AGRICULTURAL RETAILERS ASSOCIATION

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September 16, 2024

William Charmley
Director, Assessment and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
EPA Docket Center, OAR
Mail Code 28221T
1200 Pennsylvania, Avenue, NW
Washington, D.C. 20460

RE: California State Motor Vehicle Pollution Control Standards; Advanced Clean Fleets Regulation; Request for Waiver of Preemption and Authorization; Docket # EPA-HQ-OAR-2023-0589

Dear Director Charmley:

The Agricultural Retailers Association appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) consideration of the California Air Resources Board's (CARB) Advanced Clean Fleets Regulations and their request for a Waiver of Preemption and Authorization.

Statement of Interest

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all fifty states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

Comments

ARA urges the EPA to reject this waiver request as California has not provided adequate data to show compelling and extraordinary conditions to justify approval of a waiver. ARA believes California's greenhouse-gas emission standards and zero-emission vehicle mandate is unlawful and not authorized or intended by Congress when it provided a limited waiver authority. Clean Air Act (CAA) Section 202(a) requires EPA to establish standards for emissions of air pollutants from new motor vehicles or new motor vehicle engines that cause or contribute to air pollution that may be

anticipated to endanger public health or welfare. However, the standards under Section 202 require the agency to consider issues such as technological feasibility, the costs of compliance, useful life of the vehicle, and industry lead time.[1] CARB's Advanced Clean Fleets (ACF) regulations do not meet the EPA standards as being economically feasible for the agricultural industry and their rural communities. It also does not provide enough industry lead time to implement as the technology and infrastructure is not ready within most of California or the rest of the nation.

CAA Section 209(b) provides that "the EPA Administrator shall, after notice and opportunity for public hearing, waive the application of this section (the preemption of State emission standards) to any State which had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."[2] Only California can potentially qualify for such a preemption waiver as it was the only state that adopted new motor vehicle emissions standards "prior to March 30, 1966."[3]

No waiver shall be granted if the EPA finds that –

- the determination of the State is arbitrary and capricious,
- such State does not need such State standards to meet compelling and extraordinary conditions, or
- such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.[4]

Global climate change is not an "extraordinary" California condition within the meaning of Section 209. Instead, it is a global issue outside of the scope of this waiver that is impacted by the actions of nations across the world, such as China and India. The plain meaning of "extraordinary" is "most unusual."[5] The CAA also requires the conditions to be "compelling." The California waiver in the CAA is an exception from a uniform federal regulation aimed at unique, local air quality issues within the state that "may differ substantially from those in other parts of the nation."[6] The data clearly shows that the effects of climate change in California are not sufficiently different from the conditions in other part of the Western United States or the entire nation as a whole to justify separate State standards.

[1] 42 U.S.C. § 7521(a).
[2] 42 U.S.C. § 7543(b)(1).
[3] S. Rept. 403, 90th Cong., 1st Session, 1967.
[4] 42 U.S.C. § 7543.
[5] Webster's New International Dictionary 807 (3d ed. 1961).
[6] Ford Motor Co. v EPA, 606 F.2d 1293, 1303 (1979).

California's ACF regulations are an arbitrary ban on the internal combustion engine that create a distorted vehicle market with limited choices by primarily promoting electric trucks and places the economic burden on agricultural retailers and other agribusinesses located in rural communities who can not afford new, expensive mandates. The costs are unaffordable even with the large subsidies offered by the state of California. The CARB proposal is a state-imposed supply chain that mandates businesses purchase vehicles they do not want and cannot afford to meet arbitrary deadlines that will have no real impact on greenhouse gas emissions/climate change.

According to an ARA-commissioned study, an internal combustion engine ban in California and across the nation would cause steep price drops for corn and soybeans, U.S. net farm income would decrease by up to $27 billion, cumulative GDP losses would amount to hundreds of billions of dollars, and U.S. job losses could reach up to 255,300.[7] CARB's ACF requirements rely on an implausibly rapid adoption of electric heavy duty trucks and push the scale in favor of one technology. The CARB regulations are unnecessarily narrow and ignore the proven benefits of low carbon biofuels that are immediately available with less economic disruption to agricultural retailers and other rural businesses. The future of heavy-duty trucks and other vehicles will need to rely on hybrid vehicles that use low carbon emission biofuels from internal combustion engines as well as the capability to run on electric batteries. CARB and EPA should focus on promoting policies of motor vehicles designed to operate on cleaner, low carbon emission biofuels.

