NESCAUM
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Northeast States for Coordinated Air Use Management
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Paul J. Miller, Executive Director

October 22, 2024

Liane M. Randolph, Chair, and Board Members
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed 15-Day Changes to Amendments to the Advanced Clean Trucks Regulation

Dear Chair Randolph and Honorable Board Members:

The Northeast States for Coordinated Air Use Management (NESCAUM) is writing to provide comments on the proposed 15-day changes to the proposed amendments to the Advanced Clean Trucks (ACT) regulation.

NESCAUM is the regional nonprofit association of state air quality agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NESCAUM serves as a technical and policy advisor to its members and works with broader groups of states to develop strategies to achieve their shared air quality and climate goals. For more than three decades, NESCAUM has supported states in using the authority under Section 177 of the Clean Air Act to adopt California's motor vehicle emission standards. NESCAUM hosts a workgroup for Section 177 states across the country to assist with and coordinate state adoption and implementation of California's clean car and truck standards. NESCAUM also facilitates the Multi-State ZEV Task Force, which serves as a unique forum for galvanizing state leadership on complementary programs and policies through research and analysis, information sharing, collective strategizing, and coordinated action on shared priorities.

In 2021, the California Air Resources Board (CARB) adopted the ACT regulation to reduce harmful emissions from medium- and heavy-duty vehicles as part of California's comprehensive strategy to achieve state air quality and climate mitigation targets. Since then, ten states have exercised their right under Section 177 of the Clean Air Act to adopt the ACT regulation as a key strategy for meeting their own air quality, public health, and greenhouse gas reduction targets.

Earlier this year, CARB staff proposed a number of minor amendments (45-Day Changes) to the ACT regulation that will provide important clarifications and additional flexibilities for manufacturers. NESCAUM submitted comments in strong support of these proposed amendments. CARB staff is now proposing additional modifications (15-Day Changes) to the initially proposed amendments. In forming these comments, NESCAUM consulted with the Section 177 states that have adopted the ACT regulation.

The main concern with the 15-Day Changes is that the new subsections (A) and (B) in section 1963.5(a)(2) create a potential loophole for manufacturers. In short, these provisions shield manufacturers from penalties and credit and deficit adjustments when CARB discovers that a

manufacturer's ACT vehicle report does not accurately reflect where a vehicle is actually delivered for sale, as long as the labeling provisions in the new subsection (g) in section 1963 are satisfied. To meet the requirements of section 1963(g) for all new vehicles produced and delivered for sale in California,[1] the manufacturer must affix a label that states the vehicle is "for sale in CA" and disclose on the Manufacturer's Statement of Origin (MSO) that the vehicle is intended for sale in California. A few examples are provided below to help illustrate the concern:

EXAMPLE 1:

> Manufacturer A produces a zero-emission truck and contracts with a secondary vehicle manufacturer in Arizona with the understanding that a purchaser in California will ultimately take delivery of the vehicle. Manufacturer A meets the requirements of section 1963(g) (i.e., the label says: "For sale in CA," and the MSO says: "Intended for sale in CA") and reports to CARB that the zero-emission truck was delivered for sale in California. The secondary vehicle manufacturer ends up delivering the zero-emission truck to a purchaser in Arizona.
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> Section 1963.5(a)(2) currently provides, "If the Executive Officer finds that any ZEV or NZEV credit was obtained based on false information, the credit will be deemed invalid." However, in this example, the proposed 15-day changes in new subsection 1963.5(a)(2)(A)[2] would prevent the Executive Officer from revoking the credit and assessing penalties because Manufacturer A met the requirements of section 1963(g). This is true regardless of whether and when Manufacturer A knew that the vehicle was not delivered for sale in California. In other words, it would not matter if Manufacturer A learned the vehicle was delivered for sale in Arizona one day after reporting the vehicle was delivered for sale in California (and failed to update its vehicle report[3]) or five years later.

EXAMPLE 2:

> Manufacturer B produces 100 zero-emission trucks, meets the requirements of section 1963(g) (i.e., the label says: "For sale in CA," and the MSO says: "Intended for sale in CA"), and delivers the trucks for sale to a dealer in California. Manufacturers B reports to

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[1] New subsection (g) of section 1963 indicates that the new labeling provisions begin with model year 2025 vehicles. CARB may want to consider changing this because it is unlikely that the proposed amendments will be finalized before the start of model year 2025.

[2] New subsection (A) in 1963.5(a)(2): provides: "If the Executive Officer identifies that any ZEV or NZEV is not registered or domiciled in California as reported based on the documentation provided per section 1963.4(d), the Executive Officer shall revoke the credit and the manufacturer may be subject to penalty, unless the requirements of section 1963(g) are met."

