

### **Preliminary Comments on CARB's Draft TRU Regulations**

- EMA appreciates the opportunity to comment on CARB's proposed amended TRU regulations, as discussed at the recent public workshop on March 19, 2020. As we noted during that workshop, EMA has a number of significant concerns relating to the validity and scope of the proposed regulations.
- In their current form, CARB's proposed TRU regulations would require, among other things, that all new truck TRUs sold in or into California would need to meet zero-emission (ZE) standards as of December 31, 2023 (effectively the 2024 model year (MY)). For all other new TRUs (e.g., trailer TRUs, railcar TRUs, TRU gensets, and DSC TRUs) sold in or into California, and also effective as of the start of the 2024 MY, those TRUs (other than railcar TRUs) would need to convert to ZE operation when stationary at an applicable facility, such as a warehouse, for more than 15 minutes, and (including railcar TRUs) would otherwise need to meet the applicable 2024 MY nonroad emission standards for NO<sub>x</sub>, PM, and CO.
- CARB's initial concept for the amended TRU regulations would not have imposed any ZE standards for new TRUs in California until the 2028 MY. Thus, CARB's current regulatory concept amounts to a four-year pull-ahead of the proposed emission standards and other requirements for TRUs.
- CARB staff have not provided any data demonstrating that the four-year pull-ahead of the TRU ZE standards is either feasible or cost-effective. On the latter point, comparing the aggregate projected baseline emissions from new TRUs starting in the 2024 MY (i.e., the emissions that would be reduced and monetized to show regulatory benefits) against the aggregate costs of converting those new TRUs to ZE units, it is clear that CARB's TRU proposal is cost-prohibitive. Cost-prohibitive regulations are invalid under California law.
- The TRUs at issue are nonroad engines under federal and state law. Consequently, CARB will need to obtain a preemption-waiver authorization from EPA under section 209(e)(2) of the Clean Air Act (42 U.S.C. section 7543(e)(2)) before attempting to enforce the proposed TRU standards. To obtain such an authorization, CARB will need to show, through a separate EPA notice and comment period, that its proposed TRU standards and other requirements provided manufacturers with sufficient leadtime and are otherwise cost-effective.
- CARB will not be able to make that requisite showing for a preemption-waiver authorization, and certainly not before the proposed regulatory effective date of December 31, 2023. The anticipated rulemaking chronology bears that out. CARB's proposed TRU standards will not be approved by the Board in final form until early 2021. Approval from the Office of Administrative Law (OAL) will not come until late 2021 or early 2022. As a result, CARB will not even submit its request for a preemption-waiver authorization until mid-2022 at the earliest. As CARB knows well, it takes EPA several years to address preemption

waiver/authorization requests even under the best of circumstances. Thus, the proposed TRU standards will remain preempted as of their proposed effective.

- CARB's need for a preemption-waiver authorization from EPA also applies to the provisions of the proposed TRU regulations that relate to non-new TRUs as well. See *EMA v. EPA*, 88 F.3<sup>rd</sup> 1075 (D.C. Cir. 1996). Thus, the waiver authorization process will apply to all of those other sections of the proposed regulations, with the same attendant bars to enforcement.
- The accelerating COVID-19 crisis is exacerbating the infeasibility and excessive costs of CARB's proposed pull-ahead of the TRU ZE standards. Manufacturers are dealing with facility shutdowns, work-at-home mandates and furloughs, lack of access to production and testing facilities, dramatically reduced R&D budgets, and growing uncertainties about the duration and financial consequences of the dire coronavirus pandemic.
- For all of the foregoing reasons, CARB should revise in a substantial manner the proposed TRU regulations.