

**African American Farmers of California
Agricultural Council of California
Agricultural Energy Consumers Association
Associated Equipment Distributors
California Apple Commission
California Association of Winegrape Growers
California Blueberry Association
California Blueberry Commission
California Citrus Mutual
California Cotton Ginners and Growers Association
California Farm Bureau
California Fresh Fruit Association
California League of Food Producers
California Rice Commission
California Strawberry Commission
Fresno County Farm Bureau
Madera County Farm Bureau
Milk Producers Council
Nisei Framers League
Olive Growers Council of California
Plant California Alliance
Tulare County Farm Bureau
Western Agricultural Processors Association
Western Growers Association**

June 5, 2024

Mr. David Chen
Air Resources Engineer, Staff Lead
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95814

Re: **Zero-Emission Forklift Regulation – Proposed 15 - Day Changes**

Dear Mr. Chen,

On behalf of the agricultural organizations listed above, we wish to submit our collective comments on the Zero-Emission Forklift Regulation (Proposed Regulation) as outlined in the most recent release of May 21, 2024. As stakeholders representing the agricultural industry, we believe it is essential to contribute our insights on this Proposed Regulation. We appreciate the Proposed Regulation addresses some of our concerns and incorporates necessary modifications in certain sections of this draft. However, there are still outstanding issues. Our goal is to provide further constructive feedback and recommendations to align the Proposed Regulation with the unique and diverse needs of the agricultural industry. We hope you will consider modifications

that balance the objectives of the California Air Resources Board (CARB) with the broader impacts on the agricultural sectors we represent

Section 3000 Purpose, Applicability, Non-Compliance, and Severability

The 2016 Large Spark-Ignition (LSI) Engine Fleet Requirements Regulation recognized the necessity to exclude in-field forklifts from the previous regulations and we highly recommend the same consideration for the Proposed Regulation. Forklifts are an essential part of many on farm/in-field operations during harvest and many of these forklifts operate with diesel and/or propane. These forklifts have a distinct operational use primarily during the harvest seasons, many times only being used two to three months out of the year. It is important to acknowledge the unique demands and dynamics of in-field usage; the precedent has been set and should be continued in this new regulation.

We support the confidentiality clause added to the proposed regulation. We feel there should be a more definitive and clearer list of items that will be deemed confidential to maintain business information protected from potential threats. As stated in previous comments the safeguarding of personal data, addresses, contact information, fleet size, tax information, communication between utility provider, utility usage, financial records, and other **sensitive information is integral to** ensuring a company's safety, competitive advantage and long-term success. Confidentiality shields businesses from potential threats; these types of threats have occurred at agricultural operations in the past when critical and private information becomes accessible

Section 3001 Definitions

The current challenge with the rough terrain forklift definitions lies in the requirement of a specific label from the manufacturer designating it is a rough terrain forklift to be on the lift itself. The manufacturer currently does not provide this distinctive label on the equipment. Requiring a label poses a challenge especially for older equipment. Most rough terrain forklifts will bear a label with the make, model of the forklift, which should suffice as a classification for a rough terrain forklift. The requirement for this label should be removed.

We strongly oppose the proposed additions to the definition of "Ag Operation" in Section 3001(a), which exclude retail nurseries from the definition. Retail nurseries are an integral part of the agriculture industry, and their exclusion is not justifiable. Horticultural products such as plants are cultivated and cared for at retail nurseries in the same meticulous manner as in non-retail nurseries, involving watering, fertilizing, and ongoing maintenance. These operations are fundamental to the agricultural process and should be recognized as part of the "Ag Operation" category. Excluding retail nurseries from the definition disregards the essential role they play and is inconsistent with the true scope of agriculture within our state.

We are concerned about the new 'Crop Preparation Services' definition and its interaction with the 'Agriculture Operations' definition, and how these changes might impact cooperatives and packinghouses that operate within both, sometimes simultaneously. The overlap between these two definitions may create ambiguity and operational challenges for entities that engage in both

agricultural operations and crop preparation services at the same time, on the same property. Cooperatives and packinghouses often integrate these activities, and the distinct categorization could lead to regulatory confusion, increased compliance burdens, and potential disruptions in their seamless operation. We urge a reconsideration or clarification of these definitions to ensure they adequately reflect the interconnected nature of modern agricultural practices, specifically for farm cooperatives and packinghouses.

