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Craig Duehring  
 Paul Arneja  
 Mobile Source Control Division  
 California Air Resources Board  
 1001 I Street  
 Sacramento, CA 95812

Submitted Electronically to [zevfleet@arb.ca.gov](mailto:zevfleet@arb.ca.gov) and informal comment docket

**RE: INFORMAL PUBLIC COMMENTS ON THE PROPOSED ADVANCED CLEAN FLEETS RULEMAKING**

The California Chamber of Commerce is pleased to submit comments to the draft Advanced Clean Fleets (ACF) rule released by the California Air Resources Board (CARB) for informal comment. First, we appreciate CARB staff's willingness to release draft language well in advance of the formal comment deadline. This early release will provide more time for companies to evaluate the impacts of the rule, as well as prepare for the requirements set forth in the proposed rulemaking, including siting and infrastructure decisions, all of which must be made in the next few years given the proposed aggressive timeline.

In addition, although CARB has asked for initial informal comments by a certain date, CARB staff has indicated that it will keep a public comment docket open for this rulemaking and will continue to take public comments after that date.

Below are comments and requests for clarification on the draft rule released earlier this month. Because the rule was released in three separate documents, but common definitions are used throughout the three, comments that apply to one definition also apply to the use of those terms in the other two drafts. We look forward to discussing these and other issues in CARB's planned future workshops as it fine tunes the rulemaking.

### **Request for Joint CEC/CPUC Workshop**

The primary concern of most CalChamber members is the availability of charging infrastructure—both public and private charging technology—as well as ensuring that California's energy grid is poised to respond to the anticipated increase in electricity demand that will result from this and related ZEV regulations. Indeed, CARB recognizes that publicly accessible charging/fueling may not be available in all areas of the state. (See §95693.2(a)(2) Public Fleet Exemptions). We respectfully request that CARB's next workshop on this rulemaking include participation of the California Energy Commission (CEC) and the Public Utilities Commission (PUC), to which CARB has been deferring questions on charging/fueling infrastructure. At that workshop, it would be helpful to hear from the CEC and PUC their forecasts for charging infrastructure along the milestones set by the ACF, as well as ensuring that hurdles to interconnection, rates, and other related issues will be resolved by the timelines set in the ACF. A regular, transparent infrastructure process that involves all agencies and the business community will mean that companies can better plan for the likelihood of additional costs for installing private charging/fueling infrastructure, including available incentives, or can build those features into future development.

### **ZEV Phase-in Dates are Inconsistent with Executive Order N-79-20**

Governor Newsom's Executive Order N-79-20 sets out specific timelines for the phase in of zero emission vehicles (ZEVs). That regulation requires passenger cars and trucks and drayage trucks to be 100% ZEV by 2035, and medium and heavy-duty trucks to be ZEV by 2045. "Vehicle" is defined in the ACF as equipment that has a gross vehicle weight rating of 8,501 pound and above, is intended for use on highways, and meets the definition set forth in 17 CCR section 95622(a)(26). Pursuant to the Executive order, these medium-duty trucks are required to meet a 2045, not 2035 deadline. Yet § 95692.1(a) requires that certain body types of these medium duty trucks (not limited to drayage vehicles) must meet a 2035, 2039, and 2042 100% goal. In addition, CARB's 100% sales requirement by 2040 effectively eliminates all exemptions and accelerates the fleet deadline to 2040 for all companies, including small businesses. We understand from staff that this is directive from the board. However, we assume that the Executive Order's timelines represented the Newsom administrations best hopes for balancing climate goals, infrastructure needs, and economic impact. This regulation speeds up that timeline by a decade. We would be interested in the administration's understanding of a reconciliation between the recommendations of the CARB board and direction from the Governor's office, which do not appear to align.

### **CARB Should Consider Additional Flexibilities and Pathways to Meet State Goals**

In order to meet air quality and climate goals, and to not deter early adopters of technology, CARB should consider additional program flexibility, particularly for fleets that have already made

investments in technology and infrastructure. This rule, which as originally intended was to match the Advanced Clean Trucks Rule manufacturing requirement likewise excludes all technology except battery electric and hydrogen fueling. CARB should consider how the Advanced Clean Fleets rule can continue to support these additional fuels and technologies, such as renewable fuels or low NOx vehicles. For example, to the extent that a fleet has already upgraded to lower emission trucks, CARB should provide a longer-term phase-in that recognizes those early investments before the ZEV requirements are applicable.

In addition, CARB should consider an incentive-based approach in the early years of the rulemaking, rather than shifting directly into mandated purchases. These incentives should cover both the cost of vehicles, as well as the cost of infrastructure upgrades. Lowering costs will encourage early adopters and drive production while costs remain prohibitive to some entities.

Finally, the drayage timeline in the rule is extremely aggressive. CARB should evaluate whether such a timeline is technologically feasible for drayage and other categories given the cost of infrastructure and the availability of market-ready equipment at this point in time.

### **The Broad Definitions of Ownership and Control Impose the ZEV Regulation onto Small Business, Regardless of Size**

§95692(b)(8), (b)(10) Please provide clarity on this very broad definition. We understand that CARB intends this provision to cover companies that are split into subsidiaries or sister companies, in order to allow one company to report and comply for the entire related entities. However, the following sentence introduces substantial ambiguity into the regulation:

Vehicles owned by different entities but operated by using common or shared resources to manage the day-to-day operations by using the same motor carrier number, displaying the same name or logo, or contractors who represent the same company are considered to be under common ownership or control.

What does CARB mean by “manage” or “direct”? Is CARB referring to how the third party’s contracts are managed? Does it mean how contracts are selected and implemented? Does it mean how contracts are overseen and by whom? Additional clarification in the language is needed so that regulated entities understand how to respond to this provision.

