April 2, 2021

These comments on the Advanced Clean Fleets (ACF) Rule are submitted on behalf of the above groups, all committed to pursuing a zero-emission transportation future in order to protect communities, meet long-overdue commitments for clean air, reduce greenhouse gas emissions to help avoid catastrophic climate change, and stimulate economic recovery and the creation of high-road jobs in the State. These comments outline the rule changes that are necessary to ensure the rule will achieve the various commitments the Governor and California Air Resources Board have made to protect communities and transition polluting truck fleets to zero-emissions. CARB must:

- Revise the structure of the rule to include purchase and retirements mandates as necessary to work around the restrictions of SB1;
- Strengthen the rule and expand its ambition to mirror State commitments; and
- Close the loopholes and narrow the exemptions in the proposal that would undermine the rule's ability to meet State commitments.

As described below, these revisions are necessary to match the scale of the pollution problem caused by these fleets, and will ensure the feasible transition to zero-emissions.

I. The Problem: Truck Pollution Harms Our Most Vulnerable Communities and the Proposed ACF Framework Falls Short of Commitments to Address the Harms

Throughout the State, millions of Californians are suffering from the damaging effects of living with unhealthy air quality. Due to discriminatory land use and structural racism, the worst of this

pollution burden is concentrated, disproportionately in California's low-income, black, indigenous and other communities of color. Our systems of transportation and goods movement are largely responsible for these disproportionate impacts.[1] Medium- and heavy-duty vehicles are the largest source of NOx emissions Statewide and on any given day thousands of those combustion vehicles pass through port, railyard and inland distribution communities spewing toxic chemicals into the air and lungs of those that reside there. Each year that the transition to zero-emission freight goes unrealized, communities living near California's expanding freight hubs and corridors continue to face increased risk of cancer, asthma, impaired brain and nervous system function, and premature death. The COVID-19 pandemic has shone another light on the environmental racism of air pollution: maps of air pollution exposure, which significantly overlap with low-income communities of color, are also the same areas hit hardest by the COVID-19 pandemic.[2] Even adjusting for wealth and other factors, higher exposure to air pollution led to increased severity of illness from COVID-19, including a 9% increase in death.[3]

The pandemic also cemented a new paradigm in goods movement—the dominance of e-commerce and accelerating demand for freight.[4] The trend underscores both the public health and climate urgency of a zero-emission transition. Globally, freight demand is projected to increase 225% by 2050, making it the largest driver of increased greenhouse gas emissions from the transportation sector.[5] Even an ambitious policy scenario (including an assumption that 30% of new vehicles sold worldwide are electric by 2030) would fail to deliver reductions in line with the Paris Agreement.[6] Accordingly, significantly more ambition is needed from wealthier, industrialized jurisdictions. As the International Transport Forum found: "Scaling up decarbonisation measures for road freight transport that have already been tested and are comparatively easy to introduce is one of the most immediate actions required."[7]

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[1] This includes addressing the impacts on California's many misclassified truck drivers. eg. National Employment Law Project, and, Change to Win. December 8, 2010. "The Big Rig: Poverty, Pollution, and the Misclassification of Truck Drivers at America's Ports," https://www.nelp.org/wp-content/uploads/2015/03/PovertyPollutionandMisclassification.pdf; USA TODAY, June 16, 2017. "Rigged. Forced into Debt. Worked Past Exhaustion. Left with Nothing.," https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/

[2] Communities of Color in More Polluted Areas May Face Greater Covid-19 Risks https://www.phi.org/press/study-probes-links-between-air-pollution-race-and-covid-19/

[3] American Lung Association, Understanding the Link between Covid-19 Mortality and Air Pollution (Jan 4, 2021) https://www.lung.org/blog/covid-19-mortality-and-air-pollution

[4] E-Commerce Spike Likely to Outlast COVID-19 Pandemic, Experts Say. October 9, 2020. https://www.ttnews.com/articles/e-commerce-spike-likely-outlast-covid-19-pandemic-experts-say

[5] OECD, International Transport Forum Transport Outlook – 2019, at 18 https://doi.org/10.1787/transp_outlook-en-2019-en.

[6] *Id*. at 18.

[7] *Id.* at 157.

In recognition of the brutal health impacts associated with truck pollution, CARB has directed staff to adopt these fleet rules to "ensure that fleets, businesses, and public entities that own or direct the operation of medium- and heavy-duty vehicles in California will purchase and operate zero-emission vehicles on a schedule that is consistent with [the Advanced Clean Truck] manufacturer rule and achieves a smooth transition to a zero-emission vehicle fleet by 2045 everywhere feasible."[8] The Resolution further calls for drayage, last-mile delivery, and government fleets to be 100% zero-emission vehicles by 2035, refuse truck and local bus fleets to be 100% zero-emission vehicles by 2040, and utility fleets to be 100% zero-emission capable vehicles by 2040.[9]

The Governor's Executive Order N-79-20 similarly calls for regulations requiring increasing volumes of trucks sold and operated in the State towards the target of 100% of the fleet transitioning to zero-emissions by 2045, and for all drayage trucks to be zero-emissions by 2035.[10]

CARB's Mobile Source Strategy (MSS) modeling demonstrates these targets are necessary minimum commitments to have any chance of meeting health-based air quality standards in the San Joaquin Valley and South Coast air basins, or statewide greenhouse gas reduction targets. CARB's modeling scenario assumes all medium- and heavy-duty truck sales in California will be zero-emission beginning in 2035.[11] This goes beyond the current Advanced Clean Truck Rule (ACT) sales mandates, and, as noted below, will require CARB to revisit the ACT mandates sooner rather than later. Moreover, this assumption reinforces the fact that the ACT is the floor, not the ceiling, for the ACF. In fact, the MSS expressly assumes a transition to zero-emission trucks in drayage and low-mileage and return-to-base operations on a schedule that would appear to exceed the ACT mandates.[12] For both delivery and drayage fleets, the MSS assumes 100% ZE sales starting with model year 2024 (i.e., purchases beginning in 2023).[13] For low-mileage and return-to-base operations, the MSS assumes a fleet transition schedule matching the Innovative Clean Transit Rule,[14] which requires increasing portions of new purchases to be zero-emission until 2029 when 100% of all new purchases must be zero-emissions.[15] Only for "other" vocational and tractor vehicle categories does CARB assume the ramp up will follow the ACT

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[8] CARB Resolution 20-19 (June 25, 2020) (available at: https://ww3.arb.ca.gov/regact/2019/act2019/finalres20-19.pdf)

[9] *Id.*

[10] Gov. Newsom Exec. Order N-79-20 (Sept. 23, 2020) (available at: https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-text.pdf).

[11] CARB, "Workshop Discussion Draft 2020 Mobile Source Strategy" at 85 and 89 (Nov. 24, 2020) (available at: https://ww2.arb.ca.gov/sites/default/files/2020-11/Draft_2020_Mobile_Source_Strategy.pdf).

[12] *Id.* at 89.

