BY ONLINE SUBMITTAL

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California Air Resources Board
Section Manager, ZE Forklift Regulation
Transportation and Toxics Division
1001 I Street
Sacramento, CA 95814

RE: PROPOSED ZERO-EMISSION FORKLIFT REGULATION – 15-DAY MODIFICATIONS

The California Manufacturers & Technology Association (CMTA) respectfully submits the following comments on the California Air Resources Board's (CARB) Draft Regulatory Language for the agency's proposed Zero-Emission Forklift (ZEF) Regulation 15-Day Modification (Regulation). Forklifts are an indispensable tool for manufacturers and our affiliated suppliers. The vehicle assists manufacturers in achieving higher operational efficiency levels while protecting employee health and workplace safety. California's manufacturers own, lease, and operate forklifts for various applications, and we also represent the forklift manufacturing industry at large. While we certainly appreciate the technological innovations of the forklift manufacturing industry and their commitment to minimizing emissions, our comments will primarily focus on the impacts this Regulation will have on industrial facilities within California.

CMTA and our respective members have been at the forefront of the global business community in adopting and advocating for technologies that help reduce or eliminate greenhouse gases from the atmosphere. These technologies also include those that target carbon emissions during transportation. California's business and industry partners have consistently responded to the call for reducing carbon emissions by investing significant human and financial capital to help California meet its climate policies while maintaining its position as the world's fifth-largest economy.

Despite the many modifications to the proposed Regulation, CMTA still finds the proposal unworkable, disruptive to the greater availability and inventory needs of dealers and the broader businesses that use forklifts, and lacking the economic feasibility required for California businesses to comply. As such, CMTA has provided general comments and feedback on the 15-day Modification.

CARB Should Extend the Initial Compliance Deadline – Incentive for Early Adoption
CARB has been working to develop the proposed Regulation for more than four years and has shared various iterations of draft language with the public. However, as the pending 15-day notice demonstrates, CARB is still accepting public comments on substantive changes to the Regulation within a few weeks of the anticipated Board adoption hearing, scheduled for June

27, 2024. Until the proposed Regulation is adopted and approved by the Office of Administrative Law, there will be continuing uncertainty regarding the applicability of certain requirements, which will impede investments in replacement forklifts and support infrastructure.

As a practical matter, fleet operators cannot base procurement decisions on unfinished regulations. The rulemaking record also documents many uncertainties regarding the availability of ZEFs for specific applications, access to the materials and skilled labor necessary to install new or additional charging infrastructure, and the ability of load-serving entities to provide enough additional electricity to support fleet conversions. While we appreciate that CARB has created mechanisms for compliance extensions to address these issues, assuming an effective date of October 1, 2024, and an initial compliance deadline of January 1, 2026, CARB is likely to be inundated with requests for compliance extensions because regulated entities will be unable to secure funding for new equipment purchases and implement the physical changes necessary to comply with the Regulation within this 15-month timeframe.

In the interest of facilitating a more manageable implementation process for both CARB and the regulated community, and as a means of rewarding early adoption of zero-emission forklifts in a manner consistent with the phased implementation structure of the Regulation, we propose that CARB allow additional time extensions based on the ratio of zero-emission forklifts to the total fleet inventory (see Table 3, "Proposed Affected Forklift Phase-Out Schedule Caps (Maximum Cumulative Percentage Required to be Turned Over)").

For example, a covered entity that meets the 25% Class IV cap on or after January 1, 2026, would be granted a one-year compliance extension with a new effective date of January 1, 2027. A covered entity that meets the 50% cap on or before January 1, 2027, would be granted a two-year extension to January 1, 2029, and a covered entity that meets the 75% cap by January 1, 2028, would be given a three-year extension to January 1, 2031. If CARB determines this approach is unworkable, we recommend a simple two-year compliance period with an effective date of January 1, 2028, and corresponding changes to all other compliance dates.

