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Clerks' Office
California Air Resources Board
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Submitted Electronically

RE: Heavy-Duty Inspection & Maintenance Regulation

The American Trucking Associations (ATA) and California Trucking Association (CTA) appreciate the opportunity to submit comments to the California Air Resources Board (CARB) on the 15-day changes to the proposed Heavy-Duty Inspection and Maintenance regulation.

ATA and CTA applaud CARB for incorporating our recommendations to include all fleet sizes to the part unavailability compliance time extension.

Increase Periodic Testing Only for Non-Compliant Trucks

The increase in the frequency of periodic smog checks from two to four times after the third year of the program's implementation will be burdensome and contribute to further delays in the supply chain.

The majority of California's truck and commercial vehicle operators are compliant with CARB's requirements with only a small fraction of vehicle owners operating illegally. Aligned with our previous comments, ATA and CTA urges CARB to consider increasing the frequency of testing for only vehicles that violate the regulation's requirements and decrease the frequency of testing to once a year.

The disruption from pulling compliant trucks from their day-to-day operations will not reduce the number of illegally operating vehicles on the road or minimize emissions to meet attainment. This will hinder national and state efforts to increase the efficiency of the goods movement sector during unprecedented global supply chain delays. These trucks deliver everyday products like groceries, fuel, and baby formula. The proposed regulation will remove compliant trucks from delivering essential goods and take drivers out of service when the state, and country continues to reel from supply chain woes.

Referee Services Must be Widely Available

§2196.7 directs the use of referee services for a number of circumstances including "a Notice to Submit to Testing" and "the vehicle owner requests a compliance time extension." Since these services are the only path some vehicles may have to demonstrate compliance, availability of these services is essential. How these services will be made available, especially to businesses in low population counties or out-of-state locations, should be addressed both in terms of staffing and program funding.

A Soft Enforcement Period is Needed

The current proposal's applicability and requirements will subject a substantial number of trucks to new reporting and testing requirements for the first time. As many of these trucks will be infrequent visitors to the state, an enhanced education effort is needed during the initial program rollout. Similarly, enforcement should initially focus on education, awareness and compliance rather than issuing citations during the initial six-months of reporting and/or testing.

Rentals Should Mirror DMV Smog Inspection

The current proposal requires entities in the business of renting or leasing vehicles without drivers to comply with the regulation that includes a contractual exception. Due to rental or leasing contractual agreements, it may not be possible for maintenance or repairs to be done in a timely manner prior to a compliance deadline. Rental and leasing entities may have equipment that is out of compliance because a renter failed to contact the lessor. Renters often haul loads out of state for extended periods of time and may be unable to repair non-compliant equipment owned by the entity in time to meet the compliance deadline before entering back into California. Renters and leasers should follow a similar compliance schedule like the Department of Motor Vehicle's smog inspection program and require equipment under their ownership to meet a compliance deadline once a year.

The Compliance Fee should be Apportioned for Interstate Vehicles

§2196.1(f) of the proposed regulation requires vehicle owners to pay an annual $30 "compliance fee" per registered vehicle (to be adjusted annually for inflation). The Supreme Court held decades ago that the Commerce Clause of the U.S. Constitution precludes states from imposing these kinds of flat annual fees on commercial trucks. [American Trucking Ass'ns, Inc. v. Scheiner, 483 U.S. 266 (1987).] As the Court observed, such flat fees "are plainly discriminatory" against interstate commerce because "[i]n practical effect" local users will routinely obtain a greater benefit, in cost-per-mile terms, than out-of-state users. [Id. at 286.] Thus, the proposed $30 flat fee would have "a forbidden impact on interstate commerce because it exerts an inexorable hydraulic pressure on interstate businesses to ply their trade within [California] rather than 'among the several States.'" [Id. at 286-87.]

