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ASSOCIATED CALIFORNIA LOGGERS
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Long Beach Area Chamber of Commerce
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COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
SoCAL CHAPTER
NFL
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SAN GABRIEL VALLEY ECONOMIC PARTNERSHIP
Est. 1991
IEA
INDUSTRIAL ENVIRONMENTAL ASSOCIATION
Promoting Industry and Protecting the Environment
San Diego Regional Chamber
SANTA MARIA VALLEY Chamber
MURRIETA/WILDOMAR CHAMBER OF COMMERCE
SM area Chamber of Commerce
CMTA
CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION
WEST COAST LUMBER & BUILDING MATERIAL ASSOCIATION
Associated General Contractors (AGC)
Trillium
PIFC
VCTA
TULARE CHAMBER of COMMERCE
SANTA CLARITA VALLEY Chamber of Commerce
WESTERN GROWERS
Fresh produce from our families to yours
WESTERN INDEPENDENT REFINERS ASSOCIATION
WESTERN WOOD PRESERVERS INSTITUTE
EST. 1947
WAPA
WESTERN AGRICULTURAL PROCESSORS ASSOCIATION
TORRANCE Area Chamber of Commerce
California Waste Haulers Council
WSPA
WPHA
Western Plant Health Association

May 28, 2020

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Via Electronic Submittal

SUBJECT: COMMENTS ON THE PROPOSED ADVANCED CLEAN TRUCKS REGULATION—LARGE ENTITY AND FLEET REPORTING REQUIREMENT-15 DAY CHANGES

The undersigned coalition, representing dozens of organizations and the thousands of businesses they represent present these comments to the proposed 15-day changes to the Advanced Clean Trucks draft regulation first October 22, 2019 and heard by the Air Resources Board on December 12, 2019. On April 28, 2020, ARB released draft 15-day changes to the draft, which, according to the website posting, was revised again on May 1, 2020 and re-posted.

The coalition greatly appreciates the changes and updates between the first draft and this draft. In particular, we support staff recommended changes to prior section 2012.2 (Facility Category Reporting), which contained significant data collection requirements that would have been difficult, if impossible, for industry to implement in the timeline proposed. We look forward to working with staff to determine how best to provide this data to fill in the gaps on how electric vehicles can be deployed in California in the future in a manner that is cost-effective, benefits economically disadvantaged areas of the state, and helps the state meet its carbon neutrality goals.

Our coalition still has remaining concerns with the draft. We continue to believe that the reporting requirement should be bifurcated from the manufacturer requirement. We are also concerned with changes that expand the fleet reporting requirement, or otherwise remain unclear and difficult to understand. Please consider these comments in addition to those raised, but not addressed, during the first comment period of this rule, as well as raised in person at the board meeting.

We also remain concerned regarding the timeline for reporting. Although the draft clarifies that entities may use any date after January 1, 2019, this rule will not be in effect until at least July of 2020. To the extent ARB is looking for robust and supportable data concerning vehicles, reporting by April 1, 2021 provides less than 6 months for entities to collect information, count vehicles, and report in order to provide accurate information. This is because there is no requirement that entities retain records related to vehicles prior to the implementation of this rule. Moreover, entities should be given additional time to report, especially considering this rule will now overlap with many, many workplaces changes and new rules as a result of the COVID-19 pandemic and related response.

Because of the release of these 15-day changes in the midst of the stay-at-home orders required as a result of the COVID-19 pandemic and related responses, please note that our comments represent only a partial list of concerns.

Section 2012 Scope and Applicability

- § 2012(b)(2)-(3)-expands, rather than reduces, the entities that are subject to the rule from the prior draft. The prior draft applied to fleet owners with 100 vehicles or more, and it now applies to any fleet owner with 50 vehicles or more, greatly expanding the businesses to whom this draft rule will apply.
- § 2012(c)-Because the manufacturer requirement does not apply to light duty, and the trigger for reporting only applies to weight classes above light duty, the rule should not be requesting information on light duty or passenger vehicles. ARB should add an exemption for reporting for all passenger and light duty vehicles, which could number in the hundreds for many entities that also have trucks that would be subject to the rule. Entities should not be required to report on vehicles that are not part of this rulemaking.