Fleet Phase-Out Provisions for Fleet Operators and Rental Agencies

CMTA continues to disagree with the proposed phase-out schedule of the Regulation. While we acknowledge that the Regulation has improved from earlier iterations, the phase-out structure is still significantly limited. CMTA has argued that the availability, whether purchased, leased, or otherwise, of ZEFs is still largely unpredictable, as is the readiness of facilities to accommodate the added infrastructure. While the Regulation does include exemptions and extensions under limited circumstances, the Regulation and phase-out cap should not be designed to force businesses to apply for an appropriate exemption and extension.

The phase-out cap should provide additional flexibility and avoid any potential rush to the exemption and extension process. While the concept of the phase-out cap is agreeable, it only offers one year of added flexibility for fleet operators. While 25% of a fleet conversion is capped in one calendar year, the following year would require the other 75% remaining non-compliant forklifts to be immediately replaced. This phase-out would occur concurrently with other model year phase-out dates that follow. The process prescribed is overly cumbersome for fleet operators and compliance reporting purposes at CARB.

CMTA recommends that the current structure be modified so that forklift phase-outs continue with a 25% replacement cap per year throughout the entire 2027-2037 phase-out period. This static, predictable, and simplified replacement strategy would still achieve emission reductions and ensure greater availability of zero-emission replacements to consumers early in the conversion schedule.

The current phase-out strategy is still excessive and places equipment dealers and forklift operators (i.e., warehouses, manufacturers, etc.) at varying competitive disadvantages. CMTA believes CARB has largely misunderstood how companies interact with equipment dealers, rental agencies, etc. Limited inventories exist with dealers, and forklifts are often designed as site-specific configurations where the specifications for a particular ZEF replacement may or may not meet the business customer's needs.

CMTA's membership is greatly concerned that the market availability for ZEF replacements will be insufficient to meet the demands of California's regulated community. The Regulation assumes a 1:1 replacement ratio of large-spark ignition (LSI) forklifts to an equivalent electric model. Through various internal evaluations, our membership has conveyed that an all-electric conversion will require additional capital investments. For example, limited space for ZEF charging stations has created a need to purchase additional ZEFs to offset the limited charging capacity. Further analyses have indicated that replacement batteries are incredibly heavy, and facilities would likely charge them in the forklifts rather than be removed to avoid workplace safety concerns. Given the required 8-16 hours of downtime and the inability to easily remove the batteries from the forklifts, companies are considering increasing their fleet size to maintain regular operations. Some facilities would need two charging stations for every three forklifts to take advantage of intermittent daily charging and satisfy the full-charge needs.

It is unclear whether the market availability of ZEFs will be sufficient to meet demand. The Regulation will exacerbate current market conditions, which are already facing significant demands driven by the growth of e-commerce and warehousing industries, increasing infrastructure development and construction activities, and rising demand for material handling equipment across various industries. CMTA and other regulated parties continue to raise availability concerns.

CARB Should Tailor Compliance Requirements to Individual Facilities [§3006 (b)(3)]
Individual facilities, even under common ownership, may have entirely different business models that dictate the number, composition, and operation of their forklift fleets. Moreover, the capital budgets afforded to individual facilities are likely to differ dramatically based on the relative scale of the facility operation and the level of facility production or throughput. A small facility with one building and five forklifts should not be compelled to meet the same compliance requirements and deadlines as a large industrial complex with 100 forklifts. Accordingly, CMTA recommends that CARB remove proposed section 3006(b)(3) and specify instead that applicability determinations shall be made on a facility-specific basis, regardless of common ownership or control, and that such determinations shall include only forklifts subject to the applicability and fleet operator requirements of the proposed Regulation (Title 13 CCR, section 3000(c) and section 3002, respectively).

Definition of “Rent” is Unrealistic
The Regulation has incorporated a new term and definition of "Rent," which will only further disrupt California businesses and our ability to reduce emissions.