We support the revised definition of Zero-Emission Forklift (ZEF) and oppose the requirement for ZEF certification which would have been required by the previous definition.

Section 3002 Fleet Operator Requirements

We strongly support allowing businesses to acquire, possess, and operate an LSI forklift pursuant to Section 3007(b)(5) when faced with challenges beyond their control, qualifying them for an Operational Extension or an Infrastructure Site Electrification Delay Extension. This provision enables businesses to meet their operational needs during these periods.

Section 3003 Dealer Requirements

We support Section 3003(b), which permits dealers to sell, lease, and possess an LSI forklift when the acquisition is in accordance with Sections 3002(a)(5) and 3002(a)(6). Dealers must have the ability to sell or lease an LSI forklift to businesses that qualify for specific delay extensions.

Equipment dealers should not be required to obtain and disclose detailed information regarding the sale or lease of an LSI forklift, as the confidentiality of such transactions and information should be of top priority. Requiring equipment dealers to access and possibly disclose specific data about the sale or lease of LSI forklifts could compromise the privacy of businesses and individuals involved in these transactions. We strongly suggest eliminating this requirement.

Section 3004 Rental Agency Requirements

Renting a forklift becomes a complicated challenge when the Proposed Regulation prohibits or significantly restricts access to newer LSI forklifts. In situations where a company does not have the electrical infrastructure to support the rental of a ZEV forklift, this requirement impedes the business from maintaining standard business practices during harvest when the need for rentals is essential to a successful operation. While the latest proposed draft acknowledges the challenges faced by Fleet Operators and Dealers and allows for the sale, lease, and possession of an LSI forklift in accordance with Sections 3002(a)(5) and 3002(a)(6), it fails to recognize that rental agencies face similar challenges. Rental agencies are integral to many agricultural operations, providing the necessary flexibility for businesses that operate seasonally and use forklifts only a few months out of the year. We strongly urge the inclusion of Sections 3002(a)(5) and 3002(a)(6) for Rental Agencies to allow for rent of LSI forklifts in these circumstances. They must be equipped to fulfill the requirements of businesses and their ability to function effectively.

Section 3006 Fleet Phase-Out Provisions for Fleet Operators and Rental Agencies

While we support the proposed 25% cap for the initial compliance year, it fails to fully address the broader issue at hand. Considering the unique operational characteristics of agricultural businesses, many operate only for a few months each year, resulting in reduced overall forklift usage. Additionally, the age of most forklifts in agricultural operations often surpasses those in year-round businesses, leading to a disproportionate number of forklifts being phased out by the second compliance year alone.

The proposed phase-out schedule could impose significant financial strain on these companies, necessitating the replacement of a disproportionately high number of forklifts in subsequent phase-out years, such as 2032. Our survey of the tree nut and cotton industries indicates that a considerable number of operations would need to replace a substantial number of forklifts by 2032. In fact, the surveyed businesses anticipate 96% of their forklift fleet will be phased out by the second compliance date.

To address this alarming concern, we strongly urge setting the Phase-Out Percentage CAP at 20% for all compliance years, including 2032 and beyond. This approach acknowledges the differences between agricultural businesses and year-round operations, mitigating the risk of imposing overwhelming capital expenditures that could potentially jeopardize their economic viability.

As it stands, the proposed phase-out schedule poses a significant challenge for agricultural operations, requiring them to retire a substantial portion of their fleet disproportionately. Compounding this issue is the underdeveloped infrastructure in rural areas, where the majority of our members are situated. The electrical infrastructure in these regions is not yet equipped to meet the demands of charging these fleets, and unfortunately, our rural operations are at the bottom of the priority list for utility providers when it comes to upgrades or additional services. Meanwhile, electricity rates persist as some of the highest in the United States, escalating each year. In the most recent general rate case presented to the Public Utilities Commission (PUC) by SCE, the utility provider proposed a substantial 45 percent increase in rates. This places us at a distinct economic disadvantage, hindering our competitiveness in the global market. This unique situation creates an inherent significant challenge for agricultural operations. Given these circumstances, it is crucial to extend the compliance timeline for agricultural operations by 5-6 years, allowing them to allocate this significant compliance expense over an expanded period of time.

