



October 18, 2021

**Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation: Recommendations for strengthening accountability and compliance**

To the California Air Resources Board:

The undersigned environmental, environmental and social justice, and labor organizations respectfully write to share our comments and recommendations for strengthening the current Advanced Clean Fleets proposals. This set of comments focuses on the need for the strongest possible language to ensure that companies do not unlawfully shift responsibility for compliance onto the backs of their drivers, which not only hurts workers, but also undermines compliance. These comments are in alignment with and support additional comment letters submitted by our coalition on the draft proposed regulatory language.

We appreciate the attention and concerted effort that CARB staff have put into holding controlling entities in the trucking industry accountable for implementing the ACF. As our coalition has indicated, and a vast literature of academic studies has shown, the trucking industry uses a variety of ever-evolving strategies to misclassify drivers and displace financial and physical responsibility for equipment and costs onto drivers and the public purse. Our goals as a coalition are to ensure that the proposed rule at every step holds companies to their rightful responsibility to internalize business costs and plan for a sustainable transition to zero emission trucks, without punishing workers. We are heartened to see CARB's dedicated efforts in the draft text to address these concerns.

To that end, the definition of common control and ownership is an important building block for ensuring that companies do not unlawfully offload costs onto low-income drivers, thereby undermining the

effectiveness of the rule and worker equity. To further strengthen that framework and lay the groundwork to promote compliance, we offer the following recommendations:

### **Common Ownership and Control Language Needs Tightening**

A strong ACF must ensure that drayage companies do not circumvent the ACF by creating superficial changes that create the appearance of an arms-length relationship. To prevent companies from evading compliance by using systems such as load boards, dispatch apps, or other mechanisms that create the illusion of intermittent contracting or of an arms-length relationship with their drivers, the following should be addressed:

- The regulation (for both High Priority Fleets and Drayage mechanisms) should clarify that all work managed by a contracting entity is captured under the Common Owner definition, which is a more general set of relationships than “*day-to-day*” relationships described in the language. “*Day-to-day*” language in each mechanism should be removed.
- One way to close the loophole created when companies obscure their relationship with trucks they commonly own or control is to incorporate Standard Alpha Carrier Codes (SCAC) into the data collection and regulatory mechanisms defining Common Ownership and Control. Specifically, it should be added to the following sections:
  - 95691(b)(9)(drayage) and 95692(b)(8)(HPF) (added text is italicized, deleted text is struck):
  - Furthermore, a vehicle is considered to be under an entity’s control if that ~~entity~~ *vehicle is operated by the vehicle* using *that entity’s Standard Carrier Alpha Code (SCAC), or that entity’s state or federal operating authority, or any other registration held by that entity.*
  - 95691(d)(5)(E) - add “SCAC code used by vehicle for each dispatch” (motor carrier requirement)
  - 95691(d)(6)(A) - SCAC code(s) under which the vehicle operates (marine terminal/railyard requirement)

### **The Legacy Vehicles Exclusion Is too Permissive**

A higher bar should be set for this exclusion to ensure that only trucks that truly perform drayage services are included in the DTR (Section 95691(d)(1)(B)). The one move per calendar year threshold should be raised to make sure that only truly active drayage trucks continue to operate under this exclusion. The other elements of this exclusion will work well to transition legacy fleets.

### **Enforcement Language Should Be Strengthened and Explicit**

Enforcement mechanisms are left vague and implicit in the current draft rules and should be made explicit, and, in doing this, place the penalties for non-compliance on common owners and controllers, not individual drivers subject to their control.

We look forward to continuing to work with CARB as the Advanced Clean Fleet Rule advances through the regulatory process. Thank you for your consideration of this and the other letters submitted by our coalition regarding the draft rule and Total Cost of Ownership.

Sincerely,

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