Since Scheiner, numerous courts have held flat fees on commercial trucks invalid under the Commerce Clause. [See, e.g., Owner-Operator Independent Drivers Ass'n v. N.Y. State Dept. of Taxation and Finance, 34 N.Y.S.3d 332, 337 (N.Y. Sup. Ct. 2016) ($15 flat fee for certificate of registration and $4 flat decal fee discriminatory because "the cost per mile … is greater for non-New York based businesses than it is for New York based businesses"); Am. Trucking Ass'ns v. State of New Jersey, 852 A.2d 142 (N.J. 2004) (invalidating flat hazardous waste transporter registration fee); Am. Trucking Ass'ns, Inc. v. State of Wisconsin, 556 N.W.2d 761 (Wis. Ct. App. 1996) (invalidating flat hazardous materials transportation registration fee); Am. Trucking Ass'ns, Inc. v. Sec. of Admin., 613 N.E.2d 95 (Mass. 1993) (invalidating $7 flat fuel license fee and $200 flat annual hazardous materials fee); Gov't Suppliers Consolidating Servs., Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992) (invalidating Indiana's $100 biannual flat fee for registration to transport municipal waste); Commonwealth v. Am. Trucking Ass'ns, 746 S.W.2d 65, 67 (Ky. 1998) (invalidating Kentucky unapportioned supplemental highway users fee); Black Beauty Trucking, Inc. v. Indiana Dept. of State Rev., 527 N.E.2d 1163, 1165 (Ind. Tax Ct. 1998) (invalidating Indiana unapportioned supplemental highway users fee); Am. Trucking Ass'ns v. Sec. of State, 595 A.2d 1014, 1017 (Me. 1991) (invalidating flat $25 fee for carriage of hazardous materials); Am. Trucking Ass'ns v. Goldstein, 541 A.2d 955 (Md. 1988) (invalidating flat $25 marker fee).]

The flat "compliance fee" proposed here would be similarly invalid under the Commerce Clause principles at issue. To be sure, "the Commerce Clause does not require the States to avoid flat taxes when they are the *only practicable means* of collecting revenues from users and the use of a more finely gradated user-fee schedule would pose genuine administrative burdens." [Id. at 296 (emphasis added).] But against the background of California's participation in other apportionment programs in the motor carrier context (such as the International Registration Plan for registration fees, and the International Fuel Tax Agreement for fuel taxes), "[t]he administrative machinery of revenue collection … is … obviously capable" of collecting the fee at issue here on an apportioned basis. [Id. at 297.]

<u>In-Cab Certificates of Compliance are Prohibited by Federal Law</u>

§2196(e) of the proposed regulation requires drivers to carry certificates of compliance in the cab of their truck. [See ("[u]pon request from CARB staff, inspectors, or peace officers, the vehicle operator shall present a valid compliance certificate"); §2196(a)(1) ("the vehicle owner shall [o]btain a valid compliance certificate … and be able to present the certificate during inspections"); §2198.1(a)(2) ("[t]he driver of a heavy-duty vehicle selected to undergo the in-person field inspection shall … [s]how proof of … compliance certificate to the inspector or officer upon request").] This requirement, if implemented, would run afoul of federal law that preempts state and local identification requirements for commercial vehicles, with limited exceptions not applicable here.

Specifically, federal law preempts any state law or regulation "that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle." [49 U.S.C. §14506(a).] For the

purposes of this provision, a “commercial motor vehicle” is defined to include vehicles used in commerce that have a gross vehicle weight or weight rating of at least 10,001 pounds; is designed to transport more than 10 passengers; or is used in transporting hazardous materials. [49 U.S.C. §31101(1); see also id. §14504a(a)(1)(a)(ii).] And the provision includes a narrow set of enumerated exemptions to the preemption rule, none of which are applicable here. [See 49 U.S.C. §14506(a) (allowing “forms of identification required by the [U.S.] Secretary of Transportation under [49 C.F.R. 390.21]); §14506(b) (exempting requirements to display credentials required under the International Registration Plan, under the International Fuel Tax Agreement, under state license plate laws, in connection with federal hazardous materials requirements, or in connection with federal vehicle inspection standards).] And courts—including the U.S. Supreme Court—have consistently applied this provision to strike down state identification requirements like the one at issue here. [See American Trucking Ass’s, Inc. v. City of Los Angeles, 569 U.S. 641, 646 n.1 (2013); United Motorcoach Ass’n v. City of Austin, 2016 WL 5107736, *10-11 (W.D. Tex. Jan. 13, 2016).]

Again, thank you for the opportunity to comment on the draft regulatory language. For any questions or concerns with regard to our submitted comments, please contact us.

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