

California Council for Environmental and Economic Balance

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California Air Resources Board

Submitted Electronically via:

[https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=cleantrucks-
ws&comm_period=1](https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=cleantrucks-
ws&comm_period=1)

RE: Advanced Clean Trucks Regulation: Proposed Draft Regulation Language for Large Entity and Large Fleet Reporting Requirements

Dear Paul and Craig,

On behalf of the California Council for Environmental and Economic Balance (CCEEB), we submit these comments on the Proposed Draft Regulation Language for Large Entity and Large Fleet Reporting Requirements. CCEEB is a nonpartisan, nonprofit coalition of business, labor, and public leaders that advances strategies for a healthy environment and sound economy. The proposed draft regulation would apply to most of our members, either as large entities or large fleet owners or both. CCEEB generally supports efforts at the Air Resources Board (ARB) to reduce emissions of criteria pollutants, air toxics, and greenhouse gases, and recognizes that cleaner fuels and fleets play an important role in meeting air quality and climate goals. Our comments here are not directed at these broader policy objectives at ARB, and are narrowly focused on the proposed reporting requirements being considered as part of the Advanced Clean Trucks Regulation.

Our main points are as follows:

- **ARB should clearly define what questions it seeks to answer, and what systems and methods will be used to manage and analyze reported data.** The current proposal casts a wide net, both in terms of the scope of reported information, as well as the universe of businesses being asked to report. CCEEB finds this approach highly irregular and atypical of common rule development at ARB. For example, in developing its portable and small engine rules, ARB did not require every business using a lawn mower or leaf blower to report its income, location, activity, and hours of operation. Similarly, ARB does not require every commercial store to report sales and usage data for the purpose of promulgating consumer product rules. This

exhaustive approach will result in an overwhelming number of data points, most of which will be redundant of data already collected in TRUCRS or which will soon be required of fleet owners and operators. In addition, collecting information from fleet owners, operators, and those contracting for fleet services will likely result in double and triple counting of a single vehicle trip.

- **CCEEB believes a regulation is not necessary for data collection, and that alternative means for collecting data on fleets and facilities could hold key advantages over a reporting rule.** Alternatives could include voluntary surveys of businesses, public-private partnerships with telematic providers and client fleets, pilot studies with representative facilities, and use of focus groups and interviews with businesses. ARB could also survey existing data sets, both public and proprietary, to determine what information is already available. Unfortunately, none of these alternatives seem to have been reasonably explored, or at least have not been discussed with public stakeholders. CCEEB recommends that staff work with stakeholders to explore options before deciding that a mandatory reporting regulation is needed.
- **Applicability requirements set a very low bar and could result in data being reported with little meaning or value.** For example, an entity that has only one vehicle operating in California would still be required to report “fleet” information if its parent company has either more than 100 vehicles nationwide or gross receipts of more than \$50 million. However, it is hard to imagine how detailed information on such a single truck or van¹ adds meaningful context when it is only one among more than 5.28 million commercial vehicles registered in the state.² If ARB moves forward with this rulemaking, then CCEEB strongly recommends that applicability be more narrowly defined to ensure the relevancy of reported data. Businesses should not be asked to report merely for the sake of reporting.
- **Compliance costs are significantly under-estimated.** The Standardized Regulatory Impact Analysis (SRIA) estimates that reporting would entail an average of four hours of work, at a cost of \$50 per hour—including lost productivity, wages, and salary. This seems implausible. For example, environmental compliance staffs and consultants typically are compensated at higher rates than \$50 per hour. More importantly, the SRIA seems to under-estimate time needed to develop internal tracking and reporting systems, consolidate and analyze contractual services, and then collect data over a year’s time – all of this would need to be done before completing ARB’s forms. Since most businesses falling under ARB’s definition of a

¹ Requirements apply to heavy-duty as well as medium-duty vehicles with a gross weight of 8500 pounds or more, such as a Ford F-250 Truck or 150 Transit Van.

² <https://www.dmv.ca.gov/portal/wcm/connect/5aa16cd3-39a5-402f-9453-0d353706cc9a/official.pdf?MOD=AJPERES>

² <https://www.dmv.ca.gov/portal/wcm/connect/5aa16cd3-39a5-402f-9453-0d353706cc9a/official.pdf?MOD=AJPERES>

large fleet or entity would have complicated operations and multiple facilities, these businesses will end up generating hundreds of data points needing to be tracked, verified, and reported.

- **Rulemaking is on an arbitrary yet accelerated schedule, and many businesses will not be able to comply, let alone participate in rule development, because they have not been notified.** Staff assumes that a total of 12,000 “companies” will need to report.³ However, most of the actual requirements are based on the facility level, not the corporate parent. For example, a national bank with hundreds of branches operating in California would need to report unique information for each branch. The same is true for any national commercial enterprise with offices, storefronts, or facilities in California *even if they do not own or operate a single vehicle*.⁴ Because of this, there are many thousands of additional entities that would need to report beyond what has been characterized in the SRIA; almost none of these “large entities” have been notified about the rulemaking by ARB.

