

September 20, 2019

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Via email – cleantrucks-ws

SUBJECT: Comments on the Proposed Advanced Clean Trucks Regulation—Large Entity and Fleet Reporting Requirement

The California Chamber of Commerce is the largest broad-based business advocate in the state, representing the interests of 14,000 California businesses. CalChamber and the organizations listed below write to express concerns with the impacts and questions regarding authority, enforceability, and practicality of requiring 11,000 California businesses to spend months and thousands of dollars to respond to a mandatory survey where this data can be obtained by other, less burdensome means.

Our general concerns and questions are set forth below. We look forward to discussing these issues with you prior to the commencement of formal rulemaking.

The Proposal Conflicts with Legislative Directive

We are concerned with the lack of mention of statutory authority that would support imposing a mandatory reporting requirement upon businesses who do not own or control emissions from vehicles. The only items mentioned in the background materials are to the general goals of emissions reduction, executive orders, and a letter from the Governor directing the California Air Resources Board (CARB) to “assess the viability of new regulations to increase zero emission vehicle adoption in fleets across the state.” Where the legislature has intended mandatory reporting from businesses, it has done so. We are aware of no legislative directive for mandatory reporting from businesses related to deliveries.

Moreover, a mandatory reporting requirement appears to conflict with legislative directive to CARB on the issue of zero emission fleets. In 2017, CARB was directed by the legislature to collaborate with stakeholders and the Institutes of Transportation Studies of the University of California, to review all state board programs regarding adoption of light, medium, and heavy-duty zero emission vehicles, including how to expand the use of these vehicles in fleets. SB 498 (Skinner, 2017). This report was due on July 1, 2019. CalChamber did not oppose SB 498. Our understanding from CARB staff is that the report is still undergoing internal review, and that CARB does not have a timeline for presentation of the draft report to the public or the legislature, as directed by SB 498.

SB 44 (Skinner, 2019), also requires CARB to take a more comprehensive look at the sector, and coordinate activities with other agencies before recommending to the Legislature reasonable and achievable goals for reducing emissions from these vehicles, taking into account existing state goals, technological feasibility, and cost-effectiveness.

We request further clarification on statutory authority and information on when the SB 498 report will be made available prior to instituting further rulemaking on this topic, and how this regulation complies with SB 498 and SB 44.

How Will This Be Enforced?

The proposal suggests that businesses will be required to provide narrative responses to very broad questions, which contain many terms that are undefined. For example, questions as vague as “how do you ship your items” provide no guidance to the regulated community on what level of detail, or what specific information is requested if the answer is more complicated than the example answers given.

The questions will likely draw a wide variety of generic or detailed answers, not leading to the information CARB seeks.

The proposal is also silent as to the penalties for violation. Violations of Part 5 of Title 13, where this regulation is proposed to be placed, are generally subject to a civil penalty not to exceed \$37,500 for each action, adjusted for inflation. Enforcing this mandatory reporting is problematic, at best, where broad, vague questions require narrative responses that become part of the public record, and failure to respond in the manner CARB desires will subject an entity to civil penalties.

How Will CARB Deal with Confidentiality and Security Concerns?

The proposal asks for information on how contracts and ground transportation are handled. Companies' responses to this information may trigger trade secret, business sensitive, or confidential information on routes, methods of delivery, and other business sensitive information that is not generally shared with the public or competitors. The proposal is silent as to how this data will be utilized, stored, and maintained, and whether it will be shared with other parties or agencies, implicating both privacy and confidentiality concerns. During the workshop on this proposal, CARB staff were asked how confidential business information and trade secrets will be handled. CARB staff indicated that while it will consider claims of confidentiality, it will not be bound by such requests.

The proposal also implicates privacy and security concerns. For example, the proposal applies to federal facilities and fleets, implicating national security concerns. Further, it specifically calls out armored cash transport. While it may seem benign, public access to information on how each business enters into contracts with armored cash transport can be aggregated and analyzed, giving the public detailed information on cash transport networks across the state are conducted. The same can be said for facilities that provide shuttles to/from the facility, especially those that transport employees late at night.

