



September 30, 2009

Mary Nichols, Chairperson
California Air Resources Board
1001 I. Street
Sacramento, CA 90014

Re: Notice of Public Availability of Modified Text and Availability of Additional Documents for the Proposed Adoption of the Regulation to Reduce Greenhouse Gas emissions from Heavy-Duty Vehicles; 15 Day Comment Period

Dear Chairperson Nichols-

The California Trucking Association herein offers its comments on the ARB staff's 15 day changes regarding the modified text of its Regulation to Reduce Greenhouse Gas Emissions from Heavy-Duty Vehicles.

CTA has the following concerns about proposed changes:

The New Addition to Section 95301 (a) is Vague, Invites Speculation as to the "Cause" of a Violation and Creates Additional Costs for Legal Protection

ARB's proposed addition to the Applicability language of the phrase "or cause to be used" exposes companies to the prospect of being cited on the basis of speculation. The claim that some antecedent behavior led to a particular outcome leaves companies defenseless against the speculation of "inspectors" who may not have a complete set of facts but nonetheless claim that they "know" that a particular entity "caused" an illegal action. This potential liability will require companies to incur the additional cost of a defensive legal capability in addition to the costs of compliance already required by the rule.

A fundamental standard for rules is that they be clear and that it be clearly evident whether they are adhered to or breached. This fundamental standard is not observed in this language. The language is vague and creates the possibility of mistaken violation charges that would be dependent upon the speculations of an inspector. Companies must be assured that violations and their occurrence are not a matter of speculation. Violations should be easily and readily confirmable.

Section 95303 Requirements and Compliance Deadlines Do Not Contain Specific Provisions Entitling Drivers, California-based Brokers, Motor Carriers or California-based Shippers to Use Exempt Equipment.

(c) Requirements for Drivers

This section does not indicate that a Driver must have evidence that the tractor and trailer he or she is driving is exempt, if it is so.

(f) Requirements for California-based Brokers

This section does not indicate that a California-based broker can use an exempt tractor and trailer.

(g) Requirements for Motor Carriers

This section does not indicate that a Motor Carrier can use an exempt tractor and trailer.

(h) Requirements for California-Based Shippers

This section does not indicate that a California-based shipper can use an exempt tractor and trailer.

There Are No Provisions for Identifying Exempt Tractors and Trailers for Non-Enforcement Personnel Who Must Ensure a Tractor or Trailer is Compliant

There does not appear to be a means, provision or requirement in the regulations whereby exempt trailers or tractors can be identified as such by individuals who must verify whether a tractor or trailer is compliant. For example, there is no provision for a certificate or other documentation that responsible persons can refer to protect themselves from using or shipping in a non-compliant tractor or trailer.

There is No Provision that Guarantees Confidentiality of Information Provided

The proposed regulation in Section 95306 (d)(2) and Section 95307 (c)(2)(N) requires tractor and/or trailer owners to provide, among other information, VIN and license numbers in lists associated with applications for Exemption status and Compliance Plans. While CTA has no objection to such information being provided, ARB must keep this information confidential at a level equivalent to the standard established by DMV by not making it available for public access. This data can be mined by competitors and vendors to reveal confidential fleet specifications and competitive information that would not otherwise be disclosed and could put companies at a competitive disadvantage.

The Process for Making Changes to Exempt and Compliance Plan Lists is Not Well Thought Out

The proposed process for changing the status and location of, adding and removing tractors and trailers from exempt and compliance lists seems to be not well thought out. A large fleet will undergo thousands of changes each year, yet the process as contemplated in the proposed regulatory changes appears to be a paper intensive activity. The regulation needs to discuss the requirements for ARB to ensure this process can be accomplished electronically so that the consequences of changes can be reflected instantly.

Section 95307 (b)(3) Suggests the Compliance Consequences of Growing and/or Shrinking Fleets Does Appear Not to Have Been Considered

The regulation appears to contemplate fleets that are fixed in size. For example, Section 95307 (b)(3) says "... a trailer owner may redistribute trailers among the final three annual

conformance commitment lists [but] the trailer owner may not alter the number of trailers identified on each list." Under this provision, it is not clear how the large fleet compliance schedule would be adjusted for a growing or shrinking large fleet in which there could be thousands of fluctuations every year.

The Need to Report All Trailers in a Fleet in Section 95307 (a)(2)(A) is Unreasonable and Unnecessary

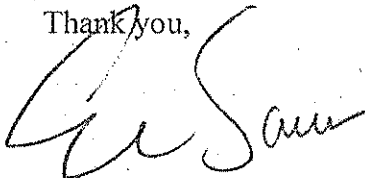
If the only reason for an owner to report all trailers is to determine eligibility for the Large Fleet Compliance Plan yet the only trailers that must comply are those that visit California, it is not reasonable or necessary to require large companies to report all the trailers in their corporate families. Large fleets may have many complex corporate structures that may even be international. Reporting should only be required for the subsidiaries that plan on operating trailers in California once the regulations become effective.

New Section 95306(i) that Provides for a 36 Month Ineligibility for the Short-Haul Exemption if a Tractor is Voluntarily Removed from an Owner's Short-Haul List Appears Punitive and Has Not Been Justified.

While it makes sense for a tractor that is declared ineligible because of a violation of the short-haul rules to be declared ineligible, it serves no understandable purpose to apply the same standard for a tractor that is voluntarily removed from its status as a short-haul vehicle and reassigned a different status in a different location. At most, a short-haul vehicle should be deemed ineligible to return to that status within the twelve months period beginning when the vehicle began its short-haul status.

CTA appreciates the opportunity to offer comments on this regulatory item and is looking forward to having our concerns outlined in our comments addressed by CARB staff.

Thank you,



Eric Sauer
Vice President Policy Development
California Trucking Association