What follows is a more detailed discussion of each of these key points. We then offer additional suggestions or questions for clarification on the proposed regulatory language further below.

Clearly Define Problem Statement, Data Gaps, and 2024 Rule Concepts

The accelerated rulemaking schedule means that staff has had little time to formulate clear problem statements it seeks to answer, nor has it identified data gaps in existing ARB and DMV fleet data that “large entity” reporting is meant to help fill. Additionally, ARB has not provided details about how reported data would be kept and managed, such as what methods would be used to analyze data, who on staff would conduct its evaluation, how data would be stored and accessed, what quality assurance and quality control protocols would be applied (if any), and what steps would be taken to protect confidential business information. These details are commonly developed as part of other ARB reporting programs, such as the Mandatory Reporting Regulation for greenhouse gases, the Criteria and Toxics Reporting Regulation, and the Portable Equipment Registration Program. CCEEB asks staff to work with public stakeholders to develop and define these important components of its proposed reporting program.

In general, ARB should avoid “data dumps,” i.e. collecting exhaustive data points without need. This would be administratively burdensome for compliance entities and could pose challenges for staff analysis and interpretation. One way to start organizing ARB’s data needs would be to clearly articulate discrete policy or technical questions staff is exploring.

³ ARB Advanced Clean Trucks SRIA, August 8, 2019, page 35: “Staff are estimating that roughly 12,000 companies or entities will be affected by this reporting requirement consisting of 11,000 large companies or trucking fleets and 1,000 public entities, utility fleet, and refuse fleets.”

⁴ Other examples include common convenience store chains, like 7-Eleven, which operate at 1749 locations in California, [<https://www.7-eleven.com/locations/ca>] or MacDonalld’s, which operates 1,295 restaurants across the state.

For example, some questions could be specific to the technological readiness of certain vehicle types and applications for a transition to zero emission vehicles (ZEVs). Others could be about facility readiness in terms of physical infrastructure available to enable vehicle charging. CCEEB recommends that ARB seek to avoid double counting and only require information from those entities best suited to provide it.

ARB Should Streamline Reporting and Consistently Allow Representative Facility Data

CCEEB believes that ARB staff should work to understand how a *typical* facility or business type operates, rather than asking for detailed information about *each and every* facility in the state. Put another way, and revisiting the bank branch example, deliveries to one bank of a certain size in an urban area would likely be representative of most banks operating under similar conditions. With representative information, ARB could develop models that suitably characterize whole sectors or categories of businesses without needing to collect and validate information from every single one.

CCEEB does appreciate that staff has tried to generalize reported information. For example, instead of asking the exact numbers of delivery trucks, it is asking entities to report ranges of data. However, the requirements remain administratively burdensome and compliance will be difficult. For example, determining whether there are 1-10 parcel trucks trips in “typical” week versus 11-20 still requires a certain level of precision or risk being in violation. This problem is particularly acute for businesses with “100% compliance” policies and facilities with Title V permits, which must comply with all environmental rules and regulations as part of their permit conditions. To help address this problem, we recommend that staff clearly define what level of accuracy is needed and how compliance would be determined.

CCEEB also recommends staff work with stakeholders to streamline requirements and allow reporting of representative facility data to the fullest extent possible. For example, CCEEB believes that Form C could be revised so that representative fleet information is provided rather than exhaustive information for each facility. This would reduce both administrative burden as well the number of redundant data points being collected; currently, a truck visiting a number of facilities would be reported multiple times, once for each facility to which it was “assigned.” To the extent possible, ARB should seek information that is already tracked, rather than asking businesses to generate new data not currently collected.

Explore Other Means of Data Collection Before Pursuing Mandatory Reporting

Under a formal rule, staff has one shot at asking the “right” questions, and reporting entities have one chance at providing a single snapshot of information, which may or may not paint a clear picture of how best to phase-in ZEV deliveries. Conversely, alternative means of data collection would allow both sides to learn through their discussions and interactions and to refine and adjust analysis on an ongoing, iterative basis as their understanding evolves over time. It also builds a foundation for partnership and

collaboration, which could be leveraged in the future for rule development. Surveys could play a useful role, such as the Biomass and Combustion Survey being done in support of ARB implementation of AB 617.