- § 2012(c)(6)-We appreciate the exemption for emergency vehicles. However, ARB should provide clarity on how this exemption impacts 2012.2(b)(2)(O), which require reporting on emergency vehicles. Would we only report non-emergency vehicles sent to assist in an emergency?

Section 2012(d) Definitions

- § 2012(d)(2)-We support staff's clarification of the term "broker."
- § 2012(d)(3)-The definition of "common ownership or control" remains problematic, and difficult to interpret as applied to joint ventures, or related entities. ARB should clarify this definition, as it is used as the basis for the applicability of the entire rule. For example, it will be difficult to determine which entity is responsible for vehicles that are owned by different companies, but for which companies have some shared officers or ownership structures.
- § 2012(d)(10)-ARB should provide clarity on how entities should handle vehicles that only operate on private property, and are not registered with the DMV.
- § 2012(d)(22)-We support staff's clarification that vehicles kept overnight at a person's home will not require disclosure of personal information.
- §2012(d)(24)-We support staff's clarification that the rule applies only to vehicles designed for on-highway use.

Section 2012(e) General Requirements

- § 2012(e)(1)-We support staff's clarification that entities may report jointly or separately, which will streamline reporting. We are confused, however, as to why brokerage or entities with motor carrier authority still must report vehicles if they do not own such vehicles.
- § 2012(e)(1)-We continue to express concern that reporting by April 1, 2021 is not feasible. If the goal is accurate vehicle information for use in future rulemaking, and data from before recording keeping is used as the basis for this reporting, this goal will not be achieved. Instead, ARB should allow for a full year after adoption for reporting.
- § 2012(e)(3)(B)-ARB should clarify if this was meant to apply to only broker authority that dispatches vehicles. There are no requirements in the rule that use the term "dispatch" that are not related to brokers, except this section.
- § 2012(e)(3)(C)-ARB should clarify whether this will apply to vehicles owned but not registered with the DMV.
- § 2012(e)(4)-We remain concerned regarding enforcement of this rule. Failure to respond can subject an entity to fines and penalties of up to $37,500 per day, per violation. Considering the rule allows entities to base their reporting on best estimates, how will ARB evaluate which data is sufficient and which data it considers insufficient that would warrant a request for clarification? What if an entity does not have any reports, because there was no record keeping requirement, to support its estimates? We recommend clarification on enforcement penalties be included in the rulemaking.

Section 2012.1 General Entity Reporting Information

- § 2012.1(a)(12)-Requires entities to report their gross US-wide revenue in "bins." Because §2012(b)(1) states that the remaining entity reporting only applies to those with annual revenues greater than $50 million, there is no basis for reporting additional revenue, nor should future regulations be based upon how much revenue an entity generates.
- § 2012.1(a)(15)-This section will be difficult to interpret. For example, it would appear that in order to require reporting under this section, the contract would be in place to deliver goods or perform work in California in 2019 or 2020, the contract must specify a truck over 8,500 lbs, the contractor must be serving the contractee's customers, and the contractor must represent the contractee's brand. Additionally, please clarify what it means to "represent your brand" and "serve your customers." Does this mean the truck or its container must have a logo on it? Does the contract have to specify a vehicle over 8,500 lbs in order to trigger this section?
- § 2012.1(a)(17)-(18)-Please provide clarification on the intent of this section. The terms used therein are not defined, nor do we understand the purpose in light of the rulemaking as a whole. The term

sustainability plan means different things to different industries. Will entities that have a sustainability plan be exempt from future rulemaking? If so, what should this sustainability plan look like? Must it include electric vehicles use as a component? Will it have an emissions reduction requirement?

- § 2012.1(a)(20)-Please provide clarity on why this distinction is necessary.