As defined by the Regulation,

> *"Rent" means to pay for the use of an LSI Forklift for a* ***period no longer than 12 calendar months.***

Rentals and leasing are critical strategies for many companies. These options are driven by the need for flexibility and cost-effectiveness, as renting or leasing allows companies to access the necessary equipment without significant capital investment. These decisions can also reflect seasonal demands. Seasonal impacts result in widely varying operational peaks that drive significant disparity in business staffing, costs, equipment, and sales demands. Businesses that rely on forklifts to handle their materials often need to rapidly scale their fleet sizes to accommodate seasonal peaks, with the option to quickly shed units as demand subsides.

Given these considerations, it is common for businesses to sign multi-year or long-term agreements with rental companies. We question the need for CARB to interfere and add further complexity to an already challenging regulatory framework. As proposed, the Regulation shifts the reporting and compliance obligations between the rental companies and end users once a rental exceeds 12 months. This back-and-forth reporting element will eventually become cause for a company (either the rental business or end user) to be cited and fined for failing to report accurately. In the LSI regulation, it was necessary to distinguish a rental of more than 12 months for determining possession of the end user and for the calculation of a fleet average. However, for purposes of the ZEF Regulation, the forklift is still owned by the rental company regardless of a contractual term, and the rental company is the entity responsible for complying with the phase-out schedule, not the end user.

CMTA respectfully requests additional clarification for the definition of "rent" and its applicability to the Regulation. This new definition has caused significant confusion and concern amongst the regulated community. Should this provision not be clarified, CMTA recommends entirely removing it from the Regulation.

ISOR – Comments on the Environmental Analysis

The magnitude of the conversion to ZEF was significantly misrepresented in the November 2023 Initial Statement of Reasons, leading to further corrections under this 15-day Modification.

As two examples,

> *In Appendix C: Draft Environmental Impact Analysis to the Staff Report: Initial Statement of Reasons, which was released on November 7, 2023, in section "Impact 6-2: Long-Term Operation-Related Impacts on Energy," there was* ***a typographical error****. In the statement, "The increase in electricity demand statewide due to the increased use of ZEFs will be approximately 1.1 Gigawatt hours per year in 2038," the* ***term "Gigawatt" is corrected to "Terawatt."***[1]

> *In Appendix D: 2023 Large Spark Ignition Forklift Emission Inventory to the Staff Report: Initial Statement of Reasons, which was released on November 7, 2023, there was* ***a typographical error*** *in Section 6.e. In the statement, "The expected increase in gridded*

[1] Notice of Public Availability of Modified Text and Availability of Additional Documents and Information Proposed Zero-Emission Forklift Regulation, Pg. 28.

> *energy demand from electric forklifts after full implementation of the Proposed Regulation is 1,065 MWh, which is roughly 0.4 percent of the statewide gridded energy demand," the unit **"MWh" is corrected to "GWh."**"*[2]

This "typographical error" represents a mistake that under-represented the magnitude of this Regulation's impact on electrical loads and the availability of electricity in California. Each unit of measurement (i.e., "megawatt," "gigawatt," and "terawatt") is about 1,000 times the size of the next smaller one. For example, one gigawatt is 1,000 times larger than a megawatt, and one terawatt is 1,000 times larger than a gigawatt. In our December 2023 comment letter, CMTA expressed our significant concern about the readiness of the energy grid to support this Regulation and other vehicle electrification policies.

EV proliferation is only one element in California's cumulative emission reduction strategy, which does not present reliability problems by itself. However, collectively with other electrification policies, the Regulation further adds demands on an electricity grid that has already demonstrated insufficiencies. While California has and will continue to demonstrate leadership in addressing climate change, the analyses must provide a comprehensive assessment that also considers the underlying challenges and potential policy conflicts.

Conclusion

CMTA appreciates CARB's consideration of our comments on the 15-Day Modifications, and we look forward to further revisions to the regulatory language. CMTA recommends that the Board not adopt the Regulation as currently drafted. We respectfully ask that staff be directed to modify provisions of the proposal to provide the regulated community with flexible options, additional clarity, and the opportunity to work collaboratively on a policy that is implementable for California businesses.

Respectfully,

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[2] Ibid, 28.