CONSTRUCTION INDUSTRY AIR QUALITY COALITION

Office of Administrative Law July 25, 2023

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 RE: 2023-0613-02 AIR RESOURCES BOARD – Advanced Clean Fleets rule

Dear Reference Attorney,

The intent of the regulation was originally, and I believe the way “vehicle” was defined in all versions of the rule prior to the  Proposed 15-day Changes to the Proposed Regulation Order for the High Priority and Federal Fleets Requirements made this the case, but when they changed the definition of vehicle and didn’t add the "vehicles specified in section 2015(a)(2)" to 2015(a)(1)(B) it changed the entity applicability, intentionally or not

ARB set entity applicability criteria outside of the “vehicle scope” in 2015(a)(1)(A) ($50million in revenue) and (D) (federal agency) so it’s not a stretch to interpret 2015(a)(1)(B) and (C) outside the vehicle scope as well.

The [Appendix A-2: Proposed 15-day Changes to the Proposed Regulation Order for the High Priority and Federal Fleets Requirements](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/acf15da2.pdf) includes the following change to the definition of vehicle which made this huge change in applicability.

"Vehicle" ~~or "motor vehicle"~~ means ~~self propelled equipment that meets one of the following criteria:~~

~~(C) Equipment that has~~either ~~a GVWR that is greater than 8,500 lbs. that is intended for use on highways, and meets the definition set forth in title 17, CCR section 95662(a)(26);~~

~~(D) Equipment that has a GVWR equal to or less than 8,500 lbs. and meets the definition of "light duty package delivery vehicle"~~ device as defined ~~by~~ in CVC section ~~201 S(b) and is intended for use on highways;~~670, or ~~Is~~ a yard tractor that is not intended for use on highways

It is a very alarming change (or what appears as a change) in the “intended” regulation language, that the "vehicles specified in section 2015(a)(2)" phrase is in 2015(a)(1) but not repeated in 2015(a)(1(B) or the definition of vehicle.

Since the scope for 2015(a)(1) is one or more "vehicles specified in section 2015(a)(2)" it only takes 1 of these vehicles to be subject to this section of the rule as an entity but 2015(a)(1(B) then adds "50 or more vehicles in the total fleet" without those vehicles being "vehicles specified in section 2015(a)(2)".

This could mean if a company owns passenger vehicles, these too are counted in the 2015(a)1(B) vehicle threshold.

Example: Company XYZ owns:

1 vehicle with GVWR greater than 8,500 lbs. (a “vehicle specified in section 2015(a)(2)") and

49 passenger vehicles with GVWR less than 8,500 lbs.

Applicability

               2015(a)(1) - Yes, the entity is subject since they own at least one vehicle with GVWR greater than 8,500 lbs.

               2015(a)(1)(B) - Yes, the entity is still subject since there are 50 or more vehicles in the total fleet.

The only exemption for entities in the ACF is for entities subject to other sections of the ACF.

In this case, only the 1 vehicle with GVWR greater than 8,500 lbs. is subject to the regulation as provided in section 2015(a)(2).

Additional considerations that support this conclusion

The regulation has a definition of vehicle.

“Vehicle” means either a device as defined in CVC section 670, or a yard tractor that is not intended for use on highways.

CVC section 670. A “vehicle” is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

We aren’t talking about vehicle applicability here; we are talking about the entity applicability. In our example the entity is subject to the rule and the vehicle scope still applies to the one vehicle within the scope.

With regulation language like this, why would CARB consider lowering the number of vehicles in the total fleet to 10 when they are already drawing in lot of entities that have fewer than 10 vehicles with GVWR greater than 8,500 into the rule? The Board clearly rejected the idea of lowering the eligible fleet size from 50 to 10.

This change in definition clearly contradicts the language in the ISOR and the FSOR, and public notices, which clearly intended fleets in excess of 50 vehicles to be subject to the rule. Further CARB has already stated their intent to prepare a second rule that would be adopted in 2027 that would bring all other fleets with fewer than 50 vehicles.

As currently worded, the inconsistencies in the definitions of eligible fleets could lead to confusion for the regulated community and litigation that could extend the rule to fleets that were never intended to be a part of the initial rule.

CARB should be directed to clarify the language.

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