



334 N. Euclid Avenue • Upland, CA 91786
(909) 982-9898 • Fax (909) 985-2348
www.westrk.org

September 27, 2021

California Air Resources Board
1001 I Street
Sacramento, CA 95812

**Ref: Western States Trucking Association Comments on Advanced Clean Fleets
Regulatory Proposal (September 9, 2021 Workshop Documents)**

Via electronic mail zevfleet@arb.ca.gov

Dear Air Resources Board:

The Western States Trucking Association (WSTA) and CleanFleets.net provide these comments. Our prior comments of December 8, 2019 and April 8, 2021 are incorporated by reference. WSTA is a non-profit organization whose members would be impacted by the ACF proposal. CleanFleets.net has been our endorsed CARB Consultant to the membership for over a decade and has been extensively involved in the CARB zero emission vehicle (ZEV) planning process for trucking since it began in 2016. The ACF proposal presented at the September 9, 2021 public workshop would damage the trucking industry in general, and WSTA members specifically, by imposing a new unfunded mandate for which there is inadequate financial resources, infrastructure and electric grid reliability identified by CARB. We register our objection to CARB's refusal to record and grant public access to the September 9 workshop. This represents a lack of transparency and prevents our members from full participation in the regulatory process. The comments below are divided into subject areas.

Regulated Entities & Controlling Parties

The draft language relating to Scope and Applicability applies the regulation to the following entities,

- “(3) Is a fleet owner whose fleet in combination with other fleets operated under common ownership and control totals 50 or more vehicles
- (4) Is a broker or other fleet owner that in combination with other fleets owns, operates, or dispatches vehicles under common ownership and control that totals 50 or more vehicles;”

Among the proposed Definitions is the following,

““Controlling party” means the motor carrier, broker, or entity that dispatches, directs or otherwise manages the day-to-day operation of multiple fleets under common ownership or control to serve the customers or clients of the controlling party.”

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As written, neither section can be implemented in goods movement or construction trucking industries. The words “in combination,” “directs or otherwise manages,” and “serves” lack the specificity needed for a potentially regulated party to determine what, if any, compliance requirements apply.

WSTA members that may contract with fleet owners or motor carriers have no practical way of determining the number of trucks over which the contracted party has “common ownership or control.” Privately-held businesses have no legal requirement that we are aware of that would compel them to divulge how many trucks they may have under “common ownership or control.” Furthermore, the words “directs or otherwise manages the day-to-day operation of multiple fleets,” is unworkable in the context of today’s trucking industry. For example, a general contractor with less than 10 trucks that hires the services of 40 or more dump trucks for a one-time job of two days or longer could arguably “direct” on a “day-to-day” basis other fleets so could be considered to be “in combination” and meet the ZEV Fleet Milestones for 50 trucks. However, it would appear that the Regulation would also compel the general contractor to investigate the ownership status and business holdings of the “directors, officers or managers” of each truck to determine if additional trucks could be operated under “common ownership or control” and if the general contractor could determine that then he/she would add those additional trucks to the 40 that were contracted and apply the ZEV Fleet Milestone to the new total. There is simply no practical way for a potentially regulated entity to reliably determine the truck ownership status, truck owner business status or a truck count to reliably implement a ZEV purchase for another business with whom he/she has only contracted for two days in any given year during the compliance period.

As requested in our April 2021 comment letter, CARB must identify the legal authority under which it is authorized to compel two separate businesses to be treated as one regulated party for the purpose of the ACF. Additionally, CARB must identify its legal authority to prevent fleet owners from purchasing federally-certified internal combustion engines.¹

Comments on ZEV Fleet Milestones & Senate Bill 1 Useful Life Applicability

Private diesel fleet owners like WSTA members have transformed and accelerated the procurement of cleaner vehicles to meet CARB mandates stemming from the Year 2000 Diesel Risk Reduction Plan. Many fleets have exceeded CARB or local air district programs or expectations and billions of dollars have been borrowed or bonded to comply with, or exceed, the rules. The bond or loan payments are ongoing for more than just trucks as off-road, portable and material handling equipment replacements have occurred simultaneously. Many fleets will be replacing vehicles to comply with the January 1, 2023 deadline in the Truck & Bus Regulation. Senate Bill 1 (Statutes of 2017) defines the useful life of specific trucks.