[3] Note that the proposed 45-Day Changes include a new subsection 1963.3(b) that provides manufacturers the option to update compliance reports: "A manufacturer <u>may</u> update a vehicle report for up to three previous model years should a manufacturer determine that a vehicle is or is not delivered for sale in California." (Emphasis added.) NESCAUM recommends changing "may" to "shall" to make updating vehicle reports mandatory, not optional, should a manufacturer determine its vehicle report is no longer accurate during the period provided.

CARB that the trucks were delivered for sale in California. CARB later determines that none of the vehicles are registered in CA because Manufacturer B and the dealer had a side agreement that the dealer would transfer the vehicles to dealers in other states that had customers lined up to buy the vehicles.

In this example, under the proposed 15-day changes in the new subsection 1963.5(a)(2)(A),[4] the CARB Executive Officer cannot revoke the credits or impose penalties on Manufacturer B because Manufacturer B met the requirements of section 1963(g), even though Manufacturer B purposefully utilized the labeling and MSO loophole to achieve false compliance with ACT.

EXAMPLE 3:

Manufacturer C produces a diesel truck and meets the requirements of section 1963(g) (i.e., label says: "For sale in CA," and MSO says: "Intended for sale in CA"). The diesel truck is delivered for sale and registered in California. Manufacturer C, however, does not include the diesel truck in its ACT vehicle report to CARB.

In this example, under the proposed 15-day changes in new subsection 1963.5(a)(2)(B),[5] the CARB Executive Officer cannot modify the deficit to account for the diesel truck and Manufacturer C would not be subject to penalties because Manufacturer C met the requirements of section 1963(g). This is true regardless of whether Manufacturer C intentionally or unintentionally failed to report the vehicle and whether and when Manufacturer C determined there was a reporting error.

Labeling and MSOs have traditionally been used as an informational tool, and not as a mechanism for guaranteed compliance. To encourage manufacturers to take appropriate steps to ensure that their ACT vehicle reports accurately reflect where their vehicles are delivered for sale, CARB should not create a blanket exemption from modifying credits and deficits and assessing penalties on the mere basis that a vehicle is properly labeled. While labeling is a proactive step in the right direction, other factors should also be considered, such as whether and when the manufacturer determines that a vehicle is or is not delivered for sale in California as previously reported; whether the manufacturer updates its vehicle reporting pursuant to section 1963.3(b);[6] etc. Rather, the CARB Executive Officer should be able to revoke credits, modify deficits, and assess penalties on a fact-specific case by case basis as appropriate, even if the labeling requirements in section 1963(g) are met.

For example, CARB could delete the newly proposed subsections (A) and (B) from section 1963.5(a)(2) and revise section 1963.5(a)(2) as follows:

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[4] See *supra* note 2.

[5] New subsection (B) in 1963.5(a)(2) provides: "If the Executive Officer identifies any vehicle which is newly registered with the California Department of Motor Vehicles or newly domiciled in California as a new vehicle and is not included in a manufacturer's reports, the Executive Officer shall add the deficits and the manufacturer may be subject to penalty, unless the requirements of section 1963(g) are met."

[6] *See supra* note 3.

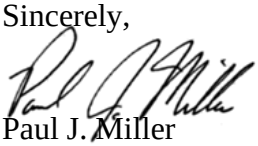
Authority to Suspend, Revoke, or Modify. If the Executive Officer finds that any ZEV or NZEV credit was obtained based on false information, the credit will be deemed invalid and will be revoked by the Executive Officer. If the Executive Officer finds that any new vehicle produced and delivered for sale in California was not included in a manufacturer's report, the Executive Officer shall modify the deficit. In assessing penalties, the Executive Officer may consider whether the manufacturer met the requirements of section 1963(g).

Alternatively, CARB could narrow the language in the new subsections (A) and (B) to avoid shielding manufacturers that fail to update their vehicle reports upon determining that a vehicle is or is not delivered for sale in California as allowed by 1963.4(b) from penalties and credit and deficit adjustments, even when the requirements of 1963(g) are met. In addition, CARB should consider whether references in the new subsections (A) and (B) to where vehicles are newly registered or domiciled should be changed to delivered for sale because CARB staff proposed in the original amendments to change the point of compliance from the ultimate purchaser to delivery for sale. Note that depending on the approach taken, corresponding changes to section 1963(g) may be needed as well. CARB should also consider whether secondary vehicle manufacturers should be subject to the new labeling provisions.

Finally, to ensure that vehicles are labeled properly, a new provision should be added to section 1963.5 that provides: "Failure to meet the requirements of section 1963(g) is a violation of this regulation and violators will be subject to penalty."

Thank you for the opportunity to comment on the proposed 15-day changes to the proposed amendments to the ACT regulation. We appreciate California's continued leadership in protecting the environment and public health from motor vehicle pollution. Our states look forward to continued collaboration in our joint effort to electrify the transportation sector.

Sincerely,



Paul J. Miller
Executive Director

cc: NESCAUM Directors