

August 17, 2021

Northeast States for Coordinated Air Use Management  
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**Re: Response to Misleading Arguments Urging States to Delay Adoption of California Medium- and Heavy-Duty Emission Standard**

The undersigned organizations are aware of recent comments and letters shared by truck manufacturers and trucking associations requesting that states delay adoption of California’s medium- and heavy-duty vehicle (“M/HDV”) emission standards. These letters mischaracterize and misinform. This document offers our response and rationale for why states should move forward with adoption as soon as possible.

**States should adopt the rules as soon as possible to avoid risk from uncertain “model year” definitions.**

The Truck and Engine Manufacturers’ Association (“EMA”) is urging Section 177 States to delay adoption of California’s Advanced Clean Trucks (“ACT Rule”) and Heavy-Duty Omnibus Rule (“HDO Rule”). In our view, there is no reason for delay; indeed, there is every reason for haste given the additional climate and air pollution harm from inaction, particularly for the most vulnerable among us, including environmental justice communities.

EMA’s letters concern Section 177’s requirement that States seeking to enforce a California motor vehicle engine standard must “adopt [the California] standards at least two years before commencement of such model year (as determined by regulations of the Administrator).” 42 U.S.C. § 7507(2). In accordance with this statutory provision, in 1995, EPA promulgated regulations that defined “model year” for the purpose of Section 177. 40 C.F.R. § 85.2301 *et seq.* (“Determination of Model Year for Motor Vehicles and Engines Used in Motor Vehicles under Section 177 . . . of the Clean Air Act”). That definition allows a model year to start as early as January 2 of the *preceding* calendar year. 40 C.F.R. § 85.2304(a). EPA recently amended this Section 177 definition to clarify that it applies to “all motor vehicles regulated under 40 CFR part 86, subpart S,” whereas “heavy-duty motor vehicles and heavy-duty motor vehicle engines regulated under 40 CFR part 86, subpart A, and 40 CFR parts 1036 and 1037” should instead use the “definitions and related provisions in 40 CFR parts 1036, 1037, and 1068.” *Id.* (as amended by Improvements for Heavy-Duty Engine and Vehicle Test Procedures, and Other Technical Amendments, 86 Fed. Reg. 34308 (June 29, 2021)).

In their letters, EMA asserts that the definition of “model year” that applies for the purpose of ACT Rule adoption is a distinct definition found in 40 CFR Part 1037, 40 C.F.R. § 1037.801 – EPA regulations promulgated under Clean Air Act Section 202, not Section 177 – and in some CARB regulations, Cal. Code Regs. tit. 13, § 1963(15); *id.* tit. 17, § 95662(a)(16). These regulations define “model year” to be the same as the “calendar year” in most situations. *Id.* Thus, according to EMA, States can adopt the ACT and HDO Rules by December 31, 2021 – two years before January 1, 2024 – and still have the rules go into effect in Model Year 2024, which starts with the 2024 calendar year under this definition.

There is another interpretation of what “model year” means in the context of Section 177 states considering adoption of a California heavy-duty truck rule. The text of the Section 177 “model year” regulations at Part 85 is unclear about which definition applies to heavy-duty vehicles, since heavy-duty vehicles may fall under both the Part 85 language of “all motor vehicles regulated under 40 CFR part 86, subpart S” – which includes heavy duty vehicles, *see* 40 C.F.R. § 86.1801–01 – and the Part 85 language about “heavy-duty motor vehicles and heavy-duty motor vehicle engines regulated under 40 CFR part 86, subpart A, and 40 CFR parts 1036 and 1037.”

Thus, uncertainty exists about which definition of “model year” applies for the purpose of the Section 177 lead time provision. Given the uncertainty, we urge States to reject EMA’s invitation to delay, and instead promptly adopt the rules so the regulations can begin as soon as possible.

