

California Air Resources Board

**Public Hearing to Consider Proposal to
Permanently Adopt the Emergency Vehicle
Emissions Regulations**

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and
Agency Response**

*Public Hearing Date: March 26, 2026
Agenda Item No.: 26-2-3*

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List of Acronyms and Abbreviations

Acronym/ Abbreviation	Definition
AAI	Alliance for Automotive Innovation
ACC	Advanced Clean Cars
ACT	Advanced Clean Trucks
APA	Administrative Procedure Act
AQMD	Air Quality Management District
BAAD	Bay Area Air District
CAA	Clean Air Act
CARB or Board	California Air Resources Board
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CO ₂	Carbon Dioxide
CRA	Congressional Review Act
DTNA	Daimler Truck North America
ECCD	Emissions Certification & Compliance Division
EMA	Truck and Engine Manufacturers Association
EMFAC	EMission FACtor
First 15-Day Notice	Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information
FSOR	Final Statement of Reasons
FTP	Federal Test Procedure
GHG	Greenhouse Gas
HDOH	Heavy-Duty On-Highway
HSC	Health and Safety Code

Acronym/ Abbreviation	Definition
International	International Motors, LLC
ISOR or Staff Report	Staff Report: Initial Statement of Reasons for Rulemaking
LCFS	Low Carbon Fuel Standard
LDT	Light-Duty Truck
LEV	Low-Emission Vehicle
MAC	Manufacturers Advisory Correspondence
MY	Model Year
NAFA	NAFA Fleet Management Association
NESCAUM	Northeast States for Coordinated Air Use Management
Nissan	Nissan North America, Inc.
NMOG	Non-Methane Organic Gas
NOPA	Notice of Proposed Action
NOx	Oxides of Nitrogen
NRTL	Nationally Recognized Testing Laboratory
OAL	Office of Administrative Law
OBD	On-Board Diagnostic
OEM	Original Equipment Manufacturer
Omnibus	On-Road Heavy-Duty Engine and Vehicle Omnibus
PM	Particulate Matter
PM2.5	Fine Particulate Matter
ROG	Reactive Organic Gas
Second 15-Day Notice	Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information
Third 15-Day Notice	Third Notice of Public Availability of Modified Text
tpd	Tons Per Day

Acronym/ Abbreviation	Definition
UCS	Union of Concerned Scientists
U.S.	United States
U.S. EPA or EPA	United States Environmental Protection Agency
VSCI	Vehicle Services Consulting, Inc.
WSPA	Western States Petroleum Association
ZEV	Zero-Emission Vehicle

I. General

The Staff Report: Initial Statement of Reasons for Rulemaking (ISOR or Staff Report), entitled Public Hearing to Consider the Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations, released September 23, 2025, is incorporated by reference herein. The Staff Report contained a description of the rationale for the proposed amendments. On September 23, 2025, the Staff Report and all references relied upon and identified in the Staff Report were made available to the public for a 45-day public comment period.¹

The initial rulemaking proposal described in the Staff Report included three separate actions: Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus (Omnibus) Regulation, Amendments to the Low Carbon Fuel Standard (LCFS) Regulation, and Permanent Adoption of the Emergency Vehicle Emissions Regulations. These three actions were initially proposed together in one rulemaking package for administrative efficiency. Nevertheless, these three actions were three separate packages proposing distinct regulatory changes and requiring three separate regulatory approval actions. On November 7, 2025, California Air Resources Board (CARB or Board) released a notice of postponement for the public hearing scheduled for November 20, 2025.²

On March 13, 2026, CARB released the Notice of Rescheduled Public Hearing³ to Consider Proposal to Permanently Adopt the Emergency Vehicle Emissions Regulations. Although the original notice of public hearing included two other actions (consideration of proposed amendments to the Omnibus and the LCFS regulations), this subsequent notice of rescheduled public hearing only concerned the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. As such, the two other actions were not considered as part of that rescheduled hearing.

On March 26, 2026, CARB conducted a public hearing to consider the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. For the 3 actions included in the September 23, 2025 notice, the Board received a total of 30 written comments during the 45-day comment period leading up to the hearing and 3 written comments during the hearing, and heard oral testimony from 4 stakeholders at the hearing. Two additional written comments were also submitted outside the 45-day comment period. Of the 37 written and oral comments received during the 45-day comment period and the public hearing, 20 addressed the Emergency Vehicle Emissions Regulations. The remaining comments focused on the proposed amendments to the Omnibus regulation, the proposed amendments to the LCFS regulation, or raised issues outside the scope of any rulemaking covered by the ISOR.

¹ California Air Resources Board. [*Notice of Public Hearing to Consider Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations*](#). September 23, 2025.

² California Air Resources Board. [*Notice of Postponement. Public Hearing to Consider Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus and the Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations*](#). November 7, 2025.

³ California Air Resources Board. [*Notice of Rescheduled Public Hearing to Consider Proposal to Permanently Adopt the Emergency Vehicle Emissions Regulations*](#). March 13, 2026.

At the conclusion of the hearing, the Board passed Resolution 26-3⁴ to approve for adoption of the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. This resolution clarifies and ensures that new motor vehicles and engines can be certified for sale in California despite the uncertainty created by the illegal and unconstitutional congressional resolutions⁵ targeting three waivers⁶ of preemption for more recent vehicle emission standards. The permanent adoption ensures that new on-road vehicles and engines sold in California will, at a minimum, meet earlier-adopted emission standards and requirements, which have extant federal preemption waivers not subject to the congressional resolutions, i.e., pre-Omnibus and Low-Emission Vehicle (LEV) III emission standards. The Emergency Vehicle Emissions Regulations maintain protective emission standards for on-road vehicles and engines produced and delivered for sale in California while ensuring manufacturers understand how they can sell vehicles and engines in the State.

In accordance with Government Code section 11346.8, the Board directed the Executive Officer to adopt the proposed regulatory action after making any necessary conforming modifications, along with any additional supporting documents and information, available to the public for a period of at least 15 days. The Board further directed the Executive Officer to consider such written comments as may be submitted during this period, to make such modifications as may be appropriate in light of the comments received, and to present the regulations to the Board again if warranted.

The text of proposed modifications to the originally proposed Emergency Vehicle Emissions Regulations and other supporting documents were made available for a 15-day public comment period through a “Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information,” (First 15-Day Notice).⁷ The First 15-Day Notice, text of proposed modifications, and additional supporting documents were posted on April 3, 2026, on CARB’s website, accessible to stakeholders and interested parties. CARB received a total of seven written comments during the First 15-Day Notice that commenced on April 3, 2026, and closed on April 20, 2026.

On June 30, 2026, CARB proposed additional modifications via a “Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information,” (Second 15-Day Notice).⁸ The Second 15-Day Notice, text of the proposed modifications, and additional supporting documents were made available on CARB’s website for public review and comment from June 30 through July 15, 2026, with a total of six comment letters received during this time.

On July 21, 2026, CARB proposed additional modifications via a “Third Notice of Public Availability of Modified Text,” (Third 15-Day Notice).⁹ The Third 15-Day Notice and text of the

⁴ California Air Resources Board. [Proposal to Permanently Adopt the Emergency Vehicle Emissions Regulations Resolution 26-3](#). March 26, 2026.

⁵ [H.J.Res.87 \(119th Congress\)](#), [H.J.Res.88 \(119th Congress\)](#), [H.J.Res.89 \(119th Congress\)](#).

⁶ [88 Fed. Reg. 20,688 \(Apr. 6, 2023\)](#), [90 Fed. Reg. 642 \(Jan. 6, 2025\)](#), [90 Fed. Reg. 643 \(Jan. 6, 2025\)](#).

⁷ California Air Resources Board. [Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information](#). April 3, 2026.

⁸ California Air Resources Board. [Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information](#). June 30, 2026.

⁹ California Air Resources Board. [Third Notice of Public Availability of Modified Text](#). July 21, 2026.

proposed modifications were made available on CARB's website for public review and comment from July 21 through August 5, 2026, with a total of four comment letters received during this time.

On the same dates that the First, Second, and Third 15-Day Notices and all attachments were posted on CARB's website, the posted documents were also electronically distributed to other parties identified per section 44(a), title 1, California Code of Regulations (CCR), in accordance with Government Code section 11340.85, and all organizations and individuals subscribed to the following CARB electronic distribution listings:

Advanced Clean Trucks	Innovative Clean Transit
Board Meetings and Public Meeting Notices	Light-Duty Vehicle Ownership Incentives
CA Phase 2 GHG for New Heavy-Duty Engines and Vehicles	LCFS Program
Clean and Sustainable Mobility Options	Mobile Source Program Mailouts and Manufacturers Advisory Correspondence (MACs)
Clean Miles Standard	Off-Road Compression-Ignition Engines
Clean Vehicle Rebate Project	On-Board Diagnostics Program
Community Air	On-Road Certification Program
Drive Forward Light Duty	Optional Reduced NOx Emission Standards for Heavy-Duty Engines
Electric Bicycle Incentives Project	Phase I GHG Standards for New Heavy-Duty Engines and Vehicles
Environmental Justice Stakeholders Group	School Bus Idling ATCM
Equity Outreach	School Buses
Funding Plan - Heavy Duty Focus	State Implementation Plan
Funding Plan - Light Duty Focus	Sustainable Freight Transport Initiative
HVIP	Tribal Relations
Heavy-Duty Demonstration Projects and Pilots	Truck Idling Reduction
Heavy-Duty Hybrid Electric Vehicle Certification Procedures	Volkswagen Settlement - California ZEV Investments
Heavy-Duty Low NOx	ZEV Fleet

This Final Statement of Reasons (FSOR) updates the Staff Report for the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. It identifies the modifications made to the originally proposed regulatory text for the proposal to permanently adopt the Emergency Vehicle Emissions Regulations, including non-substantive changes, and provides the rationale for those modifications. It also addresses the changes circulated for public comment during the 15-day comment periods. This FSOR also contains a summary of the comments received by CARB on the proposed regulatory action during the rulemaking process and CARB's responses to those comments. Because this rulemaking action

addresses only the Emergency Vehicle Emissions Regulations, only comments relevant to this specific rulemaking item are summarized and discussed in this FSOR. Comments pertaining to the proposed amendments to the Omnibus regulation or the LCFS regulation are outside the scope of this rulemaking action and therefore are not addressed in this FSOR.

A. Mandates and Fiscal Impacts to Local Governments and School Districts

The Board has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

B. Consideration of Alternatives

The Board has not identified any reasonable alternatives that would lessen any adverse impact on small business.

For the reasons set forth in the Staff Report, Appendix G of the Staff Report¹⁰ and in this FSOR, CARB determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken.

Chapter X of Appendix G of the Staff Report provided an evaluation of regulatory alternatives. The Emergency Vehicle Emissions Regulations clarify performance standards that were previously adopted and were previously in effect remain operative. The compliance pathways available to manufacturers have already been understood for years; were previously implemented; and manufacturers have either already achieved or planned to achieve one or more of the compliance pathways. Thus, CARB has not identified any reasonable alternative and is not aware of any reasonable alternative that would be more effective in stabilizing the new motor vehicle market in California, while ensuring manufacturers meet California's emission standards. Nor has CARB identified any reasonable alternative that would be effective and less burdensome, nor one that would be more cost-effective and equally effective.

II. Modifications Made to the Original Proposal

As explained on page 1 of the Notice of Public Hearing and page II of the Initial Statement of Reasons, CARB proposed the Omnibus amendments, LCFS amendments, and permanent recodification of its Emergency Vehicle Emissions Regulations together in the same notice for administrative efficiency, but the Omnibus and Associated Amendments, LCFS Amendments, and Emergency Vehicle Emissions Regulations are three separate regulatory proposals. This Final Statement of Reasons pertains only to the permanent recodification of the Emergency Vehicle Emissions Regulations, and as such, the rulemaking documents for the proposed LCFS and Omnibus amendments that were noticed at the same time are not part of this

¹⁰ California Air Resources Board. [Appendix G: Supplement to Initial Statement of Reasons – Proposed Emergency Vehicle Emissions Regulations](#). September 23, 2025.

proposed action. The Emergency Vehicle Emissions Regulations are not relying on the Documents Relied Upon listed in the ISOR, except for the documents listed as Documents Relied Upon in Appendix G pertaining to the permanent recodification of the Emergency Vehicle Emissions Regulations. Further, Appendices A-1, A-2, A-7 through B-3, and C-A-1 through F to the ISOR, or any documents referenced therein, do not pertain to the permanent recodification of the Emergency Vehicle Emissions Regulations.

Sections A. to C. below describe the First, Second, and Third 15-day notices. In addition to the modifications described below, additional modifications correcting grammar, punctuation, and spelling have been made throughout the proposed regulation text. These changes are considered to be non-substantive in nature.

A. First 15-Day Notice

Subsequent to the 45-day public comment period mentioned above, CARB identified the following additional changes to the Emergency Vehicle Emissions Regulations:

- Corrections to the 45-Day Proposal

These modifications include minor corrections to the 45-day proposal¹¹ to ensure consistency with the adopted Emergency Vehicle Emissions Regulations approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 2, 2025. These modifications reflect minor corrections made during the emergency adoption process¹² after the release of the 45-day proposal on September 23, 2025, to permanently adopt the emergency regulations. The Emergency Notice¹³ explained that the purpose of the Emergency Vehicle Emissions Regulations is to clarify that previously adopted regulations remain operative. These corrections do not affect the regulatory intent or applicability.

- Proposed Amendments to the Existing Regulatory Text

These modifications include newly proposed amendments to the existing regulatory text¹⁴ made during the emergency adoption process as approved by OAL and filed with the Secretary of State on October 2, 2025.

B. Second 15-Day Notice

The following additional changes to the proposal were made available via the Second 15-Day Notice:

- The changes clarify that CARB is not enforcing the Phase 2 greenhouse gas (GHG) emission standards for heavy-duty engines and vehicles in the affected title 13 and title

¹¹ California Air Resources Board. *Public Hearing to Consider Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations and to Permanently Adopt the Emergency Vehicle Emissions Regulations*. September 23, 2025.

¹² See Cal. Gov. Code, §§ 11346.1, 11349.6; Cal. Code Regs., tit. 1, §§ 48-56.

¹³ California Air Resources Board. *5-Day Public Notice and Comment Period. Emergency Amendment and Adoption of Vehicle Emissions Regulations*. September 15, 2025.

¹⁴ California Air Resources Board. *Proposed Emergency Amendment and Adoption of Vehicle Emissions Regulations*. October 3, 2025.

17, CCR, sections because no waiver under section 209(b) of the Clean Air Act (CAA) currently authorized enforcement of those requirements. As these standards remain preempted by federal law, enforcement may occur only upon issuance of a waiver of preemption by the U.S. Environmental Protection Agency (U.S. EPA).

- For the light-duty alternative regulatory provisions in title 13, the changes confirm that the LEV III criteria pollutant requirements remain operative, while the Advanced Clean Cars (ACC) II emission standards may be enforced only when a valid waiver under section 209(b) of the CAA is in effect. To ensure that these alternative sections maintain enforceability, the text is replaced with previously adopted 2012 regulatory language that already received a federal waiver of preemption.

C. Third 15-Day Notice

The following additional changes to the proposal were made available via the Third 15-Day Notice:

- Section 1962.1.1, which was mistakenly added in the Second 15-Day Notice, was removed from the proposed regulatory text.
- For Section 1962.2.1, the 45-day proposal would have reinstated the October 8, 2015 version of Section 1962.2. To ensure alignment with the version covered by an extant waiver, the Second 15-Day Notice replaced this text with the 2012 version. In that process, CARB inadvertently proposed to reinstate all of Section 1962.2 from 2012, including Zero-Emission Vehicle (ZEV) sales requirements that sunset in model year (MY) 2025, which CARB did not intend, as reflected in the 45-Day language¹⁵ and consistent with the adoption of the regulations on an emergency basis.¹⁶ The Third 15-Day Notice corrects this by limiting the proposed text to only subsections (a) and (h), as initially proposed and as adopted on an emergency basis intended to be made permanent with this rulemaking.

III. Non-Substantial Modifications

Subsequent to the 15-day public comment periods mentioned above, staff identified the following additional non-substantial changes to the Regulation:

- In section 2147.0.1(a), “and” was added to the regulation text to correct a grammatical error. The text reads as follows: “In order to overcome the presumption of noncompliance set forth in title 13, California Code of Regulations, section 2123(b), the average emissions of the vehicles and engines, with the failed emission-related component must comply with applicable emission standards.”

¹⁵ See Public Hearing to Consider the Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations. Staff Report: Initial Statement of Reasons, App. G: Supplement to Initial Statement of Reasons – Proposed Emergency Vehicle Emission Regulations, App. A-4-1, proposed Section 1962.2.1, Sept. 23, 2025.

¹⁶ See 5-Day Public Notice and Comment Period, Emergency Amendment and Adoption of Vehicle Emission Regulations, App. A-2-2, Proposed Regulation Order: Emergency Vehicle Emission Regulations, Part II, Section 1962.2.1, Sept. 15, 2025.

- In section 2903.0.1, “for” was added to the regulation text to correct a grammatical error to the title of “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.”

The above-described modifications constitute non-substantial changes to the regulatory text and do not materially alter the requirements or conditions of the adopted rulemaking action. In addition to these changes, additional non-substantive changes were made to correct numbering, formatting, and grammatical changes throughout the amended and adopted Regulation text.

IV. Documents Incorporated by Reference

The Emergency Vehicle Emissions Regulations and the incorporated test procedures adopted previously by the Executive Officer incorporate by reference the following documents, which were identified in OAL File Numbers:

- Z-00-1010-10 [Consider Requiring Certain California Light-and Medium-Duty Vehicles to be Subject to Federal Tier 2 Exhaust Standards, and Adopting Additional Exhaust Emission Standards for Heavy-Duty Gasoline Vehicles and Engines]
- Z-01-0828-14 [Amendments Adopting More Stringent Emission Standards for 2007 and Subsequent Model Year New Heavy-Duty Diesel Engines]
- Z-02-0917-02 [Consider the Incorporation of Federal Exhaust Emission Standards for 2008 and Later Model-Year Heavy-Duty Gasoline Engines and the Adoption of Minor Amendments to the Low-Emission Vehicle Regulations]
- Z-2011-1129-12 [Amendments to the California Greenhouse Gas and Criteria Pollutant Exhaust and Evaporative Emission Standards and Test Procedures and to the On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles]
- Z-2012-0626-07 [Proposed Revisions to On-Board Diagnostic System Requirements for Heavy-Engines, Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles and Engines]
- Z-2012-0831-01 [Proposed Amendments to the New Passenger Motor Vehicle Greenhouse Gas Emission Standards for Model Years 2017-2025 to Permit Compliance Based on Federal Greenhouse Gas Emissions Standards and Additional Minor Revisions to the LEV III And ZEV Regulations]
- Z-2013-1015-07 [Proposed Greenhouse Gas (GHG) Regulations for Medium- and Heavy-Duty Engines and Vehicles, Optional Reduced Emission Standards for Heavy-Duty Engines, and Amendments to the Tractor-Trailer GHG Regulation, Diesel-Fueled Commercial Motor Vehicle Idling Rule, and the Heavy-Duty Hybrid-Electric Vehicles Certification Procedures]
- Z-2014-0819-06 [Proposed Amendments to the LEV III Criteria Pollutant Requirements for Light- and Medium-Duty Vehicles, the Hybrid Electric Vehicle Test Procedures, and the Heavy-Duty Otto-Cycle and Heavy-Duty Diesel Test Procedures]

- Z-2018-0724-07 [Proposed Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation]
- Z-2018-0821-02 [Amendments to California Specification for Fill Pipes and Openings of Motor Vehicle Fuel Tanks]
- Z-2020-0609-07 [Proposed Amendments to the Exhaust Emissions Standards and Test Procedures for 2024 and Subsequent Model Year Heavy-Duty Engines and Vehicles, Heavy-Duty On-Board Diagnostic System Requirements, Heavy-Duty In-Use Testing Program, Emissions Warranty Period and Useful Life Requirements, Emissions Warranty Information and Reporting Requirements, and Corrective Action Procedures, In-Use Emissions Data Reporting Requirements, and Phase 2 Heavy-Duty Greenhouse Gas Regulations, and Powertrain Test Procedures]
- Z-2023-0718-09 [Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation]

The following documents are also incorporated in the Emergency Vehicle Emissions Regulation regulatory action by reference as specified by the following sections of the regulations or by the original regulatory section in which they were adopted, and they are noted here for completeness:

- California Exhaust Emission Standards and Test Procedures for 1985 through 2003 Model Heavy-Duty Diesel-Engines and Vehicles, amended December 12, 2002, incorporated by reference in title 13, CCR, section 1956.8.1(b)
- California Exhaust Emission Standards and Test Procedures for 1987 through 2003 Model Heavy-Duty Otto-Cycle Engines and Vehicles, amended December 27, 2000, incorporated by reference in title 13, CCR, section 1956.8.1(d)
- California Non-Methane Organic Gas Test Procedures, amended December 6, 2012, incorporated by reference in title 13, CCR, sections 1956.8.1(d) and 1961.2.1
- Part I-C (Parts 1039/1065/1068): California Exhaust Emission Standards and Test Procedures for New 2008-2010 Tier 4 Off-Road Compression-Ignition Engines, Amended October 25, 2012, incorporated by reference in title 13, CCR, section 2421(a)(4)(A)
- Part I-D (Part 1039): California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Amended October 25, 2012, incorporated by reference in title 13, CCR, section 2421(a)(4)(B)
- Part I-E (Part 1065): California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Adopted October 25, 2012, incorporated by reference in title 13, CCR, section 2421(a)(4)(B)
- Part I-F (Part 1068): California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Amended October 25, 2012, incorporated by reference in title 13, CCR, section 2421(a)(4)(B)
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, amended October 21, 2014, incorporated by reference in title 13, CCR, section 2485.0.1(c)
- California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission

Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, amended December 6, 2012, incorporated by reference in title 13, CCR, section 2485.0.1(c)

- California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, amended December 6, 2012, incorporated by reference in title 13, CCR, sections 1961.2.1, 1965.0.1, 2037.0.1, and 2038.0.1
- California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, adopted August 1999, amended December 2012, incorporated by reference in title 13, CCR, section 1976.0.1
- California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, amended March 22, 2012, incorporated by reference in title 13, CCR, section 1978.0.1
- California Test Procedure for Evaluating Substitute Fuels and New Clean Fuels in 2015 and Subsequent Years, adopted March 22, 2012, incorporated by reference in title 13, CCR, section 2317.0.1
- California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes, amended December 6, 2012, incorporated by reference in title 13, CCR, sections 1961.2.1 and 1962.2.1
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles, amended October 21, 2014, incorporated by reference in title 13, CCR, section 1956.8.1(b)
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, amended October 21, 2014, incorporated by reference in title 13, CCR, section 1956.8.1(d)
- California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy-Duty Vehicles, adopted October 21, 2014, incorporated by reference in title 17, CCR, section 95663(c)
- California Interim Certification Procedures for 2004 and Subsequent Model Hybrid-Electric and Other Hybrid Vehicles in the Urban Bus and Heavy-Duty Vehicle Classes, amended October 21, 2014, incorporated by reference in title 13, CCR, section 1956.8.1(b)
- California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles, amended March 22, 2012, incorporated by reference in title 13, CCR, section 1965.0.1
- California Test Procedure for Evaluating Substitute Fuels and New Clean Fuels Through 2014, amended March 22, 2012, incorporated by reference in title 13, CCR, section 2317.0.1
- “Speed Versus Time Data for California’s Unified Driving Cycle”, dated December 12, 1996, incorporated by reference in title 13, CCR, section 1968.2.1(c)

- 40 CFR 86, Appendix 1, section (g) “EPA US06 Driving Schedule for Light-Duty Vehicles and Light-Duty Trucks,” amended July 13, 2005, incorporated by reference in title 13, CCR, section 1968.2.1(c)
- Air Resources Board (ARB) Manufacturers Advisory Correspondence (MAC) No. 99-06, adopted December 20, 1999, incorporated by reference in title 13, CCR, section 1968.2.1(e)(14.1.2)(A)
- Society of Automotive Engineers (SAE) J1930 “Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms – Equivalent to ISO/TR 15031-2:April 30, 2002”, incorporated by reference in title 13, CCR, section 1968.2.1(e)(14.1.2)(B)
- SAE J1930 “Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms – Equivalent to ISO/TR 15031-2”, October 2008, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.1)
- SAE J1962 “Diagnostic Connector – Equivalent to ISO/DIS 15031-3: December 14, 2001”, April 2002, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.2)
- SAE J1978 “OBD II Scan Tool – Equivalent to ISO/DIS 15031-4:December 14, 2001”, April 2002, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.3)
- SAE J1979 “E/E Diagnostic Test Modes”, May 2007, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.4)
- SAE J1979-DA, “Digital Annex of E/E Diagnostic Test Modes”, October 2011, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.4.1)
- SAE J1850 “Class B Data Communications Network Interface”, May 2001, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.5)
- SAE J2012 “Diagnostic Trouble Code Definitions – Equivalent to ISO/DIS 15031-6”, December 2007, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.6)
- ISO 9141-2:1994 “Road Vehicles-Diagnostic Systems-CARB Requirements for Interchange of Digital Information”, February 1994, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.7)
- ISO 14230-4:2000 “Road Vehicles-Diagnostic Systems-KWP 2000 Requirements for Emission-related Systems”, June 2000, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.8)
- ISO 15765-4:2005 “Road vehicles-Diagnostics on Controller Area Network (CAN) - Part 4: Requirements for emissions-related systems”, January 2005, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.9)
- SAE J1939 “Recommended Practice for a Serial Control and Communications Vehicle Network” March 2009, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.1)
- SAE J1939/1 “Recommended Practice for Control and Communications Network for On-Highway Equipment”, September 01, 2000, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.2)

- SAE J1939/11 “Physical Layer, 250K bits/s, Twisted Shielded Pair”, September 18, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.3)
- SAE J1939/13 “Off-Board Diagnostic Connector”, March 11, 2004, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.4)
- SAE J1939/15 “Reduced Physical Layer, 250K bits/sec, UN-Shielded Twisted Pair (UTP)”, August 21, 2008, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.5)
- SAE J1939/21 “Data Link Layer”, December 22, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.6)
- SAE J1939/31 “Network Layer”, April 02, 2004, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.7)
- SAE J1939/71 “Vehicle Application Layer (Through February 2008)”, January 20, 2009, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.8)
- SAE J1939/73 “Application Layer - Diagnostics”, September 08, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.9)
- SAE J1939/81 “Network Management”, May 08, 2003, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.10)
- SAE J1939/84 “OBD Communications Compliance Test Cases for Heavy Duty Components and Vehicles”, December 2008, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.10.11)
- SAE J1699-3 “OBD II Compliance Test Cases”, May 2006, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.11)
- SAE J2534-1 “Recommended Practice for Pass-Thru Vehicle Programming”, December 2004, incorporated by reference in title 13, CCR, section 1968.2.1(g)(1.12)
- Attachment E: CAL ID and CVN Data of ARB Mail-Out #MSC 06-23, December 21, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(g)(4.7.4)
- Attachment A of ARB Mail-Out #95-20, May 22, 1995, incorporated by reference in title 13, CCR, section 1968.2.1(i)(2.2)
- Attachment A: Misfire Disablement and Detection Chart of ARB Mail-Out #06-23, December 21, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(i)(2.5.1)(C)
- Attachments F and G of ARB Mail-Out #MSC 06-23, December 21, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(i)(2.16)
- Attachment D: Rate Based Data of ARB Mail-Out #06-23, December 21, 2006, incorporated by reference in title 13, CCR, section 1968.2.1(j)(3.2)
- EMFAC2000 “Public Meeting to Consider Approval of Revisions to the State’s On-Road Motor Vehicle Emissions Inventory: Technical Support Document, Section 7.1, ‘Estimation of Average Mileage Accrual Rates from Smog Check Data,’” May 2000, incorporated by reference in title 13, CCR, section 1968.5.1(b)(3)(A)(iv)

- SAE J1979 “E/E Diagnostic Test Modes,” February 2012, incorporated by reference in title 13, CCR, section 1971.1.1(c) and (h)(1.4)
- SAE J1930 “Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms – Equivalent to ISO/TR 15031-2”, October 2008, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.1)
- SAE J1930-DA “Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms Web Tool Spreadsheet”, March 2012, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.1.1)
- SAE J1962 “Diagnostic Connector – Equivalent to ISO/DIS 15031-3:December 14, 2001”, April 2002, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.2)
- SAE J1978 “OBD II Scan Tool – Equivalent to ISO/DIS 15031-4:December 14, 2001”, April 2002, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.3)
- SAE J1979-DA, “Digital Annex of E/E Diagnostic Test Modes”, October 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.4.1)
- SAE J2012 “Diagnostic Trouble Code Definitions – Equivalent to ISO/DIS 15031-6”, December 2007, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.5)
- SAE J2012-DA “Digital Annex of Diagnostic Trouble Code Definitions and Failure Type Byte Definitions”, July 2010, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.5.1)
- ISO 15765-4 “Road Vehicles-Diagnostics Communication over Controller Area Network (CAN) - Part 4: Requirements for emission-related systems”, February 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.6)
- SAE J1939 “Recommended Practice for a Serial Control and Communications Vehicle Network”, April 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.1)
- SAE J1939/1 “On-Highway Equipment Control and Communication Network”, May 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.2)
- SAE J1939/11 “Physical Layer, 250K bits/s, Twisted Shielded Pair”, September 2006, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.3)
- SAE J1939/13 “Off-Board Diagnostic Connector”, October 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.4)
- SAE J1939/15 “Reduced Physical Layer, 250K bits/sec, UN-Shielded Twisted Pair (UTP)”, August 2008, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.5)
- SAE J1939/21 “Data Link Layer”, December 2010, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.6)
- SAE J1939/31 “Network Layer”, May 2010, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.7)
- SAE J1939/71 “Vehicle Application Layer (Through May 2010)”, March 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.8)

- SAE J1939/73 “Application Layer - Diagnostics”, February 2010, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.9)
- SAE J1939/81 “Network Management”, June 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.10)
- SAE J1939/84 “OBD Communications Compliance Test Cases for Heavy Duty Components and Vehicles”, December 2010, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.7.11)
- SAE J2403 “Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature,” February 2011, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.8)
- SAE J1699-3 “OBD II Compliance Test Cases”, December 2009, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.9)
- SAE J2534-1 “Recommended Practice for Pass-Thru Vehicle Programming”, December 2004, incorporated by reference in title 13, CCR, section 1971.1.1(h)(1.10)
- Attachment F of ARB Mail-Out #MSC 09-22, July 7, 2009, incorporated by reference in title 13, CCR, section 1971.1.1(h)(4.7.6)
- Attachments G and H of ARB Mail-Out #MSC 09-22, July 7, 2009, incorporated by reference in title 13, CCR, section 1971.1.1(j)(2.17)
- EMFAC2007, incorporated by reference in title 13, CCR, section 1971.5.1(b)(3)(A)(iv)

These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the CCR. In addition, some of the documents are copyrighted, and cannot be reprinted or distributed without violating the licensing agreements. The documents are lengthy and highly technical test methods and engineering documents that would add unnecessary additional volume to the regulation. Distribution to all recipients of the CCR is not needed because the interested audience for these documents is limited to the technical staff at a portion of reporting facilities, most of whom are already familiar with these methods and documents. Also, the incorporated documents were made available by CARB upon request during the rulemaking action and will continue to be available in the future. The documents are also available from college and public libraries or may be purchased directly from the publishers.

