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April 7, 2023

Clerk of the Board
California Air Resources Board
1001 I St.
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Submitted electronically.

RE: Proposed 15-day Changes to the Proposed Advanced Clean Fleets Regulation

Dear Chair Randolph and Members of the Board:

Thank you for the opportunity to comment on the Proposed 15-day Changes to the Proposed Advanced Clean Fleets (ACF) regulation.

The trucking industry supports keeping all available cleaner transportation technologies and fuels in play to protect our environment and communities. Fleets are the consumers who purchase trucks. Each purchase is a decision based on a fleet's ability to maintain the vehicle, fuel it, keep a driver in the seat, and move freight. In the current trucking marketplace, it is simply impossible to replace fleets of diesel trucks with battery electric and fuel-cell vehicles on the timetables proposed. We urge the Board to pause and reevaluate the proposed ACF regulation and stand ready to work with you to address the challenges ahead.

The following comments are in addition to our prior comments on the Proposed ACF regulation (October 17, 2022) as well as the California Trucking Association (CTA) jointly filed comments with the Western States Trucking Association (WSTA) via counsel at Wanger, Jones, Helsley PC (October 17, 2022) specific to serious concerns regarding the conformity of the proposed ACF with multiple State and Federal laws.

Nothing contained in these comments regarding the policies proposed by the California Air Resources Board (CARB) should be construed as conflicting with positions reflected in comments filed by counsel for CTA and WSTA.

While the proposed 15-day changes primarily provide some needed modifications to the regulation's exemptions, these modifications do not resolve the fatal flaws of the proposed regulation, which can be summarized in three points (and discussed in more detail in our prior comments).

1. The ACF requires deployment of zero-emission capable vehicles in use cases which are not prepared for this transition at a pace which is unseen in prior market transitions.

2. The ACF requires charging/fueling infrastructure, which does not exist, to be built at a pace which is unlikely to occur.
3. The ACF's exemptions continue to be woefully inadequate even though they represent the only feasible compliance option for many fleets.

The following comments are specific to the proposed 15-day changes.

1. The minimum useful life period is reduced to less than the period defined under Section 43021 of the Health and Safety Code. This definition should be revised to conform to the requirements of the Health and Safety Code.

Sections 2014 and 2015(b), the Minimum Useful Life definition, include:

> "If a vehicle no longer has its original equipped engine, or the model year of the originally equipped engine is not able to be determined, the model year of the vehicle *less one year* must be used to determine the [minimum useful life] thresholds…" [emphasis added]

Section 2015.1(b), ICE Vehicle Removal, states:

> "Beginning January 1, 2025, ICE vehicles must be removed from the California fleet by January 1 of the calendar year after the minimum useful life *mileage* threshold was exceeded, or January 1, of the calendar year the engine model year is 18 years old or older, whichever occurs first." [emphasis added]

H&SC Section 43021 provides that, with limited exceptions inapplicable here, "the retirement, replacement, retrofit, or *repower* of a self-propelled commercial motor vehicle … *shall not be required* until the later of … [t]hirteen years from the model year the engine and emission control system are first certified" or when "the vehicle reaches the earlier of either 800,000 vehicle miles traveled or 18 years" from the certification of the engine and emission control system. (California Bill Analysis, S.B. 1 Sen., 4/3/2017, subd. (a) [emphasis added].)

As presented in the proposed 15-day language, the minimum useful life threshold is being reduced by one year for repowers and other circumstances while the thirteen-year minimum useful life threshold is not recognized under the ICE Vehicle Removal provision. Both are inconsistent with state law.

2. New Section 2015(r) establishes a new engine emissions standard for trucks that may be purchased anywhere in the United States and may be operated in California. This requirement cannot be enforced in California unless and until EPA grants a waiver of preemption and in another state unless formally adopted by that state.

