

**STATE OF CALIFORNIA
AIR RESOURCES BOARD**

RE: PROPOSED CALIFORNIA GREENHOUSE GAS EMISSIONS STANDARDS FOR MEDIUM- AND HEAVY-DUTY ENGINES AND VEHICLES (PHASE 2) AND PROPOSED AMENDMENTS TO THE TRACTOR-TRAILER GHG REGULATION

Comments of Navistar, Inc.

Navistar, Inc. (Navistar) submits these comments to the above referenced proposed rule. The proposed rule encompasses California Air Resources Board's (CARB) adoption of its version of the federal Greenhouse Gas Emission Standards for Medium and Heavy-Duty Engines and Vehicles – Phase 2 (Phase 2 Rule). Navistar agrees with and adopts the comments of the Truck and Engine Manufacturer's Association, of which it is a member. In addition to those comments, Navistar would like to submit the following comments.

Navistar appreciates CARB's commitment to align to the EPA rules. We believe it is imperative to maintain a uniform program across the country. A single state or patchwork of regulations would be unnecessarily burdensome and counterproductive. A lack of uniformity could lead to additional costs which could have the unintended consequence of customers delaying purchases of new standard vehicles they may have otherwise made. While we do believe CARB has generally aligned with the federal rule, there are certain aspects of the proposal that we do not believe fully align and will have unintended consequences as a result.

CARB Rule Should Not Increase Administrative Burdens by Eliminating Deemed to Comply Option

As a general matter, both CARB and EPA review applications for certification. However, in Phase 1 of the greenhouse gas regulations, CARB allowed OEMs to rely primarily on EPA's certification for their application to CARB. This is generally referred to as "deemed to comply". Under that process CARB did require some additional information but CARB did not perform a detailed review in addition to the federal review. We think there was a very sound basis for that practice. The greenhouse gas rules are not only relatively new, they are more complex than previous engine-based emission standards. Manufacturers are required to report detailed information on every single vehicle produced. The "deemed to comply" option recognized that complexity and reduced the private and public costs involved in an OEM having to go through a detailed approval process at both the federal and state level with an identical emission family.

In this rule, CARB proposes to eliminate the "deemed to comply" option. Navistar requests that CARB maintain the "deemed to comply" option. Currently, CARB reviews two engine families for Navistar. EMA's comments set out the large number of submittals necessary under Phase 2.

The number of data files submitted per manufacturer is expected to be 1,000 or more, with at least thirty emission families. Our primary concern is the burden on the OEMs of going through the same process twice as well as the burden on CARB to review this volume of information. We are concerned that the additional volume of reviews could add substantial additional time for the issuance of executive orders. The deemed to comply approach avoids these issues by allowing CARB to review any portion of an application it would like but not requiring it review everything in addition to the EPA review.

As a result, we strongly request CARB to continue the deemed to comply format for review in Phase 2.

CARB Should Not Adopt Provisions Impacting Phase 2 ABT without Adequate Ability to Comment

CARB explicitly links “other regulations” to this regulation in a way that raises significant issues. The first issue brought up by this linkage relates to the ability to adequately comment on the rule. The public does not have an adequate opportunity to comment on the present proposed rule because it substantially incorporates a future rule that has not been proposed and yet may have a significant impact on the impact of the proposed rule.

The proposed language states in Appendix B-1: “If you are required to produce the advanced technology vehicle by another ARB regulation, you may not multiply the credits generated by those vehicles by the advanced technology credit multipliers.”¹ This refers to a rule that has not yet been proposed, but which would, according to discussions so far, impose a minimum sales requirement on heavy duty manufacturers for zero emission vehicles (ZEVs), among other requirements. CARB has conducted two workshops regarding a potential rule. Nonetheless, there is no formal regulatory proposal and key aspects of the ZEV rule remain unclear. At the very least, however, the language in this proposal leads to an obvious difference between the California rule and the federal rule. Clearly, some ZEVs will not generate as many credits in California as they would under the federal rule.