[13] *Id.*

[14] *Id.*

[15] *See* 13 Cal. Code Reg § § 2023.1(a).

schedule, and even then acknowledges that after model year 2030, the ZE sales assumptions must ramp up to 100% by 2035.[16]

As outlined below, it is evident from Staff's workshop that the current ACF proposal is inadequate for meeting these fleet targets and, more fundamentally, the State's climate and air quality targets. Staff's preliminary inventory estimate shows that in 2031, the ACF will result in 35,000 additional ZEVs beyond the ACT rule.[17] According to CARB's META tool, the ACT achieves 54,225 medium-duty ZEVs and 68,402 heavy-duty ZEVs in 2031. The total across the two regulations is about 157,626 ZEVs. Meanwhile, CARB's Mobile Source Strategy states that 21% of heavy-duty trucks – or a total of 262,685 total trucks[18] – must be ZEVs in 2031, leaving a shortfall of over 105,000 trucks.

In the MSS, CARB says most of these trucks will come from "accelerated turnover"—an assumption that over 7,800 trucks are turned over to ZEVs *each year* (starting last year) in order to meet reductions needed for the South Coast's ozone standards. CARB has offered no explanation for how these record-breaking turnovers will be achieved without direct regulation. Vague gestures to incentive programs cannot explain this volume of ZEV deployment, especially in light of the State's audit showing that CARB has "overstated GHG emissions reductions its incentive programs have achieved" and "California is in need of more reliable tools…"[19] While we strongly support efforts like CARB's goal of launching 800 ZEVs at California ports in 2021, California still needs a genuine plan for the other 7,000 trucks assumed necessary in 2021.

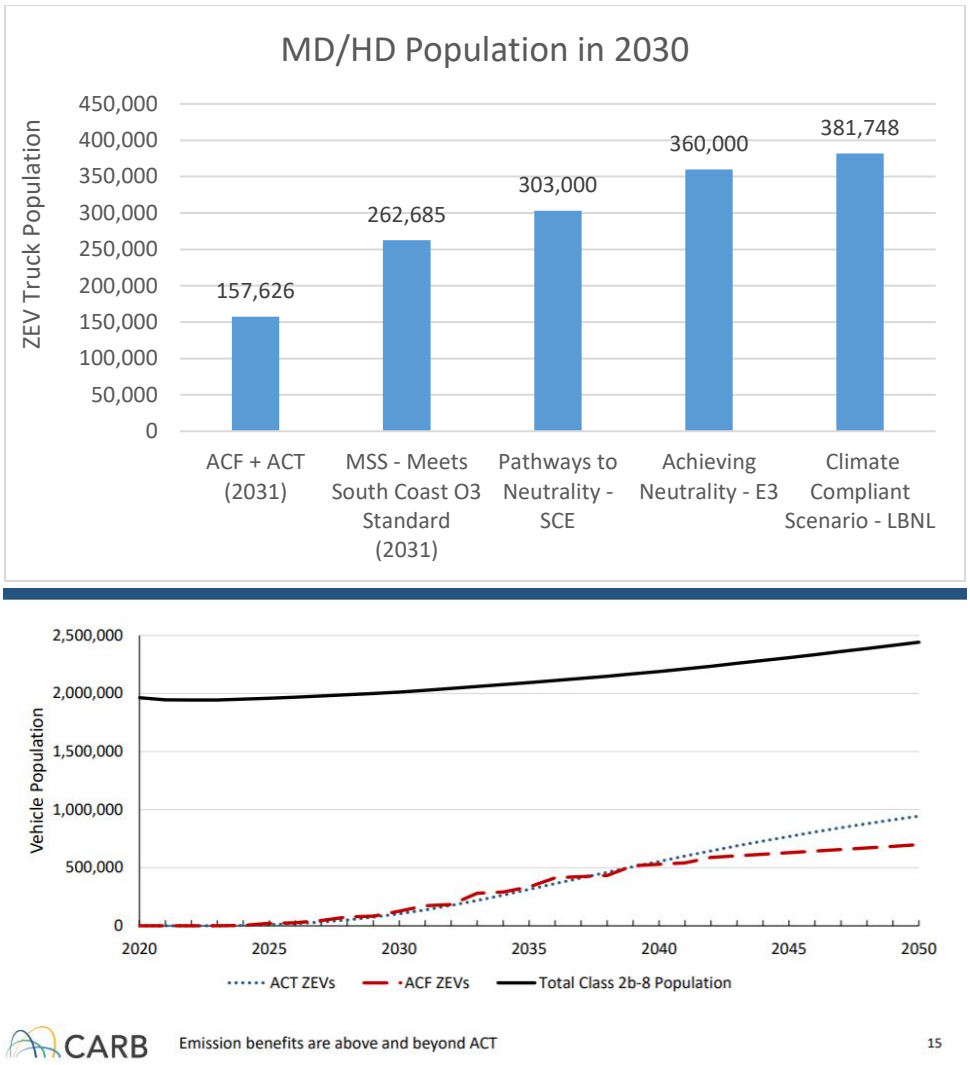
Worse, the target that CARB fails to meet is about half of what is actually needed. Multiple, independent, and State-sponsored scenario studies have said roughly 350,000 trucks need to be ZEVs in 2030 (not 2031) in order to be on a stable path to achieving California's carbon neutrality targets. The disconnect is most glaring in Staff's preliminary inventory for 2050 – showing that the ACT+ACF only decarbonizes about one third of the total vehicle population 5 years after the State must be carbon neutral.

[16] CARB, Draft Mobile Source Strategy at 89.

[17] CARB, Advanced Clean Fleets Preliminary Inventory Analysis https://ww2.arb.ca.gov/sites/default/files/2021-03/210302emissions_ADA.pdf at slide 14.

[18] MSS: 56,943 MD 205,742 – 262,685 Total.

[19] California State Auditor Report 2020-114 (ca.gov)



Staff have said that inventory adjustments (such as including additional subhaulers) could increase the ZEV populations achieved by this rule, but they are unlikely to make up the shortfall. And while we agree with Staff that regulations need to be flanked by complementary policies, like zero-emission zones and incentive funding, those policies cannot be relied on to achieve an equal or greater volume of ZEV deployment. Direct regulation through sales and purchases offer the greatest assurance of emissions reductions, require the least direct government financial support, and are shown to deliver the strongest "transformational signal."[20] They must be the lynchpin of California's ZEV strategy.

In a state where multiple communities are designated with having some of the worst air pollution in the nation, failure to address these significant gaps in the proposed ACF will further exacerbate the inequities we see in communities disproportionately fighting life-threatening air pollution. CARB must create a comprehensive regulation that meets the lived experiences of

[20] https://www.sciencedirect.com/science/article/pii/S221462961930413X

communities and workers while advancing climate change policy.

In this letter, we provide initial suggestions for how each of the ACF's concepts should be modified to bridge the gap between what is currently achieved and what the MSS says is required. We also request greater clarity from Staff on what they perceive as the key barriers to reaching a greater proportion of the truck population, especially in segments where the gap between covered trucks and the overall population are greatest.