Clean Air Act (CAA) section 209(a) preempts states from adopting or attempting to enforce "any standard relating to the control of emissions from new motor vehicles…" (CAA § 7453(a) [otherwise known as section "209(a)"]; see also *Engine Mfrs. Ass'n v. S. Coast Air Quality*

Mgmt. Dist. (2004) 541 U.S. 246 ("EMA")].) This prohibition against state-level regulation of new mobile source emissions is both "categorical" and expansive. (*EMA*, 541 U.S. at 252-53). Because the ACF Regulation requires that "[a]ny new ICE vehicle added to [a] California fleet must be certified to applicable California emission standards and emissions related requirements", this constitutes a standard relating to motor vehicle emissions and is preempted under CAA section 209(a) unless and until EPA grants a waiver under section 209(b). If such a waiver is granted, only then can California enforce these standards on truck purchasers.

CARB cannot avoid the requirement of a waiver by characterizing the ACF regulation as an "in-use" standard. Section 209(d) provides that states have the right "to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles." These in-use" controls extend to measures such as "carpool lanes, restrictions on car use in downtown areas, and programs to control extended idling of vehicles," (*Pacific Merchant Shipping Ass'n v. Goldstene* (2008) 517 F.3d 1108, 1115), and "[i]nspection and maintenance programs." (*In re Volkswagen* (N.D. Cal. 2017) 264 F. Supp, 3d 1040, 1051.) CARB has previously relied on the exemption for "in-use" regulations to circumvent the need for a waiver, for example in developing the Truck and Bus Rule. But the Truck and Bus Rule did not mandate the purchase of particular types of vehicles; as an in-use requirement, it allowed operators the flexibility to retrofit, purchase newer used vehicles, or entirely new vehicles. (California Air Resources Board, Initial Statement of Reasons, Truck and Bus Rule, p. 40 (October 2008).) The ACF Regulation makes no such provision, and instead seeks to achieve its primary aim of limiting all new ICE purchases, *regardless of the location of this purchase* (as opposed to the ACT), to "California emission standards." (ACF Regulation § 2015(r).) As the Supreme Court has already established, such a mandate is an emissions standard which is preempted in the absence of a waiver. (See *EMA*, 541 U.S. at 255.) CARB may not enforce the regulation unless and until such a waiver is granted for the ACF regulation.

In addition, Congress has defined how other states may elect to opt in to a California emissions standard. Having allowed California the ability to adopt state emission standards, Congress, in Section 177 of the CAA, established a process to allow states *with nonattainment areas* the ability to opt in to "California standards". Recognizing the limits of California's standard-setting authority, Congress allowed other nonattainment states to adopt and enforce emission standards identical to California's and for which an EPA waiver has been granted. This section ensures state's rights in determining whether they elect to sell California or federally certified vehicles and does not expand California's authority to other states.

The proposed 15-day language goes beyond California's authority to control vehicles purchased, domiciled and operated outside the state. Some of these types of vehicles will need to be counted as part of the "California fleet" due to their operations within California (*i.e.*, Arizona-based trucks that pick-up and deliver into California). This new requirement exceeds California's authority by improperly applying CARB standards to vehicle sales occurring in other states.

3. Fleet expansion pathways should be treated equally.

Under the proposed regulation, existing fleets that increase their vehicle counts or revenues above the applicability criteria ("Newly Affected Fleet") will have two years to meet all the requirements of the regulation. Conversely, fleets that increase their vehicle counts or revenues above the applicability criteria through mergers or acquisitions have one year to comply with the requirements of the regulation. Similarly, entities that are already subject to the regulation and merge or acquire a non-affected entity will have one year to comply with the requirements.

Given the time needed to acquire ZEVs and/or NZEVs to meet either compliance option and the associated infrastructure needs, it is unreasonable to assume compliance can be achieved in one year. The regulation should be revised to allow fleets that acquired additional vehicles through mergers and acquisitions at least a 2 to 3 year compliance window.

4. The ZEV Infrastructure Delay Extension should be expanded to include ZEV additions.

Section 2015.1(c)(3) states "[f]leet owners may request an extension from the ICE Removal requirements compliance date…" This extension should also apply to situations where ZEV additions cannot be achieved pursuant to Section 2015.1(a) due to infrastructure delays. In these cases, the addition of new ICE vehicles should be allowed when historical fleet turnover cycles will be exceeded.