Despite this unproposed rule clearly having an impact on the implementation of Phase 2, we do not at present definitively know: 1) how many ZEV vehicles will be required; 2) what class of vehicles would be covered; 3) within impacted classes what configurations qualify as a ZEV under the mandate; 4) to what extent CARB ZEV certification requirements for things like range will apply, and 5) other potential issues that may remain unknown until we see proposed ZEV rule language. Thus, we cannot fully comment on the rule. We know it is different than the federal rule, because available credits will be fewer. However, we do not know the degree of

¹ Attachment B1, Proposed Phase 2 Greenhouse Gas Amendments to California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy-Duty Vehicles, amendments to 86.1819 at page B-1-9.

difference because we do not know how many or what type of ZEVs will be ineligible for California credit generation on a par with the federal requirements.

California law requires an agency to give adequate opportunity to comment on a rule.² The California Administrative Procedure Act (APA) requires an agency to include in any proposal “the express terms of the proposed regulation.”³ In this case, CARB has not proposed the express terms of the regulation that constitutes a significant element of the current rule. Because the current proposal omits key language that will impact the functioning of this rule, the current proposal does not appear to comply with the APA. The terms of the ZEV rule have a direct impact on the functioning of phase 2 ABT. We do not believe CARB should adopt the provisions that relate to the ZEV rule without also proposing a full ZEV rule at the same time. Without both proposals to evaluate, we cannot fully and adequately comment on either.

CARB should remove this portion of the proposed rule. To the extent it may be appropriate to make such a proposal, that can be considered as part of the future ZEV rule, where it can be assessed in the context of both this rule, which will have been adopted by then, and the proposed terms of the ZEV rule. Given that the preliminary discussions of the ZEV rule envision it coming into effect in model year 2023, there should be more than adequate time to give impacted parties fair opportunity to comment.

The CARB Rules Should Fully Align with Federal ABT Rules

Aside from the procedural issues articulated above, Navistar has substantial concerns surrounding deviations from the federal Phase 2 averaging, banking and trading (ABT) provisions. The ABT provisions are key to Phase 2 implementation at the federal level. Phase 2 incorporates a credit multiplier for Phase 2 advanced technology vehicles which ends after model year 2027. CARB departs from the federal provisions by eliminating any credit multiplier from certain vehicles that are used to comply with “other rules.” This refers to the ZEV rule that CARB is currently considering, but which has not yet been proposed. Thus, any vehicle that counts toward compliance with the ZEV rule does not get the equivalent amount of credits as it would under the federal Phase 2 rules.

CARB articulated the need for the credit multiplier as well as anyone when it commented to the federal Phase 2 rule:

The advanced technology multiplier provides an incentive for manufacturers to continue to develop [battery electric vehicles] and [fuel cell electric vehicles] in all class 2b through 8 categories.... CARB staff believes that continuing the advanced technology multiplier is an important part of promoting these

² See generally Cal. Gov. Code Article 5.

³ Cal. Gov. Code § 11346.2(a).

technologies that, in the long term, offer a key approach to significant reduction of GHG emissions. ...

By continuing to allow advanced technology credits for these technologies in the Phase 2 rule, the synergy between the Phase 2 rule and California's incentive and regulatory programs for heavy-duty technologies could push further acceleration of advanced technologies development.⁴

CARB listed the benefits of the credit multipliers, including: the multipliers would bring down the substantial incremental costs of advanced technology vehicles; the credits would promote research, development and production of advanced technologies; and, the multipliers would accelerate consumer acceptance. CARB advocated for multipliers that were absent in EPA's original proposal. We agreed with this portion of CARB's comments when they were filed just over two years ago and do not believe the reasons for this multiplier has changed. Incentives remain just as necessary now as they were when the Phase 2 rule was adopted.