II. Overarching Amendments Necessary to Achieve Targets and Commitments

This section outlines the minimum regulatory elements that must be included in the rules for all fleets if CARB is to meet the State's fleet commitments and emission reduction targets. The ACF must include aggressive requirements to end the purchase of replacement combustion trucks, retire older trucks as soon as legally allowed, and include indirect regulatory incentives that will encourage early retirement and replacement of fleet trucks. In addition, it is clear that the Advanced Clean Truck (ACT) rule must be strengthened to meet the state's climate and clean air goals. CARB should announce its intentions to increase the ACT rule's ZEV sales volumes as part of the ACF rule in order to support fleet transition and maintain consistency between purchase requirements and production mandates. Section III provides additional comments for specific fleet proposals, but the following represent the minimum requirements that must apply to most every fleet covered by this rule:

1. Stop digging[21]: Require 100% purchase mandates beginning in 2023

To achieve the 2035 and 2040 commitments for 100% zero-emission fleets, CARB's fleet regulations must necessarily end the purchase of combustion trucks used in those fleets beginning no later than January 1, 2023. This is because SB1 prohibits the retirement of most fleet trucks before the end of their statutorily-defined "useful life." SB1 limits the ability of CARB to force the retirement of trucks that are less than 18 years old and have under 800,000 miles.[22] Once a truck hits 800,000 miles with an engine over 13 years old, it can be forced to retire by CARB, but if the mileage stays low, CARB cannot require retirement until the truck is 18 years old. Put another way, new trucks purchased in 2022 cannot be forced to retire until sometime between 2035 and 2040 depending on the mileage.

Thus, it is not sufficient to rely on fleet composition targets, such as those proposed for private and federal fleets, to transition fleets of "commercial motor vehicles"[23] to 100% zero-emissions, because as long as fleets are permitted to purchase new combustion trucks, CARB cannot force

[21] *See* First Law of Holes: https://en.wikipedia.org/wiki/Law_of_holes#:~:text=The%20first%20law%20of%20holes,on%20and%20exacerbating%20the%20situation.

[22] Cal. Health & Saf. Code § 43021(a).

[23] *See* Cal. Vehic. Code § 34601(c) (including "any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, and any other motor vehicle used to transport property for compensation").

their retirement until the end of their useful life. As long as such purchases are not prohibited, fleets will never achieve fleet electrification targets. Nor is it sufficient to delay 100% purchase requirements on the assumption that new vehicles purchased after 2023 will retire naturally before 2035 or 2040. Such an approach would create a massive loophole that would allow the repowering of low-mileage vehicles and undermine any likelihood of meeting the fleet commitments.

CARB appears to recognize the need to include combustion truck purchase prohibitions for the various fleet rules, but that conclusion has not been made clear. In CARB's September 18, 2020 Workshop presentation, CARB explained that because of SB1, "100% ZEV purchases would need to start in 2027 to meet 2045 goals."[24] And as noted above, CARB's Mobile Source Strategy assumes delivery and drayage fleets will "have 100 percent ZEV sales with model year 2024."[25] For all regulatory provisions governing commercial motor vehicle fleets subject to the restrictions of SB1, CARB must be clear that all new combustion truck purchases for those fleets will be prohibited beginning 18 years before the target date for 100% zero-emission fleets (e.g., 2027 for 2045 target dates).

2. SB1 Authority: Mandate retirement at end of useful life

To achieve the zero-emission fleet goals, it will be critical not only to stop the addition of new combustion trucks to those fleets, but also to remove older trucks as soon as legally allowed. As noted above, SB1 protects trucks from mandatory retrofit or replacement for their statutorily defined useful lives. SB1, however, also directs the Department of Motor Vehicles to deny registration for certain model years beginning in 2020.[26] Specifically, for Class 4 through 6 trucks, model year 2004 and older trucks cannot be registered beginning in 2020, 2007 and older trucks cannot be registered beginning in 2021, and 2010 and older trucks cannot be registered beginning in 2023.[27] For Class 7 and 8 trucks, 2005 and older models cannot be registered as of this year, 2007 and older trucks cannot be registered beginning in 2022, and 2010 and older trucks cannot be registered beginning in 2023.[28]

This statutory retirement is helpful but not sufficient to prevent older combustion trucks from remaining in fleets beyond the target dates for those fleets to be 100% zero-emissions. Nothing in the statute addresses retirement of post-2010 model years that have exceeded their useful lives. CARB should include in any regulatory scheme a requirement that will require the retirement of any truck that reaches the end of its statutorily-defined useful life. Coupled with the purchase mandate above, this would mean replacements for any such trucks would be zero-

[24] https://ww2.arb.ca.gov/sites/default/files/2020-09/200918presentation_ADA.pdf (Slide 37).

[25] We assume CARB meant "purchases" rather than "sales," and note further that waiting to require 100% ZEV purchases until model year 2024 will make it very difficult to achieve 100% drayage fleets by 2035.

[26] Cal. Vehic. Code § 4000.15.

[27] *Id.* § 4000.15(b)(1).

[28] *Id.* § 4000.15(b)(2).

emission trucks and could accelerate the transition to zero-emission fleets. In addition to forcing the turnover of older trucks, such a regulatory requirement will also send an important signal to the market regarding the residual value of combustion trucks, which could provide additional incentive to invest in zero-emission trucks.

It is worth noting that the effect of such a forced retirement provision would likely be small in the early years of the ACF program. By 2023, SB1 will have forced the retirement of 2010 and older trucks. Thus, the only trucks on the road will be model year 2011 and newer. A regulatory retirement requirement could affect certain high-mileage trucks as early as 2024, but most trucks operating in fleets have relatively low-mileage (i.e., less than 800,000 total miles) and likely would only exceed the SB1 useful life definition based on their age beginning in 2029. By then, the zero-emission truck market will have matured considerably and should be less of a concern for those forced to replace their trucks with zero-emission ones.

3. Incentivize accelerated turnover

Once mandates are in place to stop new combustion truck purchases and require the retirement of trucks beyond their useful lives, the next core element of any fleet regulation will be requirements to accelerate the turnover of combustion trucks. Because SB1 protects these remaining trucks from direct mandates, the regulatory strategies must focus on indirect requirements that make combustion trucks less desirable to continue using. These strategies can include financial incentives that tax the use of combustion trucks and/or subsidize the purchase or use of zero-emission trucks. Subsidies, in particular, however, should not be overly relied upon because we expect that funding of these programs will remain limited. Any subsidy-based strategy should be carefully tailored to ensure limited resources are used to promote only zero-emission technologies, prioritize investments that benefit disadvantaged communities, and support high-road job creation.

Instead, CARB should prioritize other regulatory programs that will create the right incentives. For example, strong enforcement of inspection and maintenance, and anti-idling requirements can provide immediate health benefits while internalizing the external costs of combustion trucks. Green contracting requirements and indirect source review requirements can move the customers to favor zero-emission fleet services. Use and access controls, such as priority access, favorable parking, and use/access fees, can also favor zero-emission trucks and incentivize the transition.

Some of these strategies to indirectly accelerate the turnover of combustion trucks could apply across all types of fleets, but many may need to be tailored to the specific fleet operations and markets. But for each regulated fleet, this will be the main policy question: once California has ended new combustion truck purchase and capped how long existing combustion trucks can remain on the road, how will the fleet rules ensure that turnover occurs at a rate that will achieve the various targets for 100% zero-emission fleets? We look forward to working with CARB to find those solutions.