5. Non-repairable Vehicle Exemption should allow new and used ICE vehicle replacements.

Section 2015.1(c)(9) only allows replacement with a used ICE vehicle in the event of an accident or other onetime event beyond the fleet owner's control. This vehicle will be excluded from the ICE vehicle removal requirement based on the useful life of the non-repairable vehicle. For a number of reasons, a used vehicle in the same configuration or with the same work features may not be available, especially for specialty or unique vehicles. The only feasible replacement option in this case will be a new vehicle. This section should be modified to allow fleets the discretion to choose either a new or used replacement vehicle, subject to the useful life limitations.

6. The Rental Vehicle Option should be expanded to interstate fleets in determining their "California Fleet."

A "California fleet" must include every vehicle that operated in California at any time during the calendar year. Much like a rental fleet, interstate fleets, those with trucks registered under the International Registration Plan, will have to report and determine compliance based on all vehicles that could possibly operate in California during the year, even if only for a few hours. Interstate fleets will also need to restrict any non-California fleet designated trucks from entering the state, significantly increasing logistical challenges and freight costs.

An alternative option is to allow interstate fleets to report the average number of vehicles that operate in California in accordance with the quarterly snapshots presented in the Rental Vehicle Option in Section 2015(d). This option would establish a "California Fleet" that is reflective of actual vehicle activity in the state as opposed to establishing a fleet that is comprised of vehicles that *may* travel into California.

7. The Daily Usage Exemption needs further revision.

While the Daily Usage Exemption (DUE) has been slightly expanded, it continues to exclude eligibility for fleets that may not be able to deploy ZEVs or NZEVs.

- Most importantly, the DUE is not available until a fleet has converted more than 10% of its existing vehicles to ZEVs or NZEVs (Sec. 2015.3(b)). This provision assumes all fleets will be able to convert a portion of their vehicles to ZEVs or NZEVs. This may not be the case, especially for high mileage, irregular route operations, such as nationwide long-haul fleets that service California customers using primarily Class 8 sleeper tractors (note that no distinction is made between sleeper cab tractors and day cab tractors in the rule even though they tend to perform different functions). In addition to range limitations, these vehicles face the uncertainty of the development of a nationwide public infrastructure network. To ensure the DUE is available, if needed, the minimum 10% ZEV requirement should be eliminated.

- The criteria which exclude vehicle configurations from being considered for the DUE are arbitrary and fail to consider vehicle usage. For example, ZEVs and NZEVs tractors weigh more than their traditional counterparts and may not be an option for certain fleets or result in decreased payloads/increased trips (such as auto hauler). ZEV tractors with at least 1,000 kWh rated energy capacity ignore operating impacts such as ambient temperature, HVAC usage, route topography, driver efficiency, available usable energy, and battery degradation and chemistry.

- The proposed rated energy capacities are arbitrary and do not reflect usage considerations. For example, comparing the proposed 2.1 kW/mile factor for Class 7 and 8 tractors to the same type of tractors eligible for HVIP funding reveals a range of 1.9 to 3.3 kW/mile with the mean of 2.5 kW/mile being nearly 20% higher than the CARB factor.[1] This difference equates to 40 miles of less range for the HVIP tractors which average 525 kW of rated capacity. Rated energy capacity, per the proposed regulation, also includes non-accessible energy capacity. In addition, the combination of operator range anxiety and the physics of the fast-charging curve constrain typically usable energy to 80% to 90% of rated capacity (or approximately 25 to 50 fewer miles than rated capacity). In total, these factors alone will reduce the range calculated by the CARB rated energy capacity by 65 to 90 miles.

[1] CALSTART, *California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project* (accessed October 2022).