V. Summary of Comments and Agency Response

Comments were submitted in response to the proposed regulatory actions during the 45-day comment period, on the Board hearing day, and in response to three separate proposed 15-day notice amendments.

The following sections list and summarize each objection or recommendation regarding the proposed action to permanently adopt the Emergency Vehicle Emissions Regulations, together with an agency response providing an explanation of how the proposed action has been changed to accommodate the objection or recommendation or the reasons for making no changes. The comments have been grouped by topic wherever possible. Because this rulemaking action addresses only the Emergency Vehicle Emissions Regulations, only comments relevant to this action are summarized below.

Comments regarding the proposed amendments to the Omnibus regulation or the LCFS regulation are outside the scope of this action and are not summarized in this FSOR.

Nonetheless, for completeness and informational purposes, the tables in each section below identify all comments submitted that addressed any of the three regulatory items.

A. Comments Received During the 45-Day Comment Period

Written comments were received during the 45-day comment period in response to the initial public hearing notice released on September 23, 2025. Subsection A.1 shows the applicable comments that require a full response from the agency.

Subsection A.2 lists the 45-day commenters that submitted comments with regard to the Omnibus and the LCFS regulations. Since these two items were not considered at the March 2026 Board Hearing and are not being finalized in this rulemaking, the comments are outside the scope of the rulemaking, not summarized here, and no responses are provided to these comments at this time.

Subsection A.3 lists the 45-day commenters whose submissions were not related to the Emergency Vehicle Emissions Regulations, the Omnibus regulation, or the LCFS regulation. These comments are considered out-of-scope comments. Given that these comments were out-of-scope, the comments are not summarized and no responses are provided.

1. Applicable Comments

Applicable comments here refer to the 45-day comments applicable to the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. Table A-1 provides a listing of the commenters. The comments and the responses to these comments are shown below Table A-1.

Table A-1. Commenters that Submitted Written Comments on the Proposal to Permanently Adopt the Emergency Vehicle Emissions Regulations

Commenter	Date	Affiliation
Lance Tunick	September 29, 2025	Vehicle Services Consulting, Inc. (VSCI)
Virginia Van Kuran	September 29, 2025	Private Citizen
Jamie Dow	October 10, 2025	Private Citizen
Bea Portela	November 10, 2025	Center for Biological Diversity, Natural Resources Defense Council, Environmental Defense Fund, Clean Air Task Force, the Sierra Club, and Earthjustice
Sean Waters	November 10, 2025	Daimler Truck North America (DTNA)
Katrina Tomas	November 10, 2025	Coalition of public health, environmental justice, equity, community, business, science, and environmental organizations ¹⁷

¹⁷ The 28 signatories to this comment letter include Earthjustice, The Greenlining Institute, Natural Resources Defense Council, Evergreen Action, Coalition for Clean Air, Author of AB 1493 and SB 32 Former Assemblymember and State Senator, Center for Biological Diversity, Benicians for a Healthy and Safe Community, California Environmental Voters, The Climate Center, Breathe Southern California, Good Neighbor

Commenter	Date	Affiliation
Dave Robba	November 10, 2025	Ceres
Paul Miller	November 10, 2025	Northeast States for Coordinated Air Use Management (NESCAUM)
Timothy French	November 10, 2025	Truck and Engine Manufacturers Association (EMA)
Steve Douglas	November 10, 2025	Alliance for Automotive Innovation (AAI) ¹⁸
Mariela Ruacho	November 10, 2025	Health and medical organizations ¹⁹
David Pettit	November 10, 2025	Center for Biological Diversity, Natural Resources Defense Council, Environmental Defense Fund, Clean Air Task Force, the Sierra Club, and Earthjustice
Samantha Yeager	November 10, 2025	International Motors, LLC (International) ²⁰
David Reichmuth	November 10, 2025	Union of Concerned Scientists (UCS)

Heavy-Duty Related Comments

(a) CAA and Federal Waiver of Preemption

- Comment:** Nonetheless, CARB's Proposal seeks to implement certain "antecedent" HDOH standards and requirements to be implemented and enforced in parallel with the Omnibus standards, purportedly until the litigation CARB initiated challenging the CRA legislation is fully resolved. In the interim, CARB states that "both sets of standards [the Omnibus standards and the new mix of amended antecedent standards] will be present in the California Code of Regulations." (ISOR, Appendix G, p.11.) But, under the Clean Air Act (CAA), CARB cannot implement or enforce a new mix of previously-lapsed and amended

Steering Committee of Benicia, Los Angeles Cleantech Incubator, Regional Asthma Management & Prevention, Sierra Club California, Environmental Defense Fund, Climate Action California, League of Conservation Voters, Move LA, GreenLatinos, Union of Concerned Scientists, Plug In America, California Communities Against Toxics, SJV Medical Advocates for Healthy Air, Central California Asthma Collaborative, Center for Community Action and Environmental Justice, Communities for a Better Environment, Catholic Charities of Stockton. Thus, the responses to the comments of Coalition of public health, environmental justice, equity, community, business, science, and environmental organizations are responsive to the aforementioned signatories as well.

¹⁸ Alliance for Automotive Innovation submitted two separate comments on the proposed adoption of Emergency Vehicle Emissions Regulations and the proposed OBD amendments in the Omnibus regulation.

¹⁹ The 18 signatories to this comment letter include Alliance of Nurses for Healthy Environments, American Lung Association, Asthma Coalition of Los Angeles County, Breathe California of the Bay Area, Golden Gate and Central Coast, Breathe Southern California, CA Black Health Network, California Nurses for Environmental Health & Justice (CNEHJ), California Thoracic Society, Los Angeles Chapter of NAPNAP, NAPNAP Orange County Chapter, National Association of Pediatric Nurse Practitioners San Diego, Osteopathic Physicians & Surgeons of California, Physicians for Social Responsibility/Sacramento, Regional Asthma Management & Prevention (RAMP), San Bernardino County Medical Association, San Francisco Bay Physicians for Social Responsibility, Santa Clara County Medical Association, SF Bay Area NAPNAP Chapter. Thus, the responses to the comments of Health and medical organizations are responsive to the aforementioned signatories as well.

²⁰ International, an EMA member, submitted a comment letter that enclosed and incorporated by reference EMA's submission. Accordingly, the responses to EMA's comments also address International's comment as well.

“antecedent” HDOH emissions standards without first obtaining a new preemption waiver or a “within the scope” determination from EPA. And CARB is unlikely to obtain such a waiver any time soon. (EMA and International)

2. **Comment:** Significantly, in a comment letter dated September 27, 2025 sent to CARB’s Executive Officer, the EPA Assistant Administrator stated:

EPA expects that CARB will submit any presumptively final regulation resulting from the emergency rulemaking to the Agency **before adopting or attempting to enforce** any new or amended standard applicable to new motor vehicles or engines. Until and unless EPA waives preemption for any such new or amended standard under CAA section 209(b), **no such standard may have legal force or effect.**

Thus, **CARB may not continue to enforce or require certification of preexisting regulations** unless the standards therein were submitted to EPA and are the subject of an extant EPA waiver rule under CAA section 209(b). Further, **even if a preexisting regulation previously obtained a waiver, such waiver is no longer extant if the regulation became ineffective at any time, whether through the passage of time, repeal, or by any other means.**

If CARB wishes to adopt new or amended standards in this rulemaking that differ in any way from provisions already subject to an extant preemption waiver, **CARB must submit a new waiver request and receive a waiver from EPA under CAA section 209(b) before CARB can adopt or attempt to enforce any such standard. This includes adding standards in any new sections of the California Code of Regulations, or combining standards in regulations that were previously separate, or applying standards to different model years. Any such regulation cannot be finalized or enforced,** including by requiring certification, until after submission to and review by EPA. (Emphasis added.)

The foregoing makes it clear that CARB’s Proposal is preempted and unlawful. The “antecedent” standards cannot be resurrected because they lapsed years ago and would now be applied in different ways to different model years, which will require a new preemption waiver that CARB knows it likely cannot obtain. As a result, the Proposal cannot be lawfully adopted or enforced. (EMA and International)

3. **Comment:** CARB’s Proposal also is in conflict with the CAA. Specifically, the Proposal conflicts with the CAA because: (i) CARB needs to obtain a new preemption waiver from U.S. EPA **before** adopting or attempting to enforce any new emission standards for new HDOH trucks and engines, and (ii) CARB also needs to provide at least four years of lead time **before** attempting to enforce those revised emission standards. The Proposal fails to satisfy both of those federal mandates. (EMA and International)
4. **Comment:** CARB is attempting to circumvent the CRA legislation by promulgating a new, amended set of previously-lapsed emission standards combining parts of earlier HDOH regulations for which CARB had received now-superseded preemption waivers. But the result of CARB’s Proposal would be the immediate implementation and enforcement of a new proposed set of standards that has no operative preemption waiver, which violates section 209(a) of the CAA. 42 U.S.C. §7543(a) (“[N]o State ... shall adopt or attempt to enforce any standard relating to the control of emissions...or require certification ... as condition precedent to the initial retail sale.”). As a consequence, this rulemaking is

preempted because it attempts to adopt and enforce newly revised HDOH standards without first having a new EPA preemption waiver in place or obtaining a determination from EPA that the new set of emission standards is “within the scope” of a previously granted waiver. (EMA and International)

5. **Comment:** In light of this conflict, CARB attempts to rely on prior waivers from EPA as justification for adopting and immediately enforcing the new amended mix of lapsed emission standards. But given the intervening regulatory changes and the proposed inclusion of the “antecedent” standards as entirely new sections and new language in the California Code of Regulations (CCR), reliance on since-superseded waivers is both improper and insufficient. CARB’s characterization of those standards as “earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions” (CARB Notice, at 2-3) is inaccurate and does not relieve CARB of the obligation to obtain a new CAA waiver or “within the scope” determination. (EMA and International)
6. **Comment:** Describing new regulatory sections and amended language as “earlier-adopted standards” does not reflect the reality that regulated parties are facing. Until now, the proposed new set of revised antecedent standards was not contained in the CCR, and regulated parties had no way to ascertain that those HDOH emissions standards would apply to 2026 MY products or to future model years. From that perspective as well, implementation of these so-called antecedent standards is a clear “adoption” and attempted enforcement of a new set of emissions standards for new model years that requires a new preemption waiver from EPA. (EMA and International)
7. **Comment:** Moreover, the new sections and amended regulatory language presented in Appendix A-1-2 to the Proposed Regulation are not a replica of a prior rule that was subject to a prior EPA waiver. Instead, the Proposal seeks to codify a new mix of emissions standards and requirements made up from various regulatory provisions covered by separate prior waivers granted over a twelve-year period. For example, the new replacement standards include a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and 2013 on-board diagnostic standards (see Notice at 5 n.7, 9)—all applied immediately to 2026 MY HDOH vehicles and engines. No such blended HDOH vehicle standards has ever existed before. Consequently, CARB is proposing to enforce a new, amended set of mixed emissions standards, which requires a new EPA waiver or authorization under CAA section 209(b). (EMA and International)
8. **Comment:** Importantly, the express preemption at issue not only precludes any attempt by CARB to **enforce** regulations before receiving a preemption waiver from EPA, it also preempts CARB’s **adopting** regulations in the absence of a preemption waiver. While heretofore CARB’s practice of adopting HDOH regulations before seeking a preemption waiver did not draw legal challenges – in part because CARB’s HDOH regulations largely mirrored EPA’s – that is no longer the case, such that CARB’s past practice of adopting regulations prior to seeking preemption waivers can no longer stand. Past habitual violations of CAA section 209(a) are not a valid justification for continuing and future violations of the CAA’s preemption provisions. (EMA and International)
9. **Comment:** Significantly, the United States and EPA have realized how abusive CARB’s preemption waiver practice has become and are turning to the courts to compel the required step of seeking a waiver before adopting the regulation at issue. For example, in a brief filed recently with the United States District Court for the Eastern District of California, the United States explained how and why the CAA requires CARB to obtain a preemption

waiver not only before enforcing the HDOH regulations, but also before adopting them. That thorough explanation is repeated below.

Finding it more convenient to beg forgiveness than ask permission, California thinks it can adopt emissions standards without a waiver, so long as the State obtains a waiver before enforcing them. Not so. The Clean Air Act unequivocally provides that no state shall “adopt or attempt to enforce” emissions standards for new motor vehicles. 42 U.S.C. § 7543(a). The use of the disjunctive “or” in section 209(a) means that these prohibitions on adopting and enforcing are independent and discrete from each other unless statutory context demands otherwise. See *Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024). Nothing in section 209 or elsewhere in the Clean Air Act supports an argument that adopting preempted emissions standards becomes unlawful only if a state attempts to enforce them without a preemption waiver. And where the text is clear, the interpretive inquiry ends. *Nat’l Ass’n of Mfrs. v. Dep’t of Def.*, 583 U.S. 109, 127 (2018).

Section 209(b)’s preemption waiver provision supports the plain text of section 209(a). Section 209(b) provides that EPA shall waive section 209(a) preemption for California but only “if the State . . . standards will be, in the aggregate, at least as protective as [EPA’s standards].” 42 U.S.C. § 7543(b). Reference to state standards that “will be . . . at least as protective” indicates that the standards are not yet adopted. *Id.* (emphasis added). The future tense in section 209(b) is consistent with section 209(a)’s clear prohibition on adopting standards without a waiver.

Beyond the plain text prohibiting California from adopting [HDOH regulations] before obtaining a waiver, “the structure of the statute as a whole, including its object and policy,” show that the [HDOH regulation] was unlawful ab initio because it lacks a preemption waiver. *Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1168 (9th Cir. 2007).

Congress knows how to authorize states to adopt regulations and seek EPA approval later. For the Clean Air Act Title I stationary source program, for example, Congress directed states to “adopt and submit” state implementation plans for EPA review to achieve applicable air quality standards. 42 U.S.C. § 7410(a). The adopt first, seek approval later procedure makes sense for Title I’s cooperative federalism model where the states are charged with the responsibility to implement, maintain, and enforce federal air quality standards. *Ohio v. EPA*, 603 U.S. 279, 283 (2024).

In contrast, the Title II prohibition on adopting new motor vehicle emissions standards without an EPA preemption waiver reflects Congress’s choice of uniformity absent a preemption waiver. 42 U.S.C. § 7543(a)-(b); *Motor Vehicle Mfrs.*, 17 F.3d at 526. For a program that requires national uniformity absent a waiver, it makes sense for California to seek a waiver before formally adopting emission standards. And Congress’s policy choice is mirrored in section 209(a)’s clear text requiring an EPA waiver before California can adopt new motor vehicle emissions standards. 42 U.S.C. § 7543(a)-(b).

As to policy, Congress recognized that automotive [and truck] markets require sufficient lead time to adjust to changes in heavy-duty emissions standards

for purposes of stability. See, e.g., 42 U.S.C. § 7521(a)(1)(C) (requiring four-year lead time). The fundamental restructuring of our heavy-duty trucking industry to achieve the electric-vehicle mandate that [CARB's HDOH regulations] seek would require considerable lead time. See Manufacturer Plaintiffs' Opposition to Defendants' Motion to Dismiss Daimler Truck North America et al.'s Complaint. (Mfrs.' Opp.) at 23-24 (explaining that the manufacturers must take steps now to achieve the electric-vehicle mandate within a decade). Congress's express prohibition on adopt first, waiver later in section 209(a) is consistent with this policy of promoting market stability in the automotive [and HDOH truck] industry.

Decisions that have upheld the adopt first, waiver later procedure cannot be squared with the text and structure of section 209. *Central Valley Chrysler-Jeep v. Goldstene* mistakenly concluded that section 209(b)'s reference to "any state which has adopted standards" allowed adoption before waiver. 563 F. Supp. 2d 1158, 1163 (E.D. Cal. 2008). But the reference to "any State which has adopted standards" identifies which states can seek a waiver—namely California, which is the only state that "had adopted standards" as of March 30, 1966. 42 U.S.C. § 7543(b). It does not speak to the standards that such a state may adopt after section 209(a)'s enactment.

The Second Circuit's decision in *Motor Vehicle Manufacturers Association of U.S., Inc. v. New York State Department of Environmental Conservation* 17 F.3d 521, 534 (2d Cir. 1994), is equally flawed. That court upheld New York's adoption of California's emissions standards before California obtained a preemption waiver on the theory that "waiver is a precondition to enforcement" rather than adoption and that "California's waiver applications are almost always approved." *Id.* Finding that the waiver is a limitation only on enforcement is contrary to the clear text and structure of section 209. And it simply is not true that California "almost always" gets waivers for its new motor vehicle emissions standards. Indeed, EPA denied the very first greenhouse gas-related waiver California requested, and EPA later rescinded such a waiver granted by an intervening administration. See *Diamond Alternative Energy*, 145 S. Ct. at 2130-31. Congress itself recently disapproved California's preemption waivers for Clean Trucks and Omnibus. See Pub. L. No. 119-15, 139 Stat. 65 (Clean Trucks); Pub. L. No. 119-17, 139 Stat. 67 (Omnibus).

In the past, EPA has allowed California to adopt new motor vehicle emissions standards and then seek a waiver later. See 88 Fed. Reg. 20688 (Apr. 6, 2023). But after *Loper Bright Enterprises v. Raimondo*, what matters is the best interpretation of the statute, not what EPA has done (or said) before. 603 U.S. 369, 412-13 (2024). The best interpretation of section 209 is what its plain text requires: California may not adopt new motor vehicle emissions standards without obtaining an EPA preemption waiver first. 42 U.S.C. § 7543(a).

Brief of the United States in Opposition to CARB's Motion to Dismiss, pp. 7-10; Case No. 2:25-cv-02255 (E.D. Cal). (EMA and International)

- 10. Comment:** In short, CARB's stitched together scheme requires a new waiver from EPA, which it cannot obtain under the Clean Air Act's requirements for granting such waiver. (International)
- 11. Comment:** CARB attempts to adopt the Proposed Action to "clarify and ensure that new vehicles and engines can continue to be sold in California." CARB, *Notice of Public Hearing to Consider Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations*, at 7 (Sept. 23, 2025) ("Notice"). Such clarification is not necessary and, as explained throughout this letter, not legal. While the CRA resolution overturning the waiver for the Omnibus regulation ("CRA Resolution") effectively preempted CARB's HDOH standards, vehicles still cannot be sold in the State of California without a valid certificate of conformity from EPA – just like in the other 49 states governed by the Clean Air Act. See 42 U.S.C. § 7522(a)(1) (precluding sale of new motor vehicles and engines "unless such vehicle or engine is covered by a certificate of conformity"). Because all new HDOH vehicles and engines need an EPA certification, and because EPA HDOH standards are more stringent than the Old CARB Standards, there are more protective federal emissions standards that "remain operative" in California. Notice at 7. CARB need not revive the Old CARB Standards to "maintain a stable vehicle market." CARB, Appendix G: Supplement to Initial Statement of Reasons – Proposed Emergency Vehicle Emissions Regulations, at 5 (Sept. 23, 2025) ("Appendix G"). CARB simply needs to comply with the Clean Air Act. (International)
- 12. Comment:** Federal law prohibits CARB from adopting or attempting to enforce emissions standards without a waiver of preemption from the U.S. Environmental Protection Agency (EPA), 42 U.S.C. §§ 7543(a)-(b), or without notice to and a determination from EPA that the emissions standards are "within the scope" of a previously granted waiver. This rulemaking is preempted because CARB does not have an applicable waiver or a within-the-scope determination. (DTNA)
- 13. Comment:** The Emergency Regulation creates new emissions standards requiring a federal preemption waiver. CARB cannot rely on previous EPA waivers for authorization to adopt or enforce new standards. In its Emergency Regulation, CARB purports to rely on previous waivers from EPA to adopt and enforce new emissions standards. But because CARB added these standards as new sections in the California Code of Regulations, changed the language of the emissions standards, and merged the old standards together in a new way, it cannot rely on those prior waivers. (DTNA)
- 14. Comment:** Without analysis, CARB asserts that the Emergency Regulation are "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions." Notice at 2-3. But this ignores that the standards as they are stitched together in the Emergency Rulemaking did not exist in the California Code of Regulations prior to September 22, 2025. Regulated parties had no notice or reason to think these emissions standards applied to current and future model years prior to CARB's announcement on September 15, 2025 or that these standards would be pulled together in this new way and with the new language added. This is therefore a new rule and needs a new waiver. (DTNA)
- 15. Comment:** This proposal is not a workable standard that manufacturers can use. Combining elements from various regulatory programs spanning the last two decades and applying them as certification requirements for new engines presents significant practical and legal challenges, which is another reason that this action requires new authorization

from EPA under Section 209(b). EPA has affirmed the view that CARB must submit a new waiver request for any new or amended standards in the rulemaking. Environmental Protection Agency Comment on CARB Emergency Amendment and Adoption of Vehicle Emissions Regulation (Sept. 27, 2025). (DTNA)

- 16. Comment:** The emissions standards proposed in the Emergency Regulation are not “within the scope” of the prior waivers. EPA will only consider CARB’s amendments to be within the scope of a previously granted waiver if the amended regulations do not undermine California’s determination that its standards are as protective as applicable Federal standards, if they do not impact consistency with section 202(a), and if they raise no new issues that would affect EPA’s previous waiver decision. CARB cannot meet these requirements for the Emergency Regulation, and it is therefore not within the scope of prior waivers (even if it were not a new standard). As described in more detail below, CARB’s new regulations are less stringent than the federal standards and they are inconsistent with section 202(a) of the Clean Air Act, including the lead-time requirements. (DTNA)
- 17. Comment:** EPA has also made it clear that regulatory overhauls raise “new issues” affecting prior waiver decisions and require analysis under the full waiver criteria. Since CARB received its prior waivers for its now-eliminated standards, EPA has issued new federal rules under the Clean Trucks Plan, including a rule that tightened criteria pollutant standards for heavy-duty trucks. See *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards*, 88 Fed. Reg. 4296 (Jan. 24, 2023). And CARB is currently undertaking separate amendments to harmonize its standard with the federal standards. These all raise new issues that would affect EPA’s previous waiver decision. (DTNA)
- 18. Comment:** In addition, new issues can preclude a within-the-scope determination if there are a large number of changes in CARB’s proposed rule. For instance, CARB amended its on-board diagnostic regulations multiple times and asked EPA to issue a finding that the amendments were within the scope of its prior waiver grant. California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements and Enforcement for 2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles and Engines; Notice of Decision, 81 Fed. Reg. 78143 (Nov. 7, 2016). EPA refused to conduct a within-the-scope analysis of these amendments. Because “of the significant evolution of CARB’s [on-board diagnostic] regulatory program” and “the sheer number of amendments—some in part designed to address a variety of manufacturers’ concerns with the technological feasibility of complying with previous versions of the regulations,” EPA assessed the amendments under the full waiver criteria. *Id.* Here, CARB seeks to adopt and enforce a patchwork of standards including a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and a 2013 on-board diagnostic standard. CARB’s Emergency Regulation is a massive overhaul that creates an entirely new set of alternative emissions standards, and it is not within the scope of CARB’s prior waivers. (DTNA)
- 19. Comment:** And CARB has adopted standards that are significantly less stringent than the federal standards. CARB’s new section 1956.8.1 in title 13 of the California Code of Regulations adopts CO₂ and NO_x standards that are less stringent than EPA’s corollary standards at 40 C.F.R. § 1036 that will take effect in MY2027. CARB itself recognizes this point in Omnibus amendments proposed after this rulemaking commenced. For these reasons, the new rule cannot satisfy Clean Air Act waiver criteria. (DTNA)

- 20. Comment:** All of this makes clear the true purpose of the proposed rule: this rulemaking is CARB's attempt to enforce its preempted Omnibus emissions standards and an attempt to adopt new heavy-duty emissions standards to save CARB's certification program from preemption. (DTNA)
- 21. Comment:** The Emergency Regulation is an impermissible attempt to sidestep federal preemption of CARB's certification program. Section 209(a) of the Clean Air Act also provides that "[n]o State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment." Absent a waiver of federal preemption from EPA, California cannot require certification or any other conditions precedent to initial retail sale. (DTNA)
- 22. Comment:** As CARB's emergency notice acknowledges, plaintiffs in *Daimler Truck North America LLC v. CARB*, No. 2:25-cv-02255-DC (E.D. Cal), are seeking clarity in federal court on whether CARB can require certification where the state has no authority for any emissions standards and whether CARB can attempt to enforce these rules while CARB challenges the legality of the statutory revocation of their waivers in another legal action. All regulations that could be the basis of CARB's certification authority for heavy- and medium-duty vehicles in model year 2026 have lost (or do not have) federal preemption waivers, either because the waivers for the regulations were directly revoked (ACT, Omnibus), CARB failed to apply for the waiver (California greenhouse gas requirements), or the regulation was modified by a program that lost its waiver (OBD, evaporative emissions). As such, CARB cannot require certification of heavy-duty vehicles unless and until EPA grants a waiver for CARB's "condition precedent" requirements or CARB secures a new waiver for emissions standards applicable to model year 2026 and subsequent heavy-duty vehicles. (DTNA)
- 23. Comment:** CARB seeks to end-run plaintiffs' claims in federal litigation by starting this "emergency rulemaking" purporting to "revive" old emissions standards and relying on old waivers for those outdated standards. As described above, the result is an entirely new rule for heavy-duty cobbled together from various state programs with no relationship to the current applicable technology and no synergy in how the standards will operate together to create a standard that actually works in practice. And this new rule was proposed without notice to and the appropriate waivers from U.S. EPA. (DTNA)
- 24. Comment:** All of this underscores the true nature of what CARB is trying to do: argue that it has some waiver in place for heavy-duty vehicles and engines so that it can require manufacturers to pay for certification and submit to its jurisdiction. While the Emergency Regulation may suit CARB's needs as a litigation tactic, it is completely unworkable as a set of actual standards that could be implemented for vehicles and engines to be sold in California and is preemption. It therefore cannot save their certification authority. (DTNA)
- 25. Comment:** CARB's proposed adoption of the Emergency Regulation also violates the Clean Air Act. The clear statutory language of the Clean Air Act requires CARB to seek a waiver of preemption from EPA **prior to** adoption as a state law.

Section 209 requires California to have a waiver prior to the adoption of a mobile source rule, not after. Section 209(a) is a prohibition, providing that "[n]o State ... shall adopt or attempt to enforce any standard relating to the control of emissions" from new vehicles or engines. 42 U.S.C. § 7543(a). Section 209(b) provides for an exception to Section 209(a)

and allows EPA to “waive application of this section,” provided that the preconditions of Section 209(b) have been met. 42 U.S.C. § 7543(b). (DTNA)

Agency Response to Comments A.1 through A.25: No changes were made in response to these comments.

The proposed regulatory provisions are earlier versions of sections of the CCR—specifically the versions for which U.S. EPA waived CAA preemption that are unaffected by the 2025 congressional resolutions.²¹ Commenters do not dispute that these are earlier versions of sections of the CCR or that U.S. EPA waived preemption for these sections. Commenters instead claim that those waivers no longer have legal effect, but they identify no credible basis for this assertion. Commenters primarily rely on comments submitted by U.S. EPA during earlier, emergency rulemakings. But U.S. EPA and the United States have now abandoned—both in litigation and by their actions—the positions commenters rely upon here.²² Moreover, neither U.S. EPA nor the commenters here identified any legal authority—i.e., CAA text or legal precedent—that supports the proposition that waivers expire, lapse, or have implicit termination conditions. Nor can commenters refute the fact that the requirements now proposed applied to all subsequent model years at the time the waivers authorizing enforcement were granted. The relevant waivers had no end dates when granted and authorized enforcement for the very model years for which commenters now (erroneously) claim there is no waiver.

Commenters also complain that the recodified regulations are a mixture of regulatory sections from different years covered by different waivers. But that is always true of CARB’s program because each CARB rulemaking amends or adds only certain provisions and U.S. EPA similarly iteratively waives preemption. Thus, for example, the fact that CARB amended its diesel-engine standards at a different time than its gasoline-engine standards, and that U.S. EPA waived preemption for those standards at different times, is neither unusual nor problematic. Commenters arguments about the “mix” of standards do not change the fact that U.S. EPA waived preemption for each of the provisions in this rulemaking, with later waivers issuing against the iterative backdrop of earlier ones. Nor do commenters’ claims that this “mixture” is unworkable hold water. Manufacturers previously complied with these provisions (including provisions or amendments promulgated in different years). In addition, following the October 2, 2025 effective date of the Emergency Regulations (which this rulemaking makes permanent), several manufacturers certified their 2026 MY engines and vehicles to these recodified standards.²³

Commenters also seek to establish that U.S. EPA could not grant a waiver, today, for these requirements. This is irrelevant because U.S. EPA already granted the applicable waivers. Further, whether commenters believe a federal agency could take a particular action in a subsequent waiver proceeding is outside the scope of this rulemaking proceeding. Commenters do not question CARB’s state law authority to promulgate these regulations, which is the subject of this rulemaking. Finally, commenters claim that CARB cannot

²¹ Commenters frequently refer to these resolutions as “CRA resolutions.” CARB disputes that the resolutions were enacted under the Congressional Review Act.

²² *Daimler Truck North America et al. v. CARB et al.*, Defendants’ Reply in Support of Their Cross-Motion for Summary Judgment, pp. 12-14, Case No. 2:25-cv-02255-DC-AC (E.D.Cal.) (citing filings by U.S. EPA in *California v. U.S. EPA*, Case No. 1:26-cv-02185-BAH (D.D.C.)).

²³ California Air Resources Board. [New Vehicle and Engine Certification: Executive Orders](#).