¹ See Engine Mfrs. Assn. v. South Coast Air Quality Management Dist. (02-1343) 541 U.S. 246 (2004) 309 f.3d 550 (2002)

The proposed language indicates that a “Compliant vehicle” is: “(D) A vehicle that was in the fleet since January 1, 2024, was operated in California in 2024, and is within its minimum useful life; or (E) A vehicle that is utilizing an exemption as specified in section 95692.2 for the length of its minimum useful life.”

WSTA notes the following glaring problems with the current language in High Priority and Federal Fleets ZEV Phase-in (Section 95692.1):

- a. A “Compliant vehicle” appears to be counted in the total fleet count (or baseline) to which the “Table A: Zev Fleet Milestones” are applied, however a fleet owner of compliant vehicles powered by internal combustion engines cannot count that vehicle toward the compliance requirement (“ZEV Target”) in any given year;
- b. The Advanced Clean Trucks Regulation requires amendment through a formal regulatory process in order to support the “100%” targets in 2035 and beyond. If this ACF Regulation seeks to require the owners of over one million affected trucks to purchase ZEVs then it would stand to reason that 100% of the manufacturing of affected trucks would be ZEVs. Using the present ACF effort to modify a previously adopted ACT Regulation appears to us to be in violation of the Administrative Procedures Act.
- c. The “Alternative Compliance Requirement” appears to prohibit the ability of a fleet owner to purchase federally-certified or CARB-certified internal combustion engines after January 1, 2024. If the proposed regulation is an outright ban on internal combustion purchases after January 1, 2024 then CARB should say so. This is critical to WSTA members given the inadequate vehicle exemption process described below:
- d. During the workshop process, CARB staff have verbally indicated that there is no intention to compel the purchase of a truck or bus where there is not a “one-to-one replacement.” While we appreciate that CARB recognizes that many vocational truck segments are not currently suited to ZEVs (e.g. due to range and payload requirements), we do not see an exemption process that minimizes the paperwork burden on the fleet owner to document the lack of an adequate ZEV replacement truck. For example, the proposed “Daily Mileage Exemption” would require a fleet owner to, “Submit documentation demonstrating how all commercially available ZEVs...are not able to meet the operational daily mileage needs [emphasis, ours].” Yet there is no definition of “commercially available” in the proposed language and it appears from CARB staff comments that the evidence of availability is when a manufacturer will take an order for a truck. Note that the CARB HVIP has encumbered and rolled over millions of dollars in public grant funding for years due to ZEV manufacturer delays in delivering ZEVs. There must be a self-executing exemption process in which the burden of proof is on the manufacturer to certify that its vehicle meets daily range and payload requirements rather than the fleet owner/end user being forced to compile voluminous information for an exemption, such as the proposed, “explanation of why available ZEVs cannot be charged or fueled along the route, or during the work day where ZEV fueling is available to the fleet or ZEV fueling would be installed by the fleet owner.)

Credit for Early Adopters

WSTA members that deploy any weight class ZEV or natural gas truck in their fleet should derive a “one to one” credit that expires on the final compliance date of the Final Regulation. This is an approach that the CARB Board approved in the Truck & Bus Regulation (see 13CCR, Section 2025 (j)). CARB is aware that natural gas vehicles have been deployed in the construction, utility, and waste collection industries. The evolution of natural gas trucks has taken over 20 years and it is reasonable to assume that ZEV trucks face similar barriers and will take decades to evolve to meet customer requirements. As part of the environmental analysis CARB must consider technologies that reduce near-term emissions. Natural gas trucks with “Low NOx” engines can deliver NOx and greenhouse gas reductions faster than ZEVs and more cost-effectively as there is already significant infrastructure built. CARB must model the environmental benefits of current natural gas trucks between now and 2030 and compare that to the proposed ACF. Today’s technology is producing significant reductions of short-term climate pollutants and CARB must give credit where credit is due for fleets that are investing in CNG and RNG powered vehicles.