Section 2012.2 Vehicle Usage by Facility Reporting

- Unlabeled introductory section: Because this rulemaking concerns vehicles over 8,500 lbs. Entities that otherwise qualify under the income threshold but that do not have any vehicles over 8,500 lbs should not be required to report. In addition, entities should not be required to report light duty or passenger vehicles under 8,500 lbs.
- § 2012.2(a)(7)-Please clarify whether "refueling infrastructure" has a different meaning than "fueling infrastructure" used in § 2012.2(a)(6). Additionally, ARB should clarify what this paragraph is asking for. "Initially installed" implies a single moment in time, specifically at the opening of a facility. But the term "on or after" implies a span of time instead of a single point in time which "initially installed" appears to mean More specifically, does ARB mean "what refueling infrastructure was present at the vehicle home base on 1/1/10" or does it mean "what refueling infrastructure was installed on or after January 1, 2010"? Additionally, entities were not required to keep records of what fueling infrastructure was/was not installed in 2010 or since then. It is impossible for entities to meet compliance with this provision as no records were likely kept. This is further complicated if an entity purchased the facility after 2010.
- § 2012.2(a)(8)-"Tractors" is undefined in this rule. Please clarify, as the only definition that includes the word tractor is "yard tractor."
- § 2012.2(b)-Will the intended electronic reporting system be flexible enough to allow both the main response method and the alternative response method? When will the reporting system be made available for reporting? Is user testing, which is customary with a new system, built into this timeline?
- § 2012.2(b)(2)-The rule requires that an entity base its response on 90% of the vehicle's operating days for the analysis period selected. How would an entity determine if the data is representing 90% of a vehicle's operating day without collecting data for every single day of the period?
- § 2012(b)(3)(A)-(E)-ARB should clarify if the responses to (B), (C), (D), etc. are additive with the percentages from (A) or should be listed separately for each category.
- § 2012(b)(3)(L)- This provision seems to be geared toward long haul trucks which have access to scales but not toward business which simply use trucks at their facilities. Currently companies do not have data on this requirement and there will be significant burden if required to comply with this section. Companies would have to start weighing trucks on a regular basis. For example, how would an entity be able to verify compliance unless it consistently checked the weight on the truck. How can this be done in facilities with no scales? Additionally, this provision seems extremely narrow. Trucks have a specific weigh limit (e.g. 10,000 lbs). The way this provision is written implies the company would only report if the truck is operating at exactly 10,000 lbs. This is clearly not the intent but clarity is needed if this provision is kept.
- § 2012(b)(3)(O)-Entities were not required to collect or record this data for the past three years, so compliance with this provision is impossible. Additionally, the focus during emergency response should be on providing assistance, and requiring data collection during these response activities is inappropriate.
- § 2012(b)(4)- This provision is impossible to comply with using just data from 2019 and 2020. (Of note 2019 data was not required to be kept prior to this rule even though the rule allows entities to rely on it). In order to response accurate and be in compliance with this question entities would be required to have more than 20 years of past data. This section should be deleted.

Finally, we request that the public comment deadline be extended. As you are aware, the COVID-19 pandemic and related stay-at-home orders have hindered our members' ability to focus on pending rulemaking. Instead, those businesses deemed essential are focused on protecting worker safety, and those businesses that have yet to open are focused on how to do so safety. Not providing additional time for adequate public comment hinders the rulemaking process and deprives Californians and stakeholders the ability to provide input on a workable rule.

Thank you for the opportunity to comment on the proposed reporting requirements. We again urge you to bifurcate the reporting requirement. We look forward to working with you to address our concerns and discuss our reasonable recommendations prior to the board meeting.

