



California Construction Trucking Association

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VIA E-MAIL

Clerk of the Board
California Air Resources Board
1001 "I" Street
Sacramento, CA. 95812-2815

Re: Proposed amendments to the Truck and Bus Regulation (section 2025); 15 – day Modifications to Title 13, California Code of Regulations

To Whom it Concerns,

On behalf of the members of the California Construction Trucking Association (“CCTA” or “Association”) formerly known as the California Dump Truck Owners Association (“CDTOA”) we submit these comments in response to the California Air Resources Board (“CARB”) 15-day notice of proposed amendments to the Statewide Truck and Bus regulation implementing additional compliance options approved by the full board on April 25, 2014.

The CCTA is a 501(c)(6) trade association incorporated in 1941 and headquartered in Upland, California. The CCTA is constituted of four conferences, each designed to represent and provide for the distinctive needs of a particular segment of the trucking industry. While our members still predominantly operate dump trucks made up of every style and configuration, our collective membership operates virtually every type of commercial motor vehicle imaginable. We actively maintain transportation conferences for oversized (permitted) lowbed loads, water trucks, concrete boom and trailer pumps, and most recently interstate motor carriers under the conference name Western Trucking Alliance. Our members operate fleets ranging in size from one-truck owner-operators to companies owning and operating more than 350 trucks.

The CCTA fully participated in the board hearing held on April 24-25, 2014 including filing timely comments to the docket. While the Association is locked in a protracted legal case with CARB challenging the very legality of this rule, we do appreciate that the board approved expanded flexibility options for fleets unable to meet compliance deadlines. We still disagree vehemently with the very basis of the rule – namely that diesel exhaust is responsible for killing anybody.

UNSETTLED SCIENCE

Ironically, after the April 24-25th Board meeting, the United Nations Economic Commission for Europe published a white paper (*Diesel Engines Exhausts: Myths and Realities*) debunking the commonly held view by select academic, CARB and its staff that diesel exhaust is responsible for thousands of premature deaths annually in California. The U.N got it exactly right when they stated, “...diesel driven road vehicles came to the centre of attention to the extent that they have become ‘demonized.’”

One of the very stark conclusions in the U.N. Report is, “From the data and facts mentioned [above], we conclude with a high degree of reliability that it is misleading to claim that people’s exposure to diesel engines of road motor vehicles is the cause of increased risk of lung cancer. Therefore, the claim that emissions from diesel engine exhausts from road transport are the main cause of lung cancer in

humans needs to be seriously challenged.” Either the U.N., and others like the internationally respected epidemiologists Paulo Boffetta (whose 2012 research conclusions were identical) and many others are wrong or former UCLA School of Public Health professor John Froines, who chaired and controlled the states Scientific Review Panel on Toxic Air Contaminants (for 20-years) and determined that diesel emissions “may” be toxic – is wrong.

There are also many other studies such as the National Institutes of Occupational Safety and Health (NIOSH) study on mortality of owner-operator truck drivers. This study’s author found absolutely no increased rate of mortality or even heart disease in those most closely exposed to diesel exhaust over decades, it’s a virtual certainty that the U.N. study, NIOSH and Boffetta has it right and Mr. Froines who CARB has bestowed with “honors” and tens of millions in research funding had it wrong all along.

The entire Truck and Bus rule is predicated on “junk science” and it’s the major reason why the CCTA is supporting federal legislation (H.R. 4012) to reign in the excesses of environmental agencies as they promulgate endless, job killing regulations, based on “Hein Tran” type peer reviewed studies and cherry-picked conclusions from academics with interminable conflicts of interests, namely their paymasters who financially support the contrived outcomes of studies used as a basis of regulation.

COMMENTS ON 15 – DAY CHANGES:

The CARB board approved expanded flexibility options but left it up to CARB staff to figure out how to implement adopted changes. With the exception of the newly created “Economic Hardship” Extension, the CCTA believes staff has properly followed board directive and proposed appropriate changes in § 2025 - Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles.

The CCTA does support some reasonably stringent standards to access the new Economic Hardship Extension compared to the process used to get some relief from the temporary “Good Faith Effort.” However, we believe staff has been politically motivated to propose a process that is so unwieldy and complicated as to render the usability of this provision by disadvantaged truck owners as close to nil as possible. We do not believe that this proposal fulfills the intent of the board’s directive to staff. Much worse, the process proposed by staff gives too much discretion to bureaucrats within the agency to second guess submittals from truck owners and deny access to this provision based on subjective interpretations. Industry requires an unambiguous set of criteria not subject to second guessing by CARB staff.

Current Language for Economic Hardship Extension – A Recipe for Further Abuse

§ 2025 (p) (10) (B) - as proposed requires a truck owner to complete three initial steps to begin the process of getting approved for this provision. Those steps are to get a written price quotes for retrofitting, truck replacement (anywhere between \$80K for a used truck to \$150K + for a new vehicle not including significant add-ons and modifications for construction), and leasing a vehicle for 1 to 3 years.

