



June 17, 2022

Northeast States for Coordinated Air Use Management (NESCAUM)  
89 South Street, Suite 602  
Boston, MA 02111

Re: Draft for Public Comment; Multi-State Medium- and  
Heavy-Duty Zero-Emission Vehicle (ZEV) Action Plan

Ladies and Gentlemen:

The [American Truck Dealers Division of the National Automobile Dealers Association \(ATD\)](#) represents over 1,700 franchised dealers who sell new and used medium- and heavy-duty trucks, tractors, and trailers (CMVs), and who engage in service, repair, and parts sales. Together they employ more than 125,000 people nationwide, yet most are small businesses as defined by the Small Business Administration.

Last March, NESCAUM published for public comment several policy recommendations for “accelerating the deployment” of medium-duty and heavy-duty ZEVs.<sup>1</sup> ATD and its franchised CMV dealer members are “all-in” on selling and servicing the EV and other new technology and alternative fuel CMVs being produced by the manufacturers (OEMs) they represent. To that end, ATD and the state and metro trade associations that represent new CMV dealerships are partnering with other key stakeholders on the strategic deployment of medium- and heavy-duty ZEVs. The following comments and suggestions focus on the potential impact of NESCAUM’s recommendations on new CMV sales, on fleet turnover, and on private investments in the charging and refueling infrastructure needed to facilitate and support prospective medium- and heavy-duty ZEV customers.

**I. As Written, the California Air Resources Board’s (CARB’s) Advanced Clean Truck (ACT) and Omnibus Low-NO<sub>x</sub> (Omnibus) Rules Will Hinder the Deployment of ZEV CMVs and Diminish Fleet Greenhouse Gas (GHG) Emissions Reductions by Reducing Fleet Turnover.**

ATD disagrees with NESCAUM’s recommendation that states adopt CARB’s ACT and Omnibus Rules. ATD has long supported continuous CMV emission improvements yet recognizes that, to be successful, such improvements must both be achievable by OEMs and acceptable to prospective new CMV customers. Importantly, CARB’s ACT and Omnibus rules impose ZEV CMV

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<sup>1</sup> See *Multi-State Medium- and Heavy-Duty Zero-Emission Vehicle Action Plan*, NESCAUM (March 10, 2022) (Draft Plan).

mandates on OEMs, but do not address their purchase or lease by the for-hire, private, and government fleets in California (or elsewhere) that may be in the market for new CMVs.<sup>2</sup>

Moreover, CARB's "if you build them, they will come" mandates ignore the fact that franchised dealers in California (and in states that adopt CARB's mandates) will be tasked with selling or leasing new ZEV CMVs to end users.<sup>3</sup> Of course, actual emission reductions cannot be achieved, and related policy benefits cannot be realized, unless and until new CMVs take to the road.

New emission mandates must not compromise the affordability, reliability, fuel economy, and serviceability of new CMVs, as prospective customers will avoid purchasing or leasing new CMVs that cost too much, offer performance compromises, or pose unacceptable downtime risks. CMV customers purchase or lease new equipment only when necessary to meet the needs of their business models and use cases. New medium- and heavy-duty CMVs are expensive, but unlike high-priced light-duty vehicles, they are not luxuries. Rather, they are specification-built to meet customer needs reliably and cost-effectively.

Appropriately structured standards must involve a national, wholistic approach to reducing the impact of CMVs on air quality. The ACT and Omnibus Rules go too far, too fast, and will hinder fleet turnover. To the extent that other states adopt CARB's mandates, the cost of new CMVs in those states will increase dramatically even as their performance degrades, resulting in sales declines and in lower rates of fleet turnover and environmental improvement.

Prospective new CMV customers apply rigorous total cost of ownership and return on investment decision-making and will only purchase or lease new CMVs when doing so makes economic sense. As noted previously, new CMV purchase decision-making keys on affordability, cost-efficiency, and reliability (i.e., uptime). So long as the average purchase price of ZEV CMVs greatly exceeds that of comparable diesels, prospective customers will be reluctant to consider them. Moreover, prospective ZEV CMV customer decision-making must consider the uncertainty of public charging/refueling, the high cost of fleet facility charging/refueling, and the potential lower utility and resale value of ZEV CMVs.