CARB's ACF regulations are cost prohibitive for agricultural retailers. For example, replacing a Class A diesel truck with an electric truck is three to four times higher in cost. In addition, facilities will need to install dedicated charging stations, which are also expensive. This does not factor in the installation of transmission lines from the utility-owned transmission lines located outside the property. Agricultural retailers and other private sector businesses would need to obtain the necessary state and/or local permits that will allow the construction of electric charging stations. Most agricultural retail facilities and fuel vendors do not have the land available to install charging stations as most locations would require two to three times the acreage to build.

Another key point to consider is the very limited mileage range of electric trucks, which have a range around 150 miles compared to 400 miles for a diesel truck. The electric trucks also have significantly less hauling capacity. This will require motor carriers to purchase more trucks and hire additional drivers, if available, to just maintain current trucking capacity. According to the American Trucking Associations there is an estimated 78,000 driver shortage, underlying the difficulties to find and hire qualified commercial drivers.[8] The mandate of EV heavy duty trucks for commercial motor carriers will also have a significant impact on federal hours-of-service (HOS) regulations. Due to the limited

[7] Economic Impacts to U.S. Biofuels, Agriculture, and the Economy from Subsidized Electric Vehicle Penetration, October 2020, report commissioned by ARA. https://www.aradc.org/news/ag-biofuels-study
[8] https://www.trucking.org/news-insights/lawmakers-introduce-bipartisan-bill-strengthen-driver-apprenticeship-program

range of these vehicles and charging times it could impact the overall time a driver needs to complete deliveries, especially as it relates to long-haul drivers.

There are also serious concerns with the safety of EV trucks related to its overall weight. A research study sponsored by the U.S. Army Engineer Research and Development Center (ERDC) and partnered with Auburn University's Transportation Research Institute conducted a first-of-its-kind crash test of an EV pickup truck to determine if currently used guardrails could hold up during a crash. The test for this study was conducted by the Nebraska Transportation Center.[9] According to the study, "A crash test performed on a guardrail on October 12, 2023, highlighted the concern. At 60 mph, the 7,000-plus-pound, 2022 Rivian R1T truck tore through the barrier with little reduction in speed. In a separate test conducted in September 2023, a 2018 Tesla Model 3 sedan lifted the guardrail and passed below it, coming to rest behind the barrier."[10]

EVs weigh thousands of pounds more than motor vehicles that operate with an internal combustion engine due to their batteries and related housing. The damage the EV pickup trucks and heavy duty trucks increased weight will inflict significantly more damage on roads, bridges, and other transportation infrastructure. According to the U.S. Department of Transportation (DOT), a 2,000-pound increase in axle weight can cause 50 percent more damage to pavement.[11] According to the American Society for Civil Engineers' (ASCE) Infrastructure Report Card[12], the U.S. scores a C- when it comes to the state of our nation's infrastructure. Many roads received a D, with 43 percent of roads reported to be in "poor" or "mediocre" condition. As more EV trucks are mandated, roadway conditions will worsen and cause an increase threat to public safety. EVs are also sending more toxic tire particles into the water, soil, and air, according to a report from The Atlantic.[13] Tire pollution is typically much worse than engine emissions as microplastics are expelled into the airways, waterways, and the food chain. The increased vehicle weight of EVs threaten to accelerate tire wear.