Completing two out of three steps is all that CARB should mandate. The requirement for a written estimate from a leasing entity is fraught with so many vagaries that if all three steps remain mandated this third requirement will act successfully as a “poison pill” keeping many truck owners who would be otherwise qualified from being able to use this provision.

The requirement to get a written estimate from a leasing entity assumes every leasing entity is willing to deal with all comers. That is simply untrue. Many of the major national leasing entities have stringent requirements (including that potential customers are actually incorporated) that are unobtainable for sole-proprietor businesses to meet. Absent access to the main leasing markets, there are predatory secondary markets where anything is available for a usurious price and they’ll approve virtually everyone. Who is going to decide whether a truck owner can afford a long-term lease that leaves the driver with little left in the way of wages? Will CARB staff determine arbitrarily what an acceptable income level is?

The secondary leasing markets that CARB will be indirectly enabling with this requirement are unbelievably predatory with sky-high terms that eventually guarantee the financial failure of the lessee. It is almost stunning that CARB would insist on this particular provision considering the well-known political, societal, and labor unrest associated with leasing trucks at the ports of Long Beach and Los Angeles. While that involves motor carriers leasing trucks to drivers, the independent truck leasing industry fills a niche in supplying trucks that preys upon the owner-operator precisely because the rental/lease terms often leave little room for profit. Who gets to evaluate whether the leasing terms are financially viable?

§ 2025 (p) (10) (C) - requires financial data from January 1, 2012 substantiating that the owner does not have the financial means to follow through with any of the compliance options listed in § 2025 (p) (10) (B). As previously stated, the CCTA does believe it is proper to be sure that this new provision is not “gamed” and those applying truly need the extension. However, most owner-operators run their businesses as sole-proprietorships or minimally a single-member LLC and from an accounting standpoint do not pay themselves W-2 wages but instead whatever is left-over from operating income in fact becomes wages. In either case, all business profit is reported up to the individual’s IRS 1040 long form for taxable purposes. This number represents the “fruit-of-their labor” for the previous year – essentially the wages they paid themselves. In the case of sole-proprietors and single member LLC’s, does CARB have a baseline number that takes into account that a truck owner needs to also make a living wage? Or, is CARB going to consider every dollar earned beyond expenses is available to purchase, rent, or lease their way into compliance?

§ 2025 (p) (10) (D) - requires applications for loans to have occurred commencing July 1, 2014. The CCTA believes this is overly restrictive since many who took advantage of the previous “Good Faith Effort” (GFE) by claiming they were denied a loan should be able to utilize that documentation they used to apply for the GFE extension. To not allow an exclusion for those who did sign-up under the GFE to use some of their supporting documents appears vindictive and unnecessarily harsh. If the idea is to actually help people by giving them more time to comply, eventually they will need to comply and every (unnecessary) rejected loan application further damages someone’s credit further exacerbating a cycle of economic hardship.

§ 2025 (p) (10) (D) 3 – requires that on the financing application it is to include the existing vehicle as collateral (a trade) or indicate the vehicle will be sold for a down payment. Virtually NO financial institution includes this type of language in their standard application process. Yes, consideration of a trade can be included; more likely is the amount of down payment (which can be represented by equity in a trade), but in no instance is a financial institution going to include language in an application that the applicant “promises to sell their existing truck.” We can only surmise that CARB has been informed by some of its CalCAP lenders that this is not problematic. It certainly is if the lender is not located in California and begs the question of equity in handling applications between an in-state vehicle owner and one located out-of-state.

In mentioning CalCAP, we’re curious why CARB doesn’t simply write into the proposed language that non-California based fleet owners don’t need to be included in this pre-requisite. As CARB knows, residency requirements preclude virtually all out-of-state applicants from access to CalCAP provided funds. It is misleading not to make this disclosure.

§ 2025 (p) (10) (G) – requires all fleet owners using the Economic Hardship Extension to label the sides of their vehicles with the letter “EH.” Without a doubt, this is a form of a scarlet letter that has no place in today’s society. At a minimum, this is akin to instances where judges have sentenced people to parade around with a sign announcing their transgression to anybody who can read – the intent IS humiliation. The difference is; what judges do is related to a civil or criminal proceeding, this requirement is unnecessarily stigmatizing since CARB enforcement officers already know that stickers and paperwork on-board a truck are not substitutes for actually electronically verifying compliance status in CARB databases. Frankly, it will also be a PR nightmare for CARB should it turn out that most of the users of this compliance alternative turn out to be minority truck owners and the whole world gets to know they are financially down on their luck.

§ 2025 (q) (16) (D) 4 – describes the reporting requirements for the Economic Hardship Extension mandating a signed statement from a financial institution identifying information about quotes for the vehicle lease, installation of a PM filter retrofit, or vehicle purchase. Why CARB thinks any financial institution would be involved in assessing vehicle lease information is perplexing. Unless CARB is referring to a specific financial tool called a “finance lease,” there is no reason the quotes for leasing a vehicle from another party would ever be considered by any banking institution. The requirement that a financial institution consider anything related to a vehicle lease needs to be dropped from the final regulation.