The COVID-19 pandemic and related supply-chain shortages, inflation, and strong freight volumes have resulted in high new and used CMV prices. Consequently, prospective new ZEV CMV customers, particularly those with limited capital and low profit margins, are more likely

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<sup>2</sup> Prospective customers of *new* CMVs represent only a subset of all CMV customers, with the remainder only in the market for *used* CMVs. Bottom line: CMV customers typically can choose between new and newer used options to meet their needs.

<sup>3</sup>This assumes that OEMs will be able to bring to market CMVs that comply with CARB's mandates. OEMs have serious concerns regarding the feasibility of CARB's mandates and the legality of the lead-time CARB has provided. See, e.g., *Engine Mfg. Assoc. v. Calif. Air Resources Board, et al.*, C.A. No. 2:22-cv-03663-JFW-PVC (C.D. Cal.).

to retain their existing CMVs for longer than they otherwise would, purchase new non-ZEV CMVs, or purchase newer used CMVs.

The most effective path for reducing CMV-related criteria pollutant and greenhouse gas (GHG) emissions is to accelerate the turnover of the on-road fleet. The adoption by states of CARB's ACT and Omnibus Rules would cause CMV prices to skyrocket, resulting in *reductions* in fleet turnover and *increases* in the average age of on-road CMVs, presently 14 years.<sup>4</sup> For the small businesses that constitute the majority of ATD's franchised dealership members, and for the almost 98% of U.S. fleet owners that also are small businesses, CARB's mandates are especially concerning given current and foreseeable market conditions. For all of the above reasons, and given that EPA is working on new national mandates addressing CMV criteria pollutants and GHGs,<sup>5</sup> *ATD urges NESCAUM to rescind its recommendation that states adopt CARB's ACT and Omnibus Rules.*

## **II. Broad Based Incentives Are Key to Fleet Turnover.**

Recognizing that sales mandates alone cannot successfully get ZEV CMVs into the hands of end users, NESCAUM recommends that states adopt ZEV CMV purchase requirements for public fleets, provide for purchase incentives to help offset the higher cost of new ZEV CMVs for other prospective customers, and subsidize the cost of charging/refueling infrastructure. NESCAUM further recommends that states design these incentives "to prioritize the electrification of fleets operating in communities that are disproportionately impacted by diesel emissions and to support the goals and strategies outlined in climate justice planning documents."<sup>6</sup>

As the Draft Report notes, the most effective state ZEV CMV purchase incentive programs are "cash on the hood" focused.<sup>7</sup> This means either transferable tax credits or instantly applied state-funded rebates. Prompt reimbursement by states is critical as dealers effectively will frontload ZEV CMV purchase incentives until reimbursed. And appropriately sized purchase incentives must be available for all medium- and heavy-duty ZEV CMVs, including those fueled by hydrogen. Ideally, well designed state purchase incentives will aim to offset not just a ZEV CMVs higher price, but also associated higher sales taxes and registration fees.

To foster widespread commercial ZEV CMV adoption, state charging/refueling infrastructure incentives should be designed to cover the majority, if not all, of out-of-pocket costs associated with such facilities. Properly designed recharging/refueling incentive programs should benefit all communities, including those that are underserved, disadvantaged, and/or impacted disproportionately by CMV diesel emissions. New *private* ZEV CMV charging/fueling facilities, coupled with well-designed and strategically located *public* ZEV charging/fueling facilities will

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<sup>4</sup> Association for the Work Truck Industry, [Aging Trucks Create More Service Opportunities](#), (Nov. 2019).

<sup>5</sup> 87 Fed. Reg. 17414, *et seq.* (March 28, 2022).