One major problem with a regulatory approach is that reporting rules, by design, require entities to be precise and accurate or risk violations for non-compliance. This was certainly the case under the MRR Regulation, where a single mistake in a company's reporting system could result in multiple violations and hundreds of thousands of dollars in fines and penalties. Regulated entities tend to struggle when first implementing a reporting rule, as staffs learn how to comply with new requirements and guidelines. Over time, businesses learn from experience — as do regulating agencies, which typically have several series of rule amendments and enforcement advisories during the early implementation period. CCEEB is concerned that the ACT reporting rule gives businesses a single shot at getting it right, and that precision and accuracy may not even be warranted. That is, the precision needed in MRR to support a GHG emissions trading market is likely not warranted for the ACT since the intention is to simply inform staff analysis of future rulemaking opportunities. Just because ARB can require reporting, it should ask if it needs to do so.

Another enforcement issue is how ARB will verify compliance with the rule. The easiest approach would be to audit submitted reports, or penalize late reports, because these entities can be quickly identified. However, this prioritizes enforcement of “good actors” who are trying to comply with ARB requirements. A much larger, but potentially invisible pool of “bad actors” will be those who do not report at all.

Reduce Number of Reporting Entities So that It is Manageable and Meaningful

CCEEB believes that reporting beyond fleets is unnecessary, and that even for fleets, alternative means of data collection would be worth exploring before moving to a mandatory reporting rule. Importantly, a focus on fleets prevents double counting, where a single vehicle making multiple visits to various customers and locations would not be reported by each individual site. CCEEB strongly believes that the applicability requirement for “large fleets” should be 100 or more vehicles *registered in California*, not nationwide. Not only does this prevent meaningless data for a single or just a few vehicles from being generated, it also treats businesses more fairly. For example, it does not make sense that a fleet owner with 99 vehicles registered and operating in California would not need to report, but a business with a single vehicle would.

In general, and somewhat perplexingly, reporting requirements for “large entities” appear more burdensome than those for actual fleets. For example, Form B for facilities includes 31 questions in Section B1, and then 22 questions for each “representative facility” type in Section B2. Thus, an entity could have hundreds of questions to answer depending on how many facility types it operates. Additionally, several of these questions require time-consuming tracking across a company's operations, particularly when multiple facilities or facility types are involved, or where answers involve multi-faceted responses not

consistent with the general category of responses provided. For example, Question 13 on Form B1 asks how you ship items out of state for each of 11 different facility types, with possible answers being “with your own vehicles,” “>1year contracts,” “both,” or “NA.” What if some facilities of the same type use “both” while others use only their own vehicles? Should the reporting entity say “both” because it is a simple catchall? Or “NA,” since the choices given don’t accurately characterize operational complexity? What happens if a company uses contracts of <1 year or is unsure how its contracts should be characterized? If data is so generalized, what value does it hold to ARB in the end?

The point here is that facility-focused data can be confusing or complicated to report, and that efforts by ARB to simplify and generalize answers can create further ambiguities while at the same time calling into question the ultimate value of the information. In its current form, staff should expect numerous inquiries from covered entities seeking to understand how to comply with the rule given the specifics of their business configurations.

Work with Stakeholders to Understand Compliance Challenges and Costs

As stated previously, CCEEB disagrees with the compliance cost estimates described in the SRIA. CCEEB strongly recommends that staff hold at least two workshops to better understand what would actually be involved in terms of compliance with the proposed reporting rule, and to look for ways to streamline requirements and reduce administrative burden. Staff could organize workshops or working groups by sector or type of business, e.g., delivery fleets, other large fleets, large entities with no vehicles but contracted deliveries and services, commercial properties with tenants that independently contract deliveries and services, government and other institutional properties and fleets, public and private utilities, etc.

CCEEB further recommends that at least one workshop focus on the extent to which businesses could actually leverage contractual partners and service providers to require or incentivize the use of ZEVs, as well as the degree to which fleet owners and operators would be sensitive to such market pressures. For example, some businesses have low-bid requirements for contracts, which would need to take precedence over any ZEV requirement. It’s worth noting that fleet owners and operators have the same information about contractual agreements as do facilities, and that these businesses have greater understanding about the feasibility of transitioning to ZEVs for their operations. Businesses contract for *services*, not vehicles, and most often, vehicle information is not known to them and certainly not tracked.

ARB Should Strive to Notify Affected Businesses

It is unclear how many of the 12,000 potentially affected businesses are aware of this rulemaking or that they could soon be required to track and report 2020 operational data in 2021. While ARB can identify fleets through its TRUCRS database and DMV vehicle registrations, the universe of “large entities” is much more complicated to characterize. Additionally, and as stated previously, we question whether 12,000 is an accurate estimate

since many subsidiaries, subdivisions, and branches of large entities could have separate reporting requirements and compliance obligations. Notwithstanding the challenge in outreach and communications, ARB clearly intends to enforce its reporting rule, and as such, it will need to know which businesses are affected. And, if it is to be expected to identify affected businesses for compliance purposes, then it stands to reason that it can and should be able to notify these entities as part of its public rulemaking process.