- Drayage trucks should be eligible for the Daily Usage Exemption. Drayage trucks currently travel the 400+ mile round-trip route over the Sierra Nevada Mountains from Reno to Oakland and back on a daily basis. Similar or longer routes over the I-5 Grapevine from the San Joaquin Valley to the Ports of Los Angeles/Long Beach also occur daily. While CARB assumes drayage tractors with adequate battery capacity for these routes are available, in fact, when usage factors are considered, this is not the case. In addition to the topography-related energy demands, the combination of winter temperatures and HVAC usage have been shown to decrease battery capacity by as much as 41%.[2] Continuing to haul drayage loads over these daily routes will be adversely affected under the proposed rule unless the DUE exemption is expanded to the drayage truck fleet and the 10 percent eligibility requirement is removed.

8. The ZEV Infrastructure Site Electrification Delays extension should be modified

The ZEV Infrastructure Site Electrification Delays extension should be modified in the following ways:

- *Provide contingencies for fleets reliant upon public charging.*

  We continue to implore CARB to recognize that there is no provision in the ACF which provides flexibility to a fleet operator who cannot install their own infrastructure. CARB's own analysis anticipates that 75% of sleeper tractors will rely upon public charging. However, there is no flexibility for fleet operators who face deadlines without viable charging solutions. This fails even the most charitable interpretations of feasibility.

- *Provide for site electrification delays of greater than five years.*

  Pacific Gas and Electric's October comment letter indicated that the utility "strives to interconnect projects in a timely manner, however mid-sized projects such as new distribution circuits or substation modifications can take 2-3 years. Larger projects that require new substations or transmission lines requiring licensing, permitting, or land rights acquisition can take 7 or more years."

  It is baffling that CARB would arbitrarily restrict the site electrification delay to 5 years when public comment provided by a utility covering 43% of the State's service territory has indicated site electrification can take 7 or more years in some cases.

  We recommend CARB provide flexibility for site electrification without an arbitrary time limitation given that many of these delays will be completely out of the control of regulated fleets.

- *Recognize pre-contract delays outside of the fleet's control.*

  Delays prior to the execution of a contract with the utility could delay site electrification. These could include negotiations of easements between the utility, landlord and tenant.

[2] American Automobile Association, *AAA Electric Vehicle Range Testing* (February 2019).

Also, certain projects may not be suitable, especially at rural sites with insufficient transmission and distribution infrastructure.

- *Continue this provision beyond 2030.*

  Newly affected fleets and/or new charging sites will continue beyond 2030. However, Sections 2014.2(b)(2) and 2015.3(c)(2) limits fleet owners from requesting a site electrification extension beyond this date for sites where an electric utility provider cannot provide power. The regulation should be modified to recognize that new site electrification delays will continue to occur past the current 2030 limit.

- *Requirements are overly burdensome for fleets with multiple sites.*

  The language regarding availability of the exemption for fleets with multiple sites is impractical not only where the "controlling party" does not own the vehicles, but in all cases, *i.e.*, requiring a copy of each site's infrastructure capacity is disproportionately burdensome for large fleets with multiple sites and allows CARB to arbitrarily dictate immediate, incremental electrification projects across the state, which will strain capital budgets, frustrating site-specific project needs and larger electrification projects necessary to support the operation.

9. The ZEV Purchase Exemption List should be in place when the ZEV purchase requirements begin.

Section 2015.1 requires fleet owners to purchase ZEVs as early as January 1, 2024. As proposed, the listing of configurations that are not available to purchase as ZEVs or NZEVs will be published up to one year after this purchase requirement is in effect. To ensure a level playing field and reduce the need to request exemptions for configurations that are not available, the ZEV Purchase Exemption List should be published at the same time the ZEV purchase requirement goes into effect.

10. The ZEV Purchase Exemption Application should be revised to maintain the division between non-CDL and CDL drivers.

Section 2015.3(e)(2)(E) allows the Executive Officer to identify ZEV or NZEVs in the same *or higher* weight class (emphasis added). Operators of vehicles under 26,000 pounds GVWR (Class 6 or less) do not require commercial driver licenses (CDLs) while operators of vehicles over 26,000 pounds GVWR (Class 7 and 8) do. When identifying ZEVs or NZEVs, the EO should account for this CDL distinction by ensuring Class 6 replacements will not exceed weight restrictions that would require drivers to have CDLs.