Moreover, the forklift Model Year should correspond to the calendar year in which the forklift was manufactured, rather than the engine model year. Utilizing the engine model year would reduce the useful life of forklifts, especially those with an engine model year a year or more earlier than the year the forklift was manufactured.

Section 3007 Exemptions, Extensions

Low-Use LSI Forklift Exemption

Mandating facilities to invest heavily in new forklifts for occasional operations imposes a considerable expense for equipment with limited use, posing an economic challenge for many agricultural businesses. Therefore, we support the removal of a low use LSI forklift requiring to be a model year 2013 or newer. The investment would be too high for the intended short useful life and the latest draft recognizes this.

ZEV Forklift Delivery Delay

Recognizing today's economy, the extended timelines that will be necessary to secure forklifts can be significant with much uncertainty. We urge you to reconsider the requirements to qualify for the delay extension. Requiring a purchase order to be drawn at least 2 years in advance is unreasonable. Today, businesses face a 12-month waiting period for the delivery of new equipment after placing an order. When placing an order, there is no assurance of a fixed price, and the cost may experience significant increases by the time the forklift is delivered. Most dealers will not provide a cost over 90 days ahead of delivery. It is extremely difficult to run a successful business when you don't know your cost of operation. In order to apply for the delay extension, a purchase or lease agreement is required. We strongly suggest CARB reevaluate and eliminate this requirement for a formal contract. This leaves businesses in a risky position, with uncertainty regarding both delivery timelines and equipment costs. We propose replacing the contract requirement with a letter of intent, providing a more flexible approach, given the current market.

The conversion to electric forklifts involves various considerations beyond the purchase of the equipment itself. Ensuring the necessary infrastructure and support for charging is equally imperative. Purchasing or phasing out forklifts according to proposed schedules becomes useless if the infrastructure for charging is lacking or not there. Past examples have demonstrated that simply connecting to utility services can take several years. This can mean newly purchased equipment that a company is legally contracted to purchase can sit idle for an extended period of time. No business can sustain the capital cost expenditure and afford to have equipment sitting idle for years. Therefore the 2-year advance purchase order can cause undue financial burden in these very likely situations and should be a reasonable timeframe of no more than 90 days prior.

Technical Infeasibility Delay

We support the elimination of the previously included sunset date in the technical infeasibility delay of 2038. This adjustment acknowledges that the allocated time frame may not be adequate for technology to meet the demands or requirements of all operations. Such a change would offer additional flexibility for businesses facing this particular circumstance.

Infrastructure Delay

We fully endorse the incorporation of delays related to permits, installation of charging or fueling infrastructure, construction of ZEF-related storage or shelter, and delays in the delivery of necessary building materials into the draft. These inclusions acknowledge the common

challenges that businesses in California encounter when undertaking infrastructure construction or upgrades. By recognizing and accommodating these challenges, the draft regulation demonstrates a proactive approach to supporting businesses in navigating some of the complexities of infrastructure development within the state.

Electrical Infrastructure Delay

The current statewide electrical infrastructure shortfall we are facing poses a challenge to the state's transition to ZEV forklifts. We must consider and recognize the simultaneous regulations pushing for the widespread adoption and conversion of electric trucks, commercial vehicle, appliances, etc. will only further exacerbate the electrical infrastructure shortfall. The proposed electrical infrastructure delay provides some recognition of these challenges however falls short to understand the significant actual time it currently takes for utility providers to connect or meet the companies demands. While the proposed delay acknowledges these challenges to some extent, it falls short of grasping the true magnitude of the time currently required for utility providers to fulfill or accommodate the demands and needs of agricultural operations, many of which are locating in rural areas. Facilities in rural areas often find themselves at the bottom of the priority list for upgrades or modifications to infrastructure such as substations or simple upgrades or interconnections. Whether dealing with new business developments or existing ones, the statewide infrastructure currently lacks the support needed for the state's electrification initiatives.

