and policing on the part of food producers. These hidden costs need to be addressed in any economic analysis.

    - The proposed changes have the potential to significantly alter the refrigerated goods economy in a number of ways. For instance, shifting fuel cost from trucking to production and potentially crippling smaller businesses, producers, and shippers who cannot afford the added burden.

3. Ensuring Secure Incentive Funding – In upgrading or replacing units, CARB envisions owners will utilize retrofit flexibility prior to replacing the unit under the prescribed timeline. However, for reasons stated above, lacking sufficient incentive funding there is little likelihood that the industry will willingly incur significant debt in order to meet implementation deadlines. This is especially true if reduced demand for products continues to be a factor in the years ahead. CARB should prioritize and secure sufficient incentive funding prior to implementation.

    The same is true for facility installations of ZEFI technologies. While compliance extensions are welcome, none of the listed reasons account for market recoveries or lack thereof. Generous incentives will be a key factor in assuring successful compliance.

4. Interstate Commerce and Other Legal Issues **--** Amid the proposed requirements, CARB requires that facility owners report all TRUs to CARB **or certify that non-compliant TRUs are not allowed to operate onsite.** CLFP is concerned that this makes facilities, not the state, the de facto enforcers of state law through the coercive manipulation of contractual agreements between private parties. How does such a requirement not violate interstate commerce law or the Contracts Clause (U.S. Const. art I. §10)? Such regulatory changes likely constitute a violation of federal commerce laws by indirectly attempting to regulate interstate goods movement.

   California industries should not be required to act as the proxy for enforcement of state regulations. Forcing California facilities to certify that trucks operating onsite are compliant, especially since it is common practice to contract with non-California trucks, is burdensome. Moreover, it exposes facilities to penalties for violations or mistakes based on a third-party's action.

Conclusion

We are all noticing bluer skies and cleaner air resulting from less traffic and curtailed manufacturing. However, it has come at an undeniable cost in jobs, empty shelves, and lost production. CARB must bear in mind that even the most innocuous and well-intentioned regulations can have unintended side-effects that prove detrimental, especially if implemented at the wrong moment in time. The "new normal" requires more than ever that CARB understand those consequences. The first step should be to reconsider this proposed regulation given the current and future circumstances.

CLFP looks forward to continuing to work with CARB throughout the stakeholder process.

Sincerely,

JOHN LARREA
California League of Food Producers

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