4. Remove credit for near-zero emission trucks and strengthen compliance exemption requirements

Plug-in hybrid vehicles are not zero-emission vehicles and should not be credited as satisfying zero-emission fleet requirements unless there is a demonstration that zero-emission options are not commercially available for the particular truck application. This will give fleets flexibility to manage their vehicles without needlessly extending reliance on combustion fuels. Moreover, the Rule should define qualifying near-zero emission vehicles (NZEVs) as plug-in hybrid vehicles with at least a 50-mile all-electric range, or that are capable of at least 5 hours of zero-emissions operation. As staff noted, exemptions based on the lack of availability would not be available for drayage and many other truck types that already have commercially available zero-emission models. We recommend CARB expressly identify those categories where such exemptions will not be considered.

We further recommend that CARB include language requiring fleets, as defined by "common ownership and control," to submit annual ZEV transition plans beginning in 2022 for CARB's review and approval. These transition plans should be updated annually and outline how the fleet will transition to zero-emission technologies consistent with the rule's requirements. As a model, the plans could look similar to the Zero-Emission Bus Rollout Plan required in CARB's Innovative Clean Transit rule, and could satisfy the ACF rule's reporting requirements. Critically, it should include an infrastructure installation plan developed in coordination with the fleet's electric utility. By working with utilities, the planning process will reduce uncertainty and help address one of the most significant barriers to infrastructure deployment.

The rule should include specific language concerning the criteria that must be met before fleets can qualify for an exemption due to delay of charging infrastructure installation to prevent possible abuse. Only fleets with approved plans should be allowed to invoke an impossibility exemption based on complications around infrastructure. Any applicant making such a request must demonstrate that they have done due diligence with reasonable advance planning and project management. Fleets that fail to plan for transitioning their fleets to zero-emissions cannot seek exemptions.

Staff suggested that the rule "[a]llow exemption if no ZEV fleets bid for contract." If misclassified contractors (discussed below) are engaged by non-asset fleets, this exemption opportunity lets companies shirk responsibility to upgrade the trucks that they control. This is a self-defeating exemption for non-asset-based fleets to blame non-compliance on their illegal misclassification business model and must be addressed in the rule's language, including with financial penalties to non-asset fleets.

Finally, the rule should provide that all requests for exemptions will be posted publicly along with CARB's proposed resolution. The public should be given an opportunity to amply review and comment on any such exemption request and proposed resolution.

5. Revise ACT to address non-fleet trucks

The strategies outlined above must be included in any fleet rules if California is to achieve the various commitments for transition fleets to 100% zero-emission trucks. Transitioning these fleets, however, will not be enough to meet the broader commitments to zero-emission trucks on the road, let alone the emission reductions needed to meet its health-based air quality standards or greenhouse gas emission reduction targets because the vast majority of trucks on the road in California are not part of any identifiable fleet, and do not operate in a particular industry or area of commercial activity. By our estimate, the numbers of trucks operating in the specific market segments that CARB has so far identified for potential regulation under the Advanced Clean Fleets Rule is less than 300,000.[29] This is less than 20% of the roughly 1,670,000 trucks in California documented in CARB's September 2020 presentation. We expect that the Advanced Clean Fleet Rule will have little impact on advancing zero-emissions in the largest category of trucks—Class 2b/3 trucks and vans, which represent 62% of California's truck population.[30]

To ensure that these remaining 80-plus percent of trucks are moved to zero-emissions in accordance with the state's commitments, it seems clear that stronger mandates on manufacturers will be required. For example, a majority of the Class 2b/3 vehicles are not in large fleets and will not be regulated under the ACF. The ACT rule only requires 55% of sales by 2035 for these vehicle classes, which is insufficient. To meet 2045 targets, we expect revisions to the ACT will need to achieve a level of electrification similar to the Governor's 100% sales target for light-duty vehicles. Moreover, to achieve those commitments in the 2045 timeframe without requiring massive scrappage-related expenditures of public funds that simply do not exist, 100% sales targets will be required in the 2027 to 2035 time frame to allow time for the turnover of these combustion trucks.[31] This means the current Advanced Clean Truck targets will need to be adjusted.

If CARB intends to maintain its practice of providing three years of lead time for such manufacturer mandates, and if CARB hopes to provide a smooth glide path to such a 100% sales target, CARB really needs to consider revising the Advanced Clean Truck Rule in 2024 or 2025, which means beginning work on that rule sooner rather than later. Announcing such commitments in this Advanced Clean Fleet Rulemaking will provide important market signals that will support a stronger fleet rule. Increasing the ACT requirements will also ensure that OEMs are making sufficient numbers of vehicles to meet the volume requirements needed to support the transition to ZEVs and to meet State objectives.

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[29] Based the following population estimates: public fleets – 100,000; first/last mile delivery - 80,000; private electricity, water, sanitation utilities - 13,500; telecoms and broadband utilities - 18,000; refuse services - 16,000; buses and shuttle buses - 25,000; drayage – 20,000. Total = 272,500.

[30] https://ww2.arb.ca.gov/sites/default/files/2020-09/200918presentation_ADA.pdf, Slide # 12, "California Vehicle Populations"

[31] As noted above, this is CARB's own conclusion in the current draft Mobile Source Strategy.

III. Specific Fleet Rule Recommendations

A. Drayage Fleets

This section includes recommendations to speed the conversion of the drayage and contract trucking segment to zero-emissions while prioritizing workforce equity and environmental justice. Our recommendations identify strategies to ensure controlling companies in the trucking industry are responsible for rule compliance.

Over the last several decades, California's environmental justice, environmental, and labor groups have advocated strongly to clean up the drayage sector. Drayage trucking is a uniquely polluting, exploitative, and non-compliant segment of industry. Consequently, drayage trucking requires extensive environmental regulation with unique consideration for labor and environmental justice impacts.

In 2020, the San Pedro Bay Ports moved record-breaking cargo volumes, with the Port of Long Beach recording its busiest year on record in 2020.[32] More cargo means more truck trips to carry containers, exposing neighboring communities to increased diesel pollution levels. This pollution is directly related to preterm birth and impaired immune system development, leading to higher childhood asthma rates[33] and chronic heart disease in adults.[34] At the same time, the San Pedro Bay Ports have delayed their environmental initiatives.[35] State action is imperative to reduce toxic diesel pollution and address this public health crisis.

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[32] 2020 was the Port of Long Beach's busiest year on record, moving 8.1 million TEUs, up 6.3% from 2019. Port of Long Beach, Port Moves a Record 8.1 Million TEUs in 2020 (Jan. 15, 2021), https://www.polb.com/port-info/news-and-press/port-moves-a-record-8-1-million-teus-in-2020-01-15-2021. Port of Los Angeles had its fourth busiest year on record in 2020, moving 9.2 million TEUs, due to a surge in cargo volumes in the last half of the year. Port of Los Angeles, Port of Los Angeles Cargo Reaches 9.2 Million TEUs in 2020, https://www.portoflosangeles.org/references/2021-news-releases/news_011421_sotp2021.