Significant issues can arise with the public disclosure of information on these topics. Before releasing as draft, CARB must consider appropriate procedures for protection of this confidential and sensitive information.

The Above Issues Greatly Increase the Cost to Prepare Responses

The Standardized Regulatory Impact Analysis prepared by CARB estimates that businesses can easily fill out these forms in a few hours and estimates that it will only cost businesses \$200. This estimate does not reflect the complexity of responding to questions that may solicit a narrative response, that are submitted under penalty of perjury, that become part of the public record regardless of confidentiality and security concerns, and that will be used in the future to craft regulations to which these businesses may be subjected.

For most businesses, this information is not kept in a central location or business unit, or cross referenced in the simplistic manner suggested in the materials. Instead, employees will have to gather and review contracts for dozens, sometimes hundreds, of facilities in order to answer. Early estimates from our members suggest that it will take at least one employee, working full time for two to three months, to compile, draft, and prepare responses to this questionnaire.

We request that CARB work with stakeholders to obtain additional data that more accurately reflects the cost to business implicated by this regulation prior to releasing a draft.

Other Concerns That Are Not Addressed in the Proposal

- How should the public interpret the undefined terms in the forms?
- Regulations on this issue will not be final until sometime in 2020, yet the regulation requires maintenance of records from January 1, 2020. How will CARB deal with this gap?
- The proposal is silent as to how often information will be updated. Clarification is needed on whether this is a one-time report, or a periodic report.
- The proposal does not include any questions related to partial zero emission, hydrogen fueling, or other emissions reductions technology present at the locations.

Information is Already Available in the Public Domain

Most, if not all, of this information can be obtained from CARB's sister agencies. For example, if CARB wishes to know the extent of cold storage in California, CARB can enter into a memorandum of understanding with the California Department of Public Health, Food and Drug Branch, which is responsible for granting Cold Storage or Refrigeration Facility Licenses. The Public Utilities Commission and CEC will have information on electric vehicle charging infrastructure. The Department of Motor Vehicles will have information on vehicle registrations for delivery vehicles, which will contain domiciled addresses. The California Department of Tax and Fee Administration keeps records on fulfillment centers and sellers that use fulfillment centers. Information already available to the state should be utilized before imposing a costly regulation upon 11,000 California businesses that do not keep this information ready at its fingertips.

We understand that there was a low response to a previous survey sent out by CARB. However, in speaking with members that received a recent notice letter regarding this potential regulation, none recall getting a voluntary survey. An anonymous survey could be used to help supplement data already in the public domain. In fact, just yesterday CARB issued a voluntary survey to collecting information on combustion units, devices, waste materials, pollutants, data gap, and fuel analysis reports to inform CARB's proposed regulations regarding estimating criteria and toxic emissions from biomass and waste combustion processes under AB 617.

Finally, SB 498 already directed CARB to work with the Institutes of Transportation of the University of California, which could provide additional data on transportation flows and patterns across the state, helping inform CARB's analysis and giving the legislature it's desired ability to weigh in prior to rulemaking on this subject.

Conclusion

Because the regulation appears to conflict with existing statutory authority and contains many legal and practical issues that must be solved prior to formal rulemaking, we strongly suggest that CARB reconsider and obtain the data from other sources prior to imposing this burden on California businesses. We look forward to continued discussions on these and other issues related to the proposed regulation.

Sincerely,



Leah Silverthorn, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

African American Farmers of California
Agility Fuel Solutions
Agricultural Council of California

American Pistachio Growers
Associated California Loggers
California Association of Winegrape Growers
California Attractions and Parks Association
California Business Properties Association
California Business Roundtable
California Citrus Mutual
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Fuels & Convenience Alliance
California Hotel & Lodging Association
California Natural Gas Vehicle Coalition
California New Car Dealers Association
California Refuse Recycling Council Northern District
California Refuse Recycling Council Southern District
California Restaurant Association
CARE - Californians for Affordable & Reliable Energy
Clean Energy Fuels
Climate Change Policy Coalition
Far West Equipment Dealers Association
Nisei Farmers League
West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western Plastics Association
Western States Petroleum Association

cc: Majorregulations@dof.ca.gov

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