ZEV Infrastructure & Grid Reliability Issues

The Advanced Clean Trucks (ACT) Regulation just last year identified that the funding required for new vehicle charging stations will exceed \$9.6 billion. The CARB analysis of the “payback period” for a ZEV fleet owner was rapid due to the avoided cost of purchasing diesel fuel. However, that analysis does not identify how the upfront cost of infrastructure is funded. CARB indicates that Senate Bill 350 funds may provide in the range of \$600 million, however there is still an unfunded and unidentified mandate for the remaining \$9 billion. Furthermore, it is evident that the state’s electricity grid is failing to deliver electricity reliably with today’s load demand. For example, as of yesterday’s reporting from the State Department of Water Resources Lake Oroville sits at 22% capacity.² The loss of hydroelectric power generation from this and other projects impacts the ability to keep the lights on today and is evidence of an even more uncertain electricity grid in drought years. CARB must clearly identify the new sources of electricity to displace the millions of gallons of diesel, LNG and CNG contemplated by the ACF as well as the infrastructure cost and timeline to deliver the additional electricity BEFORE ZEV deployment as the Truck and Engine Manufacturers (EMA) indicated was a pre-condition for their OEM members to develop and deliver ZEVs to California.

Economic Analysis

In the ACT Regulation process, CARB claimed a favorable Total Cost of Ownership that provides for a rapid payback for private infrastructure investments. There is no cashflow model for this or the staggering upfront cost of ZEVs in the face of dwindling customer incentives to purchase ZEVs. Note that the Hybrid Voucher Incentive Program is without sustained funding and there is no support for CARB’s statement that ZEV costs to consumers will be reduced in future years. With no certainty that the upfront incremental cost of ZEVs above a conventional diesel or natural gas truck is available there is little doubt that small businesses will be among the hardest hit with an ACF purchase

² [Major Reservoir Current Conditions Graphs \(ca.gov\)](#) . Data for Oroville taken on September 27, 2021.

requirement. WSTA demands that the cost impact to business analysis provide a clear explanation and funding source for the staggering upfront costs of infrastructure and ZEV truck purchases over the life of the ACF purchase requirements. In simple terms, if ZEVs have a favorable Total Cost of Ownership and are “commercially available” then there is no CARB mandate needed as fleet owners on the natural will deploy them without a mandate. The proposed ACF will have no chance of success when inaccurate and incomplete economic and environmental analyses are presented. The use of batteries has not been adequately addressed on a life cycle basis. The intense mining operations through recycling and reuse will have negative social and environmental consequences that must be identified if the Regulation moves forward.

Conclusion

The onus is on CARB, the governor, the legislature and electric utility providers to identify the timeline and sources of public funding to accomplish ZEV truck deployment over the proposed ACF phase in period. There is currently no business case, savings or cashflow model presented by any of these entities that maximizes ZEV deployment while ensuring that WSTA members that support goods movement, construction & demolition or waste removal can remain in business if the ACF is adopted by the Board as proposed. On the heels of the controversial, costly and litigated Truck & Bus Regulation should CARB staff and the Board choose to ignore our constructive suggestions it will only serve to leave a bad taste in the mouth of the very entities that CARB needs to “buy in” to what will be the most costly and difficult fleet mandate ever.

The Administrative Procedures Act demands a thorough analysis of the costs to regulated entities and the environmental benefits of the regulatory proposal and any alternatives. WSTA demands this as well. We may be reached via electronic mail at LeeBrown@westrk.org and Sean@CleanFleets.net.

Sincerely,



Lee Brown
Executive Director
Western States Trucking Association



Sean Edgar
Director
CleanFleets.net LLC
Endorsed Consultant, Western States Trucking Association

cc: WSTA Executive Committee
Construction Industry Air Quality Coalition
Ellison Wilson Advocacy, LLC

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