Sincerely,

Leah Silverthorn, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

African-American Farmers of California
Agricultural Council of California
American Pistachio Growers
Associated California Loggers
Associated General Contractors
Brawley Chamber of Commerce
Burbank Chamber of Commerce
Calforests
California Association of Winegrape Growers
California Attractions and Parks Association
California Automotive Wholesalers Association – Representing the Automotive Parts Industry
California Business Properties Association
California Business Roundtable
California Cattlemen's Association
California Citrus Mutual
California Cotton Alliance
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Fuels and Convenience Alliance
California Grain and Feed Association
California Manufacturers & Technology Association
California Metals Coalition
California New Car Dealers Association
California Retailers Association
California Seed Association
California Warehouse Association
California Waste Haulers Council
CARE - Californians for Affordable and Reliable Energy
Chemistry Industry Council of California
Clean Energy Fuels
Coastal Energy Alliance
El Centro Chamber of Commerce
Farwest Equipment Dealers Association
Greater Coachella Valley Chamber of Commerce
Industrial Environmental Association
Kern County Farm Bureau
Long Beach Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
NAIOP Southern California Chapter
Nisei Farmers League
Oceanside Chamber of Commerce

Pacific Egg and Poultry Association
Personal Insurance Federation of California
Resources Recovery Coalition of California
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Mateo Area Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Torrance Area Chamber of Commerce
Trillium
Tulare Chamber of Commerce
Ventura County Taxpayers Association
West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western Plant Health Association
Western States Petroleum Association
Western Wood Preservers' Institute

Attachment – Request for Public Comment Extension

cc: Alice Reynolds, Office of the Governor
Richard Corey, California Air Resources Board
Steven Cliff, California Air Resources Board
California Air Resources Board c/o Evan.Kersnar@arb.ca.gov

May 18, 2020

Steven Cliff, Ph.D.
Deputy Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Request for Extension of Deadline for Comments on the Advanced Clean Trucks Regulation

Dear Deputy Executive Officer Cliff:

On October 22, 2019, the California Air Resources Board (CARB) first published and set for hearing on December 12, 2019 the Advanced Clean Trucks draft regulation intended to "accelerate the market for zero-emission medium- and heavy-duty on-road vehicles in applications that are well suited for their use." The California Chamber of Commerce and a large coalition of stakeholders submitted comments, and the Board heard six hours of public testimony. On April 28, 2020, CARB released its 15-day changes to the draft rule, accelerating the percentage of manufacturing requirements from the initial draft and expanding the class of entities to whom the reporting requirements would apply. These changes are substantial, and while we appreciate the work staff has done with us to address concerns so far, CalChamber and the coalition's members simply need more than an additional 15 days to respond.

In light of the complications of responding to public comments on a draft rule that ARB Board Members have called "the first ever in the world effort" for a "complex and highly important industry," CalChamber and the attached coalition respectfully request a 180 day extension of the public comment deadline to allow the opportunity for its member companies and the public to exercise their statutory rights to engage in the public process of developing new rules that will affect how we deliver essential goods and services in California in the future.

CalEPA asked for a Similar Extension of Public Comment Deadlines in Regulatory Proceedings

Jared Blumenfeld, secretary of CalEPA, the parent agency of CARB, urged the EPA on March 19 to consider further extensions of pending rulemaking at the federal level, noting the complexity, and the impossibility of responding with adequate public comments within 30 days during the pandemic.[1] CalEPA urged at least 120 days for public comment, as "necessary to provide the public and other stakeholders with adequate time to evaluate the supplemental proposal," which CalEPA indicated was an expansion from an original proposed draft. In its request, Secretary

[1] A copy of this letter is attached for reference.

Blumenfeld explained why the public comment process would be undermined should more time not be provided for public comment:

> Under the current extraordinary circumstances of a national public health emergency, providing full review and comment on the SNPRM within 30 days is extremely burdensome if not impossible. The coronavirus has affected all aspects of American life and has forced organizations large and small to adjust daily operations and reallocate resources. On March 13, 2020, President Trump declared a national emergency. On March 15, 2020, the Office of Management and Budget encouraged federal agencies in the Washington, D.C., area to offer "maximum telework flexibilities" and to "develop an operational plan that maximizes resources and functional areas to most safely and efficiently deliver these mission-critical functions and other Government services (including but not limited to staggered work schedules and other operational mitigation measures)." (M-20-15.) It has been reported that US EPA authorized voluntary unscheduled leave and telework for all of its employees and that it is now facing possible coronavirus outbreaks at multiple offices.2 In short, US EPA has firsthand experience with the disruptions the coronavirus has caused, and it should appreciate all the more the added complications stakeholders now face in attempting to submit comments within an abbreviated 30-day comment period.
>
> The State of California has been a leader in attempting to proactively contain the coronavirus. Governor Newsom declared a State of Emergency on March 4, 2020. Many local jurisdictions in California—including Sacramento, where Cal/EPA's headquarters is located—have issued 'stay at home' orders. Like other state agencies, Cal/EPA is working hard to reduce the risk of further contagion while continuing to provide our essential services to the public. But these circumstances do limit the ability of Cal/EPA to fully comment on a complex US EPA rulemaking in only 30 days.