U.S. electrical infrastructure is aging while demand is set to increase. Electrical outages could halt surface transportation and create supply chain disruptions. The convergences of aging electrical grid, severe weather, and the limitations of renewable energy sources (wind, solar) have resulted in increased length and frequency of power outages. In 2020 there were 180 major disruptions to the power grid compared to approximately two dozen in 2000.[14] The ATRI report highlights the numerous challenges that will impact truck electrification efforts from U.S. electricity supply and

[9] Nebraska Transportation Center | (unl.edu)
[10] Nebraska experts weigh highway safety and electric vehicles | College of Engineering | University of Nebraska–Lincoln (unl.edu)
[11] Exploring Vehicle Size and Weight Solutions | FHWA (dot.gov)
[12] Road Infrastructure | ASCE's 2021 Infrastructure Report Card
[13] Electric Cars Are Sending Tire Particles Into the Soil, Air, and Water - The Atlantic
[14] American Transportation Research Institute: Charging Infrastructure Challenges for the U.S. Electric Vehicle Fleet., December 2022, page 19.

demand, electric vehicle production, and the truck charging requirements. In addition, California's Public Safety Power Shutoffs[15] (PSPS) has been implemented to help prevent wildfires during dry, windy weather. These preventative power shutdowns impact thousands in California[16], including commercial motor carriers required to operate EV heavy duty vehicles. Earlier this month Governor Gavin Newsom declared a state of emergency for the City of Rancho Palos Verdes due to land movement that posed an imminent threat to public safety and disrupted utility services[17]. Southern California Edison shut off power to portions of the area, impacting residences and business operations who had no certainty on when power would be restored. These types of emergency situations would directly impact local businesses' ability to recharge their EV fleet.

Increasing and variable electricity rates could negatively impact trucking. California already has one of the highest electricity rates in the nation, increasing 11.37% from 2023 to 2024. These rates will only increase as more zero emission vehicles place additional energy demand to re-charge. California also is one of the top states that experiences major power outages on an annual basis. ARA has been informed by members who have purchased electric trucks that the wait time for delivery is between 18 months to two years. Many of the electric truck manufacturers are start-up companies with a high potential for bankruptcy, which we have seen with major manufacturers over the past few years. Electric vehicle manufacturers are facing prohibitive costs, required to rely on parts and materials from China, and burning through operating funds. The costs of raw materials and production costs are causing these manufacturers to lose millions of dollars.

CARB's ACF regulations do not have any environmental considerations for the mining, processing, or recycling and recovery of lithium, a key component in electric vehicle batteries. EPA needs to take a broader approach in evaluating this waiver request such as the consideration of the increased safety and toxic hazards of lithium fires that have begun to occur at a more frequent rate. For example, recently a Tesla Semi truck caught fire on Interstate 80 in California, causing a 16-hour road closure. According to media reports, the Tesla's battery burned at 1,000 degrees and emitted toxic fumes, forcing firefights to use about 50,000 thousand gallons of water to cool the vehicle wreckage and wait for the lithium-ion batteries to burn themselves out.[18] There was also a report of another incident when a truck hauling six lithium batteries caught fire on I-15 in California. This fire led to a complete freeway shutdown for two days and caused a 50-mile backup on I-40 in Southern California, according to news reports.[19] These incidents are causing closures and shutting down the movement of essential supplies.

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[15] https://www.cpuc.ca.gov/PSPS/
[16] https://abcnews.go.com/Business/pges-preemptive-wildfire-prevention-power-shutdowns-impact-thousands/story?id=80517112
[17] https://www.foxla.com/news/rancho-palos-verdes-landslide-state-emergency-declared-gov-newsom
[18] https://www.msn.com/en-us/news/us/california-legislators-ask-gov-newsom-to-delay-ill-conceic-ausocal.orgll-electric-truck-mandate/ar-AA1piwq9
[19] Id.

In addition, California has no real plan in place to address electric vehicle battery recycling/disposal related issues. These electric vehicle batteries are considered hazardous materials that can cause considerable damage to the environment.

ARA believes a better plan to address climate change and growing energy demand is support for biofuels/renewable fuel from ethanol and biodiesel, which is not an option under California's ACF requirements. If EPA approves CARB's ACF waiver request, the significant increase in costs will cause facility closures, business failures, further industry consolidation, and major price increases that will be passed onto farmers and consumers.

ARA strongly urges EPA to reject this ill-conceived waiver request. Thank you for your review and consideration of this important matter.

Sincerely,

Richard D. Gupton
Senior Vice President, Public Policy & Counsel