“adopt” new motor vehicle emission standards without first obtaining a waiver from U.S. EPA. These comments, too, are irrelevant because U.S. EPA has already waived preemption for these requirements. However, even if that were not the case, CARB disagrees with commenters interpretation of Section 209(a), as CARB has explained:

The word “adopt” means “[t]o accept, consent to, *and put into effective operation.*” Black’s Law Dictionary (4th ed. 1968) (emphasis added). Accordingly, for nearly 60 years, [U.S.] EPA has understood the waiver provision to prevent California from putting its new motor vehicle emission regulations into effective operation absent a waiver, not from promulgating regulations or codifying them into the California Code of Regulations (so that they would be ready to take effect upon waiver of preemption). *E.g.*, 33 Fed. Reg. 10,160 (July 16, 1968) (granting waiver for already promulgated and codified regulations); 34 Fed. Reg. 7348 (May 6, 1969) (same).

This understanding also comports with the definition of “emission standard” as “a requirement *established* by the State” (past tense). 42 U.S.C. § 7602(k) (emphasis added). California cannot make the requisite determination that its “State standards will be, in the aggregate, at least as protective” as EPA’s, 42 U.S.C. § 7543(b)(1), before standards exist—i.e., before the State has “established” its requirements. U.S. EPA has thus properly and “consistently interpreted sections 209(a) and (b) to provide that the waiver process commences after state regulatory adoption.” 59 Fed. Reg. 36,969, 36,981 (July 20, 1994). And, far from disturbing U.S. EPA’s interpretation, Congress “expressed general approval of [EPA’s] subsection (b) decisions,” *Motor & Equip. Mfrs. Ass’n v. EPA*, 627 F.2d 1095, 1114 (D.C. Cir. 1979) (cleaned up), ratifying it by amending *other* text of Section 209, *Jackson v. Modly*, 949 F.3d 763, 773 (D.C. Cir. 2020); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran (Curran)*, 456 U.S. 353, 382 n.66 (1982).

Courts have also shared EPA’s (and California’s) longtime understanding, characterizing a waiver as allowing California to “place standards into effect,” not as a requirement for promulgating them in the first place. *Ford Motor Co. v. EPA*, 606 F.2d 1293, 1298 (D.C. Cir. 1979); see *Motor Vehicle Mfrs. Ass’n of U.S. v. N.Y. State Dep’t of Env’t. Conservation*, 17 F.3d 521, 534 (2d Cir. 1994) (rejecting contrary argument); *Cent. Valley Chrysler*, 563 F. Supp. 2d at 1164 (Section 209(b) “allows California to *adopt* automobile emissions regulations and submit same to U.S. EPA for their consideration.”). Moreover, even if the Act’s text and the unbroken history of its application did not wholly undermine the United States’ position here, the Constitution forecloses it. Congress cannot constitutionally “prohibit[] a State from enacting new laws,” any more than it can “compel a State to enact legislation.” *Murphy*, 584 U.S. at 474. It would thus be a “mistake” to read Section 209(a) as preventing States from promulgating regulations—even if the statutory “language might appear to” do so. *Id.* at 478.

With regard to claims that the proposal is less stringent than U.S. EPA’s standards at Title 40, CFR, section 1036 that will take effect in MY 2027, CARB notes that U.S. EPA has rescinded its greenhouse gas (GHG) Endangerment finding and rescinded all heavy-duty GHG standards.²⁴ U.S. EPA has also proposed to delay its heavy-duty emission control

²⁴ U.S. EPA. [Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act](#), Final Rule, 91 Fed. Reg. 7686, February 18, 2026.

requirements²⁵ and its light-duty emission standards,²⁶ stated it intends to reconsider the light-duty standards,²⁷ and the U.S. EPA Administrator has made public statements indicating an intention to roll back the Clean Trucks Plan that impacts 2027 and subsequent MY heavy-duty engines.²⁸ Federal standards may not be reasonably relied upon to reduce emissions. Therefore, no action was taken in response to these comments.

With regard to CAA lead time, CARB disagrees that CAA section 202(a)(3)(C)'s four-year lead time period applies to CARB. Instead, that directive, added in the 1977 CAA amendments, applies to U.S. EPA regarding its adoption of emission standards. At the same time, Congress amended CAA section 209 "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare."²⁹

(b) Lead Time and Technical Feasibility

- 26. Comment:** Among other things, CAA sections 202 and 209 require CARB to provide at least four years of lead time before enforcing any new set of HDOH emission standards. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(3)(C). In this case, however, CARB is providing no lead time whatsoever. CARB is maintaining that the amended antecedent standards became effective on September 22nd, "upon filing with OAL." In addition to manufacturers' product design and development timelines for new HDOH trucks and engines (the core issue warranting the CAA-mandated lead time), emissions and on-board diagnostic (OBD) testing for any given model year of trucks and engines takes months—if not more than a year. And, with respect to MY 2026, manufacturers have already taken new truck orders and mapped out their production schedules, which have in fact already begun. Thus, there is no real possibility for manufacturers to comply immediately with a revised package of standards that supposedly took effect two months ago. CARB's violation of the CAA's lead time requirement conflicts with federal law. (EMA and International)
- 27. Comment:** CARB also has not shown that its amended antecedent standards are technologically feasible, which also is inconsistent with CAA sections 202 and 209. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a). For example, CARB's new mix of amended regulatory provisions excludes several changes to OBD standards that were included in the Omnibus rulemaking package to ensure technical feasibility, such as modifications to certain test-out criteria and changes to thresholds at which failures must be reported and addressed. See CARB, Initial Statement of Reasons, Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (June 23, 2020) at III 10. (EMA and International)
- 28. Comment:** EPA will only consider CARB's amendments to previously approved standards to be "within the scope of a previously granted waiver" if they do not undermine the

²⁵ U.S. EPA. *Amendments and Nonconformance Penalties for Model Year 2027 and Later Heavy-Duty Highway Engines and Amendments to Inducement Provisions for SCR-Equipped Diesel Engines*, Proposed Rule, 91 Fed. Reg. 43,154, July 14, 2026.

²⁶ U.S. EPA. *Revision of Tier 4 Criteria Pollutant Standards, Part 1: Amendments to Phase-In Schedule for Light-Duty and Medium-Duty Vehicles*, Proposed Rule, 91 Fed. Reg. 28,463, May 18, 2026.

²⁷ *Id.*

²⁸ U.S. EPA Press Office. *EPA Announces Action to Implement POTUS's Termination of Biden-Harris Electric Vehicle Mandate*. March 12, 2025

²⁹ H.R. Rep. No. 294, 95th Cong., 1st Sess. 301 (1977), reprinted in 4 Leg.Hist., at 2768.

determination that California's standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards, do not create any inconsistency with section 202(a) of the CAA, and do not raise any new issues affecting EPA's previous waiver decision. "California State Motor Vehicle Pollution Control Standards; Within the Scope Determination and Waiver of Preemption Decision for Amendments to California's Zero-Emission Vehicle (ZEV) Standards," 76 Fed. Reg. 61095 (Oct. 3, 2011). Here, CARB's new provisions are less stringent than the corollary federal standards as of MY 2027, are inconsistent with the lead time requirements of CAA section 202(a) of the CAA, and are foreclosed in any event by the CRA legislation. (EMA and International)

- 29. Comment:** To adopt or enforce these emissions standards, CARB needs a new waiver of federal preemption or a within-the-scope determination as to an existing waiver. But these emissions standards cannot satisfy the requirements of Section 209 of the Clean Air Act regardless. Sections 202 and 209 of the Act require CARB to provide lead time for any heavy-duty emissions standard, meaning that CARB cannot meet the requisite lead-time requirements for the next several model years' certifications—including the MY2026 certifications underway now. Putting aside development timelines (which is the core purpose of statutory lead time), emissions and on-board diagnostic testing for any given model year takes months—if not more than a year. CARB is well aware that manufacturers cannot actually use this proposal without months of advance preparation. (DTNA)
- 30. Comment:** CARB will also not be able to show that its standards are technologically feasible and consistent with federal requirements and, therefore, consistent with Sections 202 and 209 of the Clean Air Act. For example, CARB's new regulation excludes several flexibilities added to on-board diagnostic standards in the Omnibus rulemaking package to ensure technical feasibility, including changes to certain test-out criteria and failure adoption thresholds. (DTNA)
- 31. Comment:** And EPA cannot grant CARB a waiver because CARB's proposed regulations cannot meet the Clean Air Act requirements for lead time. (DTNA)
- 32. Comment:** As Daimler Truck North America ("Daimler") correctly points out in its comments on the Emergency Regulations, CARB's Proposed Action is not technologically feasible, as it omits important flexibilities added to on-board diagnostic standards in the Omnibus regulation, including changes to certain test-out criteria and failure adoption thresholds. See CARB, Initial Statement of Reasons, Proposed Heavy Duty Engine and Vehicle Omnibus Regulation and Associated Amendments, at III 10 (June 23, 2020). (International)

Agency Response to Comments A.26 through A.32: No changes were made in response to these comments.

The Emergency Vehicle Emissions Regulations that the Board approved on March 26, 2026, already have extant federal preemption waivers. The comments that the regulations do not satisfy the requirements for U.S. EPA to grant such waivers are irrelevant to this rulemaking, and do not require a response; however, see response to comments in subsection A.1.(a), incorporated by reference here.

Although some comments are framed solely as relating to CAA compliance, certain CARB regulations are required to be technologically feasible under state law (and lead time can impact technological feasibility). See, e.g., Health and Safety Code section 43013. In an effort to read the comments as broadly as possible and be as responsive as possible, CARB is providing the following response.

These regulations do not accelerate the applicability of any emission standard, nor do they impose new emission standards or requirements. Rather, these are emission standards that were previously promulgated as applicable to all subsequent model years. The standards and compliance pathways available to manufacturers had already been understood for years; and manufacturers had already certified engines and vehicles meeting these standards and requirements. As a result, CARB does not agree that manufacturers would need additional lead time to comply with the proposed standards.

CARB already demonstrated the feasibility of these regulations when CARB first adopted them. CARB incorporated those rulemaking files into this rulemaking (see Chapter IV of Appendix G to the ISOR).

The purpose of this rulemaking is to clarify that pre-Omnibus or LEV III standards, including their associated OBD and other requirements, remain operative in light of the uncertainty created by the federal government. Several engine and vehicle manufacturers have already certified engines and vehicles via the Emergency Vehicle Emissions Regulations for the 2026 MY. Therefore, CARB disagrees with the claims that these regulations are not feasible, or need additional lead time to be technologically feasible.

Manufacturers also have the option to certify their products to the Omnibus or ACC II standards, including the associated OBD and other requirements, on a voluntary basis. Specifically, the OBD flexibilities mentioned were added in Omnibus because of the lowered emission standards in that rulemaking; this does not make the earlier version infeasible because, as demonstrated by the successful years of implementation prior to the Omnibus rulemaking. Accordingly, the proposed emergency regulations simply preserve the option to certify to the preexisting standards and do not restrict manufacturers from certifying to the newer standards should they choose so, to resolve any potential feasibility issues that particular manufacturer may predict for their specific product offering. CARB encourages manufacturers to contact technical or certification staff with any particular concerns they may encounter with a particular product.

(c) Engine and Vehicle Certification Test Procedures

- 33. Comment:** EPA requires that California's test procedures remain consistent with federal test procedures, such that manufacturers may meet both California and federal requirements with the same test vehicle. 44 Fed Reg. 61096 (Oct. 23, 1979); see also 43 Fed. Reg 32183. CARB, however, is proposing test procedures that differ significantly from the EPA requirements adopted since these procedures were originally developed and enforced under previous CARB regulations. In fact, some of CARB's proposed scheme derives from California test procedures last amended in 2014, predating recent EPA test requirements for aging to determine and validate Deterioration Factors. See 40 CFR 1036.245 and 40 CFR 1036.246. As such, CARB's proposed test procedures cannot be found consistent with federal procedures and manufacturers cannot be expected to satisfy both sets of requirements with the same test vehicle. (International)
- 34. Comment:** EPA has also held that if California's test procedures differ from those required by EPA, this can be an impermissible violation of section 202(a) of the Clean Air Act. EPA determined that "if the Federal and California test procedures impose inconsistent certification requirements, the California test procedures are deemed not to be consistent with Section 202(a)." EPA also provided that California's test procedures can be more stringent than EPA's, but that manufacturers must be able to meet federal and California requirements with the same test vehicle. With these new proposed requirements, CARB

creates new test procedures, meaning that test procedures that may have originally been consistent with EPA's, no longer are. For example, EPA's new requirements for aging to determine and validate Deterioration Factors, 40 C.F.R. § 1036.245 and 40 C.F.R. § 1036.246, differ significantly from the test procedures in the Emergency Regulation, which adopts Test Procedures last amended October 21, 2014 predating EPA's changed Test Procedures and could not reasonably be performed on the test vehicle. Accordingly, CARB's proposed test procedures cannot meet the requirements of Section 202 of the Clean Air Act. (DTNA)

- 35. Comment:** As written, the Emergency Rulemaking is not functional. For example, as part of the Emergency Rulemaking, California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy-Duty Vehicles incorporates by reference sections of the Code of Federal Regulations that are no longer valid or in force. These sections have been replaced by subsequent federal greenhouse gas regulations.

In addition, CARB's regulation requires manufacturers "submit to CARB all data that the manufacturer submitted to the U.S. Environmental Protection Agency in accordance with the reporting requirements as required under 40 C.F.R. § 1037.205, § 1037.250 and § 1037.730, for demonstrating compliance with the 2014 MY National Heavy-Duty Engine and Vehicle Greenhouse Gas Program and the U.S. Environmental Protection Agency determination of compliance." Manufacturers no longer report data that demonstrates compliance with the 2014 MY National Heavy-Duty Engine and Vehicle Greenhouse Gas Program to the U.S. EPA. The Emergency Rulemaking relies on outdated and defunct codes and regulations, and implementation is not functional or practical. (DTNA)

- 36. Comment:** CARB's test procedures require that manufacturers shall demonstrate compliance using Averaging, Banking, and Trading volumes based on total U.S. production volumes ("2. Any reference to vehicle or engine sales or vehicle or engine production volume throughout the United States shall mean vehicle or engine sales or vehicle or engine volume in California, except in Part 1037, Subpart H, Averaging, Banking, and Trading for Certification.") - which implies that manufacturers should apply CARB's outdated test procedures to national volumes of vehicle sales – applying state standards to vehicles CARB has no regulatory authority over, and assuming the existence of a federal credit bank that no longer exists. (DTNA)

Agency Response to Comments A.33 through A.36: No changes were made in response to these comments.

The Emergency Vehicle Emissions Regulations clarify the continued operability of previously adopted regulations, including associated test procedures and compliance provisions, pending the outcome of any litigation. The fact that federal regulations have since been amended or superseded does not render California's previously adopted and operative regulations nonfunctional or outdated, as those previous versions of the federal regulations were incorporated into the CARB regulation and are state law. Regulated entities can access the cross-referenced federal regulations via CARB's own rulemaking files, older versions of the Code of Federal Regulations, or the still-publicly-available Federal Register notices for the relevant final U.S. EPA rules.

Manufacturers may use the same test article to demonstrate compliance with both California's (antecedent or the more stringent standards) and federal standards.

With regard to the comment indicating that California's antecedent test procedures are not aligned with the federal requirements, it should be noted that manufacturers have already

certified the same engines and vehicles with these test procedures and federal test procedures. Indeed, several light-duty and heavy-duty manufacturers have already used the Emergency Vehicle Emissions Regulations pathway to certify their 2026 MY engines and vehicles with CARB while also certifying with U.S. EPA.

(d) “Retroactive” Enforcement of Omnibus

- 37. Comment:** Indeed, CARB’s threat of retroactive enforcement is just that, a coercive threat to try to strong-arm manufacturers into complying with Omnibus regulations that CARB knows it has no power to enforce. And the availability of retroactive enforcement and penalties in the event that the Omnibus resolution is held invalid is for a court to decide. See, e.g., Order on Motion for Preliminary Injunction at 28, *Daimler Truck N. Am. v. CARB*, No. 2:25-cv-02255-DC (Oct. 31, 2025) (ECF 94). Trying to hold manufacturers hostage during the pendency of that litigation is not only unlawful, it is also the type of targeted ex post facto coercion that the State of California should denounce. (EMA and International)
- 38. Comment:** CARB also is threatening retroactive enforcement of the Omnibus standards notwithstanding their nullification under the CRA legislation. By doing so, CARB is attempting to compel compliance with standards that are no longer in effect as a matter of law. Such threatened retroactive enforcement is heavily coercive. In the face of CARB’s threats, manufacturers face the dilemma of complying with the regulations that Congress voided, thereby acting in contravention of federal law, or not complying with the Omnibus regulations, which creates the specter of heavy fines and other enforcement actions during any interim period that might lead up to a successful litigation outcome for CARB in the future. Administrative law has a strong presumption against any form of retroactivity, and retroactive penalties would be especially unreasonable and unlawful in this case. CARB has no authority to retroactively enforce its now-void Omnibus emission standards. (EMA and International)
- 39. Comment:** Simply stated, CARB’s threat of retroactive enforcement amounts to an unauthorized attempt to enforce the Omnibus regulations that Congress invalidated under the CRA. Through its threats to retroactively enforce the Omnibus regulations, if CARB succeeds in its lawsuit against the United States, CARB is deliberately creating an untenable “Catch-22” for truck and engine manufacturers. They can continue to comply with regulations that Congress voided, or they can follow federal law while facing large financial penalties if CARB proves to be a prevailing litigant. CARB has no authority to set such a snare through an unlawful threat of retroactive ex post facto enforcement tactics. (EMA and International)
- 40. Comment:** The CRA-related litigation that CARB has commenced against the United States could take years to reach a final solution, which creates years of uncertainty for manufacturers and their customers. All the while, manufacturers could be incurring fines of \$48,788 per new non-Omnibus-compliant engine and vehicle sold or operating in California. (See CARB Memo re Maximum Penalties, February 21, 2025.) The Board should reject that type of coercive and unauthorized behavior and should direct CARB staff to delete any references to retroactive enforcement in any communications with HDOH manufacturers. (EMA and International)
- 41. Comment:** Finally, CARB’s threat of retroactive enforcement is an inappropriate attempt to coerce manufacturers into complying with Omnibus regulations that CARB knows it has no current power to enforce. (International)

- 42. Comment:** CARB also is claiming enforcement authority it does not have. CARB proposes to reserve the right to retroactively enforce the Omnibus regulations, notwithstanding that a key component of the Proposal is to create an alternative compliance pathway that includes a new blended version of certain antecedent NOx and PM standards, until such time as “a court of law holds invalid the [CRA] resolution purporting to disapprove the [Omnibus] waiver.” Emergency Regulations Notice, p.6. There is no lawful basis for CARB to threaten retroactive enforcement of regulations that it acknowledges have been preempted. CARB has no authority to punish manufacturers at some point in the future for not complying with regulations that are currently preempted and that CARB took emergency and regular rulemaking measures in an attempt to create an alternative compliance pathway. (International)
- 43. Comment:** The rulemaking creates a contradictory regulatory regime, where newly re-enacted pre-Omnibus standards and the Omnibus standards are both codified and “operative” depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill. The rulemaking itself and the new regulatory text also explicitly threaten retroactive enforcement for manufacturers that do not obtain a CARB certification pursuant to the Omnibus standards, discussed further below. This is an attempt to enforce the Omnibus emissions standards and conditions precedent to sale of new heavy-duty vehicles and engines now, through the threat of potential future retroactive enforcement, even though CARB’s heavy-duty vehicle emissions standards are all preempted by the Clean Air Act, and its conditions precedent to sale are likewise preempted in the absence of an emissions waiver. (DTNA)
- 44. Comment:** The threat of retroactive enforcement is an impermissible attempt to enforce Omnibus. Put another way, under the new rules, manufacturers can only avoid the potential for penalties if they follow the Omnibus regulation as opposed to the new proposed Emergency Rule” or “deem to comply,” the two alternatives for certification offered by CARB in the August MAC. Putting aside that CARB has no authority to certify heavy-duty trucks at this time, the “choice” presented by CARB is not a real choice – the potential for significant penalties is coercing manufacturers to conform conduct to CARB’s preempted rules before they can be tested in court, particularly where CARB insists on litigating to “final judgment,” which creates years of uncertainty for industry. All the while, the penalties would be accruing, creating significant business risk for companies that ask a court to clarify the law when two regulators disagree or presume that federal legislation is valid. As such, CARB’s new regulatory language and board order stating that it will enforce Omnibus (without regard to court orders or enforcement discretion) violates Section 209’s attempt to enforce clause (among other issues). (DTNA)
- 45. Comment:** This creates a serious threat to regulated industry because CARB asserts it retains the ability to retroactively “enforce Advanced Clean Cars II and Omnibus, to the extent permitted by law, in the event a court of law holds invalid the resolutions purporting to disapprove the waivers for those more recent regulations. In other words, unless manufacturers follow the rules that are currently preempted by federal law—and which the U.S. Department of Justice has directed manufacturers, including DTNA, to “cease and desist” from following—CARB may impose penalties on manufacturers if the law changes later. CARB is attempting to adopt new rules while essentially stating that if manufacturers follow these rules, they may be punished later. “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

Such fair notice is absent here. And the lack of clarity on the law sets manufacturers up for potential retroactive enforcement, which itself is a due process issue. (DTNA)

Agency Response to Comments A.37 through A.45: No changes were made in response to these comments.

The Emergency Vehicle Emissions Regulations do not create ambiguity regarding manufacturers' certification pathways or other regulatory obligations. This rulemaking makes the emergency regulations permanent. It cannot create uncertainty when none currently exists.

Commenters object to the language that expressly reserves CARB's rights to enforce other regulations (Omnibus and ACCII) in the event that a court invalidates the resolutions purporting to disapprove the waivers authorizing such enforcement. But this language provides notice to the public stating how judicial decisions may operate. Courts determine what the law is and always was, and their decisions can have retrospective effective. CARB seeks to inform the public that it is possible the Omnibus, ACCII, and other regulations may become enforceable pursuant to a court order. The possibility of such a court order would exist whether or not CARB chose to provide notice about it. Moreover, it is not this rulemaking (or any CARB regulation) that gives rise to the possibility of a court order with retrospective effects. This rulemaking is not creating a dilemma or "Catch-22" for manufacturers or otherwise creating uncertainty, nor is providing additional pathways coercing manufacturers into compliance with Omnibus or ACCII. Uncertainty exists as a result of unprecedented actions by the federal government. That uncertainty will, as EMA and International acknowledge, be resolved by the courts. CARB seeks to inform the public about that fact and that, should CARB obtain a favorable resolution from the courts, it will subsequently decide whether and how to enforce any regulations within the bounds of that court order. Contrary to the position of some commenters, CARB has not indicated it will enforce the regulations. Rather, CARB has been clear that it will make those enforcement decisions when and if the circumstances to do so arise.

(e) Compliance with the APA and Other Procedural Requirements

- 46. Comment:** Under the California Administrative Procedure Act ("APA"), CARB regulations must meet certain standards for consistency, clarity, nonduplication, and necessity. Cal. Gov. Code § 11349.1. CARB's Proposed Action fails to meet such standards. First, CARB's Proposed Action is inconsistent with the federal Clean Air Act. CARB proposes to reserve the right to retroactively enforce the preempted Omnibus regulation — notwithstanding that a key component of the Proposed Action is to create an alternative compliance pathway — in the event a court overturns the CRA Resolution. Under the APA, CARB's regulations must be in "in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." Cal. Gov. Code § 11349(d). The CRA Resolution overturned the Omnibus regulation. CARB's attempt to force manufacturers into still complying with the Omnibus regulation is an unlawful attempt to enforce preempted standards without a waiver. The same is true for the Old CARB Standards which CARB seeks to permanently adopt. CARB may not enforce such standards absent a new waiver from EPA without violating the Clean Air Act. (International)
- 47. Comment:** Second, the Proposed Action is internally inconsistent and unclear for regulated parties. The APA requires that CARB regulations be "easily understood by those persons directly affected by them." Cal. Gov. Code § 11349(c). CARB proposes to add an alternative compliance option to the CCR, yet threatens retroactive enforcement if

regulated entities comply with such alternative. This engineered dilemma for regulated parties is anything but clear. CARB cannot penalize manufacturers in the future for failing to comply with the preempted Omnibus regulation, especially when CARB itself has undertaken rulemaking efforts to establish an alternative compliance pathway. (International)

- 48. Comment:** Both the rules here and the process by which they are being implemented raise serious fair notice and due process concerns. Principles of due process require the government to give individuals “an opportunity [1] to know what the law is and [2] to conform their conduct accordingly.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). But CARB’s new rules create a contradictory regime that makes it impossible for regulated entities to know what the law is and then conform their conduct. Under the Emergency Regulation, mutually exclusive earlier standards (revived here) and newer standards (ACC II, Omnibus) are simultaneously “operative” depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill. (DTNA)
- 49. Comment:** Further, CARB proposed additional amendments to its Omnibus standards together in this rulemaking. CARB plans to adopt these Omnibus amendments through a combination of amending existing rules and adopting new sections of the California Code of Regulations. This leads to a bizarre result: the Emergency Regulation attempts to “restore” prior standards, and the Omnibus amendments propose to amend those same prior standards. CARB is pursuing simultaneous amendments to the same set of standards that cut in opposite directions. The lack of clarity makes it difficult for parties to assess and understand their legal obligations. (DTNA)
- 50. Comment:** CARB’s Emergency Regulation does not comply with the requirements of the California Administrative Procedure Act, Cal. Gov. Code § 11349.1(a)(2)-(6). CARB regulations must satisfy the “Clarity” and “Consistency” standards of the California Administrative Procedure Act (APA). “Clarity” requires that the regulations “be easily understood by those persons directly affected by them.” “Consistency” requires the regulations to be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” (DTNA)
- 51. Comment:** CARB’s Emergency Regulation is not clear as regulated parties have no way to determine which regulatory standard governs. OAL also points to a regulation that “presents information in a format that is not readily understandable by those who are ‘directly affected’” as a quintessential example of an unclear regulation. As described above, directly regulated parties cannot readily confirm CARB’s assertion in its Emergency Regulation that its new standards have “extant preemption waivers,” and are therefore valid and enforceable. (DTNA)
- 52. Comment:** The Emergency Regulation also violates the “Consistency” standards of the APA. As noted above, adoption of the rule would conflict with federal law, and it is an attempt to enforce CARB’s preempted Omnibus emissions standards in contradiction of the Clean Air Act. The Emergency Regulation is also internally inconsistent. It creates a facially contradictory regulatory regime: both revived standards and newer Omnibus standards are “operative” depending on litigation outcomes. (DTNA)
- 53. Comment:** In addition, CARB regulations must satisfy the “Authority” and “Nonduplication” standards of the California APA. “Authority” requires that the regulations are based on a “provision of law which permits or obligates the agency to adopt, amend, or repeal a

regulation.” As described in more detail below, this Emergency Regulation is an adoption of emissions standards without a preemption waiver in violation of Section 209(a) of the Clean Air Act. CARB plainly lacks the federal waiver which “permits” it to “adopt [] a regulation” and thus cannot cite to a statutory provision that expressly empowers CARB to implement this Emergency Rulemaking in violation of Section 209(a) of the Clean Air Act. *Id.*; *Camarillo Sanitary Dist. v. State Water Res. Control Bd.*, 335 Cal. Rptr. 3d 404, 438 (2025), review filed (Sept. 15, 2025). “Nonduplication” requires that the regulations “do[] not serve the same purpose as a state or federal statute or another regulation.” CARB’s regulations involve emissions standards that are already addressed by federal standards and are less stringent than EPA’s corollary standards, as noted above. Thus, CARB’s standards cannot be justified as offering additional protection of California’s interests. (DTNA)

Agency Response to Comments A.46 through A.53: No changes were made in response to these comments.

The Emergency Vehicle Emissions Regulations clarify that regulatory provisions previously adopted remain operative. These Emergency Vehicle Emissions Regulations are consistent with existing California and federal law and are designed to maintain regulatory continuity during ongoing litigation, avoiding regulatory gaps or uncertainty.

Commenters claim that CARB’s Emergency Vehicle Emissions Regulations fail to meet the clarity, consistency, authority, and nonduplication standards of the California APA. CARB disagrees. As these regulations were already found to meet all APA requirements when initially adopted, they continue to meet such requirements today. The newly added introductory paragraphs make clear which sections of the CCR may be followed by manufacturers and how these sections interact with the alternative sections. Indeed, manufacturers have continued to certify to CARB’s standards with the Emergency Vehicle Emissions Regulations in place, undermining any assertion as to lack of clarity—and again, manufacturers have been complying with these requirements for many years. As explained in the responses to comments in subsections A.1.(b) and A.1.(c), which are incorporated by reference here, these regulations are not inconsistent with federal requirements. See response to comments A.1 through A.25. Nor do these regulations duplicate state or federal statutory or regulatory requirements simply because they regulate vehicle emissions. Further, as noted in response to comments in subsection A.1.(a), incorporated by reference here, multiple federal standards applicable to the same categories of vehicles as the Emergency Vehicle Emission Regulations have been repealed or are the subject of multiple proposals and statements to weaken, delay, or reconsider them. Further, as explained in the response to comments in subsection A.1.(d), incorporated by reference here, the Emergency Vehicle Emissions Regulations are not an attempt to enforce Omnibus. CARB has the authority to adopt the Emergency Vehicle Emissions Regulations under California law, and, as explained more in the response to comments in subsection A.1.(a), incorporated by reference here, these regulatory requirements already have extant waivers.

(f) Section 177 States

- 54. Comment:** With the adoption of the new sections in this Emergency Regulation, all other states may lack identity with California’s standards. For example, many Section 177 states have adopted the ACT and Omnibus Low NOx standards, which are now preempted as a matter of federal law. If they do have certain antecedent standards on the books rather than the ACT and Omnibus Low NOx standards, the state law provisions are still not

identical to the new Emergency Regulation, which is a combination of various regulatory programs spanning the last two decades in the form of a new rule applicable to new model years (in addition to adding new regulatory language). As a result, Section 177 states cannot enforce their emissions standards. The lack of identity between this attempt by CARB to create a new Emergency Regulation and the Section 177 programs is confusing to industry. (DTNA)

Agency Response to Comment A.54: No change was made in response to this comment.

CARB does not set or determine the regulations of other states. Therefore, this comment is outside the scope of this rulemaking action and no response is required. Nonetheless, the permanent adoption of the Emergency Vehicle Emissions Regulations provides further clarity and certainty in response to unprecedented federal actions. Other states may follow the Emergency Vehicle Emissions Regulations if appropriate pursuant to section 177 of the CAA. If a manufacturer has questions about the regulations in another state, the manufacturer should discuss with that state.