**Separate rulemakings in California have been mischaracterized and are not cause for delay.**

The ACT Rule was finalized in January 2021 and became effective in March 2021. Once the ACT Rule was published in the California Code of Regulations, states could also adopt the standard. Cal. Code Regs. tit. 13, §§ 1963-1963.5; *see also Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York State Dep't of Env't Conservation*, 17 F.3d 521, 533-34 (2d Cir. 1994) (holding Section 177 States can adopt California standards prior to EPA’s granting of waiver). In addition to the ACT Rule, the California Air Resources Board (“CARB”) is considering a separate Advanced Clean Fleets Rule (“ACF Rule”), currently projected to be finalized next year, as a suite of standalone requirements. While we urge states to adopt all of California’s M/HDV emission standards, the [ACT Rule is not dependent on the ACF Rule](#), nor was it designed to be. The ACT Rule was completed before the ACF Rule’s structure was conceived, based on a robust suitability analysis, technical feasibility assessment, and projected market growth.

The proposed ACF Rule consists of four components:

1. A zero-emission vehicle (“ZEV”) purchasing requirement for drayage trucks;
2. A ZEV purchase requirement for “high priority” private fleets;
3. A ZEV purchase requirement for public fleets; and
4. A requirement that all new M/HDV sales be ZEVs by 2040 (“100% by 2040”).

Each component is separate. Once finalized by CARB, States can opt into any or all of California’s suite of M/HDV regulations. In other words, States can choose to adopt whatever mix of the following they deem appropriate: the ACT Rule, any or all of the ZEV purchase requirements for specific fleets (drayage, “high priority”, or public), and/or 100% by 2040. For example, a state could adopt the ACT Rule now, in 2023 adopt the ZEV purchase requirement for drayage fleets, and, in 2037, adopt the 100% by 2040 requirement (to comply with the lead time requirement).

The 100% by 2040 target is prompted by rapid advancements in zero-emission technology in the past year, new zero-emission vehicle commitments by truck manufacturers, a desire to send a clearer market signal, and to better match the urgency to address the climate and air pollution crises that disproportionately impact low-income communities and communities of color. In fact, it is hardly out of step with natural market evolution: a group of prominent European truck manufacturers already committed to the [same timeline](#) at the end of 2020.

It may be tempting to simply say these are all one rule, however, that would be incorrect. They serve different purposes, regulate different entities, and leverage different compliance mechanisms. They may originate from the same agency and seek to accomplish similar objectives, but, as with other CARB programs, they are distinct standards, each one affording States flexibility but not imposing any obligation to adopt another.

**Recent federal action reinforces the need for States to adopt California’s vehicle emission standards as soon as possible.**

President Biden’s recent Executive Order (“EO”) on Strengthening American Leadership in Clean Cars and Trucks was welcome news. Contrary to some industry assertions, this federal action serves to reinforce, rather than undermine, the rationale for States to move forward as quickly as possible to adopt California’s M/HDV emission standards.

First, the EO directs the EPA Administrator to coordinate the agency’s activities “with the State of California as well as other States that are leading the way in reducing vehicle emissions, including by adopting California’s standards.” This suggests the Biden Administration intends for States who adopt California’s vehicle emission standards to have a

seat at the federal rulemaking table, ensuring their priorities are considered and folded into federal policymaking and potentially inspiring more ambitious national standards. At the same time, few details about the forthcoming EPA standards have been released, while State standards present a certain path to secure emission reductions. National standards by themselves can be complemented by State leadership that, holistically, aids in the achievement of climate and clean air objectives. For example, States can move forward with a M/HDV ZEV sales penetration date and a ZEV sales mandate. Moreover, the details of a potential federal low NOx rule still remain unclear. Even if a strong ZEV sales mandate and low NOx rule are adopted next year, because of federal lead time requirements, States would have to wait until Model Year 2027 for the rules to take effect, possibly missing out on several years of critical emission reduction and public health benefits.

While Biden’s recent EO was clearly a step in the right direction, it demonstrates how far the pendulum can swing from administration to administration. Will a future president simply reverse course and drag States that do not adopt California’s standards backward? States can retain a degree of certainty irrespective of federal standards by adopting any or all of California’s MHDV emission standards as laid out above—a certainty that will be critical in meeting various clean air and decarbonization mandates.

Sincerely,

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