[33] Hew, K. M., Walker, A. I., Kohli, A., Garcia, M., Syed, A., McDonald-Hyman, C., Noth, E. M., Mann, J. K., Pratt, B., Balmes, J., Katharine Hammond, S., Eisen, E. A. and Nadeau, K. C., *Clinical & Experimental Allergy*, 2015 (45) 238– 248, *available at* https://static1.squarespace.com/static/57f3dc70d482e90db4be3355/t/58a61c6b9f7456d4257b38af/1487281262989/Childhood+exposure+to+ambient+polycyclic+aromatic.pdf

[34] Amy M. Padula, Wei Yang, Fredrick W. Lurmann, John Balmes, S. Katharine Hammond, Gary M. Shaw,
Prenatal exposure to air pollution, maternal diabetes and preterm birth, Environmental Research, Volume 170, 2019, Pages 160-167, ISSN 0013-9351, https://doi.org/10.1016/j.envres.2018.12.031.

[35] Port Of Long Beach Delays New Clean Truck Rate, a*vailable at* *https://www.pacificports.org/port-of-long-beach-delays-new-clean-truck-rate/*.

The drayage, package delivery, and other short-haul segments of the trucking industry are also home to ongoing and egregious worker exploitation.[36] Trucking companies, brokers, and other contracting entities often illegally misclassify drivers as independent contractors (when they are employees by law) to avoid paying wages, benefits, equipment costs, taxes, and regulatory compliance costs.[37] Misclassified drivers operate 70 to 90% of California's drayage trucks, making misclassification the drayage segment's dominant business model.[38]

Misclassified contract drivers are often low-income, and face high environmental compliance costs. For example, contractors typically pay financing costs above 14% (900 basis points higher than the industry average of 5%), increasing their overall total cost of ownership (TCO) compared to well-financed corporations.[39] Misclassified drivers also have shorter time horizons to earn back truck investments, decreasing their ability to adopt new technology. As a result, contractors have the lowest clean vehicle standard compliance rates of all California trucking companies and contribute an outsized share of fine particulate matter (PM2.5) to California's air.[40] Importantly, the toxic emissions from non-compliant trucks disproportionately harm environmental justice communities adjacent to ports, warehouses, and freight corridors.

Because many misclassified truck drivers cannot access the low-cost capital available to large trucking companies and because those drivers also barely subsist on poverty wages, they lack the financial capacity to acquire higher cost new ZEV trucks. If CARB is not mindful about contractors becoming regulated parties under the ACF rule, CARB could end up imposing significant cost burdens on misclassified truck drivers with similar failures that occurred with the Truck and Bus Rule as the outcome. This situation threatens the ACF rule's success, potentially resulting in greater amounts of criteria pollution and greenhouse gas emissions than expected. Contractors should not be ignored in the ACF rule; nor should "small fleets" (often jargon for misclassified contractors) be exempted. Rather, controlling companies must be held accountable for rule compliance.

Before sharing our suggested amendments to the drayage proposal, a note on terminology: throughout our recommendations you will find terms such as "misclassified," "employee," "independent contractor," or "owner-operator." Some are legal definitions which describe the employer-employee relationship, while the final one is simply a self-appointed term which describes a workers' relationship with the tools of the trade and not an employer-employee relationship.

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[36] USA Today, Rigged: Forced into debt. Worked past exhaustion. Left with nothing. 2017. *Available at* https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/.
[37] Viscelli, The Big Rig: Trucking and the Decline of the American Dream, 2016.
[38] Bensman, Misclassification: Workers in the Borderland, 2014, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383396.
[39] *Id.*
[40] Truck Driver Misclassification: Climate, Labor, and Environmental Justice Impacts, UC Berkeley Labor Center, 2019, *available at* https://laborcenter.berkeley.edu/truck-driver-misclassification/.

An "employee" is the most common employer-employee relationship; the term “employee” is defined under the Fair Labor Standards Act, and subsequent Supreme Court decisions.[41] An "independent contractor" is another legal term used by enforcement agencies to describe a worker, who is in fact, and in law their own boss (see fact sheets for legal definitions). Different enforcement agencies and courts apply different tests to determine if a worker is an employee or an independent contractor. In California, state agencies use the *Borello* test to determine a workers’ employment relationship and to determine protection eligibility under state wage and hour laws and unemployment and disability insurance benefits for workers in the commercial trucking industry.[42] An employer who illegally “misclassifies” their workers as independent contractors is committing fraud. Employers illegally misclassify workers so they can avoid having to pay payroll taxes, unemployment benefits, minimum wage, overtime, workers compensation, or to avoid having to abide by wage and hour laws, meal breaks, rest periods or to deny their workers the right to organize a union. Of the close to 500 drayage drivers’ cases adjudicated by the Department of Labor Standards Enforcement, almost every single one has found that trucking companies are misclassifying their employees as independent contractors.

There is a term, often used to confuse the issue, “owner-operator”, which is used by the trucking industry and some drivers. To be clear, “owner-operator” is not a legal definition or classification of employee status. In the trucking industry, an owner-operator simply owns their truck. It describes a workers’ relationship to the tools of the trade. But, it does not define whether that worker is an employee or an independent contractor – both legal definitions. A truck driver who owns their own truck can still be an employee, much the same way a plumber, mechanic, or dry-waller can own their own hand tools and still be employees. In fact, there are owner-operators who are properly classified as employees and receive not only a paycheck for wages earned but also reimbursement from the trucking company for maintenance and fuel. We also want to make it clear that there are also misclassified port truck drivers who do not own their own trucks, but instead drive a company truck and are still illegally misclassified as independent contractors.

1. Use the “common ownership or control” definition.

Many drayage companies operate on a non-asset-based/contractor model in which truck ownership by a contractor obfuscates real corporate control over operations. Companies with operational control must bear the cost of the ACF rule without shifting costs to drivers. To help address this issue, CARB defined ownership in the ACT rule as “common ownership or control” to include companies that control or direct trucks. The improved “common ownership or control” definition must also be used to identify the ACF rule’s regulated party. We support the intention in CARB’s proposed private and federal fleet requirements that uses the “common ownership and control” definition to identify the regulated entity. By making the “common owner” responsible for compliance, the regulatory burden and financial penalties for non-compliance correctly fall on the controlling entity.

[41] See the Department of Labor’s fact sheet here: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf

[42] See the Department of Labor Standards Enforcement FAQ (https://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm) for more information about the different methods used to determine the employer-employee relationship.

2. Require new drayage purchases to be zero-emission starting in 2023 and retired upon reaching useful life.

We strongly support staff's proposal to require new trucks added to the Drayage Truck Registry be zero-emission starting in 2023, but CARB must clarify that the only new drayage trucks that will be allowed to enter service beginning in 2023 are zero-emission trucks. This clarification is important because the current drayage truck regulation exempts non-diesel trucks – meaning other types of combustion trucks do not need to register.[43]

Further, we recommend that the ACF rule require all combustion engine drayage trucks reaching the end of their useful life as defined by SB1 to retire immediately from any further use. Coupled with the purchase mandate above, this would mean replacements for any such trucks would be zero-emission trucks and could boost turnover slightly by driving older trucks' retirement even if they are otherwise serviceable. Although SB1 limits CARB's ability to force the retirement of trucks that are less than 18 years old and have under 800,000 miles, this requirement to retire at the end of that life is essential to help phase out the oldest, dirtiest vehicles. We urge CARB to remain committed to this early action step to meet the complete transition in 2035 as outlined in Executive Order N-79-20.