(g) Compliance with California Environmental Quality Act (CEQA) Requirements

- 55. Comment:** As with its “Emergency” Regulation, CARB seeks to avoid the environmental review required under the California Environmental Quality Act (CEQA) by invoking exemptions under Cal. Code Regs. tit. 14, §§ 15061(b)(3) (common sense), 15307 (natural resources protection), and 15308 (environmental protection). Proposed Rule ISOR at 43-47. An agency may not rely on these exemptions where record evidence demonstrates any possibility of significant environmental effects or where a rule relaxes existing environmental safeguards or otherwise risks environmental degradation. CARB argues its actions merely maintain the status quo, protect health amid uncertainties created by the CRA legislation, and present no possibility of significant environmental effects. Yet CARB’s own statements in support of the Proposal confirm a possibility of adverse effects relative to the preempted Omnibus regulation and comparable federal standards. Ultimately, this possibility forecloses reliance on the claimed exemptions. (EMA and International)
- 56. Comment:** Specifically, the “common sense” exemption only applies if CARB demonstrates with substantial evidence that “it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment.” 14 Cal. Code Regs. § 15061(b)(3); see also *Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n*, 41 Cal. 4th 372, 386-87 (2007), quoting *Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106, 114 (1997) (“[T]he agency’s exemption determination must [rely on] evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.”). (EMA and International)
- 57. Comment:** Here, the Proposal would amend and put in place “relaxed” antecedent HDOH emission standards in lieu of more stringent federal standards, especially those starting in MY 2027. CARB’s own pending Notice of Rulemaking, issued on September 23, specifically acknowledges that the current and continuing HDOH federal diesel standards are comparable to the now-void Omnibus standards starting in MY 2027. That statement makes it clear that adopting and implementing the relaxed antecedent standards could lead to higher emissions, especially from and after the 2027 MY. Under the applicable CEQA Guidelines, any attempt to make emission standards less stringent bars the application of CARB’s claimed CEQA exemptions. (EMA and International)

- 58. Comment:** CARB attempts to argue that the CRA legislation has necessitated the Proposal. That perceived necessity—which does not in fact exist where protective federal standards are in place—does not excuse CARB from complying with CEQA’s requirements. CARB’s relaxation of emissions standards creates reasonably foreseeable environmental impacts, which, under California law, precludes application of CARB’s claimed CEQA exemptions. CARB has not met the demanding certainty showing required by the common sense exemption, nor can CARB rely on the exemptions for natural resources and environmental protection where the Proposal lessens such protections. Therefore, CARB should prepare an appropriate CEQA analysis to determine whether and how the Proposal might cause adverse environmental effects. (EMA and International)
- 59. Comment:** By acknowledging that the Omnibus and federal standards are similarly stringent, CARB admits that the federal standards, which are currently on the books and enforceable (and were when CARB started this rulemaking process), are also more protective than the Old CARB Standards. CARB claims that it is confirming “a baseline regulatory framework to protect public health from the threat of uncontrolled motor vehicle emissions.” Appendix G at 13. (International)
- 60. Comment:** First, the “common sense” exemption only applies if “it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment.” Cal. Code Regs. tit. 14, § 15061(b)(3). But “if there is a reasonable possibility that a proposed project will have a significant effect upon the environment, then the lead agency must conduct an initial study.” *Cal. Farm Bureau Fed’n v. Cal. Wildlife Conservation Bd.*, 143 Cal.App.4th 173, 194 (Cal. Ct. App. 2006). Whether an agency’s action qualifies for the common sense exemption is an issue of fact and “the agency invoking the exemption has the burden of demonstrating that it applies.” *Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n*, 41 Cal.4th 372, 386-87 (Cal. 2007). This exemption is improper when actions—even if intended to improve the environment—have collateral effects on the environment that preclude application of the exemption. *Dunn-Edwards Corp. v. BAAQMD*, 9 Cal.App.4th 644, 653-58 (Cal. Ct. App. 1992). Courts have repeatedly invalidated agencies’ invocation of the exemption where record evidence suggests possible adverse effects or where the agency assumes that nominally protective actions are entirely beneficial without engaging the possibility of collateral impacts. See *Cal. Farm Bureau Fed’n v. Cal. Wildlife Conservation Bd.*, 143 Cal.App.4th at 194-196 (Cal. Ct. App. 2006) (no exemption where a wildlife habitat restoration project had a reasonable possibility of a significant environmental impact). (International)
- 61. Comment:** Second, CEQA’s categorical exemptions for actions to protect natural resources or the environment (Cal. Code Regs. tit. 14, §§ 15307, 15308) are available only where the project affirmatively assures protection or enhancement of the environment and do not apply where the action may relax existing standards or otherwise risk environmental degradation. Cal. Code Regs., tit. 14, § 15308; see also *Dunn-Edwards*, 9 Cal.App.4th at 653-58 (no exemption where record shows possibility of increased emissions from regulatory change); *International Longshoremen’s & Warehousemen’s Union v. Board of Supervisors*, 116 Cal.App.3d 265, 276 (Cal. Ct. App. 1981) (no protective exemption where NOx emissions standards are relaxed and a significant effect is reasonably possible); *California Unions for Reliable Energy v. Mojave Desert AQMD*, 178 Cal.App.4th 1225, 1240-47 (Cal. Ct. App. 2009) (exemption invalid absent evidence of no significant adverse effects). (International)

62. Comment: Reverting to the Old CARB Standards could create adverse environmental impacts because the benefits of the currently operative federal standards may not be realized if regulated entities are authorized to certify to the less stringent Old CARB Standards. Under *Dunn-Edwards* and *International Longshoremen's*, the existence of a plausible pathway to increased pollution bars reliance on both the common sense exemption and the exemptions for environmental and natural resource protection. CARB attempts to argue that the CRA Resolution has necessitated the Proposed Action. That perceived necessity—which does not in fact exist where protective federal standards are in place—does not excuse CARB from complying with CEQA's requirements. CARB has not met the demanding certainty showing required by the common sense exemption, nor can CARB rely on the exemptions for natural resources and environmental protection where the Proposed Action may lessen such protections. Therefore, CARB should prepare an appropriate CEQA analysis to determine whether and how the Proposed Action might cause adverse environmental effects. (International)

63. Comment: Further, the protective-purpose of categorical exemptions (14 Cal. Code Regs. sections 15307, 15308) do not apply where the action may relax existing standards or otherwise risk environmental degradation. 14 Cal. Code Regs. § 15308 ("relaxation of standards allowing environmental degradation are not included in this exemption"); see also *Dunn-Edwards Corp. v. BAAQMD*, 9 Cal. App. 4th 644, 653-58 (1992) (no exemption where possibility of increased emissions); *Int'l Longshoremen's & Warehousemen's Union v. Board of Supervisors*, 116 Cal. App. 3d 265, 276 (1981) (no exemption where NOx emissions standards are relaxed); *California Unions for Reliable Energy v. Mojave Desert AQMD*, 178 Cal. App. 4th 1225, 1240-47 (2009) (exemption invalid absent evidence of no significant adverse effects). (International)

Agency Response to Comments A.55 through A.63: No changes were made in response to these comments. Reasonably foreseeable compliance responses associated with the Emergency Vehicle Emissions Regulations are not anticipated to result in significant adverse environmental impacts as compared to the CEQA baseline.

The current Emergency Vehicle Emissions Regulations became effective on October 2, 2025, and were readopted on March 26, 2026, and June 29, 2026, each for an additional 90 days, extending their effectiveness through September 29, 2026. (Cal. Gov. Code § 11346.1, subd. (h)).

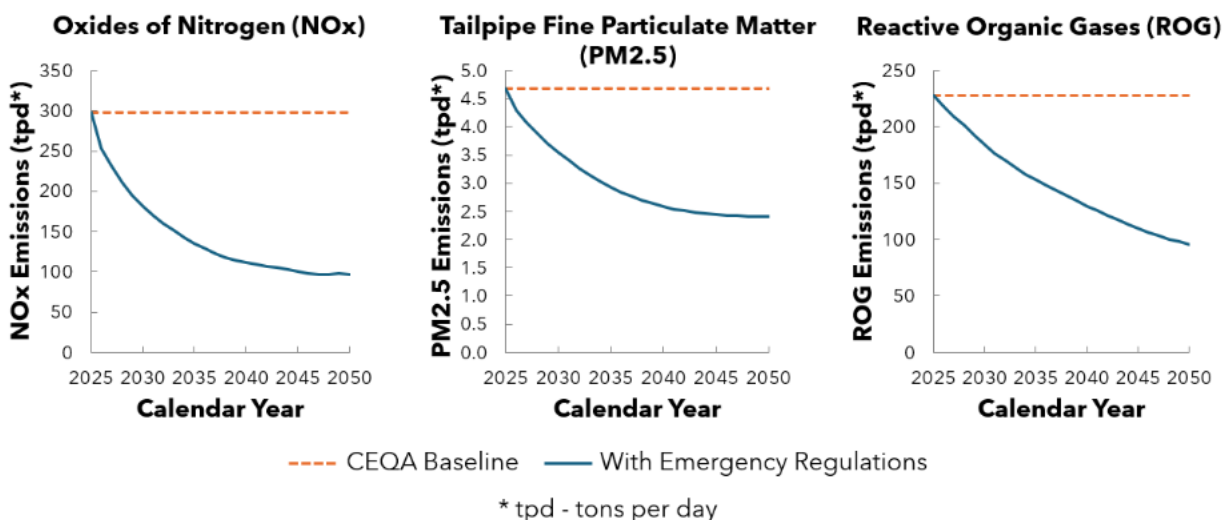
Moreover, the Board approved the permanent adoption of these regulations on March 26, 2026. Accordingly, the regulatory action will continue to provide clarity and confirm that, until a court resolves the uncertainty created by the federal government's actions, certain antecedent regulations (amended by ACC II and Omnibus) remain operative (as previously adopted) with the caveat that CARB may enforce ACC II and Omnibus, to the extent permitted by law, in the event a court of law holds invalid the resolutions purporting to disapprove those waivers.

While the commenters are claiming that CARB is required to analyze the proposed action compared to a future federal standard, for which implementation has not yet begun, this is not what CEQA demands. The CEQA guidelines provide that, "[g]enerally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published or if no notice of preparation is published, at the time environmental analysis is commenced..." (Cal. Code Regs., tit. 14, § 15125(a)(1)). CARB has followed that approach here. CARB appropriately used the current physical conditions

in 2025, which was the point in time when environmental analysis commenced, as the CEQA baseline when conducting its analysis.

CARB compared existing criteria pollutant emissions with the future reductions expected from light-duty, medium-duty, and heavy-duty vehicles based on implementation of the proposal, and, as the following graphs clearly indicate, the regulatory action will lead to a reduction of criteria pollutant emissions below the CEQA baseline and therefore constitute a beneficial impact on air quality. As such, CARB is appropriately relying on CEQA exemptions, including the commonsense exemption, for the proposal.

Projected Vehicle Emissions with the Emergency Regulations in Effect Versus the CEQA Baseline



Moreover, as noted in response to comments A.1.(a), incorporated by reference here, multiple federal standards applicable to the same categories of vehicles as the Emergency Vehicle Emission Regulations have been repealed or are the subject of multiple proposals and statements to weaken, delay, or reconsider them. Federal standards may not be reasonably relied upon to reduce emissions.

(h) Miscellaneous

The comments summarized below did not fit in with any of the categories listed above. They are presented here separately as miscellaneous comments.

- 64. Comment:** International does not support CARB's Proposed Action because, among other reasons, there is no "emergency" risk to the health, safety, and general welfare that is addressed by the emergency regulations and, thus, no basis to avoid required rulemaking procedures under California law. (International)
- 65. Comment:** The Proposed Action falls short of APA requirements because there is no crisis that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. CARB claims the emergency rule is necessary "to clarify that protective emission standards for vehicles and engines remain operative, while ensuring manufacturers can sell vehicles and engines into California[.]" Notice of Proposed Action, Emergency Amendment & Adoption of Vehicle Emissions Regulations, at 6 (Sept. 15, 2025) (the "Notice"). (International)

- 66. Comment:** CARB raises the specter of heavy-duty on-highway (“HDOH”) vehicles and engines being sold into the State with uncontrolled emissions or of no vehicles being sold at all. Neither rationale for jettisoning normal rulemaking procedures is supported. (International)

Agency Response to Comments A.64 through A.66: No changes were made in response to these comments. CARB disagrees with the assertions raised.

The emergency necessitating the amendments was clearly articulated in the emergency rulemaking notice. As stated in that notice, each day without regulatory clarity risks the health of millions of Californians, CARB’s ability to enforce its long-standing vehicle emissions certification program, including ensuring vehicles meet emission standards both at sale and throughout their useful lives, and the stability of the California vehicle market.

On-road light-duty, medium-duty, and heavy-duty vehicles operating in California contribute significantly to NO_x, reactive organic gas (ROG), and fine particulate matter (PM_{2.5}) emissions. Thus, CARB’s Emergency Vehicle Emissions Regulations are necessary to provide clarity and ensure that, at a minimum, the pre-Omnibus and LEV III regulations remain operative.

However, no emergency is proposed or required for this rulemaking, which is to permanently adopt the emergency rulemaking, following the normal APA requirements rather than emergency APA provisions. These comments are out of scope and instead more appropriately submitted to the emergency adoption or emergency readoption rulemaking procedures.

- 67. Comment:** As CARB admits, laws passed by Congress and signed by the President revoked the waivers for CARB’s most recent HDOH emissions standards (the “Revoked HDOH Standards”). See Notice at 2-3. As such, CARB is not authorized to enforce the Revoked HDOH Standards. See *id.* CARB also admits that the Revoked HDOH Standards “displaced” its earlier-adopted rules. See *id.* (emphasis added). CARB’s Executive Officer makes clear that the Revoked HDOH Standards “supplanted the Board’s earlier regulations (which were applicable to all future model years until they were supplanted). . . .” CARB Executive Order R-25-002 at 4 (Sept. 15, 2025) (emphasis added). “Supplanted” means to supersede or replace. As a result, those earlier, older standards also no longer apply. (International)

Agency Response to Comment A.67: No change was made in response to this comment.

If a current regulation is invalidated (as the commenter asserts occurred as to the “Revoked HDOH Standards,” it is common for the earlier version to spring back into effect. The commenter’s argument that “supplanted” regulations cannot spring back after the “supplanting” ones have been disapproved contravenes basic administrative law principles and practices. In any event, nothing in this comment undercuts CARB’s state-law authority to promulgate these regulations.

- 68. Comment:** Nevertheless, although CARB’s Revoked HDOH Standards (and thus certification program) are now preempted, vehicles cannot be sold in the State of California without a valid certificate of conformity from the United States Environmental Protection Agency (“EPA”) – just like in the other 49 states governed by the Clean Air Act. See 42 U.S.C. § 7522(a)(1) (precluding sale of new motor vehicles and engines “unless such vehicle or engine is covered by a certificate of conformity”). And, as CARB acknowledges, the current HDOH federal standards are stricter than the old standards CARB now

proposes to reanimate on an emergency basis. See Notice at 8; see also EMA Comments at 6.

Accordingly, there is no basis for emergency rulemaking. Because all new HDOH vehicles and engines need an EPA certification, and because EPA HDOH standards are more stringent than the old CARB standards, there are right now and going forward, more protective federal emissions standards that “remain operative” in California. Notice at 2. CARB provides no basis why a new EPA-certified, HDOH vehicle or engine cannot legally be sold in the state. Indeed, CARB need not issue an “emergency rule” to allow vehicles to be sold into California, it simply needs to comply with the Clean Air Act. As such, the Proposed Action is not needed to “maintain a stable vehicle market” in California either. Notice at 2. (International)

Agency Response to Comment A.68: No change was made in response to this comment. CARB disagrees with this comment.

See, e.g., HSC, section 43151. See also the response to comments A.64 through A.66, response to comment A.69, and response to comments in subsection A.1.(a), incorporated by reference here.

- 69. Comment:** The Proposed Action is not about health or safety; it is about CARB trying to preserve its certification program. But this is exactly the sort of “good practices” argument that the APA rejects. CARB acknowledges that its Proposed Action is being taken to affect the outcome of a court case. Specifically, in its Notice, CARB states that the Proposed Action is in response to an argument made by certain HDOH truck manufacturers that CARB’s old standards were not automatically revived when Congress and the President revoked the current waivers. See Notice at 2. CARB “disagrees” (*id.*) but, nevertheless, attempts to resurrect older, less stringent HDOH standards through emergency rulemaking. However, CARB’s proposed emergency reintroduction of old HDOH emission standards that are less stringent than federal standards, along with agency threats of retroactive enforcement, only serves to introduce additional uncertainty and instability into California’s HDOH market. (International)

Agency Response to Comment A.69: No change was made in response to this comment. CARB disagrees with this comment, including with the claim as to the purpose of this rulemaking. CARB made the purpose of this rulemaking clear in the ISOR.

See responses to comments A.64 through A.68, and responses to comments in subsections A.1.(d), which are incorporated in this response by reference.

Light-Duty Related Comments

(i) Lead Time Allowance if Court Invalidates Congressional Resolutions

- 70. Comment:** CARB should allow specified lead time for ACCII requirements, in the event CARB prevails in its challenges to the congressional resolution disapproving the waiver that authorizes enforcement of ACCII(AAI)
- 71. Comment:** Small volume manufacturers (SVM) need adequate lead-time to commence certifying to LEV IV (part of ACCII) in the event CARB prevails in its challenges to the congressional resolution disapproving the waiver that authorizes enforcement of ACCII. The “unprecedented uncertainty” has impeded the ability of SVMs to develop and implement emissions compliance plans as they historically have done in the normal course

of business. VSCI requests that CARB incorporate into the permanent Emergency Regulations a provision giving SVMs until 24 calendar months after any final unappealable court decision in CARB's favor before SVMs must begin to submit applications for CARB certification based on LEV IV (and allowing SVMs during those 24 months to submit applications for CARB certification based on the ACC I/LEV III pathway or the EPA certification "deemed to comply" pathway). (VSCI)

Agency Response to Comments A.70 and A.71: No change was made in response to these comments. Generally, CARB disagrees with the comments related to lead time proposed by commenters. The ACC II regulations were adopted in 2022 and were to take effect, under state law, beginning with the 2026 MY. As a result, manufacturers have already had several years to prepare to comply with ACC II requirements. Additionally, prior to the congressional resolutions, the manufacturers indicated during certification preview meetings that their 2026 MY vehicles and fleets would meet ACC II requirements. See also response to comments in subsection A.1.(m), incorporated by reference here.

(j) Allow MAC ECCD-2025-08 as a Compliance Pathway

72. Comment: It remains unclear whether the proposed EVE regulations are intended to supersede MAC ECCD 2025-08 or whether these regulations will live alongside MAC ECCD-2025-08. (AAI)

73. Comment: Neither the Emergency nor Proposed Regulations mention opt set forth in MAC ECCD-2025-08. Option 2 allows CARB certification for model year 2025 AND SUBSEQUENT MODEL YEARS based on "submission to CARB of U.S. EPA certification to its motor vehicle emission standards applicable to the vehicle in the relevant model year as those regulations are currently codified." We request that Option 2 be incorporated into the Final Regulations -- without the impermissible caveat in which CARB may take retroactive action to invalidate this certification option -- by adding a provision stating that submission to CARB of an EPA certification as described in Option 2 shall be deemed to comply with the LEV III regulations made applicable by the Emergency Regulations (e.g. 13 CCR 1961.2.1). (VSCI)

Agency Response to Comments A.72 and A.73: No change was made in response to these comments. CARB does not agree that there is a lack of clarity, as evinced by the fact that manufacturers have been certifying vehicles for MY 2026 through the Emergency Vehicle Emissions Regulations made permanent here. The ISOR indicated that this rulemaking does not supersede MAC ECCD 2025-08. Manufacturers retain discretion during the ongoing litigation to select among available compliance pathways. The language to which the commenter objects is simply a reservation of rights that CARB may nor may not exercise in the event CARB secures such rights from a future court order. See also response to comments in subsection A.1.(m), incorporated by reference here.

(k) Federal Waiver of Preemption

74. Comment: CARB must get a waiver or within-the-scope determination from EPA under Section 209(b) of the Clean Air Act given that there are substantial changes such as extending prior standards past the 2025 model year and including block languages regarding the impact of possible future court decision. In addition, California has consistently requested a new waiver or a within-the-scope determination from EPA when it amends its emissions regulations in any way. (AAI)

Agency Response to Comment A.74: No changes were made in response to these comments. CARB disagrees with the assertion that a new waiver is required for CARB to either adopt or enforce the Emergency Vehicle Emissions Regulations. See the response to comments in subsection A.1.(a), incorporated by reference here. These regulations clarify previously adopted provisions remain operative and the requirements remain enforceable under existing federal preemption waivers. The reservation of rights concerning potential future court orders is not an emission standard or accompanying enforcement procedure and therefore not preempted by the CAA. See response to comments in subsection A.1.(m).

The Emergency Vehicle Emissions Regulations do not establish new emission standards or requirements for new MYs. Rather, they clarify the continued applicability of standards that have been in place for years, have received waivers of preemption, and to which manufacturers have complied for many years. As a result, the regulations ensure that new engines and vehicles sold in California will continue to meet the earlier adopted, federally waived standards unaffected by the recent congressional resolutions.

(l) Compliance with CEQA Requirements

- 75. Comment:** CARB has not completed any analysis to demonstrate how or when the proposed Emergency Regulations will improve air quality—or, conversely, how or when those regulations will harm California’s air quality compared to the more stringent U.S. EPA Tier 4 emission standards. CARB should perform this analysis regardless of whether the regulations are adopted via emergency or non-emergency rulemaking. (AAI)

Agency Response to Comment A.75: No changes were made in response to this comment. CARB concluded in the Notice of Proposed Action (NOPA) for the initial Emergency action in September 2025 that it met the exemptions for CEQA under Title 14 of the CCR. In addition, in the NOPA posted in March 2026 for the re-adoption of the Emergency Regulation, CARB provided data showing that the emergency regulation would provide emission reductions (of NOx, ROG, PM2.5) in comparison to the 2025 CEQA baseline all the way to year 2050. In addition, CARB notes that U.S. EPA has proposed to delay its Tier 4 mission standards, which creates uncertainty regarding whether and when U.S. EPA’s Tier 4 standards will apply. As noted in Agency Response to Comments A.55 through A.63, incorporated herein by reference, CARB’s data shows the emergency regulation would provide benefits in comparison to the CEQA baseline. See also the response to comments in subsection A.1.(g), incorporated by reference here.

(m) “Retroactive” Enforcement of ACC II

- 76. Comment:** We remain deeply concerned that CARB continues to indicate that ACC II is the only pathway available that does not risk enforcement action. Throughout the regulations and Appendix G, Initial Statement of Reasons, CARB threatens manufacturers with enforcement action on vehicles that they certify under the proposed Emergency Regulations or U.S. Environmental Protection Agency (EPA) motor vehicle emission standards (allowed by CARB Manufacturers Advisory Correspondence (MAC) ECCD-2025-08). Manufacturers are left with no secure pathway to certify except under the ACC II regulations, which federal law prohibits CARB from implementing or enforcing. The Emergency Regulations only provide clarity and certainty if following them does not result in enforcement action. Consequently, we recommend CARB clarify that vehicles complying

with the Emergency Regulations or EPA regulations (included in MAC ECCD-2025-08) will not face enforcement action. (AAI)

- 77. Comment:** The proposed Emergency Regulations suggest that automakers have the option to certify to a regulation but must do so at their own peril because CARB may invalidate that certification pathway; and CARB may do so retroactively. However, administrative law includes a strong presumption against retroactivity (See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *PHH Corp. v. CFPB*, 839 F.3d 1, 46 (D.C. Cir.2016)(Kavanaugh, J.), reinstated in relevant part, 881 F.3d 75, 83 (D.C. Cir. 2018 (en banc))("Retroactivity . . . contravenes the bedrock due process principle that the people should have fair notice of what conduct is prohibited.")) (AAI)
- 78. Comment:** Any attempt to enforce the Advanced Clean Cars II during the gap period (i.e., when the CRA resolutions were in effect and the waivers were not) would "attach new legal consequences" to manufacturers' reasonable reliance on laws in place, including making decisions on which vehicles to manufacture and sell (see *Nat'l Min. Ass'n v. Dep't of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002) (per curiam)). Retroactive penalties from this reasonable reliance would be inherently unreasonable and unlawful. CARB's threat of retroactive enforcement essentially is an unauthorized attempt to enforce invalidated regulations. (AAI)
- 79. Comment:** CARB's language in both the Emergency Regulations and Proposed Regulations says that for model year 2026 and later a manufacturer can certify to LEV III regulations, but that if CARB wins in court, then such LEV III certification option may disappear retroactively, and that CARB reserves the right to nullify retroactively an OEM's LEV III certification. Such a retroactive nullification is simply not permissible. It is so unfair as to be unlawful. If, for example, an OEM uses the ACC I/LEV III option in 13 CCR 1961.2.1 for a model year 2027 certification prior to a final unappealable court decision in CARB's favor, and then CARB later wins in court, CARB cannot lawfully say – after the fact – that the previously-granted 1961.2.1 ACC I/LEV III certification for MY 27 is invalid. Why? Because the only California regulation that would have been in effect at the time of the OEM's model year 2027 certification – and the only valid California regulation to which the OEM could have certified – was the new ACC I/LEV III regulation 1962.2.1. (The LEV IV regulation being defunct by virtue of the CRA rescission of the underlying waiver.) (VSCI)
- 80. Comment:** The caveat language, in which CARB reserves the right to nullify retroactively an OEM's LEV III certification if CARB wins in court, renders the ACC I/LEV III "option" illusory. The inclusion of the caveat in both the Emergency and Proposed Regulations seems to be an attempt by CARB to compel OEMs to certify to the defunct ACC II/LEV IV regulations. A regulatory option is an option only if OEMs can count on it and make important business plans based on it. Therefore, the LEV III pathway is meaningless. (VSCI)

Agency Response to Comments A.76 through A.80: No changes were made in response to these comments. See the response to comments in subsection A.1.(d), which is incorporated by reference here.

(n) Unclear Requirements

- 81. Comment:** CCR 1962.2.1 references the ZEV test procedure that contains the requirements regarding the ZEV annual sales requirements and credits. However, CCR

1962.2.1 had removed those requirements. Therefore, it is unclear on what part of the test procedures the manufacturer must comply with.

In addition to this comment, the commenter provided a proposed revision of the ZEV test procedure in which all sections related to the ZEV annual sales requirements and credits are deleted. (AAI)

Agency Response to Comment A.81: No changes were made in response to these comments. The only parts of section 1962.2.1 that are recodified are subsections (a) and (h), which are limited to ZEV certification requirements. CARB is not recodifying any ZEV sales requirements or otherwise establishing any such requirements in 1962.2.1. It is the regulation section (1962.2 or 1962.2.1) that determines any sales requirements, not the test procedure document. Therefore, the ZEV annual sales and credit requirements within the referenced ZEV test procedure do not apply, consistent with the regulatory text in section 1962.2.1, unless and until those in section 1962.2 may become legally enforceable.

- 82. Comment:** It is not clear if manufacturers can certify some test groups to 1961.2 and others to 1961.2.1 and maybe still others to 1961.4; or if the manufacturer must certify all its vehicles to one of the three different regulations that CARB mentions in the emergency regulations (or doesn't mention as is the case with 13 CCR 1961.4). (AAI)

Agency Response to Comment A.82: Changes were made in response to this comment. CARB added parallel preambulatory language to section 1961.4 to clarify that manufacturers may choose to certify test groups to either the ACC I regulation (e.g., Title 13, CCR, section 1961.2.1) or the ACC II regulation (e.g., Title 13, CCR, section 1961.4). However, the manufacturer must comply with all requirements of the regulation they have chosen for that test group.

Please note that Title 13, CCR, section 1961.2, even though amended with language regarding a court decision on the congressional resolution, is not applicable because it only applies (for light-duty vehicles) through the 2025 MY. In addition, CARB has added the analogous language to Title 13, CCR, section 1961.4 in order to clarify that manufacturers may comply with either section 1961.2.1 or 1961.4 for MYs 2026 and newer until a court issues a final ruling on the relevant congressional resolution. See also response to comments in subsection A.1.(m).

- 83. Comment:** In CCR 1962.2, CARB added language to clarify that manufacturers shall comply with 1962.2 if a court invalidates the CRA resolution. However, 1962.2 only applies to 2025 and prior model years. Therefore, if a court invalidates the CRA resolution, does that mean there are no certification requirements for 2026 and subsequent model years? Likewise, the commenter has the same question for CCR 1961.2, which has the analogous block language and also applies to 2025 and prior model years. (AAI)
- 84. Comment:** Finally, if a court invalidates the CRA resolution, two sets of ZEV regulations would apply. The EVE regulations would subject manufacturers to both 1962.2.1 (effective for 2018 and subsequent model years) and 1962.4 (effective for model year 2026 and subsequent model years). Would manufacturers be subject to dual regulations within California with two different sets of certification requirements, two different sets of test procedures, one program that has a sales mandate, and another that does not? Would manufacturers be required to apply for two Executive Orders or display two vehicle emission labels? (AAI)

Agency Response to Comments A.83 and A.84: Changes were made in response to this comment. To address the questions by commenter, CARB added the language to Title 13, CCR, section 1962.4, which applies to 2026 and subsequent MYs, to clarify that manufacturers may be subject to section 1962.4 if a court invalidates the relevant congressional resolution targeting this section. Likewise, to address the potential unclarity regarding Title 13, CCR, section 1961.2, CARB added the analogous block language to Title 13, CCR, section 1961.4, which applies to 2026 and subsequent MYs.

- 85. Comment:** Commenter has provided proposed revisions to CCR 1962.3.1 in which 1962.2.1 is added to the list of referenced CCR sections in the applicability and definition sections. (AAI)

Agency Response to Comment A.85: Changes were made in response to this comment. In response to the proposed revisions, CARB added the following language to address potential cross-referencing issues in Title 13, CCR, section 1962.2.1: "For purposes of this section, any cross-referenced section in title 13 or title 17 of the CCR shall refer to the section identified as the alternative version "(Alternative)" for the corresponding section, to the extent an alternative version of that section exists." This language has also been added to all alternative regulations (those with ".1" affixed to the CCR section number e.g., 1962.2.1 is alternative of 1962.2) to address similar cross-referencing issues.