During our meetings with utility providers, we discovered the completion and operation of a new substation can take up to 13 years. The California Energy Commission (CEC) is in the process of conducting a study to identify the infrastructure needs, it will identify how much infrastructure will be needed, where it will be needed and when it will be needed. Unfortunately, our facilities mostly located in rural areas are slated to be last on the priority list for upgrades. Utility providers are currently directing their efforts and resources toward addressing other concerns such as wildfire mitigation, with extensive projects like undergrounding thousands of miles of transmission lines which will take precedence over projects like ours. In recognizing these challenges, we recommend a reconsideration of the proposal, advocating for an extended initial exemption from three years to a minimum of eight years minimum timeline for agricultural operations.

The requirements and information required for requesting an extension is excessive and burdensome. In addition, preserving the confidentiality of business information should be of utmost priority. We firmly believe that furnishing documents such as a load profile from the electrical utility provider is unnecessary. This information on a company's overall usage is irrelevant and poses a potential threat to the privacy and security of the business. A more streamlined approach, such as an attestation from the utility provider stating their inability to provide the required service along with an estimated completion date, should be deemed sufficient for the extension request process.

In-Field Exemption

The 2016 Large Spark-Ignition (LSI) Engine Fleet Requirements Regulation recognized the necessity to exclude in-field forklifts from the previous regulations and we strongly support the same consideration for the Proposed Regulation. Forklifts are an essential part of many on farm/in-field operations during harvest and many of these forklifts operate with diesel and/or propane. These forklifts have a distinct operational use primarily. The precedent has been set and we agree it should continue in this new regulation.

We fully support the provision allowing the replacement of an LSI forklift with another LSI forklift, even if the replacement occurs years before the compliance date. This enables businesses that qualify for an extension to acquire the necessary equipment to maintain their operations functioning.

Section 3009 Reporting and Recordkeeping

We vehemently object to the reporting requirement outlined in this regulation. The precedent set by the Large Sparked Ignited Rule (LSI) has enabled Agricultural Operations to convert their forklift fleets to compliant forklifts without the necessity of reporting. California businesses already contend with a plethora of regulations and reporting obligations from various state agencies. Introducing an additional reporting requirement that is unnecessary would only add to this burden and should therefore be eliminated.

Moreover, maintaining the privacy of business information is of utmost importance. The safeguarding of personal data, addresses, contact information, fleet size, tax information, communication between utility provider, utility usage, financial records, and other sensitive information is integral to ensuring a company's safety, competitive advantage and long-term success. Confidentiality shields businesses from potential threats; these types of threats have occurred at agricultural operations in the past when critical and private information becomes accessible. We must always prioritize the confidentiality of business information and would suggest the removal of reporting and record keeping or at the most suggest an attestation from a company stating they have converted over the fleet within the appropriate phase-out period. As agriculture has proven in the past with the previous LSI regulation, we can work towards the same goals while maintaining the privacy and safety of the agricultural businesses in California.

Section 3011 General Requirements

The ability of a business to make independent decisions regarding the selection of equipment is vital for its overall success and operational efficiency. Every company operates within a unique environment, facing specific challenges, goals, and operational requirements. The choice of equipment, whether it be diesel forklifts, operating equipment, technology, or tools, directly impacts productivity, cost-effectiveness, and the quality of goods produced. Therefore, we strongly support the removal of the reference in Section 3007, as diesel forklift restrictions clearly violated the nonroad engine and vehicle preemption in the Clean Air Act (CAA) and the provisions of the Off-Road Mobile Diesel Regulation.

Incentives

A proven strategy in enhancing air quality involves the utilization of incentives, particularly for source categories where achieving compliance is economically challenging. An outstanding example of successful implementation is evident in the Funding Agricultural Replacement Measures for Emission Reductions (FARMER) Program, focusing on the replacement of agricultural tractors and harvesters. This substantial achievement not only meets the State Implementation Plans (SIP) goals, accounting for 11 tons of emissions reductions, but also exemplifies the effectiveness of incentive programs in addressing air quality concerns. Given this proven and successful example where the agricultural industry, the state and federal agencies came together to work on the same air quality goals, we strongly advocate for funding sources and propose the consideration of expanding programs, such as the Carl Moyer Program, to encompass the replacement of propane forklifts.

Thank you for the opportunity to provide our comments and for considering our input. We look forward to continuing our dialogue with CARB staff regarding the Proposed Regulation. If you have any questions about our comments, please contact Priscilla Rodriguez at (559) 455-9272 or via email at priscilla@agprocessors.org.

Sincerely,

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