3. Address misclassified drayage drivers.

Misclassified contractors operate between 70 and 90% of the drayage fleet. The proposed private and federal fleet requirements appropriately address misclassification by regulating companies with "common ownership or control." CARB's current drayage truck proposal, however, lacks a mechanism to ensure that "common owners" of drayage trucks are the regulated party. This will allow drayage companies to offload compliance responsibilities onto drivers. To help address misclassification, CARB should maintain a database of all drayage fleets, using the "common ownership and control" definition to identify the "fleet." CARB may use the ACT rule reporting data and Department of Motor Vehicles' Motor Carrier data to identify "common owners." After 2023, any new truck added to the "fleet" must be zero-emission, with "common ownership and control" used to identify the regulated entity corresponding to each truck. Common owners should report data annually to describe the makeup of their fleet and demonstrate ZEV compliance.

Further, CARB should work with the California Workforce Development Board to require a high-road labor criterion as part of the proposed ZEV Fleet Certification. Such a criterion would allow CARB to identify for the public, firms in compliance with labor laws and conforming to the "common ownership and control" definition. Elements to consider in this certification include predatory leasing that creates an asymmetric relationship between a trucking company and the driver, as well as companies on the California Labor Commissioner's SB 1402 list with "unsatisfied final court judgments, tax assessments or tax liens."

[43] *See* 13 Cal. Code Regs. § 2027(b)(1).

4. Apply 2035 100% drayage ZEV timeline to all regional goods movement.

The ACF rule's current definition of drayage covers the initial movement of goods by trucks that move cargo from ports and intermodal facilities. This definition, however, misses secondary goods movement handled at local processing, cross-docking, or transloading facilities before heading to their ultimate destination. Importantly, these facilities are in communities suffering from the worst air pollution, including Southeast Los Angeles, the Inland Empire, and the San Joaquin valley. Nearly two-thirds of all cargo flowing through the San Pedro Bay Ports are destined for local consumption or handled locally. Moreover, when CARB's Board approved the ACT rule resolution and set a 2035 drayage ZEV transition target, drayage was intended to capture regional goods movement and not limited to a narrow technical definition. We understand these trucks are addressed in the private fleet portion of the ACF rule. However, the ZEV adoption timeline for vehicles that are functionally identical to drayage trucks is extended to 2039. CARB should consider the purpose of these trucks instead of adhering to an overly narrow drayage definition.

We recommend CARB either expand the current drayage definition to include regional secondary goods movement or create an equivalent regional goods movement registry with the same regulatory timeline as the drayage fleet. A possible goods movement definition based on operational purpose could be "a container or flatbed truck moving 150 miles from the point of origination." This would allow the ACF rule to reflect the industry's realities where fleets may not call on ports but are intrinsically involved in local goods movement while furthering the goal to prioritize ZEV benefits to pollution burdened communities.

B. Public Fleets

According to CARB's Resolution, government fleets must transition to 100% zero-emission operations by 2035.[44] Given this mandate, the ACF Rule needs to set a path to get most public fleets to reach zero-emissions by 2035. However, the current ACF proposal only requires that public fleets begin 100% zero-emission purchases in 2027, which means that combustion trucks could be on the road until 2045, long beyond the 2035 deadline. CARB needs to incorporate the 2035 timeline for public fleets into the next version of the Rule in order to keep the State on track with its goals.

1. Require 100% ZE purchases beginning in 2023

As discussed with other fleets above, to achieve a statewide zero-emission public fleet goal by 2035, it will be critical to stop the addition of new combustion trucks to public fleets as soon as possible, and to remove older trucks as soon as legally allowed. While the 100% zero-emission purchase requirement beginning in 2027 is a move in the right direction, most fleets will likely not complete a full fleet turnover within 8 years. The Rule needs to shift the 100% purchase requirement for public fleets up to 2023, and even this timeline may not be enough to fully transition by 2035.

[44] CARB Resolution 20-19 at 10 (June 25, 2020) (available at: https://ww3.arb.ca.gov/regact/2019/act2019/finalres20-19.pdf).

2. Mandate retirement at end of SB1-protected useful life

There is nothing in the current proposal that prevents fleets from keeping combustion vehicles beyond the deadline for a complete transition. As we recommend for private fleets, the Rule should also require that all combustion vehicles in public fleets be retired at the end of their statutorily-defined useful lives. Including a retirement requirement will not only ensure that combustion vehicles are retired as soon as legally allowed, but it will also send a strong market signal that combustion vehicles have a limited lifespan in California's public fleets. At the same time, if most government fleets naturally turnover before reaching 18 years or 800,000 miles, this will be a low impact safety net that can ensure timely turnover.

C. Refuse Fleets

Refuse truck technology has made significant advances in recent years. For example, BYD and Lion have zero-emission refuse trucks currently on the road,[45] Mack is beginning deliveries of its rear loader this year,[46] Peterbilt has a side loader and a rear loader scheduled for production this year,[47] and Daimler plans to begin production on its municipal refuse truck in 2022.[48] On top of this, the City of Los Angeles, the second largest city in the nation, has already committed to stop procuring combustion refuse trucks beginning in 2022, and to achieve a 100% zero-emission refuse fleet for its more than 750 trucks by 2035.[49] These advances and commitments show that the refuse sector can meet the proposed 2039/2040 transition timeline.

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[45] Cole Rosengren, "Electric refuse trucks on the road or on the way in rising number of states" (March 9, 2020), https://www.wastedive.com/news/electric-refuse-trucks-byd-lion-mack-dsny-ecomaine/573352/. *See also* FleetOwner, "Electric Class 8 refuse trucks from BYD headed to Seattle" (July 18, 2018), https://www.fleetowner.com/running-green/blue-fleets/article/21702731/electric-class-8-refuse-trucks-from-byd-headed-to-seattle; PR Newswire, "Lion Electric and Boivin Evolution Announce Initial Sales of Lion8 Zero Emission Refuse Trucks to Waste Connections" (July 6, 2020), https://www.prnewswire.com/news-releases/lion-electric-and-boivin-evolution-announce-initial-sales-of-lion8-zero-emission-refuse-trucks-to-waste-connections-301088460.html.

[46] Jesus Garcia, "Electric Garbage Trucks Are Finally Coming in 2021 With the Battery-Powered Mack LR" (Sept. 20, 2020), https://www.thedrive.com/news/36566/electric-garbage-trucks-are-finally-coming-in-2021-with-the-battery-powered-mack-lr.

[47] FleetOwner, "Peterbilt makes electric 520EV truck available for 2021 orders" (Nov. 20, 2020), https://www.fleetowner.com/equipment/trucks/article/21148377/peterbilt-makes-electric-520ev-truck-available-for-2021-orders; Today's Trucking, "Order book opens for Peterbilt 520EV" (Nov. 13, 2020), https://www.trucknews.com/transportation/order-book-opens-for-peterbilt-520ev/1003146328/.

[48] Fred Lambert, "Daimler announces upcoming electric garbage truck" (Jan. 17, 2020), https://electrek.co/2020/01/17/daimler-electric-garbage-truck/.