(o) Light-Duty and Medium-Duty OBD Requirements

- 86. Comment:** The OBD II requirements in newly proposed 13 CCR section 1968.2.1 are incompatible with the LEV III exhaust requirements in 1961.2.1. The OBD regulation in 1968.2.1 is the OBD regulation operative on 7-31-2013 and adopted before the LEV III requirements. So 1968.2.1 does not include any LEV III requirements contained in 1961.2.1 (or even 1961.2). For example, 1968.2.1 contains requirements for LEV I and LEV II applications, but do not contain any LEV III requirements. This incompatibility makes it technically impossible to develop and certify an OBD system that meets both 1968.2.1 and 1961.2.1.

While the proposed amendments to 13 CCR 1968.2 provides the option for manufacturers to certify to 1968.2.1, it is unclear how this option could be utilized given it does not and has not applied to any vehicles (i.e., LEV III applications) for over a decade. Because LEV III requirements were added in the OBD regulations and became operative on 7-25-2016 and later, one approach is to allow manufacturers to meet the OBD regulations adopted in 2016 and later instead of choosing between CCR 1968.2 and CCR 1968.2.1. (AAI)

Agency Response to Comment A.86: No changes were made in response to this comment. CARB disagrees with the commenter.

While the OBD II regulation in 1968.2.1 does not contain requirements that are specific only to LEV III applications, the requirements in the regulation still do apply to LEV III applications. The regulation does not state that only LEV I and LEV II applications have to meet 1968.2.1 or that LEV III applications are not required to meet 1968.2.1. The applicability section of the regulation (1968.2.1(b)) states that the regulation applies to "all 2004 and subsequent model year vehicles, defined as passenger cars, light-duty trucks, and medium-duty vehicles, including medium-duty vehicles with engines certified on an engine dynamometer and medium-duty passenger vehicles." The commenter may be referring to the fact that the OBD emission thresholds specific to LEV III applications that exist in section 1968.2 do not exist in 1968.2.1, which is true. However, that would mean

that LEV III applications would have to meet the OBD emission thresholds specified in the regulation, which are generally written in the regulation as a multiplicative or additive of the “applicable FTP standards,” which is inclusive of LEV III standards. Therefore, the OBD requirements in 1968.2.1 are not incompatible with the requirements in 1961.2.1 and a manufacturer is able to certify an OBD system that meets both 1968.2.1 and 1961.2.1. This is demonstrably true because CARB certified OBD II systems on LEV III vehicles prior to the adoption of LEV III-specific OBD thresholds in the OBD II regulation in 2016.

Concerning the commenter’s suggestion to allow manufacturers to meet the OBD II regulation adopted in 2016 since it contains the LEV III requirements in lieu of meeting either section 1968.2 or 1968.2.1, CARB disagrees with this suggestion for a regulatory change. Considering the current OBD II regulation in section 1968.2 also contains the LEV III requirements of concern, CARB is unsure of why manufacturers would rather meet the 2016 version of the OBD II regulation instead of the current section 1968.2 if the only reason for suggesting this 2016 option was the inclusion of the LEV III requirements. If the concern was that the LEV III applications are unable to meet the more stringent OBD emission thresholds in section 1968.2.1, there are provisions in sections 1968.2.1(e)(17.1) and (f)(17.1) that would allow manufacturers to use higher OBD emission thresholds more akin to the thresholds in section 1968.2 if the most reliable monitoring method requires a higher threshold for robust monitoring, provided certain conditions are met. As always, if a manufacturer faces particular circumstances that might warrant additional consideration for a given regulatory requirement, the manufacturer is encouraged to discuss those with CARB.

- 87. Comment:** The examples above regarding the OBD regulations and LEV III clearly show the proposed EVE regulations do not meet the clarity standard – the meaning of the regulations is not easily understood by those persons directly affected by them. The lack of clarity is a violation of due process under California’s Constitution, Article I, Section 7 for the parties CARB intends to regulate. Due Process requires the government to give parties “an opportunity (1) to know what the law is and (2) to conform their conduct accordingly.” Here, the regulated parties are entitled to know what the proposed EVE regulations require so they can ensure their conduct satisfies such requirements. (AAI)

Agency Response to Comment A.87: No changes were made in response to this comment. CARB disagrees with the commenter.

The OBD II requirements in 13 CCR section 1968.2.1 accurately represent the OBD regulation from 1968.2 as it existed in 2013 (for which U.S. EPA waived preemption). As shown in the response to comment A.86 above, incorporated by reference here, while 1968.2.1 does not contain LEV III specific thresholds, the existing thresholds for LEV I and LEV II continue to apply to “all 2004 and subsequent model-year vehicles” and are generally written in the regulation as a multiplicative or additive of the “applicable FTP standards,” which is inclusive of LEV III standards. All regulated parties are encouraged to work with CARB staff on any specific issues or areas where they are having trouble understanding the regulation as it applies to any particular situation. CARB does not believe there is a lack of clarity in the emergency regulations, as many manufacturers built products compliant with these regulations for many MYs.

(p) Need for Emergency Regulations

- 88. Comment:** CARB seems to imply that without the EVE regulations, new vehicles will not meet any emissions standards. This is not true. New vehicles must still meet U.S. EPA’s

emission standards. The Tier 3 LDV criteria pollutant standards are identical to LEV III apart from one element of the particulate matter (PM) standards. In addition, starting in 2027 model year, automakers must meet U.S. EPA Tier 4 standards. CARB acknowledged in their Notice of Public Hearing for the Emergency Regulations in September 2025 that at least portions of the U.S. EPA Tier 4 standards are more stringent than the LEV III standards adopted in the proposed EVE regulations. (AAI)

- 89. Comment:** Government Code §11342.545 defines “emergency” as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” The current situation does not meet this standard. Most 2026 MY vehicles have already received CARB executive orders, and as discussed above, CARB issued MAC ECCD-2025-08 to specify certification requirements for 2025 and subsequent MY vehicles. If CARB believed this was an emergency, it should have acted immediately on June 12, 2025, when President Trump signed the bipartisan resolution passed by both Chambers of Congress under the CRA disapproving the ACC II waiver, rather than waiting over 3 months to declare an emergency. Moreover, President Trump’s signature of the CRA resolution was not a surprise; CARB issued a MAC almost 3 weeks before President Trump signed the CRA resolution, and just a month ago, CARB issued MAC ECCD-2025-08, which could be used until CARB completes a regular, nonemergency rulemaking and provides sufficient time for stakeholders to inform the process. (AAI)
- 90. Comment:** By providing extremely limited public participation with the “emergency” rulemaking and then, if approved, seeking immediately to have these “emergency” regulations made permanent, the public participation process is subverted. The proposed EVE regulations in this rulemaking do not clarify this situation; they complicate it. Finally, CARB’s claim of “serious harm” is undermined by existing federal EPA regulations that require vehicles to meet stringent nationwide emissions standards, as recognized in its MAC ECCD-2025-08. (AAI)

Agency Response to Comments A.88 through A.90: No changes were made in response to these comments. See the responses to comments A.64 and A.65 in subsection A.1.(h), incorporated by reference here. Furthermore, this rulemaking was released for 45-days, and then three 15-day periods within which public comments were made.

(q) Request to Work with Stakeholders

- 91. Comment:** AAI requests CARB to work with stakeholders to include additional changes to regulations or test procedures on a 15-day notice. This is because regulations are complex and typically take a year or more to develop/draft/correct/refine everything and even then, errors are still made. Also, correcting errors via Enforcement Discretion letters is time consuming for all stakeholders. (AAI)
- 92. Comment:** The EVE regulations will require corrections and clarifications. We understand that CARB Staff has identified changes to be included in Staff Proposed 15-Day Changes, and we have identified others in the attachments. For example, since this is the first time OEMs have simultaneous programs (ACC II, ACC I, EPA Tier 4), maintaining various fleet average and phase-in percentages should be reviewed. However, additional time to review and collaborate with CARB staff would improve the regulations, provide clarity, and ensure the regulations reflect the Board’s intent to provide a clear pathway to certification and sale of new vehicles in California. (AAI)

Agency Response to Comments A.91 and A.92: Changes were made in response to these comments. CARB has reviewed the proposed changes by AAI, agrees certain changes were appropriate and incorporated those changes into 15-day proposed amendments. Other proposed changes were found to be outside the scope of this rulemaking. CARB has summarized and provided responses to AAI's proposed changes in the relevant sections of this FSOR. CARB continues to welcome further engagement on implementation and other issues.

(r) Out-of-Scope Comments

- 93. Comment:** In an attachment to a comment letter, Commenter has provided proposed revisions to the regulations in the Appendix A-4-2 document in which the full word is written where its acronym is first used, if the acronym was not defined. Likewise, if the acronym was not defined, write out the acronym where its full word is first used. (AAI)

Agency Response to Comment A.93: No changes were made in response to this comment as they are outside the scope of this rulemaking. The intent of this rulemaking is to recodify prior regulations to provide clarity, not to correct minor errors in the prior regulations when originally codified. Acronyms that the commenter pointed out (e.g., "NMOG", "LDT", etc.) are those already understood by industry throughout the history of emissions compliance. In addition, "MDV," "NMOG," "LDT" and "MDPV," are defined as medium-duty vehicle, Non-Methane Organic Gases, light-duty truck, and medium-duty passenger vehicle, respectively, in Title 13 CCR, Section 1961.2(e), 1961.2.1(e), and 1961.4(b), among other defined acronyms in those sections. Indeed, the alternative regulations created in this rulemaking reflect the prior regulations adopted numerous years ago (e.g., ACC I adopted in 2012), so industry already understands the acronyms.

- 94. Comment:** Commenter added a note to CCR 1961.2.1 to request CARB to allow the use of either LEV III or LEV IV test fuel. In this request, the commenter stated that there is no adverse emissions impact between the two fuels so they should be treated as equivalent when certifying to either LEV III or LEV IV standard. (AAI)
- 95. Comment:** The ACC I ZEV charging requirements in 1962.3.1 point to SAE procedures from 2010, specific power output requirements, and specific charger outlet and/or adapter requirements. On the other hand, the ACC II ZEV charging requirements in 1962.3 point to SAE procedures from 2017, different specific output requirements, and different charger/adapter requirements. This emergency rulemaking would immediately insert greater uncertainty as to what requirements manufacturers certify their ZEVs to, whether previously-certified ZEVs could be de-certified, and whether ZEVs already in their production process could be forced to re-certify with different hardware and/or software requirements that cannot be changed without sufficient lead-time. Adding to the confusion around certification to the charging requirements regulation is the fact that all of industry has now aligned around a single SAE charging standard (SAE J3400) for both AC and DC charging, that is not reflected anywhere in any of CARB's requirements. Most manufacturers will have fully converted their new EV fleets to this new standard for Model Year 2027. This standard includes improvements in communication, security, and performance, such as thermal sensing and arc detection, to improve charging reliability and safety. (AAI)
- 96. Comment:** The commenter provided a proposed revision to CCR 1962.3.1 in which the referenced version of SAE J1772 is updated to version 2024; and add SAE J3400 version September 2024 as one of the charging standards that industry could comply with. (AAI)

97. Comment: Commenter provided a proposed revision to the Appendix B-9 document (i.e., 2018 and subsequent model year ZEV Test Procedure) in which the referenced versions of SAE J1634 and J1711 are updated to versions 2025 and 2023, respectively. (AAI)

Agency Response to Comments A.94 through A.97: No changes were made in response to the comments, as they are outside the scope of this rulemaking. The intent of this rulemaking is to permanently adopt emergency regulations that clarify previously adopted standards remain operative, not to update them for convenient compliance (in this context, using the most updated industry standards or test fuel; or allowing flexibilities in charging inlet compliance).

Supportive Comments

The following commenters expressed strong support for the Emergency Vehicle Emissions Regulations.

- Virginia Van Kuran (Private Citizen)
- Jamie Dow (Private Citizen)
- Katrina Tomas (Coalition of public health, environmental justice, equity, community, business, science, and environmental organizations, see Table A-1 for detailed list)
- Dave Robba (Ceres)
- Paul Miller (NESCAUM)
- Mariela Ruacho (Health and medical organizations, see Table A-1 for detailed list)
- Bea Portela (Center for Biological Diversity, Natural Resources Defense Council, Environmental Defense Fund, Clean Air Task Force, the Sierra Club, and Earthjustice)
- David Pettit (Center for Biological Diversity, Natural Resources Defense Council, Environmental Defense Fund, Clean Air Task Force, the Sierra Club, and Earthjustice)
- David Reichmuth (UCS)

The comments emphasized California's authority to enforce vehicle standards, protect public health, attain climate benefits and maintain California emission standards that previously had federal waivers.

The comments also mention the importance of advancing clean technologies to ensure regulatory certainty, fleet investment, and continued progress toward air quality and decarbonization goals. These comments of support are appreciated by CARB staff but are not summarized in this section for simplicity.

Agency Response: No changes were made in response to these comments. CARB appreciates the supportive comments.

2. Comments Regarding the Omnibus and Low Carbon Fuel Standard Regulations

Table A-2 lists the commenters that submitted comments during the 45-day comment period that were related to the Omnibus and LCFS regulations.

For simplicity, comments pertaining to the proposed amendments to the Omnibus regulation or the LCFS regulation are not shown in this document. These comments are outside the scope of this rulemaking action and therefore are not addressed in this FSOR.

Table A-2. List of Commenters that Submitted Comments Regarding the Proposed Amendments to the Omnibus and LCFS Regulations

Commenter	Date	Affiliation
Michael Pimentel	October 31, 2025	California Transit Association
Ryan Kenny	November 5, 2025	Clean Energy
Kent Leacock	November 7, 2025	Mainspring Energy, Inc.
Paul Townsend	November 7, 2025	POET
Alex Braicovich	November 7, 2025	CR&R Environmental Services Incorporated
Nina Robertson	November 10, 2025	Earthjustice
Kevin Brown	November 10, 2025	Manufacturers of Emission Controls Association
Cassandra Farrant	November 10, 2025	Amp Americas
Jonathan Harding	November 10, 2025	American Biogas Council
Alexis Moch	November 10, 2025	Prologis
Andy Navarrete	November 10, 2025	International Council on Clean Transportation
Christine Ball-Blakely	November 10, 2025	Defensores del Valle Central para el Aire y Agua Limpio, Leadership Counsel for Justice & Accountability, Food & Water Watch, Animal Legal Defense Fund, and Center for Food Safety
Gregory Stevens	November 10, 2025	Ocean Pacific Energy Company
Steve Douglas	November 10, 2025	AAI
Sam Wade	November 10, 2025	Coalition for Renewable Natural Gas
Jiao Yang	November 21, 2025	China WTO/TBT National Notification & Enquiry Center**

**Note: This comment was submitted outside of the comment period.

3. Out-of-Scope Comments

Table A-3 lists the 45-day commenters whose submissions were not related to the Emergency Vehicle Emissions Regulations, the Omnibus regulation, or the LCFS regulation. These comments are out-of-scope or untimely comments for this rulemaking action. Because of their nature, some of these comments are not listed in this FSOR and no agency responses are provided. Only one comment from Japan's Yazaki Corporation is listed and an agency response is provided.

Table A-3. Commenters that Submitted Out-of-Scope Comments

Commenter	Date	Affiliation
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Michelle Anderson	October 20, 2025	Private Citizen
Tomoyuki Yamazaki	November 21, 2025	Japan's Yazaki Corporation**

**Note: This comment was submitted outside of the comment period.

98. Comment: OEMs were not aware of 1962.3(c) NRTL requirement during early development phase so they may risk noncompliance; Allow OEM self-test option as alternative to NRTL requirement; Allow J3400 instead of J1772, to be consistent with California Energy Commission's infrastructure direction. (Japan's Yazaki Corporation).

Agency Response to Comment A.98: This comment was submitted outside of the designated comment period. No changes were made in response, as the comment falls outside the scope of this rulemaking. The intent of this rulemaking is to permanently adopt the existing Emergency Vehicle Emissions Regulations. The comment concerns specific requirements in section 13 CCR 1962.3, "Electric Vehicle Charging Requirements", which is not part of this rulemaking, solely to add the preambulatory paragraphs, which specify regulated parties may comply with section 1962.3 or alternative section 1962.3.1.

B. Comments Received During the Public Hearing

1. Applicable Comments

Applicable comments here refer to the Board Hearing comments applicable to the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. Tables B-1 through B-3 provide a listing of the commenters. Table B-1 shows the list of commenters who submitted written comments during the Board Hearing on March 26, 2026. Oral comments were also presented at the Board Hearing by the stakeholders as shown in Table B-2. Similarly, Table B-3 lists the stakeholder who submitted written comments after the docket closure. Staff has listed the comments and the responses below Table B-3.

Table B-1. Commenters that Submitted Written Comments at the Board Hearing

Commenter	Date	Affiliation
Samantha Yeager	March 26, 2026	International
Sophie Ellinghouse	March 26, 2026	Western States Petroleum Association (WSPA)

Table B-2. Commenters that Submitted Oral Comments at the Board Hearing

Commenter	Date	Affiliation
Ian MacMillan	March 26, 2026	South Coast Air Quality Management District (South Coast AQMD)
Steve Douglas	March 26, 2026	AAI
Sarah Taylor	March 26, 2026	WSPA

Table B-3. Commenter that Submitted Written Comments After Docket Closure

Commenter	Date	Affiliation
Dan Potter	March 27, 2026	DTNA

The following is a summary of comments and agency responses for comments listed in Tables B-1 through B-3.

Heavy-Duty Related Comments

- 1. Comment:** Under the Proposed Action, CARB seeks to readopt and extend its emergency vehicle emissions regulations (Emergency Regulations), which are set to expire on April 1, 2026, for an additional 90 days until June 30, 2026. According to CARB, the proposed regulatory text for readoption “remains identical” to the initial regulations. Indeed, the 5-Day Public Notice offers no new justification for the continuation of the emergency regulations. The agency simply claims that “[t]he facts asserted in the initial finding of emergency remain the same . . . , which are incorporated by reference.” CARB believes that until federal courts decide the disputes related to the Congressional resolutions that withdrew its preemption waivers, CARB’s earlier-adopted regulations must remain operative to “ensure that new vehicles and engines can continue to be sold in California.”

International does not support CARB’s Proposed Action because there has never been, and is not currently, an “emergency” risk to the health, safety, and general welfare and, thus, no basis to continue to avoid required rulemaking procedures. Because CARB’s claims have not changed, International incorporates by reference and encloses its previous comments regarding the illegal actions of CARB, which violate several California statutes and regulations as well as federal law. See Sept 26, 2025, International’s Comments to “Emergency Amendment and Adoption of Vehicle Emissions Regulations”: OAL File Number: 2025-0922-01E; see also Nov. 10, 2025, International’s Comments to “Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to Permanently Adopt the Emergency Vehicle Emissions Regulations.”

As noted previously, there is no crisis that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. The Proposed Action is not about health or safety; it is CARB’s attempt to preserve its certification program. The specter of heavy-duty vehicles and engines being sold into the State with uncontrolled emissions, or of no vehicles being sold at all, has not come to pass, nor will it. Just like with the other 49 states, new heavy-duty vehicles and engines cannot be sold in the State without a valid certificate of conformity from the U.S. EPA. See 42 U.S.C. § 7522(a)(1). As CARB acknowledges, current heavy-duty federal standards are stricter than the old standards CARB now proposes to again reanimate on an emergency basis. (International)

Agency Response to Comment B.1: No changes were made in response to this comment. CARB disagrees with the assertions raised.

The emergency necessitating the amendments was clearly articulated in the emergency rulemaking notice. See the responses to comments A.64 through A.68, incorporated by reference here. This is not an emergency rulemaking, but rather the action is to

permanently adopt the Emergency Vehicle Emissions Regulations following the normal APA process.

2. **Comment:** Further, International does not support the Proposed Action because, as with the original Emergency Regulations, CARB failed to comply with the California Environmental Quality Act (CEQA). CARB's environmental analysis of the Proposed Action repeats the same deficiencies identified in prior comment letters and introduces new shortcomings that further undermine CARB's claimed CEQA exemptions. (International)
3. **Comment:** CARB claims the Proposed Action is exempt from CEQA under the common sense exemption (Cal. Code Regs. tit. 14, § 15061(b)(3)), the Class 7 categorical exemption (Cal. Code Regs. tit. 14, § 15307), and the Class 8 categorical exemption (Cal. Code Regs. tit. 14, § 15308), repeating its conclusory assertion that "substantial evidence" and the "entire administrative record" support these claims. The administrative record, however, is devoid of evidence affirmatively demonstrating that the Proposed Action satisfies the requirements for any claimed exemption. To the contrary, the record contains substantial evidence refuting those exemptions, namely, comment letters demonstrating that the Emergency Regulations revive less protective standards than the currently operative federal standards. Under *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n*, 41 Cal. 4th 372, 386 (2007), "the agency invoking the exemption has the burden of demonstrating that it applies," and that duty "is all the more important where the record shows, as it does here, that opponents of the project have raised arguments regarding possible significant environmental impacts." The existence of a plausible pathway to increased pollution bars reliance on both the common sense exemption and the categorical exemptions for natural resources and environmental protection. *Dunn-Edwards Corp. v. BAAQMD*, 9 Cal. App. 4th 644, 653-58 (Cal. Ct. App. 1992); see also *International Longshoremen's & Warehousemen's Union v. Board of Supervisors*, 116 Cal. App. 3d 265, 276 (Cal. Ct. App. 1981). (International)
4. **Comment:** Additionally, CARB's analysis under the California Environmental Quality Act (CEQA) is deficient. As highlighted in multiple comment letters submitted during the Fall 2025 comment period, CARB improperly relies on the common sense exemption and the Class 7 and Class 8 categorical exemptions. These exemptions do not apply here, and CARB has not met its burden to justify their use. The agency's environmental analysis is conclusory and lacks supporting data, emissions modeling, or differentiation across vehicle classes. Moreover, CARB has not demonstrated the level of certainty required to invoke the common sense exemption, nor can it rely on categorical exemptions where the action may reduce environmental protections. (WSPA)

Agency Response to Comments B.2 through B.4: No changes were made in response to these comments. CARB disagrees with these comments.

The comments assert that the proposed action does not meet the requirements for any claimed CEQA exemptions. As support, they reference comment letters alleging that the Emergency Regulations would reinstate standards less protective than the currently operative federal standards and therefore the proposal would result in adverse environmental impacts. CARB disagrees with these assertions.

Commenters contend that CARB must evaluate the proposed action against a future federal standard that has not yet been implemented. However, CEQA does not require such an approach. The CEQA Guidelines specify that, "[g]enerally, the lead agency should describe physical environmental conditions as they exist at the time the notice of

preparation is published or if no notice of preparation is published, at the time environmental analysis is commenced...” (Cal. Code Regs., tit. 14, CCR, § 15125(a)(1)). CARB followed that directive here. CARB is appropriately relying on CEQA exemptions, including the common sense exemption, for the proposed action. CARB appropriately used the current physical conditions in 2025, which was the point in time when environmental analysis commenced, as the CEQA baseline when conducting its analysis.

The Emergency Vehicle Emissions Regulations will not result in adverse environmental impacts. See also the responses to comments in subsection A.1.(g), A.55 through A.63, and comment B.5, incorporated by reference here.

- 5. Comment:** CARB’s environmental analysis for the Proposed Action compounds these deficiencies, providing just three conclusory charts, with no underlying data, modeling, or explanation of assumptions. CARB’s analysis also fails to distinguish between light-duty, medium-duty, and heavy-duty emissions, despite independent regulatory requirements for each class of vehicle. This conceals whether significant adverse effects may occur within any individual class, especially heavy-duty, where the federal EPA-NOx standards are more stringent than the pre-Omnibus standards CARB seeks to revive. Because CARB ignores the operative federal emissions standards, CARB’s analysis of the emissions savings from the Proposed Action is implicitly wrong. Further, CARB’s analysis purports to compare emissions against a “2025 CEQA baseline year,” but it is unclear what that baseline is and how CARB determined it. In any event, this baseline is legally deficient given the inaccurately portrayed emissions savings of the Proposed Action. The baseline must be realistic, reflecting “the actual environmental conditions existing at the time of CEQA analysis.” See *Communities for a Better Env’t v. South Coast Air Quality Management District*, 48 Cal. 4th 310, 321 (2010). CEQA does not permit CARB to ignore applicable federal standards. (International)

Agency Response to Comment B.5: No change was made in response to this comment. CARB disagrees with this comment.

To quantify the emissions impacts of the proposed permanent adoption of the Emergency Vehicle Emissions Regulations, CARB staff used California’s on-road emissions inventory or Emission FACTor (EMFAC) model 2025 version. The analysis assumed implementation of all currently adopted on-road mobile source regulations but excluded regulations affected by illegal congressional resolutions including the Omnibus and LEV IV standards.

The Emergency Vehicle Emissions Regulations constitute a single rulemaking action affecting all on-road light-duty, medium-duty and heavy-duty vehicles. Accordingly, CARB staff evaluated the overall emissions impacts of the proposed action as a whole. The charts referenced in the comment therefore present aggregated emissions impacts resulting from the proposed action.

Furthermore, CARB did not evaluate a hypothetical scenario in which California-certified vehicles instead comply with federal 2027 and subsequent MY heavy-duty engine standards. CEQA does not require a future year baseline. Moreover, as noted above, there is significant uncertainty about U.S. EPA future standards.

CARB appropriately used a 2025 CEQA baseline year for the environmental analysis as that was the timeframe when the environmental analysis commenced (Cal. Code Regs., tit. 14, § 15125(a)(1)). See also the response to comments A.55 through A.63 and B.2 – B.4, incorporated by reference here.

- 6. Comment:** In conclusion, CARB's emergency reintroduction of old heavy-duty emission standards that are less stringent than federal standards, along with the agency's continued threats of retroactive enforcement, only serve to introduce additional uncertainty and instability into California's market. (International)

Agency Response to Comment B.6: No change was made in response to this comment. CARB disagrees with this comment.

The Emergency Vehicle Emissions Regulations maintain protective emission standards for vehicles and engines while ensuring manufacturers can sell vehicles and engines in California. See also responses to comments in subsections A.1.(a), A.1.(d), and A.1.(h), incorporated by reference here.

- 7. Comment:** There are procedural concerns regarding CARB's handling of the public comment process. CARB posted a notice postponing the action on November 7, 2025—just three days before the original comment period was set to close. Because many stakeholders submit comments near the close of comment periods, this timing suppressed public participation from those who reasonably believed another opportunity to comment would be provided. CARB's subsequent position that comments submitted outside the original period are untimely further compounds this issue and reflects an irregular process that discouraged meaningful stakeholder engagement. (WSPA)

Agency Response to Comment B.7: No changes were made in response to these comments.

CARB followed all procedural requirements under the APA. The Notice of Postponement issued on November 7, 2025, properly postponed the public hearing originally scheduled for November 20, 2025, to a later date. The notice also clearly stated that the public comment period would close on November 10, 2025, consistent with the originally noticed deadline. Stakeholders were also still able to submit comments by the stated deadline as well as at the later public hearing (and did so). The postponement of the hearing did not alter the closure of the comment period, and CARB's handling of comments was consistent with all applicable procedural requirements. There is no information provided or reason to believe that the Notice of Postponement discouraged meaningful stakeholder engagement.

- 8. Comment:** Comment letter dated September 26, 2025, submitted March 27, 2026

Emergency Amendment and Adoption of Vehicle Emissions Regulations

In June, pursuant to the Congressional Review Act, the federal government statutorily preempted California's emissions standards governing heavy-duty vehicles and engines. Notwithstanding that new legislation, California has continued to (1) demand compliance with its heavy-duty emissions standards and (2) require manufacturers to obtain certification to those standards as a condition precedent to retail sale, despite the fact that Section 209(a) of the Clean Air Act, provides that, absent a waiver, "No State ... shall adopt or attempt to enforce any standard relating to the control of emissions" from new vehicles or engines, and further mandates, "No State shall require certification ... as condition precedent to the initial retail sale" of those vehicles or engines. 42 U.S.C. § 7543(a).

With this Emergency Rulemaking, CARB is attempting to sidestep federal legislation by promulgating new heavy-duty emissions standards stitched together from old and inapplicable standards for which CARB had once received now-obsolete preemption waivers. The end result is (a) new preempted emissions standards in violation of Section

209(a) of the Clean Air Act, and (b) conflicting state emissions standards simultaneously adopted as California regulations.

OAL should not approve CARB's Emergency Rulemaking. This action violates both federal and state law and is inconsistent with OAL's standards. CARB's proposal also raises due process concerns, fails to comply with the California APA, and does not satisfy the requirements for an emergency rulemaking under California law. (DTNA)

9. Comment: Comment letter dated September 26, 2025, submitted March 27, 2026

CARB lacks the authority to adopt or enforce the Emergency Regulation.

Federal law prohibits CARB from attempting to enforce emissions standards without a waiver of preemption from the U.S. Environmental Protection Agency (EPA), 42 U.S.C. §§ 7543(a)-(b), or without notice to and a determination from EPA that the emissions standards are "within the scope" of a previously granted waiver. This rulemaking is preempted because CARB does not have an applicable waiver or a within-the-scope determination.

- a) The Emergency Regulation creates new emissions standards requiring a federal preemption waiver. CARB cannot rely on previous EPA waivers for authorization to adopt or enforce new standards.*

In its Emergency Regulation, CARB purports to rely on previous waivers from EPA to adopt and enforce new emissions standards. But because CARB added these standards as new sections in the California Code of Regulations, changed the language of the emissions standards, and merged the old standards together in a new way, it cannot rely on those prior waivers.

Without analysis, CARB asserts that the Emergency Regulation are "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions." Notice at 2-3. But this ignores that the standards as they are stitched together in the Emergency Rulemaking did not exist in the California Code of Regulations prior to September 22, 2025. Regulated parties had no notice or reason to think these emissions standards applied to current and future model years prior to CARB's announcement on September 15, 2025 or that these standards would be pulled together in this new way and with the new language added. This is therefore a new rule and needs a new waiver.

Rather than using the Emergency Regulation to undo Omnibus changes and restore the previous version of title 13, section 1956.8, CARB is adopting entirely new regulatory sections with standards applicable to current and subsequent model years and inserting new language into provisions. For example, the tailpipe standards that would purportedly apply to heavy-duty engines are in a newly created section of the regulations and add two new paragraphs of text not found in earlier versions of this rule. And more broadly, the entire structure of the Emergency Regulation demonstrates why these emissions standards are new. In Appendix A-1-2 to the Emergency Regulation, CARB proposes an assemblage of emissions standards—including tailpipe emissions standards from 2005 and 2010 as well as 2013 on-board diagnostic standards—with waivers granted at separate times.