§95692.1 (h) also imposes upon any company who “directs the operation of any vehicle subject to this regulation” a requirement to hire compliant fleets. This broad rule could drive smaller contractors out of business, because, under the terms of the rule, a large entity would be required to impose upon the smaller entity all of the requirements applicable to it, defeating the purpose of imposing this rule upon large companies and fleets that can better afford it.

We understand that CARB’s intent is to prevent companies from disposing of their fleets and avoiding the rule. However, many legitimate contracted businesses provide transportation for California goods and services, which will be affected by this rule if they were to do business with a large entity subject to this rule. Small companies often contract with multiple entities. The language of the rule creates a situation where multiple entities are responsible for the same contractor’s compliance.

CARB should delete this provision of the rule to avoid imposing the burdens of meeting ZEV requirements on small businesses, putting them at a disadvantage and encouraging consolidation.

## **CARB Should Consider Duty Cycle in Addition to Vehicle Type**

The draft ACF proposes that phase in should be by body type. Although we appreciate CARB's consideration that some trucks may have a longer lead time for availability than others, CARB should consider re-drafting the rule to allow for distinctions between duty cycles as well as body type.

## **CARB Should Create a Streamlined, Formalized Exemption Process**

We appreciate the categorical exemptions provided in this rule. However, consistent with the Governor's Executive Order, CARB should provide a formal process for determining exemptions when operation of a ZEV is not feasible, not simply a staff member decision, which could have substantial variability. CARB should provide a definition in the regulation of "feasibility" that incorporates vehicle availability and additional criteria, such as sufficiently available maintenance, warranty, and replacement, as well as sufficient charging/fueling infrastructure. CARB should also consider average costs for both vehicles and infrastructure.

In addition, CARB should consider and address the scenario of a company that has ordered replacement vehicles, but those vehicles are, due to no fault of the purchasing entity, not yet delivered. We also understand that part availability and repairs for battery electric and hydrogen vehicles has been slow. CARB should provide for a short-term exemption to allow companies to lease or otherwise use backup vehicles where repairs or backorders for parts remove that vehicle from the fleets.

Finally, to provide more predictability and structure, CARB should create a separate exemption process. In our experience, other agencies that have created one-off exemption processes have left entities waiting months to years to determine whether it meets the exemption, even where the criteria seem straight forward. At minimum, CARB should clarify in the rule that an entity will not be considered in non-compliance while it awaits a decision on an exemption.

## **Comments on Draft Cost Document**

CARB should continue to analyze the up-front infrastructure costs necessary to acquire new technology and consider ongoing maintenance and replacement needs. To the extent publicly available charging/fueling infrastructure is not available or is far from the home base of fleets, fleets may be required to install private charging/fueling infrastructure at their facilities. These costs are a necessary cost of upgrading fleets to ZEVs and must be incorporated into the cost analysis.

CARB must consider the implications of duty cycles that extend the range/battery life of the ZEVs required under this rule. For example, if a vehicle must be available/runs for long periods of time, an entity may be required to have two vehicles to replace one conventional fuel vehicle in order to meet that duty cycle. Requiring additional backup vehicles beyond a one-to-one replacement is inappropriate. At minimum, CARB's cost analysis must reflect these additional costs.

## **Section-Specific Comments**

Although this list is not exhaustive, below are comments specific to definitions or other requirements of the rulemaking. As indicated above, to the extent these terms or concepts are utilized across all three rules, our comments apply equally.

§95682 High Priority and Federal Fleets Applicability, Definitions, and General Requirements

§95692(a)(1) Please clarify whether \$50M in gross annual revenue is California, US, or world-wide

§95692(b) CARB should consider additional backup vehicle situations. For example, where a duty cycle requires round the clock use and a secondary vehicle is necessary to be used while the vehicle is charging/fueling.

§95692(b)(33) CARB defines near zero emissions vehicle by reference to title 13 CCR 1963(c)(16). This definition excludes low emissions vehicles, including those that have a conventional drivetrain but all electric equipment and operate predominantly in all electric mode. ARB should revise this definition to include all lower emissions vehicles.

§95692(e)-CARB should differentiate between newly purchased vehicles that form a new fleet, and a company that forms a new fleet by acquiring the assets of an unrelated company. The purchasing entity should be provided with the same lead time as a “newly affected fleet” under § 95692(f).

**Conclusion**

Thank you for the opportunity to provide comments on this early draft. We look forward to working with you and your staff to address concerns before formal rulemaking commences.

If you have any questions, please feel free to contact Leah Silverthorn at [leah.silverthorn@calchamber.com](mailto:leah.silverthorn@calchamber.com).

Sincerely,



Leah Silverthorn, Senior Policy Advocate  
California Chamber of Commerce

*On behalf of the following organizations:*

- American Pistachio Growers
- Building Owners and Managers Association California
- California Association of Port Authorities
- California Business Properties Association
- California Cotton Ginners and Growers Association
- California Farm Bureau Federation
- California Grain & Feed Association
- California Manufacturing & Technology Association
- California Retailers Association
- California Walnut Commission
- Farwest Equipment Dealers Association
- Garden Grove Chamber of Commerce
- Harbor Association of Industry and Commerce

Hexagon Agility  
Industrial Environmental Association  
Innovating Commerce Serving Communities  
NAIOP California  
Redondo Beach Chamber of Commerce  
Resource Recovery Coalition of California  
Santa Maria Valley Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Southwest California Legislative Council  
Western Agricultural Processors Association  
Western Growers Association  
Western Independent Refiners Association  
Western Plant Health Association

cc: Tyson Eckerle, Go-Biz