<sup>6</sup> Draft Plan, p. 28.

<sup>7</sup> *Id.*

spur new economic development through spending and employment associated with facility design, contracting, construction, and operation. States should ensure that new facility development involve small, minority-, and women-owned businesses.

### **III. Promoting Private Investment in EV Charging Infrastructure.**

The Draft Plan discusses the need for electricity rate reform but does not seem to make specific recommendations in that regard. The anticipated long-term demand for EV charging infrastructure presents a unique business opportunity for a variety of private sector stakeholders. However, there are many impediments to private investment in this market. To incentivize and leverage private investment in the expansion of publicly accessible EV charging, states must focus on promoting competitive market dynamics, on helping to establish a clear pathway for profitability, and on the needs of prospective ZEV CMV customers.

One of the most significant impediments to private investment in EV charging involves rate base practices where the costs associated with EV charging facilities are passed onto all ratepayers. This practice gives utility companies an unfair advantage over private investors by enabling them to engage in the EV charging market without risking their own capital. This makes new and existing private market participants reluctant to risk investing private capital in EV charging infrastructure because they will be either competing at a disadvantage or unable to earn an adequate return their investment. NESCAUM should recommend criteria designed to encourage fair competition between utilities and private investors.

Another significant barrier to private investment in EV charging facilities involves demand charges. These are charges utilities bill their commercial customers over and above the rates they bill for electricity use, presumably to provide reserve capacity to respond to demand spikes. For private businesses, including prospective ZEV CMV customers, demand charges can increase monthly electricity bills significantly. For private companies engaged in reselling electricity to ZEV CMV and other ZEV operators at public charging facilities, demand charges can restrict accurate pricing as they are difficult if not impossible to calculate in advance. NESCAUM should recommend criteria designed to assist states with developing policies to ensure that charging facility operators are able to accurately calculate and disclose their retail electricity prices to EV operators.

Moreover, in some states, private businesses that seek to sell electricity at public charging facilities are classified and regulated as utilities, which effectively prohibits them from investing in such EV charging facilities. NESCAUM should recommend that states revise their laws and policies to enable private entities to resell electricity at public charging facilities.

Lastly, ATD disagrees with NESCAUM's recommendation for Congress to repeal the prohibition of most commercial activities on interstate rest areas and within federal rights-of-way. To avoid undercutting existing incentives for private investment in ZEV charging/refueling, the prohibition must be preserved. Permitting commercialized ZEV charging/refueling to occur in

these areas will discourage private investment at existing off-exit business locations, which will lead to the deployment of fewer, not more, ZEV charging/refueling facilities. NESCAUM should instead adopt a more nuanced recommendation on the location of ZEV charging/refueling facilities in these areas. For example, recommending the development and siting of ZEV CMV charging/refueling facilities “on-highway” in certain limited locations, like grandfathered facilities located on Interstate rights-of-way or on exempted toll roads/turnpikes, will be more universally accepted and will better serve to benefit prospective ZEV CMV customers. However, criteria should be adopted which appropriately recognize that such “on-highway” facilities should not be allowed to compete unfairly with existing and future public charging/refueling facilities operated at off-exit locations. These criteria should be focused on the goal of maximizing the strategic siting of ZEV CMV recharging/refueling facilities.

#### **IV. Charging and Refueling Facility Standards Designed to Accommodate ZEV CMVs.**

Too often, discussions regarding the design and development of ZEV charging/refueling facilities have focused on light-duty ZEVs. But as the unit sales and miles driven of ZEV CMVs increase, the demand for publicly accessible facilities designed to accommodate them will increase. States working on the strategic development of public ZEV charging/refueling infrastructure along designated alternative fueling corridors and elsewhere should ensure that such infrastructure will accommodate ZEV CMVs.<sup>8</sup>

New charging/refueling facilities should be strategically located where ZEV CMVs are likely to be operated. And they should be designed and deployed for convenient use by ZEV CMVs which means chargers and parking must be properly sized to maximize throughput and minimize wait times. Ideally, design and deployment should foster utilization rates high enough to provide investors with reasonable rates of return. To maximize desirability and utility, priority should be given to facilities located on or near major ZEV CMV travel corridors and near businesses frequented by CMV operators. The more desirable facilities are, the higher their rate of utilization will be.