Notice at 5 nn.7, 9. In doing so, CARB creates something both new and newly applicable to current and future model year vehicles.³⁰

This proposal is not a workable standard that manufacturers can use. Combining elements from various regulatory programs spanning the last two decades and applying them as certification requirements for new engines presents significant practical and legal challenges, which is another reason that this action requires new authorization from EPA under Section 209(b).

b) The emissions standards proposed in the Emergency Regulation are not “within the scope” of the prior waivers.

EPA will only consider CARB’s amendments to be within the scope of a previously granted waiver if the amended regulations do not undermine California’s determination that its standards are as protective as applicable Federal standards, if they do not impact consistency with section 202(a), and if they raise no new issues that would affect EPA’s previous waiver decision. California State Motor Vehicle Pollution Control Standards; Within-the-Scope Determination for Amendments to California’s Motor Vehicle Greenhouse Gas Regulations; Notice of Decision, 76 Fed. Reg. 34693 (June 14, 2011). CARB cannot meet these requirements for the Emergency Regulation, and it is therefore not within the scope of prior waivers (even if it was not a new standard). As described in more detail below, CARB’s new regulations are *less* stringent than the federal standards and they are inconsistent with section 202(a) of the Clean Air Act, including the lead-time requirements.

EPA has also held that if California’s test procedures differ from those required by EPA, this can be an impermissible violation of section 202(a) of the Clean Air Act. EPA determined that “if the Federal and California test procedures impose inconsistent certification requirements, the California test procedures are deemed not to be consistent with Section 202(a).” 44 Fed Reg. 61096 (Oct. 23, 1979). EPA also provided that California’s test procedures can be more stringent than EPA’s, but that manufacturers must be able to meet federal and California requirements with the same test vehicle. 43 Fed. Reg. 32183. With these new proposed requirements, CARB creates new test procedures, meaning that test procedures that may have originally been consistent with EPA’s, no longer are. For example, EPA’s new requirements for aging to determine and validate Deterioration Factors, 40 CFR 1036.245 and 40 CFR 1036.246, differ significantly from the test procedures in the Emergency Regulation, which adopts Test Procedures last amended October 21, 2014 predating EPA’s changed Test Procedures and could not reasonably be performed on the test vehicle. Rulemaking Appendix A-2-1 13 CCR § 1965.8.1(b) *Test Procedures*. Accordingly, CARB’s proposed test procedures cannot meet the requirements of Section 202 of the Clean Air Act.

EPA has also made it clear that major regulatory overhauls raise “new issues” affecting prior waiver decisions and require analysis under the full waiver criteria. Since CARB received its prior waivers for its now-eliminated standards, EPA has issued new federal

³⁰ Even if CARB only restored prior emissions standards, applying those standards to the current and subsequent model year without notice violates federal law. The application of these standards to new model years when industry had no notice these standards would apply after model year 2023 is the creation of a new rule that requires a waiver. It does not matter if the standards covered an indefinite time span when the waiver was initially granted. Notice at 5 n.7. Regulated parties had no notice that these standards applied after model year 2023 once CARB’s prior rulemakings removed the language indicating that the standards applied to “subsequent model years” and added applicability end dates. [Footnote in comment]

rules under the Clean Trucks Plan, including a rule that tightened criteria pollutant standards for heavy-duty trucks. See *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards*, 88 Fed. Reg. 4296 (Jan. 24, 2023). And CARB is currently undertaking separate amendments to harmonize its standard with the federal standards. These all raise new issues that would affect EPA's previous waiver decision.

In addition, new issues also can preclude a within-the-scope determination if there are a large number of changes in CARB's proposed rule. For instance, CARB amended its on-board diagnostic regulations multiple times and asked EPA to issue a finding that the amendments were within the scope of its prior waiver grant. *California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements and Enforcement for 2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles and Engines*; Notice of Decision, 81 Fed. Reg. 78143 (Nov. 7, 2016). EPA refused to conduct a within-the-scope analysis of these amendments. Because "of the significant evolution of CARB's [on-board diagnostic] regulatory program" and "the sheer number of amendments—some in part designed to address a variety of manufacturers concerns with the technological feasibility of complying with previous versions of the [] regulations," EPA assessed the amendments under the full waiver criteria. *Id.* Here, CARB seeks to adopt and enforce a hodgepodge of standards including a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and a 2013 on-board diagnostic standard. See Notice at 5 nn.7, 9. CARB's emergency rulemaking is a massive overhaul that creates an entirely new set of alternative emissions standards, and it is not within the scope of CARB's prior waivers.

c) The Emergency Regulation cannot satisfy the Section 209(b) waiver criteria.

To enforce these emissions standards, CARB needs a new waiver of federal preemption or a within-the-scope determination as to an existing waiver. But these emissions standards cannot satisfy the requirements of Section 209 of the Clean Air Act. Sections 202 and 209 of the Act require CARB to provide lead time for any heavy-duty emissions standard, meaning that CARB cannot meet the requisite lead-time requirements for the next several model years' certifications—including the MY2026 certifications underway now. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(1)(C). Putting aside development timelines (which is the core purpose of statutory lead time), emissions and on-board diagnostic testing for any given model year takes months—if not more than a year. CARB is well aware that manufacturers cannot actually use this proposal without months of advance preparation.

CARB will also not be able to show that its standards are technologically feasible and consistent with federal requirements and, therefore, consistent with Sections 202 and 209 of the Clean Air Act. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a). For example, CARB's new regulation excludes several flexibilities added to on-board diagnostic standards in the Omnibus rulemaking package to ensure technical feasibility, including changes to certain test-out criteria and failure adoption thresholds. See CARB, *Initial Statement of Reasons, Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments* (June 23, 2020) at III-10.

And CARB has adopted standards that are less significantly stringent than the federal standards. CARB's new section 1956.8.1 in title 13 of the California Code of Regulations adopts CO₂ and NO_x standards that are less stringent than EPA's corollary standards at 40 C.F.R. § 1036 that will take effect in MY 2027. CARB itself recognizes this point in Omnibus amendments proposed after this emergency rulemaking commenced. For these reasons, the new rule cannot satisfy Clean Air Act waiver criteria.

All of this makes clear the true purpose of the proposed rule: this rulemaking is CARB's attempt to enforce its preempted Omnibus emissions standards and an attempt to enact new heavy-duty emissions standards to save CARB's certification program from preemption. The rulemaking creates a contradictory regulatory regime, where newly re-enacted pre-Omnibus standards and the Omnibus standards are both codified and "operative" depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill. The rulemaking itself and the new regulatory text also explicitly threaten retroactive enforcement for manufacturers that do not obtain a CARB certification pursuant to the Omnibus standards, discussed further below. This is a flagrant attempt to enforce the Omnibus emissions standards and conditions precedent to sale of new heavy-duty vehicles and engines now, through the threat of potential future retroactive enforcement, even though CARB's heavy-duty vehicle emissions standards are all preempted by the Clean Air Act, and its conditions precedent to sale are likewise preempted in the absence of an emissions waiver.

d) The Emergency Regulation is an impermissible attempt to sidestep federal preemption of CARB's certification program.

Section 209(a) of the Clean Air Act also provides that "[n]o State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment." Absent a waiver of federal preemption from EPA, California cannot require certification or any other conditions precedent to initial retail sale.

For decades, EPA has implemented this statutory prohibition by requiring CARB to have a preemption waiver for its emission standards prior to enforcement of its certification program and related conditions precedent to initial sale. In the normal course, CARB receives this waiver for its certification program when it receives a waiver for emissions standards applicable to a particular class of regulated vehicles. See EPA, Conditions Precedent to the Sale, Titling, or Registration of New Motor Vehicles in California, 50 Fed. Reg. 35123 (Aug. 29, 1985). EPA has affirmed the need for a preemption waiver prior to enforcement of certification on at least several prior occasions and in both Republican and Democratic federal administrations.³¹

As CARB's emergency notice acknowledges, plaintiffs in *Daimler Truck North America LLC v. CARB*, No. 2:25-cv-02255-DC (E.D. Cal), are seeking clarity in federal court on whether CARB can require certification where the state has no authority for any emissions standards and whether CARB can attempt to enforce these rules while CARB challenges the legality of the statutory revocation of their waivers in another legal action. All regulations that could be the basis of CARB's certification authority for heavy- and medium-duty vehicles in model year 2026 have lost (or do not have) federal preemption waivers, either because the waivers for the regulations were directly revoked (ACT, Omnibus), CARB

³¹ See 50 Fed. Reg. 35,123 (Aug. 29, 1985) (Reagan Admin.); 55 Fed. Reg. 28,824 (July 13, 1990) (Bush Admin.) ("EPA's prior issuance of waivers for the affected classes of vehicles and engines, based on California's standards and/or accompanying enforcement procedures, removes the prohibitions of section 209(a) regarding such conditions precedent for those classes."); 78 Fed. Reg. 44112 (July 23, 2013) (Obama Admin.) ("[O]nce EPA has granted California a waiver of section 209(a)'s preemption for emission standards and/or accompanying enforcement procedures, California may then require other such conditions precedent."). [Footnote in comment]

failed to apply for the waiver (California greenhouse gas requirements), or the regulation was modified by a program that lost its waiver (OBD, evaporative emissions). As such, CARB cannot require certification of heavy-duty vehicles unless and until EPA grants a waiver for CARB's "condition precedent" requirements or CARB secures a new waiver for emissions standards applicable to model year 2026 and subsequent heavy-duty vehicles.

Because CARB cannot require "any ...approval ... as condition precedent" to sale, the requirement for a CARB Executive Order prior to initial sale also is preempted. Federal Certificates of Conformity are now the basis for sale of new vehicles and engines into California. This entire enterprise violates the prohibition on requiring any condition precedent that Congress expressly placed on states under Section 209(a) of the Clean Air Act.

CARB seeks to end-run plaintiffs' claims in federal litigation by starting this "emergency rulemaking" purporting to "revive" old emissions standards and relying on old waivers for those outdated standards. As described above, the result is an entirely new rule for heavy-duty cobbled together from various state programs with no relationship to the current applicable technology and no synergy in how the standards will operate together to create a standard that actually works in practice. And this new rule was proposed without notice to and the appropriate waivers from U.S. EPA.

All of this underscores the true nature of what CARB is trying to do: argue that it has *some* waiver in place for heavy-duty vehicles and engines so that it can require manufacturers to pay for certification and submit to its jurisdiction. While the Emergency Regulation may suit CARB's needs as a litigation tactic, it is completely unworkable as a set of actual standards that could be implemented for vehicles and engines to be sold in California and is preemption. It therefore cannot save their certification authority. (DTNA)

10. Comment: Comment letter dated September 26, 2025, submitted March 27, 2026

CARB's attempt to codify its threat of retroactive enforcement violates federal law.

The threat of retroactive enforcement is an impermissible attempt to enforce Omnibus. Put another way, under the new rules, manufacturers can only avoid the potential for penalties if they follow the Omnibus regulation as opposed to the new proposed Emergency Rule" or "deem to comply," the two alternatives for certification offered by CARB in the August MAC. Putting aside that CARB has no authority to certify heavy-duty trucks at this time, the "choice" presented by CARB is not a real choice – the potential for significant penalties is coercing manufacturers to conform conduct to CARB's preempted rules before they can be tested in court, particularly where CARB insists on litigating to "final judgment," which creates years of uncertainty for industry. All the while, the penalties would be accruing, creating significant business risk for companies that ask a court to clarify the law when two regulators disagree or presume that federal legislation is valid. As such, CARB's new regulatory language and board order stating that it will enforce Omnibus (without regard to court orders or enforcement discretion) violates Section 209's attempt to enforce clause (among other issues). See Executive Order R-25-002 ("if a court of competent jurisdiction issues a final ruling that [the resolutions] are invalid or that the waivers US EPA granted California . . . are in effect, the regulated parties are subject to the requirements of the regulations targeted by these congressional resolutions.") (DTNA)

11. Comment: Comment letter dated September 26, 2025, submitted March 27, 2026

Section 177 States no longer have a regulation that is identical to the California standards.

Section 177 of the Clean Air Act permits other states to adopt California's emissions standards provided their standards are "identical" to those for which California has received a waiver under Section 209(b) of the Clean Air Act. 42 U.S.C. §§ 7507, 7543(b); see *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1043 (9th Cir. 2007). With the adoption of the new sections in this emergency rulemaking, all other states may lack identity with California's standards. (DTNA)

12. Comment: Comment letter dated September 26, 2025, submitted March 27, 2026

The Emergency Rulemaking creates significant due process concerns.

Both the rules here and the process by which they are being implemented raise serious fair notice and due process concerns. Principles of due process require the government to give individuals "an opportunity [1] to know what the law is and [2] to conform their conduct accordingly." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). But CARB's new rules create a contradictory regime that makes it impossible for regulated entities to know what the law is and then conform their conduct. Under the Emergency Regulation, mutually exclusive earlier standards (revived here) and newer standards (ACC II, Omnibus) are simultaneously "operative" depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill.

This creates a serious threat to regulated industry because CARB asserts it retains the ability to retroactively "enforce Advanced Clean Cars II and Omnibus, to the extent permitted by law, in the event a court of law holds invalid the resolutions purporting to disapprove the waivers for those more recent regulations." Notice at 3. In other words, unless manufacturers follow the rules that are currently preempted by federal law—and which the U.S. Department of Justice has directed manufacturers, including DTNA, to "cease and desist" from following—CARB may impose penalties on manufacturers if the law changes later. CARB is attempting to adopt new rules while essentially stating that if manufacturers follow these rules, they may be punished later. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Such fair notice is absent here. And the lack of clarity on the law sets manufacturers up for potential retroactive enforcement, which itself is a due process issue. See *PHH Corp. v. CFPB*, 839 F.3d 1, 46 (D.C. Cir. 2016) (Kavanaugh, J.), reinstated in relevant part, 881 F.3d 75, 83 (D.C. Cir. 2018) (en banc) ("Retroactivity ... contravenes the bedrock due process principle that the people should have fair notice of what conduct is prohibited.").

Furthermore, regulated parties—or anyone else seeking to participate in the rulemaking process cannot adequately comment on the proposal because it is impossible to assess CARB's claim that this rule is subject to "extant preemption waivers" in the five-day comment period. CARB characterizes this rulemaking as "confirm[ing]" that "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions, are operative." Notice at 2-3. It is prohibitively difficult, however, to quickly find these "extant preemption waivers" and trace their applicability to the "earlier-adopted standards" (Notice at 2-3) that are now being promulgated as "new language" in the California Code of Regulations (App'x A-2-1 at 1).

This is because when CARB submits a waiver package to EPA, it generally does not submit a complete version of the current rule planned for adoption and enforcement, but rather submits a redline “Final Regulation Order” that only shows revisions to the rule. See, e.g., “2008 Enclosure 9, Final Regulation Order 13 CCR 1956.8 and 2485,” Nonrulemaking Docket EPA-HQ-OAR-2016-0017, Document 0012, <https://www.regulations.gov/document/EPA-HQ-OAR-2016-0017-0012>. In other words, CARB’s waiver submissions to EPA (and indeed the Rulemaking section of CARB’s website) do not contain the complete version of the regulation that received a waiver. As a result, matching the new emissions standards here with past waivers requires not merely a section-by-section analysis across 700 pages of new regulatory text, but a line-by-line one. Compounding the difficulty, the prior versions of these new rules are spread across ten or more waiver applications spanning twelve years.

Without undertaking this analysis, regulated parties cannot fully assess, much less adequately comment on, the validity of CARB’s approach here. But it is simply not possible to perform this analysis in the five calendar days that CARB is providing for comment under this “emergency” rulemaking—a period overlapping almost entirely with the ten-day period when four key regulated entities must reply to CARB’s opposition to a motion for a preliminary injunction against CARB’s enforcement of preempted regulations. See Dkt. #54 (Scheduling Order), *Daimler Truck North America LLC v. CARB*, No. 2:25-cv-02255-DC (E.D. Cal. Aug. 20, 2025).

Further, CARB proposed additional amendments to its Omnibus standards after the emergency rulemaking commenced. CARB plans to adopt these Omnibus amendments through a combination of amending existing rules and adopting new sections of the California Code of Regulations. This leads to a bizarre result: the emergency rulemaking attempts to “restore” prior standards, and the Omnibus amendments propose to amend those same prior standards. CARB is pursuing simultaneous amendments to the same set of standards that cut in opposite directions. The lack of clarity makes it difficult for parties to assess and adequately comment on the proposal. (DTNA)

13. Comment: Comment letter dated September 26, 2025, submitted March 27, 2026

CARB’s emergency regulation does not comply with the “Clarity” and “Consistency” requirements of the California Administrative Procedure Act, Cal. Gov. Code § 11349.1(a)(3)-(4).

CARB regulations must satisfy the “Clarity” and “Consistency” standards of the California Administrative Procedure Act (APA). Cal. Gov. Code § 11349.1(a)(3)-(4); § 11349(c)-(d). “Clarity” requires that the regulations “be easily understood by those persons directly affected by them.” Cal. Gov. Code § 11349(c). “Consistency” requires the regulations to be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” Cal. Gov. Code § 11349(d).

CARB’s emergency regulation is not clear as regulated parties have no way to determine which regulatory standard governs. OAL also points to a regulation that “presents information in a format that is not readily understandable by those who are ‘directly affected’” as a quintessential example of an unclear regulation. See OAL, Review of Compliance with the Six Substantive Standards of the Administrative Procedure Act, at ¶ 3.03, <https://oal.ca.gov/wp-content/uploads/sites/166/2023/04/OAL-Review-for-6-APA-Standards.pdf>. As described above, directly regulated parties cannot readily confirm

CARB's assertion in its emergency regulation that its new standards have "extant preemption waivers," and are therefore valid and enforceable.

The emergency regulation also violates the "Consistency" standards of the APA. As noted above, adoption of the rule would conflict with federal law, and it is an attempt to enforce CARB's preempted Omnibus emissions standards in contradiction of the Clean Air Act. The Emergency Regulation is also internally inconsistent. It creates a facially contradictory regulatory regime: both revived standards and newer Omnibus standards are "operative" depending on litigation outcomes. (DTNA)

14. Comment: Comment letter dated September 26, 2025, submitted March 27, 2026

CARB fails to demonstrate an "emergency," Cal. Gov. Code § 11346.1(b), and lacks substantial evidence of necessity, Cal. Gov. Code § 11349.1(a)(1); § 11349(a).

An emergency "calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." Cal. Gov. Code § 11342.545. CARB cannot simply declare an emergency. Any finding of emergency must "describe specific facts demonstrating the existence of an emergency and the need for immediate action," and any regulation needed to address the emergency must be supported "by substantial evidence." Cal. Gov. Code § 11346.1(b)(2). CARB does not and cannot meet these standards. CARB's claim of an "emergency" lacks credibility, as the situation was neither unexpected nor abrupt. CARB was well aware that Congress has long been openly deliberating revoking the waivers under the Congressional Review Act.

CARB will not experience "serious harm" in the absence of the emergency rulemaking. EPA's emission standard remain in effect, and as described above, several of the standards are *more* stringent than the standards CARB seeks to revive through emergency rulemaking, including with respect to NOx emissions. This federal regulatory framework is sufficient to protect public health or welfare.

CARB's showing amounts to little more than a speculative and redundant effort to reassert its own authority over emissions control, lacking the substantial evidence necessary to justify an emergency rulemaking under California law. CARB must make a showing of objective, imminent, and serious harm, see Cal. Gov. Code §§ 11342.545, 11346.1(b)(2). The Government Code provides that "[a]ny finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate," Cal. Gov. Code § 11346.1(b)(2). Here, EPA's regulations are protective of public health and welfare (and in some respects, more protective) and negate CARB's purported public harms—and vehicles sold in California will continue to adhere to the same comprehensive emissions standards as those sold in non-Section 177 states. CARB's justifications thus seem to boil down to a desire to preserve some semblance of the regulatory authority revoked by the federal government. The urgency of CARB's rulemaking is likely related to its litigation strategy rather than any actual threat to public health or safety. This institutional anxiety is not a cognizable emergency. CARB's proposed rule is an unlawful and improper attempt to circumvent normal rulemaking procedures to address a problem of CARB's own making, which poses only speculative and hypothetical harms. (DTNA)

15. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

CARB's proposal seeks to adopt new standards and amendments for which it lacks a Clean Air Act preemption waiver, including the "harmonization" of the Omnibus with EPA's existing 2027 Low NOx standard. (DTNA)

- 16. Comment:** Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

CARB's proposed modifications are for a regulation that is preempted under section 209(a) of the Clean Air Act. The new amendments would require that a waiver be granted by the U.S. EPA, which is unlikely under the terms of the Congressional Review Act.

On May 22, 2025, Congress completed its proceedings under the Congressional Review Act to invalidate the federal preemption waiver that EPA previously issued for CARB's Omnibus regulations. On June 12, 2025, the President signed that Congressional mandate. By operation of law, the Omnibus regulation is now preempted under section 209(a) of the Clean Air Act, 42 U.S.C. § 7543(a). Under the Congressional Review Act, EPA cannot issue a waiver "that is substantially the same" without express congressional authorization.³²

As a result, in this rulemaking proceeding, CARB is proposing amendments to a rule that has been voided by Congress. Furthermore, under the terms of the Congressional Review Act, EPA cannot grant CARB a waiver for a regulation "that is substantially the same." And EPA cannot grant CARB a waiver because CARB's proposed regulations cannot meet the Clean Air Act requirements for lead time.

DTNA cannot support the adoption of amendments to a rule that has been federally preempted. This practice of adopting and amending emissions standards without a preemption waiver violates the Clean Air Act and creates significant confusion for industry as to the relevant law governing vehicle and engine certification. While DTNA does not believe that CARB has authority to demand certifications for heavy-duty vehicles at this time, if such certifications are sought, allowing "deem to comply" with the federal NOx standards (the standard with which this CARB amendment is trying to align) would be a better way to harmonize federal and state law during the current period of uncertainty. See Section 3 below. (DTNA)

- 17. Comment:** Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

The Clean Truck Partnership (CTP) does not commit manufacturers to voluntarily complying with a federally preempted standard.

- a. CTP was preliminarily enjoined by the Eastern District of California on October 31, 2025.*

After CARB commenced this rulemaking process, the Eastern District of California granted a preliminary injunction "based on [the] claim that the Clean Truck Partnership is preempted" and further ordering that CARB is enjoined from "implementing . . . the Clean Truck Partnership."

³² 5 U.S.C. § 801(b)(2). [Footnote in comment]

Daimler does not object to the CARB-EPA harmonization goal of the Omnibus Amendments but proposes that allowing manufacturers to follow federal emissions standards is the best approach for harmonization during this period of uncertainty.

b. CARB has not worked collaboratively with manufacturers to resolve any issues warranting regulatory amendments.

To the extent that CARB is implementing these amendments to fulfill CTP, CARB already has breached it. For example, earlier this year, CARB made several changes to the Advanced Clean Trucks (ACT) regulation and Zero-Emission Powertrain (ZEP) Certification Test Procedures without cooperation with manufacturers. CARB proposed those amendments without first engaging in any substantive discussions with DTNA or EMA regarding the specifics of the proposed amendments, or whether those proposed amendments were acceptable to EMA and its members. Manufacturers explicitly opposed many of those changes, but CARB finalized those amendments without addressing manufacturer's concerns about fairness and technical feasibility. In addition, certain of the amendments did not comport with the terms of the CTP. For example, the CTP stated that CARB "will propose to modify ACT to lengthen the number of years a manufacturer has to make up a deficit from one year to three years." But the changes to ACT did not provide the promised three-year make-up period. It only allowed manufacturers to carry over 30 percent of the deficit from year-to-year—a material restriction not contemplated by the CTP.³³

c. It is impossible for CARB to meet its regulatory obligations in the CTP.

The CTP requires CARB to substantively amend ACT and Omnibus Low NOx, largely for the purpose of harmonization, the President signed Joint Resolutions of Congress under the Congressional Review Act that expressly revoked California's preemption waivers for ACT and Omnibus Low NOx. Following the signature of these Joint Resolutions into law, EPA cannot reissue CARB's waivers for those standards without a subsequent act of Congress expressly permitting such action.³⁴ As a result, CARB is statutorily foreclosed from amending these rules as contemplated by the Clean Truck Partnership or enforcing the resulting amendments. DTNA acknowledges that CARB has challenged these federal statutes in federal court, but CARB has not sought any emergency relief to clarify the relevant law or that it can enforce its standards, and as a result, the Congressional Review Act remains controlling law. CARB's practice of adopting and amending emissions standards without a preemption waiver (including pursuant to CTP, which is now subject to a preliminary injunction) creates significant confusion for industry as to the relevant law governing vehicle and engine certification. It also results in unnecessary expenditure that industry will never recover should CARB's challenges to the Congressional Review Act fail.

d. The amendments proposed by CARB staff as part of this rulemaking do not satisfy the CTP terms with respect to harmonization.

In July of 2023, CARB staff committed to propose amendments to the Omnibus regulation "that will generally align the emission standards, test procedures, and accompanying enforcement provisions for 2027 and subsequent MY engines and vehicles with the corresponding provisions in the EPA-NOx rule." As part of that proposal, CARB included a

³³ See Cal. Code Regs. tit. 13, § 1963.3(b). [Footnote in comment]

³⁴ 5 U.S.C. § 801(b)(2). [Footnote in comment]

specific list of deviations and exclusions. However, in this amendment package, CARB has proposed many additional deviations from EPA's regulation. CARB's proposed Appendix B-3: Proposed New California Exhaust Emission Standards and Test Procedures for 2027 and Subsequent Model Heavy-Duty Engines, Vehicles and Hybrid Powertrains is, itself, a list of changes CARB intends to make to EPA's 2027 NOx provisions. As just one example, CARB explicitly proposes excluding many of the interim allowances in 40 C.F.R. § 1036.150, including § 1036.150(t), which effects which standards certain MY2027 engines must be certified to. If CARB intends to proceed with the adoption of this amendment package in pursuant to its view of the CTP, the agency should adopt EPA's rule only with the exceptions identified in July of 2023.

- e. *CARB has granted certification of Option 2 legacy engines in model year 2026 but doing so is inconsistent with CTP and Omnibus, both of which additionally lack legal authority.*

As discussed above, the continued effect and viability of CTP has been called into question by congressional action affecting CARB's waivers for ACT and Omnibus. However, if CARB still considers CTP in effect CARB cannot certify legacy engines under "Option 2" as described in CTP Appendix A and 13 C.C.R. § 1956.8(a)(2)(C)3.iv.2. in model year 2026 because no Option 2 legacy engines are eligible for sale in California in model year 2026.

The purpose of a CARB Executive Order is to allow a new motor vehicle or engine to be "offer[ed] for sale, introduce[d] into commerce, import[ed], deliver[ed], purchase[d], rent[ed], lease[d], acquire[d], or receive[d] . . . for use, registration, or resale *in this state*."³⁵ Option 2 of CTP Appendix A as codified at 13 C.C.R. § 1956.8(a)(2)(C)3.iv.2 allows the sale of certain volumes of legacy engines in model years 2024 and 2025, and then provides: "No legacy engine sales are allowed in 2026 model year."

As documented in the Health and Safety Code, the enabling statute for CARB's certification program under state law, the Legislature has granted CARB the authority to certify vehicles to support the "special interest in assuring that only those new motor vehicles and new motor vehicle engines which meet this state's stringent emission standards and test procedures . . . are used or registered in this state."³⁶ If an engine or vehicle is ineligible for sale in California under CARB's own regulations, the enabling statute does not provide CARB with authority to certify that engine or vehicle. Thus, CARB cannot certify Option 2 engines, which are subject to a total California sales ban in model year 2026 under section 1956.8.

Furthermore, CTP itself indicates this is the correct interpretation of the Option 2 cap. CTP provides in Appendix A that "CARB commits that it will initiate rulemaking . . . [t]o extend the legacy engine provisions flexibility *through 2026 MY (under option 1 only)* to allow manufactures to *certify* engines to the exhaust emission standards for NOx and PM" in 13 C.C.R. § 1956.8(a)(2)(C)3, provided that manufacturers offset NOx or PM deficits. In this language, CARB made clear that the ability to *certify* engines in model year 2026 is a prerogative only of manufacturers who have elected Option 1, and that the "0 percent legacy cap in 2026" (CTP Appendix A) which bars the sale of Option 2 engines also prevents such engines from receiving CARB certification.

³⁵ Cal. Health & Safety Code § 43151(a). [Footnote in comment]

³⁶ Cal. Health & Safety Code § 43150. [Footnote in comment]

At least one MY26 Executive Order issued by CARB explicitly permits this path and is in breach of CTP. (DTNA)

- 18. Comment:** Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

EPA has announced they are considering further amendments to 40 C.F.R. § 1036, including the Low NOx program.

EPA is actively making changes to heavy-duty greenhouse gas regulations, but also announced earlier this year they may revisit and make changes to parts of EPA's Clean Truck Plan³⁷. In the event EPA makes changes to 40 C.F.R. § 1036, the standards with which CARB is harmonizing may no longer be in effect and the proposed adoption may not function as expected. This is especially critical since, in the CTP, CARB committed that they would adopt "a single national ABT program for NOx standards for medium- and all classes of heavy-duty engines and vehicles, administered by U.S. EPA and CARB."³⁸ Since EPA may potentially change how such an ABT program functions, CARB cannot currently commit to a single national ABT program, and cannot commit that the U.S. EPA will co-administer the ABT program CARB proposes.

DTNA recommends CARB wait until EPA's vehicle and engine regulations are finalized. At that time, CARB should work to develop a legal and workable set of new regulations that follow the Clean Air Act, including lead time, stability, and waiver approvals.

As an alternative to amending preempted rules that cannot receive a waiver, CARB could accept "deem to comply" certifications as a basis for federal certification, thereby ensuring that CARB receives the benefit of trucks that comply with the new federal standards in MY2027 while also harmonizing the state program with the federal requirements. (DTNA)

- 19. Comment:** Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

DTNA opposes CARB's proposal to adopt new standards as part of the Emergency Rulemaking to resurrect the antecedent standards.

CARB lacks the authority to adopt or enforce the Emergency Regulation.

Federal law prohibits CARB from adopting or attempting to enforce emissions standards without a waiver of preemption from the U.S. Environmental Protection Agency (EPA), 42 U.S.C. §§ 7543(a)-(b), or without notice to and a determination from EPA that the emissions standards are "within the scope" of a previously granted waiver. This rulemaking is preempted because CARB does not have an applicable waiver or a within-the-scope determination.