[49] Jameson Dow, "Los Angeles won't buy ICE garbage trucks by 2022, full fleet electric by 2035" (Jan. 30, 2020), https://electrek.co/2020/01/30/los-angeles-wont-buy-ice-garbage-trucks-by-2022-full-fleet-electric-by-2035/.

Concerns raised by refuse fleet owners at the March 4, 2021 workshop are unfounded, and should not sway staff to delay the timeline for a complete transition. Fleets can continue to use any refuse trucks and fueling infrastructure that they recently purchased for the remainder of the statutorily-protected life of the vehicles. The Rule will not result in stranded assets or investments. That said, fleet owners should be on notice that continued investment in gas trucks and fueling infrastructure is not a rational choice when they know that the ZEV transition is around the corner. CARB and the Governor have made it clear for years that all vehicles, specifically including refuse trucks, will need to go to fully zero-emission operations.[50]

The proposed electrification timeline for refuse fleets—2040 for public fleets and 2039 for private fleets—is attainable and aligned with State mandates.[51] But to achieve these goals, CARB will need to institute a 100% purchase requirement beginning in 2023 in order to ensure compliance despite SB1's restrictions. In fact, the Engine Manufacturers Association confirmed during the ACT rulemaking that the refuse sector is particularly well-suited to immediate electrification, and can reach 100% zero-emissions as early as 2026.[52] This makes sense given their operations: they stop and start regularly, stay at low speeds, drive predictable routes, and return to a central facility each night, making charging straightforward. Refuse trucks are some of the easier vehicles to electrify, so it will be critical that the Rule maintain the proposed 2039/2040 timeline and put in place a 2023 100% purchase requirement so California has a shot at meeting its zero-emission goals on time.

D. Private and Federal Fleets.

1. Use the "common ownership or control" definition to identify private fleets.

Many private fleets, outside of drayage, operate on a non-asset-based/contractor model in which truck ownership by a contractor obfuscates real corporate control over operations. As described above, the improved "common ownership or control" definition from ACT must also be used to identify the ACF rule's regulated party in the private fleet regulations. This requirement will be

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[50] CARB, "Vision for Clean Air: A Framework for Air Quality and Climate Planning" at 17 (June 27, 2012) (available at: https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2012-air-quality-management-plan/vision-for-clean-air-2012/draft-vision-for-clean-air-a-framework-for-air-quality-and-climate-planning.pdf?sfvrsn=4); CARB, "Mobile Source Strategy" (May 2016) at 78-80 (available at: https://ww3.arb.ca.gov/planning/sip/2016sip/2016mobsrc.pdf); CARB Resolution 20-19 (June 25, 2020) at 10 (available at: https://ww3.arb.ca.gov/regact/2019/act2019/finalres20-19.pdf;); Gov. Newsom Exec. Order N-79-20 (Sept. 23, 2020) (available at: https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-text.pdf).

[51] *Id.*

[52] Engine Manufacturers Association, "Public Hearing to Consider the Proposed Advanced Clean Trucks Regulation and Draft Environmental Analysis Prepared for the Regulation" at 1-2 (Dec. 12, 2019) (available at: https://www.arb.ca.gov/lists/com-attach/142-act2019-WjAAY1A1AAwEbwdm.pdf).

especially significant in package delivery, long haul, and short haul segments where we know misclassification and independent contracting is pervasive.

2. Change "high priority" definition to expand number of trucks covered by rule

Commenters are eager to work with CARB to ensure that "high priority" fleets capture the largest breadth of vehicles and companies genuinely suited for an accelerated transition to ZEVs. We know from CARB's market assessment that since 2018, more than 70% of Class 4-7 trucks, and 30% of Class 2b-3 and Class 8 trucks have been highly suitable for electrification.[53] These percentages have likely already increased with advances in ZE technology, and will continue to do so between now and 2030. Thus, even from the fleet owner/operator's perspective, an increasingly substantial portion of the truck market should be considered "high priority." Rapid electrification, purely from an economic standpoint, is likely a wise investment for fleets of much smaller sizes than 50 vehicles. Similarly, companies with well below $50 million in annual revenue should not be entirely exempted from planning for an investment that can lower their total costs.

We are concerned that the current criteria for defining "high priority" fleets (50 or more vehicles, $50 million in revenue) leave much of this market out. For example, the parcel delivery category, which relies heavily on contractors and small fleets of one to three trucks,[54] is ripe for electrification, and often work on behalf of extremely profitable beneficial cargo owners. It would be helpful for the stakeholder process if CARB could elaborate on how many of the trucks that provide delivery service for large companies such as Amazon, Walmart, IKEA, etc. are counted as high-priority fleets. CARB should consider lowering the threshold for "high priority" fleets to $10 or $20 million in revenue, or fleet sizes of 10 or 15 trucks, or explain which businesses would be potentially adversely affected with such lower cutoffs.

For truly small fleets (e.g., three vehicles up to the priority cutoff), rather than categorically exclude such a large fraction of the fleet, CARB should create a new "small fleet" category that will be subject to similar mandates, but receive additional time for compliance or narrow exemptions to assist those that would genuinely struggle to transition. For these small fleets, CARB could consider delaying a 100% purchase requirement for one year to allow more time to plan their transition to ZEVs including infrastructure installation.

[53] CARB, Appendix E: Zero Emission Truck Market Assessment, at 5. https://ww3.arb.ca.gov/regact/2019/act2019/appe.pdf.

[54] *See, e.g.*, Sam Appel and Carol Zabin. *Truck Driver Misclassification: Climate, Labor, and Environmental Justice Impacts.* Center for Labor Research and Education, University of California, Berkeley. August 2019. http://laborcenter.berkeley.edu/truck-driver-misclassification/.

3. Add purchase requirement to the private and federal fleets portion of the rule

The currently proposed structure is problematic and will not achieve its objectives. As highlighted throughout these comments, a fleet composition requirement alone ignores SB1 restrictions. CARB cannot force these fleets to retire their trucks before they hit their lifetime caps. As a result, the achievement of these fleet percentage targets would be illusory. The ZEV Target Phase-in Schedule as shown on slide 50 of CARB's workshop presentation does nothing to prevent fleets from purchasing ICE trucks for tier 1 as late as 2034 (box trucks, vans, etc.), tier 2 as late as 2038, and tier 3 as late as 2041.[55] SB1 would allow these trucks to continue in operation until 2052, 2056 and 2059 respectively. Other than our recommendation above for a 2035 100% electrification target for trucks operating as drayage trucks but not traveling directly to or from a port or railyard, we support the 100% electrification dates (2035, 2039, 2042) and categories outlined on slide 50.

We recommend that the current proposal be replaced with a purchase requirement structure. Those purchase requirements must be consistent with the CARB-approved Board resolution for the ACT rule, which requires that:

- Drayage, last mile delivery, and government fleets must achieve 100% electrification of trucks on the road by 2035;

- Refuse trucks, local buses and utility fleets must achieve 100% electrification of trucks on the road by 2040; and

- All other MHD vehicles achieve electrification by 2045 everywhere feasible.