In adopting the Phase 2 rule, EPA and NHTSA agreed with CARB's analysis including CARB's suggested multipliers, stating:

Our intention in adopting these multipliers is to create a meaningful incentive to those considering adopting these qualifying advanced technologies into their vehicles. CARB's values were based on a cost analysis that compared the costs of these technologies to costs of other conventional technologies. Their costs analysis showed that adopting multipliers in this range would make these technologies much more competitive with the conventional technologies and could allow manufacturers to more easily generate a viable business case to develop these technologies for heavy-duty and bring them to market at a competitive price.⁵

Despite these earlier comments, CARB's proposal may for all practical purposes remove the credit multiplier in California. Although we do not know the exact amount of electric vehicles CARB intends to mandate, nor do we know other final requirements such as minimum ranges, it appears that a substantial number of vehicles will need to be sold to meet the mandate, particularly later in the phase-in. At least initially, sales numbers may be only minimally over the requirement. The wide variety of duty cycles and uses for heavy duty vehicles further makes any sales mandate a challenge since it will take time for manufacturers and customers to identify specific uses that may be most suitable for electrification. In addition, the multiplier is temporary, lasting primarily through the first two phases of Phase 2. Worst of all, as mentioned earlier, we really don't know the ZEV mandate proposal well enough to fully assess this risk right now since it has not been formally proposed. We don't even definitively know such basic parameters as what *classes* the mandate would cover. All these considerations weigh against the removal of the multiplier, not in favor of it.

⁴ CARB Comments to Phase 2 Standards, October 1, 2015, Attachment, page 73.

⁵ *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles - Phase 2 Response to Comments for Joint Rulemaking*, EPA and NHTSA, page 117-18.

CARB's rationale for disallowing the credit multiplier in the California Phase 2 rule lacks any real substance. It essentially relies on a general argument that one shouldn't get credit for something one is required to do. CARB states that there is "an inherent conflict in granting extra credits in one regulation to a manufacturer that is producing vehicles and engines that are required by another regulation."⁶ That is perhaps valid as a general statement of principal but it ignores the facts that incentives *will* be necessary to achieve the level of penetration CARB would like. Ultimately, one will not be able to force purchasers to acquire EVs or other advanced technology vehicles. Heavy duty vehicle purchasers know their specific uses very well and will need time and experience to change over fleets to a wholly different powertrain in addition to adopting the infrastructure necessary for that change. Purchasers will still need incentives to undertake the costs involved in turning over a fleet to electrified vehicles. A ZEV requirement, if anything, makes incentives *more* necessary because it forces an arbitrary number of units out into a market that may or may not be ready to purchase them at the level CARB expects. If the market does not meet the expected demand, then apparently manufacturers are to incentivize their purchase in some way on their own to meet the sales mandate. That is neither fair nor realistic. The credit multipliers are necessary for Phase 2 as CARB pointed out when it proposed them, but probably even more so if there is any sales mandate.

Moreover, the Phase 2 rule and ZEV mandate are simply different rules. The argument that it is a double credit if the multiplier applies for vehicles required under a mandate is not correct because the multiplier is part of Phase 2, not any future ZEV rule. Phase 2 sets what CARB advocated, and both agencies ultimately determined was an appropriate amount of credit for the initial period of the Phase 2 rule. Phase 2 should stand alone, including its incentives, and CARB should fully align with the federal rule.

The proposed regulation also incorporates range requirements for PHEVs. This again is another additional requirement to that of the federal rules and is linked to ABT credits. CARB proposes a range requirement based on charges and conditions available credits based on the charging range.⁷ This requirement also makes the stringency of the CARB regulation different from that of the federal rule by conditioning and altering the credit provisions for PHEVs. In general, we also agree with the EMA comments regarding the other differences between the CARB and EPA rules related to Phase 2. With this as with the other aspects of the proposal, we believe that the California rule should follow the federal rule.

Conclusion

In sum, we appreciate CARB following the federal rules as a general matter. However, we do think the changes requested in our comments and those of the EMA are necessary to bring this proposal into full substantive alignment with the federal rule. In the absence of true alignment,

⁶ ISOR at III-20

⁷ Appendix B-1, page B-1-9.

we fear that Phase 2 implementation could be much more cumbersome and costly than it need be.

We appreciate the opportunity to comment and remain available to discuss any of these issues further.

Respectfully submitted,

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