³⁷ U.S. Environmental Protection Agency. (2025, March 12). EPA Announces Action to Implement POTUS'S Termination of Biden-Harris Electric Vehicle Mandate. [Press release]. <https://www.epa.gov/newsreleases/epa-announces-action-implement-potuss-termination-biden-harris-electric-vehicle>. [Footnote in comment]

³⁸ Clean Truck Partnership Agreement. https://ww2.arb.ca.gov/sites/default/files/2023-07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf. [Footnote in comment]

- a) *The Emergency Regulation creates new emissions standards requiring a federal preemption waiver. CARB cannot rely on previous EPA waivers for authorization to adopt or enforce new standards.*

In its Emergency Regulation, CARB purports to rely on previous waivers from EPA to adopt and enforce new emissions standards. But because CARB added these standards as new sections in the California Code of Regulations, changed the language of the emissions standards, and merged the old standards together in a new way, it cannot rely on those prior waivers.

Without analysis, CARB asserts that the Emergency Regulation are “earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions.” Notice at 2-3. But this ignores that the standards as they are stitched together in the Emergency Rulemaking did not exist in the California Code of Regulations prior to September 22, 2025. Regulated parties had no notice or reason to think these emissions standards applied to current and future model years prior to CARB’s announcement on September 15, 2025 or that these standards would be pulled together in this new way and with the new language added. This is therefore a new rule and needs a new waiver.

Rather than using the Emergency Regulation to undo Omnibus changes and restore the previous version of title 13, section 1956.8, CARB is adopting entirely new regulatory sections with standards applicable to current and subsequent model years and inserting new language into provisions. For example, the tailpipe standards that would purportedly apply to heavy-duty engines are in a newly created section of the regulations and add two new paragraphs of text not found in earlier versions of this rule. And more broadly, the entire structure of the Emergency Regulation demonstrates why these emissions standards are new. In Appendix A-1-2 to the Emergency Regulation, CARB proposes an assemblage of emissions standards—including tailpipe emissions standards from 2005 and 2010 as well as 2013 on-board diagnostic standards—with waivers granted at separate times.³⁹ In doing so, CARB creates something both new and newly applicable to current and future model year vehicles.⁴⁰

This proposal is not a workable standard that manufacturers can use. Combining elements from various regulatory programs spanning the last two decades and applying them as certification requirements for new engines presents significant practical and legal challenges, which is another reason that this action requires new authorization from EPA under Section 209(b). EPA has affirmed the view that CARB must submit a new waiver request for any new or amended standards in the rulemaking. Environmental Protection Agency Comment on CARB Emergency Amendment and Adoption of Vehicle Emissions Regulation (Sept. 27, 2025).

³⁹ Notice at 5 nn.7, 9. [Footnote in comment]

⁴⁰ Even if CARB only restored prior emissions standards, applying those standards to the current and subsequent model year without notice violates federal law. The application of these standards to new model years when industry had no notice these standards would apply after model year 2023 is the creation of a new rule that requires a waiver. It does not matter if the standards covered an indefinite time span when the waiver was initially granted. Notice at 5 n.7. Regulated parties had no notice that these standards applied after model year 2023 once CARB’s prior rulemakings removed the language indicating that the standards applied to “subsequent model years” and added applicability end dates. [Footnote in comment]

b) *The emissions standards proposed in the Emergency Regulation are not “within the scope” of the prior waivers.*

EPA will only consider CARB’s amendments to be within the scope of a previously granted waiver if the amended regulations do not undermine California’s determination that its standards are as protective as applicable Federal standards, if they do not impact consistency with section 202(a), and if they raise no new issues that would affect EPA’s previous waiver decision. California State Motor Vehicle Pollution Control Standards; Within-the-Scope Determination for Amendments to California’s Motor Vehicle Greenhouse Gas Regulations; Notice of Decision, 76 Fed. Reg. 34693 (June 14, 2011). CARB cannot meet these requirements for the Emergency Regulation, and it is therefore not within the scope of prior waivers (even if it were not a new standard). As described in more detail below, CARB’s new regulations are *less* stringent than the federal standards and they are inconsistent with section 202(a) of the Clean Air Act, including the lead-time requirements.

EPA has also held that if California’s test procedures differ from those required by EPA, this can be an impermissible violation of section 202(a) of the Clean Air Act. EPA determined that “if the Federal and California test procedures impose inconsistent certification requirements, the California test procedures are deemed not to be consistent with Section 202(a).”⁴¹ EPA also provided that California’s test procedures can be more stringent than EPA’s, but that manufacturers must be able to meet federal and California requirements with the same test vehicle.⁴² With these new proposed requirements, CARB creates new test procedures, meaning that test procedures that may have originally been consistent with EPA’s, no longer are. For example, EPA’s new requirements for aging to determine and validate Deterioration Factors, 40 C.F.R. § 1036.245 and 40 C.F.R. § 1036.246, differ significantly from the test procedures in the Emergency Regulation, which adopts Test Procedures last amended October 21, 2014 predating EPA’s changed Test Procedures and could not reasonably be performed on the test vehicle.⁴³ Accordingly, CARB’s proposed test procedures cannot meet the requirements of Section 202 of the Clean Air Act.

EPA has also made it clear that regulatory overhauls raise “new issues” affecting prior waiver decisions and require analysis under the full waiver criteria. Since CARB received its prior waivers for its now-eliminated standards, EPA has issued new federal rules under the Clean Trucks Plan, including a rule that tightened criteria pollutant standards for heavy-duty trucks. See *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards*, 88 Fed. Reg. 4296 (Jan. 24, 2023). And CARB is currently undertaking separate amendments to harmonize its standard with the federal standards. These all raise new issues that would affect EPA’s previous waiver decision.

In addition, new issues can preclude a within-the-scope determination if there are a large number of changes in CARB’s proposed rule. For instance, CARB amended its on-board diagnostic regulations multiple times and asked EPA to issue a finding that the amendments were within the scope of its prior waiver grant. California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements and Enforcement for 2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks,

⁴¹ 44 Fed. Reg. 61096 (Oct. 23, 1979). [Footnote in comment]

⁴² 43 Fed. Reg. 32183, [Footnote in comment]

⁴³ Rulemaking Appendix A-2-1 13 C.C.R. § 1965.8.1(b) *Test Procedures*. [Footnote in comment]

and Medium Duty Vehicles and Engines; Notice of Decision, 81 Fed. Reg. 78143 (Nov. 7, 2016). EPA refused to conduct a within-the-scope analysis of these amendments. Because “of the significant evolution of CARB’s [on-board diagnostic] regulatory program” and “the sheer number of amendments—some in part designed to address a variety of manufacturers’ concerns with the technological feasibility of complying with previous versions of the [] regulations,” EPA assessed the amendments under the full waiver criteria. *Id.* Here, CARB seeks to adopt and enforce a patchwork of standards including a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and a 2013 on-board diagnostic standard.⁴⁴ CARB’s Emergency Regulation is a massive overhaul that creates an entirely new set of alternative emissions standards, and it is not within the scope of CARB’s prior waivers.

c) The Emergency Regulation cannot satisfy the Section 209(b) waiver criteria.

To adopt or enforce these emissions standards, CARB needs a new waiver of federal preemption or a within-the-scope determination as to an existing waiver. But these emissions standards cannot satisfy the requirements of Section 209 of the Clean Air Act regardless. Sections 202 and 209 of the Act require CARB to provide lead time for any heavy-duty emissions standard, meaning that CARB cannot meet the requisite lead-time requirements for the next several model years’ certifications—including the MY2026 certifications underway now.⁴⁵ Putting aside development timelines (which is the core purpose of statutory lead time), emissions and on-board diagnostic testing for any given model year takes months—if not more than a year. CARB is well aware that manufacturers cannot actually use this proposal without months of advance preparation.

CARB will also not be able to show that its standards are technologically feasible and consistent with federal requirements and, therefore, consistent with Sections 202 and 209 of the Clean Air Act.⁴⁶ For example, CARB’s new regulation excludes several flexibilities added to on-board diagnostic standards in the Omnibus rulemaking package to ensure technical feasibility, including changes to certain test-out criteria and failure adoption thresholds.⁴⁷

And CARB has adopted standards that are significantly less stringent than the federal standards. CARB’s new section 1956.8.1 in title 13 of the California Code of Regulations adopts CO₂ and NO_x standards that are less stringent than EPA’s corollary standards at 40 C.F.R. § 1036 that will take effect in MY2027. CARB itself recognizes this point in Omnibus amendments proposed after this rulemaking commenced. For these reasons, the new rule cannot satisfy Clean Air Act waiver criteria.

All of this makes clear the true purpose of the proposed rule: this rulemaking is CARB’s attempt to enforce its preempted Omnibus emissions standards and an attempt to adopt new heavy-duty emissions standards to save CARB’s certification program from preemption. The rulemaking creates a contradictory regulatory regime, where newly re-enacted pre-Omnibus standards and the Omnibus standards are both codified and

⁴⁴ 13 See Notice at 5 nn.7, 9. [Footnote in comment]

⁴⁵ See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(1)(C). [Footnote in comment]

⁴⁶ See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a). [Footnote in comment]

⁴⁷ See CARB, Initial Statement of Reasons, Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (June 23, 2020) at III-10. [Footnote in comment]

“operative” depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill. The rulemaking itself and the new regulatory text also explicitly threaten retroactive enforcement for manufacturers that do not obtain a CARB certification pursuant to the Omnibus standards, discussed further below. This is an attempt to enforce the Omnibus emissions standards and conditions precedent to sale of new heavy-duty vehicles and engines now, through the threat of potential future retroactive enforcement, even though CARB’s heavy-duty vehicle emissions standards are all preempted by the Clean Air Act, and its conditions precedent to sale are likewise preempted in the absence of an emissions waiver.

d) *The Emergency Regulation is an impermissible attempt to sidestep federal preemption of CARB’s certification program.*

Section 209(a) of the Clean Air Act also provides that “[n]o State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.” Absent a waiver of federal preemption from EPA, California cannot require certification or any other conditions precedent to initial retail sale.

For decades, EPA has implemented this statutory prohibition by requiring CARB to have a preemption waiver for its emission standards prior to enforcement of its certification program and related conditions precedent to initial sale. In the normal course, CARB receives this waiver for its certification program when it receives a waiver for emissions standards applicable to a particular class of regulated vehicles.⁴⁸ EPA has affirmed the need for a preemption waiver prior to enforcement of certification on at least several prior occasions and in both Republican and Democratic federal administrations.⁴⁹

As CARB’s emergency notice acknowledges, plaintiffs in *Daimler Truck North America LLC v. CARB*, No. 2:25-cv-02255-DC (E.D. Cal), are seeking clarity in federal court on whether CARB can require certification where the state has no authority for any emissions standards and whether CARB can attempt to enforce these rules while CARB challenges the legality of the statutory revocation of their waivers in another legal action. All regulations that could be the basis of CARB’s certification authority for heavy- and medium-duty vehicles in model year 2026 have lost (or do not have) federal preemption waivers, either because the waivers for the regulations were directly revoked (ACT, Omnibus), CARB failed to apply for the waiver (California greenhouse gas requirements), or the regulation was modified by a program that lost its waiver (OBD, evaporative emissions). As such, CARB cannot require certification of heavy-duty vehicles unless and until EPA grants a

⁴⁸ See EPA, Conditions Precedent to the Sale, Titling, or Registration of New Motor Vehicles in California, 50 Fed. Reg. 35123 (Aug. 29, 1985). [Footnote in comment]

⁴⁹ See 50 Fed. Reg. 35,123 (Aug. 29, 1985) (Reagan Admin.); 55 Fed. Reg. 28,824 (July 13, 1990) (Bush Admin.) (“EPA’s prior issuance of waivers for the affected classes of vehicles and engines, based on California’s standards and/or accompanying enforcement procedures, removes the prohibitions of section 209(a) regarding such conditions precedent for those classes.”); 78 Fed. Reg. 44112 (July 23, 2013) (Obama Admin.) (“[O]nce EPA has granted California a waiver of section 209(a)’s preemption for emission standards and/or accompanying enforcement procedures, California may then require other such conditions precedent.”). [Footnote in comment]

waiver for CARB's "condition precedent" requirements or CARB secures a new waiver for emissions standards applicable to model year 2026 and subsequent heavy-duty vehicles.

Because CARB cannot require "any ...approval ... as condition precedent" to sale, the requirement for a CARB Executive Order prior to initial sale also is preempted. Federal Certificates of Conformity are now the basis for sale of new vehicles and engines into California. This entire enterprise violates the prohibition on requiring any condition precedent that Congress expressly placed on states under Section 209(a) of the Clean Air Act.

CARB seeks to end-run plaintiffs' claims in federal litigation by starting this "emergency rulemaking" purporting to "revive" old emissions standards and relying on old waivers for those outdated standards. As described above, the result is an entirely new rule for heavy-duty cobbled together from various state programs with no relationship to the current applicable technology and no synergy in how the standards will operate together to create a standard that actually works in practice. And this new rule was proposed without notice to and the appropriate waivers from U.S. EPA.

All of this underscores the true nature of what CARB is trying to do: argue that it has *some* waiver in place for heavy-duty vehicles and engines so that it can require manufacturers to pay for certification and submit to its jurisdiction. While the Emergency Regulation may suit CARB's needs as a litigation tactic, it is completely unworkable as a set of actual standards that could be implemented for vehicles and engines to be sold in California and is preemption. It therefore cannot save their certification authority. (DTNA)

20. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

CARB's attempt to codify its threat of retroactive enforcement violates federal law.

The threat of retroactive enforcement is an impermissible attempt to enforce Omnibus. Put another way, under the new rules, manufacturers can only avoid the potential for penalties if they follow the Omnibus regulation as opposed to the new proposed Emergency Rule" or "deem to comply," the two alternatives for certification offered by CARB in the August MAC. Putting aside that CARB has no authority to certify heavy-duty trucks at this time, the "choice" presented by CARB is not a real choice – the potential for significant penalties is coercing manufacturers to conform conduct to CARB's preempted rules before they can be tested in court, particularly where CARB insists on litigating to "final judgment," which creates years of uncertainty for industry. All the while, the penalties would be accruing, creating significant business risk for companies that ask a court to clarify the law when two regulators disagree or presume that federal legislation is valid. As such, CARB's new regulatory language and board order stating that it will enforce Omnibus (without regard to court orders or enforcement discretion) violates Section 209's attempt to enforce clause (among other issues).⁵⁰ (DTNA)

21. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

⁵⁰ See Executive Order R-25-002 ("if a court of competent jurisdiction issues a final ruling that [the resolutions] are invalid or that the waivers US EPA granted California . . . are in effect, the regulated parties are subject to the requirements of the regulations targeted by these congressional resolutions."). [Footnote in comment]

Section 177 States no longer have a regulation that is identical to the California standards.

Section 177 of the Clean Air Act permits other states to adopt California's emissions standards provided their standards are "identical" to those for which California has received a waiver under Section 209(b) of the Clean Air Act.⁵¹ With the adoption of the new sections in this Emergency Regulation, all other states may lack identity with California's standards. For example, many Section 177 states have adopted the ACT and Omnibus Low NOx standards, which are now preempted as a matter of federal law. If they do have certain antecedent standards on the books rather than the ACT and Omnibus Low NOx standards, the state law provisions are still not identical to the new Emergency Regulation, which is a combination of various regulatory programs spanning the last two decades in the form of a new rule applicable to new model years (in addition to adding new regulatory language). As a result, Section 177 states cannot enforce their emissions standards. The lack of identity between this attempt by CARB to create a new Emergency Regulation and the Section 177 programs is confusing to industry. (DTNA)

22. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

The Emergency Rulemaking creates significant due process concerns.

Both the rules here and the process by which they are being implemented raise serious fair notice and due process concerns. Principles of due process require the government to give individuals "an opportunity [1] to know what the law is and [2] to conform their conduct accordingly." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). But CARB's new rules create a contradictory regime that makes it impossible for regulated entities to know what the law is and then conform their conduct. Under the Emergency Regulation, mutually exclusive earlier standards (revived here) and newer standards (ACC II, Omnibus) are simultaneously "operative" depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill.

This creates a serious threat to regulated industry because CARB asserts it retains the ability to retroactively "enforce Advanced Clean Cars II and Omnibus, to the extent permitted by law, in the event a court of law holds invalid the resolutions purporting to disapprove the waivers for those more recent regulations."⁵² In other words, unless manufacturers follow the rules that are currently preempted by federal law—and which the U.S. Department of Justice has directed manufacturers, including DTNA, to "cease and desist" from following—CARB may impose penalties on manufacturers if the law changes later. CARB is attempting to adopt new rules while essentially stating that if manufacturers follow these rules, they may be punished later. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

⁵¹ 42 U.S.C. §§ 7507, 7543(b); see *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1043 (9th Cir. 2007). [Footnote in comment]

⁵² Notice at 3. [Footnote in comment]

Such fair notice is absent here. And the lack of clarity on the law sets manufacturers up for potential retroactive enforcement, which itself is a due process issue.⁵³

Further, CARB proposed additional amendments to its Omnibus standards together in this rulemaking. CARB plans to adopt these Omnibus amendments through a combination of amending existing rules and adopting new sections of the California Code of Regulations. This leads to a bizarre result: the Emergency Regulation attempts to “restore” prior standards, and the Omnibus amendments propose to amend those same prior standards. CARB is pursuing simultaneous amendments to the same set of standards that cut in opposite directions. The lack of clarity makes it difficult for parties to assess and understand their legal obligations. (DTNA)

23. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

CARB’s Emergency Regulation does not comply with the requirements of the California Administrative Procedure Act, Cal. Gov. Code § 11349.1(a)(2)-(6).

CARB regulations must satisfy the “Clarity” and “Consistency” standards of the California Administrative Procedure Act (APA).⁵⁴ “Clarity” requires that the regulations “be easily understood by those persons directly affected by them.”⁵⁵ “Consistency” requires the regulations to be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.”⁵⁶

CARB’s Emergency Regulation is not clear as regulated parties have no way to determine which regulatory standard governs. OAL also points to a regulation that “presents information in a format that is not readily understandable by those who are ‘directly affected’” as a quintessential example of an unclear regulation.⁵⁷ As described above, directly regulated parties cannot readily confirm CARB’s assertion in its Emergency Regulation that its new standards have “extant preemption waivers,” and are therefore valid and enforceable.

The Emergency Regulation also violates the “Consistency” standards of the APA. As noted above, adoption of the rule would conflict with federal law, and it is an attempt to enforce CARB’s preempted Omnibus emissions standards in contradiction of the Clean Air Act. The Emergency Regulation is also internally inconsistent. It creates a facially contradictory regulatory regime: both revived standards and newer Omnibus standards are “operative” depending on litigation outcomes.

⁵³ See *PHH Corp. v. CFPB*, 839 F.3d 1, 46 (D.C. Cir. 2016) (Kavanaugh, J.), *reinstated in relevant part*, 881 F.3d 75, 83 (D.C. Cir. 2018) (en banc) (“Retroactivity ... contravenes the bedrock due process principle that the people should have fair notice of what conduct is prohibited.”). [Footnote in comment]

⁵⁴ Cal. Gov. Code § 11349.1(a)(3)-(4); § 11349(c)-(d). [Footnote in comment]

⁵⁵ Cal. Gov. Code § 11349(c). [Footnote in comment]

⁵⁶ Cal. Gov. Code § 11349(d). [Footnote in comment]

⁵⁷ See OAL, Review of Compliance with the Six Substantive Standards of the Administrative Procedure Act, at 3.03, <https://oal.ca.gov/wp-content/uploads/sites/166/2023/04/OAL-Review-for-6-APA-Standards.pdf>. [Footnote in comment]

In addition, CARB regulations must satisfy the “Authority” and “Nonduplication” standards of the California APA.⁵⁸ “Authority” requires that the regulations are based on a “provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.”⁵⁹ As described in more detail below, this Emergency Regulation is an adoption of emissions standards without a preemption waiver in violation of Section 209(a) of the Clean Air Act. CARB plainly lacks the federal waiver which “permits” it to “adopt [] a regulation” and thus cannot cite to a statutory provision that expressly empowers CARB to implement this Emergency Rulemaking in violation of Section 209(a) of the Clean Air Act. *Id.*; *Camarillo Sanitary Dist. v. State Water Res. Control Bd.*, 335 Cal. Rptr. 3d 404, 438 (2025), review filed (Sept. 15, 2025). “Nonduplication” requires that the regulations “do[] not serve the same purpose as a state or federal statute or another regulation.”⁶⁰ CARB’s regulations involve emissions standards that are already addressed by federal standards and are less stringent than EPA’s corollary standards, as noted above. Thus, CARB’s standards cannot be justified as offering additional protection of California’s interests.⁶¹ (DTNA)

24. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

As written, the Emergency Rulemaking is not functional.

For example, as part of the Emergency Rulemaking, California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy-Duty Vehicles incorporates by reference sections of the Code of Federal Regulations that are no longer valid or in force. These sections have been replaced by subsequent federal greenhouse gas regulations.

In addition, CARB’s regulation requires manufacturers “submit to CARB all data that the manufacturer submitted to the U.S. Environmental Protection Agency in accordance with the reporting requirements as required under 40 C.F.R. § 1037.205, § 1037.250 and § 1037.730, for demonstrating compliance with the 2014 MY National Heavy-Duty Engine and Vehicle Greenhouse Gas Program and the U.S. Environmental Protection Agency determination of compliance.”⁶² Manufacturers no longer report data that demonstrates compliance with the 2014 MY National Heavy-Duty Engine and Vehicle Greenhouse Gas Program to the U.S. EPA. The Emergency Rulemaking relies on outdated and defunct codes and regulations, and implementation is not functional or practical.

CARB’s test procedures require that manufacturers shall demonstrate compliance using Averaging, Banking, and Trading volumes based on total U.S. production volumes (“2. Any reference to vehicle or engine sales or vehicle or engine production volume throughout the United States shall mean vehicle or engine sales or vehicle or engine volume in California, except in Part 1037, Subpart H, Averaging, Banking, and Trading for Certification.”) - which implies that manufacturers should apply CARB’s outdated test procedures to national volumes of vehicle sales – applying state standards to vehicles CARB has no regulatory

⁵⁸ Cal. Gov. Code § 11349.1(a)(2), (6). [Footnote in comment]

⁵⁹ Cal. Gov. Code § 11349(b). [Footnote in comment]

⁶⁰ Cal. Gov. Code § 11349(f). [Footnote in comment]

⁶¹ *Cf. California Forestry Assn. v. California Fish & Game Commission*, 68 Cal. Rptr. 3d 391 (2007).

⁶² Appendix B-12. 1037.101(3)(2). [app_b-12.pdf](#). [Footnote in comment]

authority over, and assuming the existence of a federal credit bank that no longer exists⁶³. (DTNA)

25. Comment: Comment letter submitted on November 10, 2025 and resubmitted on March 27, 2026

The Emergency Regulation is a new adoption of emissions standards without a preemption waiver in violation of Section 209(a) of the Clean Air Act.

CARB's proposed adoption of the Emergency Regulation also violates the Clean Air Act. The clear statutory language of the Clean Air Act requires CARB to seek a waiver of preemption from EPA **prior to** adoption as a state law.

Section 209 requires California to have a waiver prior to the adoption of a mobile source rule, not after. Section 209(a) is a prohibition, providing that "[n]o State ... shall adopt or attempt to enforce any standard relating to the control of emissions" from new vehicles or engines. 42 U.S.C. § 7543(a). Section 209(b) provides for an exception to Section 209(a) and allows EPA to "waive application of this section," provided that the preconditions of Section 209(b) have been met. 42 U.S.C. § 7543(b).

Thus, until a waiver has been granted, Section 209(a) remains in full effect, and all States, including California, are preempted from either "adopt[ing] or attempt[ing] to enforce" an emissions regulation. That is, either action—adopting or enforcing—independently violates the federal statutory prohibition.

In conclusion, DTNA believes CARB should work closely with industry and EPA to determine workable solutions that observe the principles of the Clean Air Act including the requirements for lead time and stability, the need for waivers, and the implementation of the Congressional Review Act. (DTNA)

26. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

Emergency Amendment and Adoption of Vehicle Emissions Regulation

In June, pursuant to the Congressional Review Act, the federal government statutorily preempted California's emissions standards governing heavy-duty vehicles and engines. California has continued to (1) demand compliance with its heavy-duty emissions standards and (2) require manufacturers to obtain certification to those standards as a condition precedent to retail sale, despite that Section 209(a) of the Clean Air Act, provides that, absent a waiver, "No State ... shall adopt or attempt to enforce any standard relating to the control of emissions" from new vehicles or engines, and further mandates, "No State shall require certification ... as condition precedent to the initial retail sale" of those vehicles or engines. 42 U.S.C. § 7543(a).

With this Emergency Regulation, CARB is attempting to promulgate new heavy-duty emissions standards stitched together from old and inapplicable standards for which CARB had once received now-obsolete preemption waivers. The end result is (a) new preempted

⁶³ California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy Duty-Vehicles. Part 1037, Subpart A. California Test Procedures GHG Vehicles 2014+ (Phase 1). [Footnote in comment]

emissions standards in violation of Section 209(a) of the Clean Air Act, and (b) conflicting state emissions standards simultaneously adopted as California regulations.

OAL should not approve CARB's Emergency Regulation. This action violates both federal and state law and is inconsistent with OAL's standards. CARB's proposal also raises due process concerns, fails to comply with the California APA, and does not satisfy the requirements for an emergency rulemaking under California law. (DTNA)

27. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

CARB lacks the authority to adopt or enforce the Emergency Regulation.

Federal law prohibits CARB from attempting to enforce emissions standards without a waiver of preemption from the U.S. Environmental Protection Agency (EPA), 42 U.S.C. §§ 7543(a)-(b), or without notice to and a determination from EPA that the emissions standards are "within the scope" of a previously granted waiver. This rulemaking is preempted because CARB does not have an applicable waiver or a within-the-scope determination.

- a) The Emergency Regulation creates new emissions standards requiring a federal preemption waiver. CARB cannot rely on previous EPA waivers for authorization to adopt or enforce new standards.*

In its Emergency Regulation, CARB purports to rely on previous waivers from EPA to adopt and enforce new emissions standards. But because CARB added these standards as new sections in the California Code of Regulations, changed the language of the emissions standards, and merged the old standards together in a new way, it cannot rely on those prior waivers.

CARB asserts that the Emergency Regulation are "earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions." Notice at 2-3; Readoption Notice at 4. But this ignores that the standards as they are stitched together in the Emergency Regulation did not exist in the California Code of Regulations prior to September 22, 2025. Regulated parties had no notice or reason to think these emissions standards applied to current and future model years prior to CARB's announcement on September 15, 2025 or that these standards would be pulled together in this new way and with the new language added. This is therefore a new rule and needs a new waiver.

Rather than using the Emergency Regulation to undo Omnibus changes and restore the previous version of title 13, section 1956.8, CARB is adopting entirely new regulatory sections with standards applicable to current and subsequent model years and inserting new language into provisions. For example, the tailpipe standards that would purportedly apply to heavy-duty engines are in a newly created section of the regulations and add two new paragraphs of text not found in earlier versions of this rule. And more broadly, the entire structure of the Emergency Regulation demonstrates why these emissions standards are new. In Appendix A-2-1 to the Emergency Regulation, CARB proposes an assemblage of emissions standards—including tailpipe emissions standards from 2005 and 2010 as well as 2013 on-board diagnostic standards—with waivers granted at separate times.

Notice at 5 nn.7, 9. In doing so, CARB creates something both new and newly applicable to current and future model year vehicles.⁶⁴

This proposal is not a workable standard that manufacturers can use. Combining elements from various regulatory programs spanning the last two decades and applying them as certification requirements for new engines presents significant practical and legal challenges, which is another reason that this action requires new authorization from EPA under Section 209(b). EPA has affirmed the view that CARB must submit a new waiver request for any new or amended standards in the rulemaking. Environmental Protection Agency Comment on CARB Emergency Amendment and Adoption of Vehicle Emissions Regulation (Sept. 27, 2025).

b) The emissions standards proposed in the Emergency Regulation are not “within the scope” of the prior waivers.

EPA will only consider CARB’s amendments to be within the scope of a previously granted waiver if the amended regulations do not undermine California’s determination that its standards are as protective as applicable Federal standards, if they do not impact consistency with section 202(a), and if they raise no new issues that would affect EPA’s previous waiver decision. California State Motor Vehicle Pollution Control Standards; Within-the-Scope Determination for Amendments to California’s Motor Vehicle Greenhouse Gas Regulations; Notice of Decision, 76 Fed. Reg. 34693 (June 14, 2011). CARB cannot meet these requirements for the Emergency Regulation, and it is therefore not within the scope of prior waivers (even if it were not a new standard). As described in more detail below, CARB’s new regulations are *less* stringent than the federal standards and they are inconsistent with section 202(a) of the Clean Air Act, including the lead-time requirements.

EPA has also held that if California’s test procedures differ from those required by EPA, this can be an impermissible violation of section 202(a) of the Clean Air Act. EPA determined that “if the Federal and California test procedures impose inconsistent certification requirements, the California test procedures are deemed not to be consistent with Section 202(a).” 44 Fed. Reg. 61096 (Oct. 23, 1979). EPA also provided that California’s test procedures can be more stringent than EPA’s, but that manufacturers must be able to meet federal and California requirements with the same test vehicle. 43 Fed. Reg. 32183. With these new proposed requirements, CARB creates new test procedures, meaning that test procedures that may have originally been consistent with EPA’s, no longer are. For example, EPA’s new requirements for aging to determine and validate Deterioration Factors, 40 C.F.R. § 1036.245 and 40 C.F.R. § 1036.246, differ significantly from the test procedures in the Emergency Regulation, which adopts Test Procedures last amended October 21, 2014 predating EPA’s changed Test Procedures and could not reasonably be performed on the test vehicle. Rulemaking Appendix A-2-1 13 CCR § 1965.8.1(b) *Test Procedures*. Accordingly, CARB’s proposed test procedures cannot meet the requirements of Section 202 of the Clean Air Act.

⁶⁴ Even if CARB only restored prior emissions standards, applying those standards to the current and subsequent model year without notice violates federal law. The application of these standards to new model years when industry had no notice these standards would apply after model year 2023 is the creation of a new rule that requires a waiver. It does not matter if the standards covered an indefinite time span when the waiver was initially granted. Notice at 5 n.7. Regulated parties had no notice that these standards applied after model year 2023 once CARB’s prior rulemakings removed the language indicating that the standards applied to “subsequent model years” and added applicability end dates. [Footnote in comment]

EPA has also made it clear that major regulatory overhauls raise “new issues” affecting prior waiver decisions and require analysis under the full waiver criteria. Since CARB received its prior waivers for its now-eliminated standards, EPA has issued new federal rules under the Clean Trucks Plan, including a rule that tightened criteria pollutant standards for heavy-duty trucks. See *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards*, 88 Fed. Reg. 4296 (Jan. 24, 2023). And CARB is currently undertaking separate amendments to harmonize its standard with the federal standards. These all raise new issues that would affect EPA’s previous waiver decision.