11. A consolidated compliance reporting system is needed.

Trucking fleets currently report to multiple CARB databases (TRUCRS, DTR, ARBER) with additional databases proposed (HDIM, ACF). Much of the required information is reported

multiple times (company/contact information) and, in many cases, covers or will cover the same vehicle (TRUCRS, DTR, HDIM, ACF). A streamlined process is needed that provides fleets a single database for all reporting requirements and transfers existing reported data to the new system. If done properly, this system should reduce compliance costs by eliminating duplication and enhance enforcement by providing a single reference point for fleets and enforcement personnel alike.

12. The documentation for ZEVs operated in California conflicts with interstate truck operations.

Section 2015.4(o) requires "documentation showing each reported ZEV was operated in California *during every calendar year* in which the ZEV was reported as being part of the fleet owner's California fleet" (emphasis added). This requirement is not consistent with the operation of interstate trucks, those registered under the International Registration Plan, that are eligible to enter California but may not in any given year due to load availability or other logistical considerations. As written, fleets would need to ensure *all* ZEVs in their California fleet operate in the state every year. In reality, interstate trucks may travel in a number of different states each and every year but these states, including California, may not be the same every year. This requirement must be revised to maintain ZEV flexibility in the interstate fleet.

13. State-provided incentive funding should be directed towards initial compliance.

To date, the substantial acquisition costs of zero-emission trucks have been partially offset through the use of incentive funds. These incentive funds range from $7,500 for the smallest Class 2b vehicle to $180,000 for a semi-tractor.[3] This latter incentive amount is roughly equal to the purchase price of a single new diesel semi-tractor, with zero-emission tractors being roughly 2 to 3 times the cost of a conventional tractor.

The loss of state-provided incentive funds will place the entire conversion expense in the hands of affected fleets. Passing the full costs onto customers will be difficult since not all fleets are subject to the regulation and will not experience the additional costs associated with vehicle and infrastructure acquisition and operational modifications. To reduce the cost of this transition, CARB should allow incentive funds to be used to purchase vehicles for compliance through at least 2030. This will help fleets to meet the first-round percentages under the fleet milestone option and allow the zero-emission truck market to grow and mature.

14. The ZEV Milestone Option vehicle count should be revised.

Fleets should be permitted to remove an ICE vehicle from the California fleet count if it was removed during the calendar year and replaced by a ZEV or NZEV. As the draft is currently written, entities would be required to count the removed ICE vehicle towards the California

[3] CALSTART, *California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project* (accessed October 2022).

fleet calculation if it operated during any of the calendar year. This creates an inflated denominator for the means to calculate the number of ZEV or NZEVs needed to meet a compliance milestone.

15. The Five-Day Pass needs to be expanded.

This provision is not practical for any entity that may need to operate a vehicle in California at short notice. The rule requires the request to be submitted and approved prior to the vehicle operating in California and is only applicable for 5 consecutive days once per year. It is highly feasible that a vehicle may need to operate in California for a few days that are not consecutive due to unexpected high-volume operations or maintenance issues with the existing fleet, as examples. This is highly plausible at entity locations that are located outside of California that only determine a certain set of vehicles to operate in California (*e.g.*, pickup and delivery from Arizona domiciled facilities).

As we learned since the pandemic, our supply chain is fragile, and even small disruptions can cause huge problems nationally and globally. As recently as last year, prices for new, cleaner diesel trucks skyrocketed because of a lack of availability due to the semiconductor shortage. Prices for new zero-emission trucks are two to three times higher than diesel trucks, making them unaffordable for most fleets.

Zero-emission truck prices are expected to stay high due to the increased demand for batteries, electrical components and other raw materials. And, contrary to some projections, manufacturers are not expecting battery prices to fall given the increased demand from these regulatory requirements and market forces. This will place additional inflationary pressures on the supply chain and lead to higher prices for goods and services.

We cannot stress enough our concerns that the proposed regulation is a recipe for failure. Substantial revisions in addition to the proposed 15-day changes are needed to have any chance of success given the technology and infrastructure limitations. We urge the Board to pause and reevaluate the proposed ACF regulation and stand ready to work with you to address the challenges ahead.

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