Therefore, we recommend that CARB adopt a purchase requirement structure with three categories of ZEV body type categories, similar to what CARB has proposed, but starting with:

- 100% purchase requirement beginning in 2023 for category 1 trucks (box trucks, vans, two-axle buses, yard trucks) and government (public) fleets;

- 100% purchase requirement starting in 2023 for category 2 trucks (work trucks, day cab tractors, three-axle buses), which should at least include private refuse trucks, local buses and utility fleets; and

- 50% purchase requirement starting in 2023 and 100% by 2027 for category 3, which should include everything else (sleeper cab tractors and specialty vehicles).

The number of truck purchases for a fleet in any given year are determined by the average life of the vehicles. For trucks with a life of 18 years, for example, the annual turnover is 5.6% of a fleet's trucks. For trucks with a life of 10 years, the annual turnover would be 10%. Requiring all

[55] https://ww2.arb.ca.gov/sites/default/files/2021-02/210302acfpres_ADA.pdf

new purchases to be zero-emissions would only mean transitioning 6-10% of a given fleet per year. Our recommended purchase mandate, does not mandate a particular number of purchases, but ensures that the rule takes advantage of natural turnover to ensure all replacements are zero-emission. Fleet owners are accustomed to needing to turnover their fleets in this way as their trucks age out. The difference is that they would now be acquiring ZEVs.

It should be noted that our understanding is that the TCO for EVs is positive for many applications today and continues to get better every year. Strong sales and purchase standards will help position fleets to realize financial benefits with this transition. Even two years ago, CARB's total cost of ownership study for the ACT rule published in February 2019[56] showed a positive TCO for a walk-in step van in 2018 and for a day cab tractor in 2024. In our TCO analysis for Class 2b/3 pickup trucks that we submitted to CARB, we showed that by 2024 the TCO for Class 2b/3 electric pickup trucks was lower than diesel trucks, and 25% lower than gasoline trucks.[57] A recent study released by Lawrence Berkeley National Laboratory concludes that "at the current global average battery pack price of $135 per kilowatt-hour (kWh) (realizable when procured at scale), a Class 8 electric truck with 375-mile range and operated 300 miles per day when compared to a diesel truck offers about 13% lower total cost of ownership per mile, equating to a roughly 3-year payback and net present savings of about $200,000 over a 15-year lifetime."[58] We have also submitted comments to CARB on cost assumptions for its upcoming updated TCO study for this rule and expect that the new study will show even more positive TCO results for EVs than the prior study.

4. Update the ACT market segment analysis before assigning suitability

CARB states that it will assign truck types and divide them into three tiers of EV suitability. This sorting is to be based on the ACT Market segment analysis.[59] That analysis from February 2019 is already two years old. Batteries have improved significantly since then, truck ranges are now longer, many more new electric trucks are now available and the overall suitability of many categories of trucks will have improved since then. CARB must update that analysis before using it to assign trucks into suitability categories.

E. ZEV Fleet Certification proposal

We generally support the ZEV Fleet Certification program but recommend that it be modified to have to meet or exceed our proposed purchase requirement as described above. As described earlier, we also recommend that a new requirement for certification be added such that the fleet must certify that all truck drivers directly or indirectly employed by or under its control must be

[56] https://ww2.arb.ca.gov/sites/default/files/2020-06/190225tco_ADA.pdf

[57] https://www.arb.ca.gov/lists/com-attach/2929-act2019-UDNUPlULBGVQNFcI.pdf

[58] https://eta-publications.lbl.gov/publications/why-regional-and-long-haul-trucks-are?utm_campaign=Transportation&utm_medium=email&_hsmi=2&_hsenc=p2ANqtz-_8s9iPX2dYr7SI5K9tJ9_6FlykbD2nohg5xFFUha4ZL56r1PEdtJ7St7HWx543ZkHlTtBtEMF_rhAO4-edRvYDhJHTbftYC7kpXmXy_gq1CciWUSA&utm_content=2&utm_source=hs_email

[59] https://ww2.arb.ca.gov/index.php/sites/default/files/2019-02/190225actmarketanalysis.xlsx

properly classified according to California law and regulation with respect to whether they are employees or may be independent contractors.

IV. Ensuring Regulatory Requirements Are Consistent With ACT

We understand that CARB staff want to ensure that purchase requirements of the fleet rule are consistent with the ACT Rule to avoid creating a market imbalance between supply and demand that could affect pricing power. While commenters are sympathetic to these concerns, we do not believe a one-to-one match is required. As outlined above, and in CARB's own draft Mobile Source Strategy, some fleets may need to transition at an accelerated rate to meet state targets. But with many manufacturers rapidly entering the ZE market at a scale that promises to exceed the ACT targets around the world, these purchase numbers are not so different from the ACT mandates that a pricing power imbalance is a realistic concern. Moreover, to the extent CARB believes there needs to be closer alignment between the ACT and the ACF, the Mobile Source Strategy demonstrates that it is the ACT that must be amended to increase ZEV sales.

Imposing a 100% purchase requirement on all fleets targeted for being all zero emissions by 2035 or 2040 could require more zero-emission trucks than required by the ACT in the early years, but as the ACT mandates increase over time, the delta between mandated purchases and sales will become smaller. Based on announcements from manufacturers demonstrating that manufacturers plan to exceed the minimum requirements of the ACT,[60] we believe there is little chance that any such difference will create pricing concerns.

V. Conclusion

CARB and the Governor have committed to transitioning California's trucks to zero-emissions. Meeting these commitments is critical to finally protecting communities that have long suffered from the State's worst air pollution. It is also critical for paving the way to the much broader transition required to avoid catastrophic climate change. These commitments are feasible and are consistent with actions being taken in other regions around the world.

The current draft proposal falls far short of these commitments and provides only marginal benefits beyond the ACT rule, which itself will need to be strengthened in short order. The ACF rule must be revised to:

- Mandate the purchase and retirement of trucks as allowed by SB1;
- Require all new purchases to be zero-emissions beginning in 2023 for all fleets subject to 2035 and 2040 100%-fleet goals, and by 2027 for all other truck fleets;

[60] Legacy manufacturers are joining new entrants in the race to dominate the zero-emission revolution in trucks. Ford, GM, Peterbilt, Kenworth, Tesla, and Volvo all announced new investments in all-electric trucks this year, with Daimler, Hyundai, and Toyota working on fuel-cell-powered vehicles. *See, e.g*. Murray Slovick "The Age of Zero-Emissions Heavy Duty Trucks Begins" (Feb. 12, 2021) https://www.electronicdesign.com/markets/automotive/article/21155025/electronic-design-the-age-of-zeroemissions-heavyduty-trucks-begins.

- Use the common ownership and control definition from ACT for all drayage and private fleets;
- Require fleets to prepare and submit transitions plans to ensure due diligence toward compliance;
- Preclude the use of plug-in hybrid vehicles to satisfy ZE requirements unless ZE trucks are not commercially available;
- Address all drayage operations and ensure 100% fleet requirements are met by 2035;
- Address misclassified drayage drivers; and
- Expand the definition of "high priority fleets" and adopt additional mandates for small fleets to capture more trucks consistent with MSS assumptions.

Only with these changes will the ACF rule begin to come close to fulfilling the zero-emission truck commitments and protecting impacted communities. We look forward to working with staff to develop these concepts further.

Sincerely,

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350 Silicon Valley

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