CONCRETE PUMPERS

Concrete pumps are as unique as heavy-cranes and can cost up to a million dollars to replace. The ISOR for the April 24, 2014 Board hearing provided the following information relating to the additional flexibility granted to heavy cranes, “This option would recognize the high cost of replacing heavy cranes and the added complexity for retrofitting existing cranes and meeting crane safety certification standards.” Heavy concrete pumps share many of the same attributes, complexity, and costly expense as summarized below.

1- High cost of replacing:

- Concrete pumps with 4 to 7 axles typically cost in excess of \$600,000 and are financed over 7 to 8 years
- The Portland Cement Assn (PCA) Forecast for California shows 10.9 to 15.9% growth in cement consumption in 2015 and 2016, followed by 8.2 and 5.1 growth the following two years.
- Pumps replaced in 2014-2016 at a monthly lease/purchase cost of \$6,000 to \$12,000 will see significantly reduced growth in 2017-2018 so revenues may not sustain the new equipment purchase.

2- Added complexity for retrofitting:

- Eleven DPFs have been installed to date on a total inventory of approximately 350 pumps statewide over 1.5 years
- Nine of the 11 are on applications 400 hp or less
- Six of the 11 are active/corded DPFs where pumps return to a local base
- Five are passive on lower horsepower applications
- All pumps are operated remotely and operator cannot see the DPF indicators
- The DPF size can interfere with the safe operation of the boom
- The Mack “AI” engines have high opacity
- There is a risk of DPF regeneration delay that is not well understood (i.e. having to cease a pour to regen).

3- Crane safety certification standards:

- The DMV and Caltrans consider concrete pumps to be cranes
- The weight impacts of DPFs are unknown at this time

A fair resolution to deal with issues surrounding these unique and costly vehicles is to:

- 4 to 7 axle concrete pumps should be granted a 10 year phase out
- Allow replacement one time in 2018 and beyond
- Allow engines in excess of 400 hp to be granted a 10 year phase out
- Provide relief from DPFs on heavy pumps

The Portland Cement Assn (PCA) Forecast for California estimates cement consumption. Even with the projected growth, ARB received prior economic analysis from Dr. Lynn Reaser¹ that by 2015 California’s construction industry will be a shadow of its former self after having plummeted in 2006 through 2010. Pumps replaced in 2014-2016 at a monthly lease/purchase cost of \$6,000 to \$12,000 will see significantly reduced growth in 2017-2018 so revenues may not sustain the new equipment purchase.

¹ See Dr. Reaser’s 2010 presentation to the ARB Executive Officer at <http://www.arb.ca.gov/msprog/ordiesel/documents/reaserpresentation.pdf>

The pumps that are currently reported as low-use would require replacements by 1/1/2020, meaning that pumps under the low-use exemption would need to meet 100% compliance by 1/1/2020. The crane extension only requires 30% compliance by 1/1/2020.

The pumps that are under the work truck extension require action by the end of this year. 40% compliance is required by 1/1/2015, 60% by 1/1/2016, 80% by 1/1/2017, and 100% by 1/1/2018.

The crane extension would allow these pumps to be replaced beginning on 1/1/2018 at 10% per year. Fleets are more inclined to replace their pumps with newer models but require additional time as replacement pumps are costly and fleets would have a huge financial burden to replace all equipment by 1/1/2018 (under the Work Truck extension).

CONCLUSION

CARB and the U.S. EPA charters were to make the air and water cleaner (not pristine), and they have done an admirable job at achieving this goal. It's time to stop and reassess where we really are today, at least environmentally speaking. What is the hurry? Everyone knows the air is very clean today – at least in the U.S. What we find most troubling about all these regulations and the chaos that it has caused for many small-business and disadvantaged people, is the huge social and economic cost now as we continue on this path of “whatever it takes, at all cost – forever!”

This regulatory attitude has and is killing small-businesses dependent on repurposing used trucks (which incidentally was a very green policy as it recycled existing trucks as opposed to the extensive manufacturing process of building new on-road trucks) that created a prosperous construction trucking industry that thousands of individuals have utilized to prosper for the last 60-plus years. Far too many business models appear to be in conflict with today's environmental agenda. In CARB's pursuit of pristine air at all costs, far too many people are being hurt than people helped. For the record, we oppose all retroactive diesel engine regulations including these – period.

It's quite telling that as of today, the government of Australia broke free of the stranglehold by environmentalist and rescinded their self-imposed job-killing carbon tax with a government official responding to the enviros hand-wringing by stating, “It's typical that the Greens think they know better than anyone.” We can only wish the State of California would recognize its “go it alone” attitude in dealing with concerns of Climate Change is doomed to failure and will only result in increased poverty and negative health outcomes for those it claims to be helping with its aggressive anti-business regulations.

While we recognize that CARB needs to establish sufficient criteria to access the Economic Hardship Extension, the process needs objective standards as opposed to the subjective standards proposed. Every applicant needs to be assured of the same equal treatment in the process and the standards as proposed clearly allow for too much latitude for personal interpretation by CARB staff processing applications.

Concrete pumps are unique vehicles in the same vein as heavy-cranes and as such are entitled to the same considerations and flexibility to comply with CARB regulations.

Respectfully submitted,

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