Other critical design and deployment issues for ZEV CMV charging/refueling facilities include:

A. Transparency. ZEV CMV operators must be able to determine ahead of time, through phone apps or otherwise, exactly where facilities are located, the vehicle sizes they can accommodate, the types, number, and rate of charge of Electric Vehicle Supply Equipment (EVSE), the use and operational status of EVSEs, charging/refueling costs, and the other facilities at the location (restrooms, convenience stores, and restaurants, for example).

B. Accessibility. As noted above, facilities must be conveniently located for ZEV CMV operators, including at on or just off highway locations and along major secondary travel corridors. New

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<sup>8</sup> Facilities designed for medium-and heavy-duty vehicles will almost always accommodate light-duty vehicles.

facilities should be strategically deployed to avoid redundancy and should adopt strategies designed to prevent non-ZEVs from blocking access.

C. Compatibility. With limited exceptions, traditional diesel CMVs can be refueled at almost any standard diesel pump. On the other hand, not all EVSEs are compatible with all ZEV CMVs. States should set criteria for transparency regarding the EVSEs at any given charging facility. In addition, states should ensure that public ZEV charging/refueling facilities are not proprietary in nature but are instead designed and deployed to serve most or all ZEV CMVs, even if that means requiring that facilities with EVSEs must have multiple connectors and adapters.

D. Reliability. EVSE reliability issues are significant and concerning. EVSE can and often do malfunction, go offline, function only after multiple plug-in attempts, abort prior to charging completion, or inappropriately refuse or limit forms of payment. Expedient repair is critical.

E. Payment Convenience and Fairness: Ideally, ZEV CMV operators should not be limited to specific payment networks or mobile payment systems. At the very least, payment systems should be comparable to what current CMV operators use when refueling with gas or diesel and should involve easy-to-use credit or debit card readers that accept payment from a wide variety of networks and mobile applications. Moreover, states should help develop criteria for economic “penalties” designed to keep ZEV operators from parking at EVSEs for longer than what is necessary to recharge.

In summary, to ensure that charging and refueling facilities meet or exceed acceptable benchmarks, NESCAUM should recommend that states set uniform criteria for facility design, transparency, accessibility, compatibility, reliability, and payment convenience and fairness.

## **V. The CDL Weight Threshold Exemption Should Be Raised for Zero-Emission CMVs.**

The Draft Plan notes that Congress amended federal law to provide for a 2,000-pound exemption for ZEV CMVs from the otherwise applicable 80,000-pound GVWR cap and recommends that states provide for similar changes to their maximum weight laws for ZEV CMVs operating on state roads that are not part of the federal interstate system.<sup>9</sup> ATD concurs with this recommendation and also urges NESCAUM to recommend that states increase the commercial driver’s license weight threshold for ZEV CMVs, which is tied to the statutory definition of “commercial motor vehicle” in 49 U.S.C. § 31301(4).<sup>10</sup>

On behalf of ATD, I thank NESCAUM for the opportunity to comment on this matter. Should you wish to discuss these issues in greater detail, please contact Greg Cote at [gcote@nada.org](mailto:gcote@nada.org) to set up a time of mutual convenience to do so.

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<sup>9</sup> See 23 U.S.C. § 127(s).

<sup>10</sup> This will serve to remove a disincentive for the purchase of heavier battery electric CMVs, but may require the Federal Motor Carrier Administration to issue a regulatory exemption.

Respectfully submitted,

A handwritten signature in black ink that reads "Douglas I. Greenhaus". The signature is written in a cursive style with a large initial 'D'.

Douglas I. Greenhaus  
V.P., Regulatory Affairs,  
Environment, Health and Safety