This request and reasoning was echoed by the Attorney General of the State of California, as well as the Cities of Los Angeles, Oakland, the City and County of San Francisco[2], and over 100 environmental organizations, including the Natural Resources Defense Council, EarthJustice, the League of Conservation Voters, the Sierra Club, Union of Concerned Scientists, and the Environmental Defense Fund, many of which are engaged on the ACT rulemaking and each of which noted their inability to participate in the public comment process because resources were focused on COVID-19 responses. These associations and nonprofits asked for an even longer extension, with a request that public comment deadline should be tied to a date that is 60 or 90 days after the national emergency is lifted. Attached to this letter are 99 letters representing over 100 of these organizations requesting extensions of public comment deadlines at the federal level because of complications from COVID-19, the same reasons supporting our request for additional time. Clearly, the complications of responding to public comments on complex regulations during this pandemic are not unique to regulated industry.

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[2] A copy of this letter is attached.

As noted above, we do not expect that CARB will abandon the ACT rulemaking. Instead, our member companies merely ask for the same extensions as that asked by CARB's parent agency, CalEPA. As noted by Chair Nichols, the ACT is a groundbreaking, first in the world program and

> "not a no brainer by any matter or means. In fact, it's a big brainer. It requires us to really use our intellectual abilities and our technical knowledge to make a wise set of regulations."

As succinctly laid out by Secretary Blumenfeld, California is focused on providing essential services and slowing the spread of COVID-19. Like the agencies, California's regulated entities require additional time to participate in this complex, technical regulatory proceeding.

Environmental Health and Safety Professionals are Responding to COVID-19

As you likely know, environmental regulations such as this one are often evaluated and commented upon by the Environmental Health and Safety (EHS) professionals at our member companies. EHS professionals are also responsible for the appropriate health and safety measures for their workers and processes. For those entities that Governor has deemed Essential Services providers, EHS professionals are heavily focused on providing on-the-ground health and safety assistance to reduce the spread of the COVID-19 virus at their workplaces. Moreover, many companies that were not part of the initial Executive Order on essential services are currently undertaking planning to figure out how to safely reopen. Forcing companies to divert resources to respond to a very complex, very technical regulation that is an expansion from the original draft in a mere 30 days is antithetical to the goal of taking action in our workplaces to flatten the curve and allow the millions of unemployed Californians to get back to work. EHS professionals certainly do not expect that ARB will abandon this effort entirely; instead, they ask for patience, and a reprieve, so that they do not need to divert resources from responding to COVID-19.

Conclusion

Without sufficient time to participate in the rulemaking process, the public's participation in regulations is severely undermined. Therefore, we respectfully request a middle ground, an extension of 180 days for this yet-to-be implemented new groundbreaking regulation, which will allow this rule to go forward, but also allow businesses and groups to get sufficient protective measures in place that allow normalized operations. This will allow California to focus on the imminent threat to public health occasioned by the COVID-19 outbreak in order to continue to bend the curve and put millions of Californians back to work.

Sincerely,

Leah Silverthorn, Policy Advocate
California Chamber of Commerce

Attachments (3)

cc: Richard Corey, Executive Officer, California Air Resources Board
California Air Resources Board c/o Evan.Kersnar@arb.ca.gov
Jared Blumenfeld, Secretary of Environmental Protection Agency, CalEPA
Alice Reynolds, Office of the Governor