Compounding this challenge is the accelerated rule development schedule for the “large entity and large fleet” reporting, which has been conjoined with manufacturer requirements in the Advanced Clean Trucks (ACT) regulation. Although talks with manufacturers have been ongoing since at least 2016, the reporting proposal was only first mentioned at a June 2019 workshop, and no targeted notification was made to “large entities” without fleets. Substantive details of the reporting requirements were only released in August; and, with a 45-day comment period proposed for October, stakeholders have only a few months to work through the many complex details before staff takes the rule package to its board in December. CCEEB does not believe this schedule is sufficient. Instead, we recommend that staff bifurcate the ACT regulation, moving forward with its manufacturer requirements as needed, but allowing more time for outreach and rule development on the reporting requirements.

Other Comments and Questions

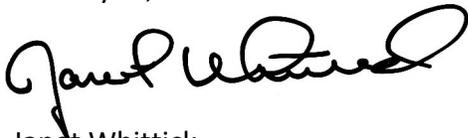
- The proposed draft rule fails to mention how the proposed regulation would be enforced, or what would constitute a violation. CCEEB would like to work with staffs in the Mobile Sources Control Division, the Legal Office, and the Enforcement Division to better understand how ARB would prioritize enforcement of this rule, what could be deemed non-compliance, and what range of penalties or enforcement actions could result from a violation.
- CCEEB asks ARB to include in the staff report a section on electricity infrastructure readiness needed to support widespread transportation electrification, similar to the technical analysis staff prepares for vehicle manufactures on technology feasibility. If this information is not available, staff should outline how it will develop such an analysis in support of 2022 and beyond ZEV rulemaking.
- CCEEB asks ARB to cite its authority in the rule language and to include in the staff report a discussion of its legal analysis, including its authority to set the point of any future regulation on ZEVs at the facility-level or within a defined geographic zone. In public meetings, staff has indicated that ARB legal counsel has already done such an analysis. However, in the draft proposed rule language, staff only provide a placeholder [“XXXX”] instead of relevant Health & Safety Code and Vehicle Code citations.

- Given the significant attainment challenges in the San Joaquin Valley and South Coast air basins, ARB should thoughtfully consider approaches in its ACT regulation that balance the need for further NO_x and PM_{2.5} reductions with its greenhouse gas goals. This could include looking at technologies beyond ZEVs, such as partial zero-emission vehicles and hydrogen fueling.
- § 2012.1 states that a regulated entity, “including the corporate parent *and* each subsidiary, subdivision, or branch” under its control must report. [*Emphasis added.*] Using the bank example once again, would the corporate parent need to report for each of its branches collectively *and* each branch would need to report individually? Or, should the “and” be an “or,” that is, either the corporate parent reports for all of its sub-entities, *or* each of its sub-entities must report individually? If the latter, if one sub-entity failed to report or reported incorrectly, would the violation rest with the sub-entity, or would the corporate parent be in violation?
- § 2012.0(b)(3): what is the definition of “dispatched” and how would ARB determine who is the responsible entity for purposes of implementing this section of the rule?
- § 2012.0(d)(1) defines “Pickup and delivery” to mean “services performed using vehicles *generally* characterized by *urban transportation* with frequent stops to load or unload goods or other items.” [*Emphasis added.*] If a business were located in a rural, non-urban location, would it by this definition have no pickup and deliveries? At what point would deliveries to rural or non-urban locations be considered long haul, and as such, not subject to this rule?
- What is the definition of “contract” on Form B? If services and deliveries are not “contracted,” do they still need to be detailed on Section B2 for representative facilities?
- On Form A, Item 12, what constitutes subhaulers/subcontracting and dispatched/directed? Is this for the entire year? For example, typically subcontractors are paid to provide a specific service, not scheduled to make a specific number of trips each week/month. On Form C, are subcontractor vehicles meant to be included? If so, under what circumstances? Would a business be in violation if it was unable to track subcontractor vehicles?
- On Form A item 13, what is meant by “under our authority?”
- What is meant by a “representative facility” on Section B2?
- Many questions on Section B2 ask about smaller vehicles than those covered by the regulation. What is the purpose of gathering that information?

- In Section B2, Questions 5 and 6, what is meant by “associated with the operation of the facility”? Could a vehicle be domiciled at a facility and not associated with the operation of the facility or the inverse?

We sincerely appreciate the opportunity to comment, as well as time taken by staff to discuss the proposed regulation with CCEEB staff and members. CCEEB firmly believes that by working with stakeholders, ARB can devise appropriate means to collect the data it needs for future ZEV rulemakings; and we commit to working with staff in support of those efforts. Should you have questions or wish to discuss our comments in detail, please contact me at janetw@cceb.org or (415) 512-7890 ext. 111.

Thank you,



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