In addition, new issues also can preclude a within-the-scope determination if there are a large number of changes in CARB’s proposed rule. For instance, CARB amended its on-board diagnostic regulations multiple times and asked EPA to issue a finding that the amendments were within the scope of its prior waiver grant. *California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements and Enforcement for 2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles and Engines*; Notice of Decision, 81 Fed. Reg. 78143 (Nov. 7, 2016). EPA refused to conduct a within-the-scope analysis of these amendments. Because “of the significant evolution of CARB’s [on-board diagnostic] regulatory program” and “the sheer number of amendments—some in part designed to address a variety of manufacturers concerns with the technological feasibility of complying with previous versions of the [] regulations,” EPA assessed the amendments under the full waiver criteria. *Id.* Here, CARB seeks to adopt and enforce a patchwork of standards including a 2005 diesel tailpipe emissions standard, a 2010 gasoline tailpipe emissions standard, and a 2013 on-board diagnostic standard. See Notice at 5 nn.7, 9. CARB’s Emergency Regulation is a massive overhaul that creates an entirely new set of alternative emissions standards, and it is not within the scope of CARB’s prior waivers.

c) The Emergency Regulation cannot satisfy the Section 209(b) waiver criteria.

To adopt or enforce these emissions standards, CARB needs a new waiver of federal preemption or a within-the-scope determination as to an existing waiver. But these emissions standards cannot satisfy the requirements of Section 209 of the Clean Air Act. Sections 202 and 209 of the Act require CARB to provide lead time for any heavy-duty emissions standard, meaning that CARB cannot meet the requisite lead-time requirements for the next several model years’ certifications—including the MY2026 certifications underway now. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(1)(C). Putting aside development timelines (which is the core purpose of statutory lead time), emissions and on-board diagnostic testing for any given model year takes months—if not more than a year. CARB is aware that manufacturers cannot use this proposal without months of advance preparation.

CARB will also not be able to show that its standards are technologically feasible and consistent with federal requirements and, therefore, consistent with Sections 202 and 209 of the Clean Air Act. See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a). For example, CARB’s new regulation excludes several flexibilities added to on-board diagnostic standards in the Omnibus rulemaking package to ensure technical feasibility, including changes to certain test-out criteria and failure adoption thresholds. See CARB, *Initial Statement of Reasons, Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments* (June 23, 2020) at III-10.

And CARB has adopted standards that are significantly less stringent than the federal standards. CARB’s new section 1956.8.1 in title 13 of the California Code of Regulations

adopts CO₂ and NO_x standards that are less stringent than EPA's corollary standards at 40 C.F.R. § 1036 that will take effect in MY2027. CARB itself recognizes this point in Omnibus amendments proposed after this emergency rulemaking commenced. For these reasons, the new rule cannot satisfy Clean Air Act waiver criteria.

This rulemaking is CARB's attempt to enforce its preempted Omnibus emissions standards and an attempt to adopt new heavy-duty emissions standards to save CARB's certification program from preemption. The rulemaking creates a contradictory regulatory regime, where newly re-enacted pre-Omnibus standards and the Omnibus standards are both codified and "operative" depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill. The rulemaking itself and the new regulatory text also explicitly threaten retroactive enforcement for manufacturers that do not obtain a CARB certification pursuant to the Omnibus standards, discussed further below. This is an attempt to enforce the Omnibus emissions standards and conditions precedent to sale of new heavy-duty vehicles and engines now, through the threat of potential future retroactive enforcement, even though CARB's heavy-duty vehicle emissions standards are all preempted by the Clean Air Act, and its conditions precedent to sale are likewise preempted in the absence of an emissions waiver.

d) The Emergency Regulation is an impermissible attempt to sidestep federal preemption of CARB's certification program.

Section 209(a) of the Clean Air Act also provides that "[n]o State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment." Absent a waiver of federal preemption from EPA, California cannot require certification or any other conditions precedent to initial retail sale.

For decades, EPA has implemented this statutory prohibition by requiring CARB to have a preemption waiver for its emission standards prior to enforcement of its certification program and related conditions precedent to initial sale. In the normal course, CARB receives this waiver for its certification program when it receives a waiver for emissions standards applicable to a particular class of regulated vehicles. See EPA, Conditions Precedent to the Sale, Titling, or Registration of New Motor Vehicles in California, 50 Fed. Reg. 35123 (Aug. 29, 1985). EPA has affirmed the need for a preemption waiver prior to enforcement of certification on at least several prior occasions and in both Republican and Democratic federal administrations.⁶⁵

As CARB's emergency notice acknowledges, plaintiffs in *Daimler Truck North America LLC v. CARB*, No. 2:25-cv-02255-DC (E.D. Cal), are seeking clarity in federal court on whether CARB can require certification where the state has no authority for any emissions

⁶⁵ See 50 Fed. Reg. 35,123 (Aug. 29, 1985) (Reagan Admin.); 55 Fed. Reg. 28,824 (July 13, 1990) (Bush Admin.) ("EPA's prior issuance of waivers for the affected classes of vehicles and engines, based on California's standards and/or accompanying enforcement procedures, removes the prohibitions of section 209(a) regarding such conditions precedent for those classes."); 78 Fed. Reg. 44112 (July 23, 2013) (Obama Admin.) ("[O]nce EPA has granted California a waiver of section 209(a)'s preemption for emission standards and/or accompanying enforcement procedures, California may then require other such conditions precedent.") [Footnote in comment]

standards and whether CARB can attempt to enforce these rules while CARB challenges the legality of the statutory revocation of their waivers in another legal action. All regulations that could be the basis of CARB's certification authority for heavy- and medium-duty vehicles in model year 2026 have lost (or do not have) federal preemption waivers, either because the waivers for the regulations were directly revoked (ACT, Omnibus), CARB failed to apply for the waiver (California greenhouse gas requirements), or the regulation was modified by a program that lost its waiver (OBD, evaporative emissions). As such, CARB cannot require certification of heavy-duty vehicles unless and until EPA grants a waiver for CARB's "condition precedent" requirements or CARB secures a new waiver for emissions standards applicable to model year 2026 and subsequent heavy-duty vehicles.

Because CARB cannot require "any ...approval ... as condition precedent" to sale, the requirement for a CARB Executive Order prior to initial sale also is preempted. Federal Certificates of Conformity are now the basis for sale of new vehicles and engines into California. This entire enterprise violates the prohibition on requiring any condition precedent that Congress expressly placed on states under Section 209(a) of the Clean Air Act.

CARB seeks to end-run plaintiffs' claims in federal litigation by starting this "emergency rulemaking" purporting to "revive" old emissions standards and relying on old waivers for those outdated standards. As described above, the result is an entirely new rule for heavy-duty cobbled together from various state programs with no relationship to the current applicable technology and no synergy in how the standards will operate together to create a standard that actually works in practice. And this new rule was proposed without notice to and the appropriate waivers from U.S. EPA.

All of this underscores the true nature of what CARB is trying to do: argue that it has *some* waiver in place for heavy-duty vehicles and engines so that it can require manufacturers to pay for certification and submit to its jurisdiction. While the Emergency Regulation may suit CARB's needs as a litigation tactic, it is completely unworkable as a set of actual standards that could be implemented for vehicles and engines to be sold in California and is preemption. It therefore cannot save their certification authority. (DTNA)

28. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

CARB's attempt to codify its threat of retroactive enforcement violates federal law.

The threat of retroactive enforcement is an impermissible attempt to enforce Omnibus. Put another way, under the new rules, manufacturers can only avoid the potential for penalties if they follow the Omnibus regulation as opposed to the new proposed Emergency Rule" or "deem to comply," the two alternatives for certification offered by CARB in the August MAC. Putting aside that CARB has no authority to certify heavy-duty trucks at this time, the "choice" presented by CARB is not a real choice – the potential for significant penalties is coercing manufacturers to conform conduct to CARB's preempted rules before they can be tested in court, particularly where CARB insists on litigating to "final judgment," which creates years of uncertainty for industry. All the while, the penalties would be accruing, creating significant business risk for companies that ask a court to clarify the law when two regulators disagree or presume that federal legislation is valid. As such, CARB's new regulatory language and board order stating that it will enforce Omnibus (without regard to court orders or enforcement discretion) violates Section 209's attempt to enforce clause (among other issues). See Executive Order R-25-002 ("if a court of competent jurisdiction issues a final ruling that [the resolutions] are invalid or that the waivers US EPA granted

California . . . are in effect, the regulated parties are subject to the requirements of the regulations targeted by these congressional resolutions.”) (DTNA)

29. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

Section 177 States no longer have a regulation that is identical to the California standards.

Section 177 of the Clean Air Act permits other states to adopt California’s emissions standards provided their standards are “identical” to those for which California has received a waiver under Section 209(b) of the Clean Air Act. 42 U.S.C. §§ 7507, 7543(b); *see Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1043 (9th Cir. 2007). With the adoption of the new sections in this emergency rulemaking, all other states may lack identity with California’s standards. For example, many Section 177 states have adopted the ACT and Omnibus Low NOx standards, which are now preempted as a matter of federal law. If they do have certain antecedent standards on the books rather than the ACT and Omnibus Low NOx standards, the state law provisions are still not identical to the new Emergency Regulation, which is a combination of various regulatory programs spanning the last two decades in the form of a new rule applicable to new model years (in addition to adding new regulatory language). As a result, Section 177 states cannot enforce their emissions standards. The lack of identity between this attempt by CARB to create a new Emergency Regulation and the Section 177 programs is confusing to industry. (DTNA)

30. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

The Emergency Rulemaking creates significant due process concerns.

Both the rules here and the process by which they are being implemented raise serious fair notice and due process concerns. Principles of due process require the government to give individuals “an opportunity [1] to know what the law is and [2] to conform their conduct accordingly.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). But CARB’s new rules create a contradictory regime that makes it impossible for regulated entities to know what the law is and then conform their conduct. Under the Emergency Regulation, mutually exclusive earlier standards (revived here) and newer standards (ACC II, Omnibus) are simultaneously “operative” depending on litigation outcomes, leaving the entire industry without clarity or certainty as to which standard governs, threatening product planning, sales, and customer goodwill.

This creates a serious threat to regulated industry because CARB asserts it retains the ability to retroactively “enforce Advanced Clean Cars II and Omnibus, to the extent permitted by law, in the event a court of law holds invalid the resolutions purporting to disapprove the waivers for those more recent regulations.” Notice at 3. In other words, unless manufacturers follow the rules that are currently preempted by federal law—and which the U.S. Department of Justice has directed manufacturers, including DTNA, to “cease and desist” from following—CARB may impose penalties on manufacturers if the law changes later. CARB is attempting to adopt new rules while essentially stating that if manufacturers follow these rules, they may be punished later. “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Such fair notice is absent here. And the lack of clarity on the law sets manufacturers up for potential retroactive enforcement, which itself is a due process issue. *See PHH Corp. v. CFPB*, 839 F.3d 1, 46 (D.C. Cir. 2016) (Kavanaugh, J.), *reinstated in*

relevant part, 881 F.3d 75, 83 (D.C. Cir. 2018) (en banc) (“Retroactivity ... contravenes the bedrock due process principle that the people should have fair notice of what conduct is prohibited.”).

Furthermore, regulated parties—or anyone else seeking to participate in the rulemaking process cannot adequately comment on the proposal because it is impossible to assess CARB’s claim that this rule is subject to “extant preemption waivers” in the five-day comment period. CARB characterizes this rulemaking as “confirm[ing]” that “earlier-adopted standards, which have extant preemption waivers not subject to the recent congressional resolutions, are operative.” Notice at 2-3. It is prohibitively difficult, however, to quickly find these “extant preemption waivers” and trace their applicability to the “earlier-adopted standards” (Notice at 2-3) that are now being promulgated as “new language” in the California Code of Regulations (App’x A-2-1 at 1).

This is because when CARB submits a waiver package to EPA, it generally does not submit a complete version of the current rule planned for adoption and enforcement, but rather submits a redline “Final Regulation Order” that only shows revisions to the rule. See, e.g., “2008 Enclosure 9, Final Regulation Order 13 CCR 1956.8 and 2485,” Nonrulemaking Docket EPA-HQ-OAR-2016-0017, Document 0012, <https://www.regulations.gov/document/EPA-HQ-OAR-2016-0017-0012>. In other words, CARB’s waiver submissions to EPA (and indeed the Rulemaking section of CARB’s website) do not contain the complete version of the regulation that received a waiver. As a result, matching the new emissions standards here with past waivers requires not merely a section-by-section analysis across 700 pages of new regulatory text, but a line-by-line one. Compounding the difficulty, the prior versions of these new rules are spread across ten or more waiver applications spanning twelve years.

Without undertaking this analysis, regulated parties cannot fully assess, much less adequately comment on, the validity of CARB’s approach here. But it is simply not possible to perform this analysis in the five calendar days that CARB is providing for comment under this “emergency” rulemaking—a period overlapping almost entirely with the ten-day period when four key regulated entities must reply to CARB’s opposition to a motion for a preliminary injunction against CARB’s enforcement of preempted regulations. See Dkt. #54 (Scheduling Order), *Daimler Truck North America LLC v. CARB*, No. 2:25-cv-02255-DC (E.D. Cal. Aug. 20, 2025).

Further, CARB proposed additional amendments to its Omnibus standards after the emergency rulemaking commenced. CARB plans to adopt these Omnibus amendments through a combination of amending existing rules and adopting new sections of the California Code of Regulations. This leads to a bizarre result: the Emergency Regulation attempts to “restore” prior standards, and the Omnibus amendments propose to amend those same prior standards. CARB is pursuing simultaneous amendments to the same set of standards that cut in opposite directions. The lack of clarity makes it difficult for parties to assess and understand their legal obligations. (DTNA)

31. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

CARB’s Emergency Regulation does not comply with the “Clarity” and “Consistency” requirements of the California Administrative Procedure Act, Cal. Gov. Code § 11349.1(a)(2)-(6).

CARB regulations must satisfy the “Clarity” and “Consistency” standards of the California Administrative Procedure Act (APA). Cal. Gov. Code § 11349.1(a)(3)-(4); § 11349(c)-(d).

“Clarity” requires that the regulations “be easily understood by those persons directly affected by them.” Cal. Gov. Code § 11349(c). “Consistency” requires the regulations to be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” Cal. Gov. Code § 11349(d).

CARB’s Emergency Regulation is not clear as regulated parties have no way to determine which regulatory standard governs. OAL also points to a regulation that “presents information in a format that is not readily understandable by those who are ‘directly affected’” as a quintessential example of an unclear regulation. See OAL, Review of Compliance with the Six Substantive Standards of the Administrative Procedure Act, at ¶ 3.03, <https://oal.ca.gov/wp-content/uploads/sites/166/2023/04/OAL-Review-for-6-APA-Standards.pdf>. As described above, directly regulated parties cannot readily confirm CARB’s assertion in its emergency regulation that its new standards have “extant preemption waivers,” and are therefore valid and enforceable.

The Emergency Regulation also violates the “Consistency” standards of the APA. As noted above, adoption of the rule would conflict with federal law, and it is an attempt to enforce CARB’s preempted Omnibus emissions standards in contradiction of the Clean Air Act. The Emergency Regulation is also internally inconsistent. It creates a facially contradictory regulatory regime: both revived standards and newer Omnibus standards are “operative” depending on litigation outcomes.

In addition, CARB regulations must satisfy the “Authority” and “Nonduplication” standards of the California APA. Cal. Gov. Code § 11349.1(a)(2), (6). “Authority” requires that the regulations are based on a “provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.” Cal. Gov. Code § 11349.1(b). As described in more detail below, this Emergency Regulation is an adoption of emissions standards without a preemption waiver in violation of Section 209(a) of the Clean Air Act. CARB plainly lacks the federal waiver which “permits” it to “adopt [] a regulation” and thus cannot cite to a statutory provision that expressly empowers CARB to implement this Emergency Rulemaking in violation of Section 209(a) of the Clean Air Act. *Id.*; *Camarillo Sanitary Dist. v. State Water Res. Control Bd.*, 335 Cal. Rptr. 3d 404, 438 (2025), review filed (Sept. 15, 2025). “Nonduplication” requires that the regulations “do[] not serve the same purpose as a state or federal statute or another regulation.” Cal. Gov. Code § 11349.1(f). CARB’s regulations involve emissions standards that are already addressed by federal standards and are less stringent than EPA’s corollary standards, as noted above. Thus, CARB’s standards cannot be justified as offering additional protection of California’s interests. *Cf. California Forestry Assn. v. California Fish & Game Commission*, 68 Cal. Rptr. 3d 391 (2007). (DTNA)

32. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

CARB fails to demonstrate an “emergency,” Cal. Gov. Code § 11346.1(b), and lacks substantial evidence of necessity, Cal. Gov. Code § 11349.1(a)(1); § 11349(a).

An emergency “calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” Cal. Gov. Code § 11342.545. CARB cannot simply declare an emergency. Any finding of emergency must “describe specific facts demonstrating the existence of an emergency and the need for immediate action,” and any regulation needed to address the emergency must be supported “by substantial evidence.” Cal. Gov. Code § 11346.1(b)(2). CARB does not and cannot meet these standards. CARB’s claim of an “emergency” lacks credibility, as the situation was neither unexpected nor abrupt. CARB

was well aware that Congress has long been openly deliberating revoking the waivers under the Congressional Review Act.

CARB will not experience “serious harm” in the absence of the emergency rulemaking. EPA’s emission standard remain in effect, and as described above, several of the standards are *more* stringent than the standards CARB seeks to revive through emergency rulemaking, including with respect to NOx emissions. This federal regulatory framework is sufficient to protect public health or welfare.

CARB’s showing amounts to little more than a speculative and redundant effort to reassert its own authority over emissions control, lacking the substantial evidence necessary to justify an emergency rulemaking under California law. CARB must make a showing of objective, imminent, and serious harm, see Cal. Gov. Code §§ 11342.545, 11346.1(b)(2). The Government Code provides that “[a]ny finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate,” Cal. Gov. Code § 11346.1(b)(2). Here, EPA’s regulations are protective of public health and welfare (and in some respects, more protective) and negate CARB’s purported public harms—and vehicles sold in California will continue to adhere to the same comprehensive emissions standards as those sold in non-Section 177 states. CARB’s justifications thus seem to boil down to a desire to preserve some semblance of the regulatory authority revoked by the federal government. The urgency of CARB’s rulemaking is likely related to its litigation strategy rather than any actual threat to public health or safety. This institutional anxiety is not a cognizable emergency. CARB’s proposed rule is an unlawful and improper attempt to circumvent normal rulemaking procedures to address a problem of CARB’s own making, which poses only speculative and hypothetical harms. (DTNA)

33. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

As written, the Emergency Regulation is not functional.

For example, as part of the Emergency Regulation, California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy-Duty Vehicles incorporates by reference sections of the Code of Federal Regulations that are no longer valid or in force. These sections have been replaced by subsequent federal greenhouse gas regulations.

In addition, CARB’s regulation requires manufacturers “submit to CARB all data that the manufacturer submitted to the U.S. Environmental Protection Agency in accordance with the reporting requirements as required under 40 C.F.R. § 1037.205, § 1037.250 and § 1037.730, for demonstrating compliance with the 2014 MY National Heavy-Duty Engine and Vehicle Greenhouse Gas Program and the U.S. Environmental Protection Agency determination of compliance.”⁶⁶ Manufacturers no longer report data that demonstrates compliance with the 2014 MY National Heavy-Duty Engine and Vehicle Greenhouse Gas Program to the U.S. EPA. The Emergency Rulemaking relies on outdated and defunct codes and regulations, and implementation is not functional or practical.

CARB’s test procedures require that manufacturers shall demonstrate compliance using Averaging, Banking, and Trading volumes based on total U.S. production volumes (“2. Any

⁶⁶ Appendix B-12. 1037.101(3)(2). [app_b-12.pdf](#). [Footnote in comment]

reference to vehicle or engine sales or vehicle or engine production volume throughout the United States shall mean vehicle or engine sales or vehicle or engine volume in California, except in Part 1037, Subpart H, Averaging, Banking, and Trading for Certification.”) – which implies that manufacturers should apply CARB’s outdated test procedures to national volumes of vehicle sales – applying state standards to vehicles CARB has no regulatory authority over, and assuming the existence of a federal credit bank that no longer exists.⁶⁷ (DTNA)

34. Comment: Comment letter dated March 18, 2026, submitted March 27, 2026

The Emergency Regulation is a new adoption of emissions standards without a preemption waiver in violation of Section 209(a) of the Clean Air Act.

CARB’s proposed adoption of the Emergency Regulation also violates the Clean Air Act. The clear statutory language of the Clean Air Act requires CARB to seek a waiver of preemption from EPA **prior to** adoption as a state law.

Section 209 requires California to have a waiver prior to the adoption of a mobile source rule, not after. Section 209(a) is a prohibition, providing that “[n]o State ... shall adopt or attempt to enforce any standard relating to the control of emissions” from new vehicles or engines. 42 U.S.C. § 7543(a). Section 209(b) provides for an exception to Section 209(a) and allows EPA to “waive application of this section,” provided that the preconditions of Section 209(b) have been met. 42 U.S.C. § 7543(b).

Thus, until a waiver has been granted, Section 209(a) remains in full effect, and all States, including California, are preempted from either “adopt[ing] or attempt[ing] to enforce” an emissions regulation. That is, either action—adopting or enforcing—independently violates the federal statutory prohibition.

In conclusion, DTNA believes CARB should work closely with industry and EPA to determine workable solutions that observe the principles of the Clean Air Act including the requirements for lead time and stability, the need for waivers, and the implementation of the Congressional Review Act. (DTNA)

Agency Response to Comments B.8 through B.34: No changes were made in response to these comments.

These comments were submitted on March 27, 2026, after the close of the comment period on March 26, 2026, and the enclosed letters dated September 26, 2025, and March 18, 2026, were directed at the emergency proposal. The November 11, 2025 enclosure was properly submitted during the 45-Day comment period and responded to above. While not required by the Administrative Procedure Act, CARB is providing the following responses.

CARB’s responses to Comments A.1 through A.31, in subsections A.1.(a) and A.1.(b), incorporated by reference here, respond to the comments contending CARB is adopting new standards that require a waiver, are not within the scope of a previous waiver, do not meet the criteria for a waiver, and U.S. EPA is precluded from granting a new waiver that are presented in Comments B.9, B.15, B.16, B.19, B.25, B.26, B.27, and B.34.

⁶⁷ California Greenhouse Gas Exhaust Emission Standards and Test Procedures for 2014 and Subsequent Model Heavy Duty-Vehicles. Part 1037, Subpart A. California Test Procedures GHG Vehicles 2014+ (Phase 1). [Footnote in comment]

As noted above, the proposed amendments to the Omnibus Regulation are not part of this proposal. The Clean Truck Partnership is a contractual agreement and not regulatory (and not part of this regulation). Comment B.17 and others directed at these topics are outside the scope of this rulemaking action.

Comments B.24, B.33, and others that are directed at U.S. EPA's amendments to its standards are outside the scope of this proposal.

CARB's responses to Comments A.37 through A.45, in subsection A.1.(d) incorporated by reference here, respond to the retroactive enforcement concerns raised in Comments B.10, B.20, and B.28.

Comments B.11, B.21, B. 29, and others related to standards in other states are outside the scope of this proposal to amend California state regulations. Therefore, no response is necessary. To the extent a response is required, CARB responded to comments on laws in other states in its responses to comments in subsection A.1.(f) and A.54, incorporated by reference here.

CARB's responses to Comments A.32 through 36, in subsection A.1.(c), and A.46 through A.53, in subsection A.1.(e), incorporated by reference here, respond to the due process concerns raised in Comments B.12, B.22, and B. 30, the clarity and consistency Administrative Procedure Act concerns raised in Comments B.13, B.23, B.24, B.31, and B.33, and the concerns about the certification requirements in Comments B.24 and B.33. For Comments B.9 through B.34 related to the Emergency Vehicle Emissions Regulations, see responses to comments in subsection A.1(a) and comments B.1 through B.7, incorporated by reference here. CARB's responses to Comments A.64 and A.65, in subsection A.1.(h), incorporated by reference here, respond to the comments regarding the existence of an emergency presented in Comments B.14 and B.32.

Light-Duty Related Comments

- 35. Comment:** We do not oppose the emergency regulations. However, we are concerned that automakers can certify to emergency regulations, but on the other hand it might be illegal to do so, and they may face enforcement action. This adds to confusion rather than providing clarity. The Board should clarify that it is not illegal to follow the regulations that will be adopted and that automakers will not face enforcement action when following any of the CARB-approved pathway. (AAI)

Agency Response to Comment B.35: No changes were made in response to this comment. See the response to comments in subsection A.1.(m), incorporated by reference here.

- 36. Comment:** There are a number of technical errors and oversights in the regulations, though mostly minor. We also provided written recommendations in comments during the 45-day period. (AAI)

Agency Response to Comment B.36: Changes were made in response to this comment. In the First 15-Day Notice, staff proposed changes to correct errors that were identified, including those raised by the commenter during the 45-day comment period. A summary of these changes is provided in the First 15-Day Notice.

Supportive Comment

37. Comment: Mr. Ian MacMillan from South Coast AQMD expressed strong support for the Emergency Vehicle Emissions Regulations. The commenter emphasized that the South Coast Air Basin continues to experience the worst ozone levels in the nation and some of the most severe fine particulate matter pollution, much of which is driven by mobile sources. The commenter stated that this rulemaking action can provide needed regulatory certainty for mobile source control strategies that are relied upon in the State Implementation Plan. The commenter also highlighted the South Coast AQMD's unique role as one of the few agencies, aside from U.S. EPA and CARB, that adopts mobile source-related regulations, including multiple Indirect Source Rules and fleet rules that depend on CARB's regulatory framework. Accordingly, the commenter stressed the importance of close coordination between CARB and the South Coast AQMD to maintain alignment and to support both agencies' efforts to attain State and federal air quality standards and protect public health. (SCAQMD)

Agency Response to Comment B.37: No changes were made in response to this comment. CARB appreciates the supportive comment.

2. Out-of-Scope Comment

Table B-4 lists out-of-scope oral comment received during the public hearing.

Table B-4. Commenter that Submitted Out-of-Scope Comment

Commenter	Date	Affiliation
Harvey Eder	March 26, 2026	Public Solar Power Coalition

Since this oral comment is outside the scope of this rulemaking, no response is provided in this FSOR.

C. Comments Received During the First 15-Day Comment Period

1. Applicable Comments

Applicable comments here refer to the comments on the First 15-Day Notice to the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. Tables C-1 lists the commenters that submitted applicable comments. The table identifies the date in which the comments were submitted, commenter name, and affiliation. The comments and agency responses to the comments are listed below the table.

Table C-1. Commenters that Submitted Written Comments During the First 15-Day Comment Period

Commenter	Date	Affiliation
Michael Taylor	April 18, 2026	NAFA Fleet Management Association, formerly the National Association of Fleet Administrators (NAFA)
Timothy French	April 20, 2026	EMA

Heavy-Duty Related Comments

- 1. Comment:** Implementation Under Legal and Regulatory Uncertainty: NAFA argues that conditional compliance pathways tied to ongoing federal actions and judicial review create uncertainty for fleets making near-term procurement, infrastructure, and operational decisions.

Regulatory Stability and Procurement Timing: NAFA emphasizes that fleet procurement and infrastructure planning require multi-year timelines and warns that changing regulatory requirements could delay procurement, increase costs, and disrupt essential public services.

Risk Allocation Under Conditional Compliance Frameworks: NAFA argues that conditional compliance frameworks place significant compliance and timing risks on fleet operators, particularly public-sector fleets, despite their limited control over vehicle availability, infrastructure readiness, and legal outcomes.

Aligning Implementation with Operational Reality: NAFA supports fleet modernization and lower- and zero-emission technologies but argues that compliance requirements should account for duty cycles, vehicle availability, useful life, and other operational constraints.

Recommendations for Durable Implementation: NAFA recommends regulatory stability, a procurement compliance safe harbor, greater transparency, performance-based flexibility, and continued engagement with fleet operators.

NAFA remains supportive of California's emissions goals but emphasizes that successful fleet transition depends on regulatory stability, clarity, flexibility, and alignment with operational realities. NAFA encourages targeted adjustments to ensure implementation remains durable, equitable, and practical.(NAFA)

Agency Response to Comment C.1: No changes were made in response to these comments.

The Emergency Vehicle Emissions Regulations do not apply to fleets, including NAFA members and this comment appears to instead pertain to the Advanced Clean Fleets (ACF) regulation. To the extent NAFA refers to uncertainty for manufacturers, this rulemaking responds to, rather than creates, uncertainty as discussed in the responses to comments in subsection A.1.(b), response to comments A.26 through A.32, subsection A.1.(d), response to comments A.37-A.45, and subsection A.1.(i), response to comment A.74, which are incorporated herein by reference. As noted there, manufacturers have been certifying and selling vehicles in California with these provisions in effect on an emergency basis and permanently recodifying these provisions will not change the pathways already being used to do so. In terms of requirements for emergency vehicles, please note the exemptions provided under section 27156.2 of the California Vehicle Code.

While the remaining comments are outside the scope of this rulemaking, CARB appreciates the support to meet CARB's air quality goals and achieve emissions reductions from all vehicles in California.

- 2. Comment:** As before, EMA opposes CARB's adoption of the Emergency Regulations, including the proposed 15-day changes, since those regulations are clearly preempted under federal law. EMA's specific comments on the 15-day changes at issue are set forth below.

Modified Text – Retroactive Enforcement Language

The proposed 15-day changes and modified text include revisions to CARB’s Phase 2 greenhouse gas emissions standards, Cal. Code Regs. tit. 17, § 95663, and its heavy-duty on-board diagnostic standards, Cal. Code Regs. tit. 13, § 1971.1, and also attempt to reserve the right for CARB to retroactively enforce its currently preempted regulations should it prevail in pending litigation that CARB has brought in federal court challenging the Congressional Review Act (“CRA”) legislation that curtailed CARB’s authority to adopt or implement medium- and heavy-duty (“MHD”) vehicle and engine emission standards (the “CRA litigation”). CARB does not have the authority to try to adopt or enforce those retroactive enforcement provisions.

Specifically, in proposed section 95663, CARB threatens that “if a court of competent jurisdiction issues a final ruling that H.J. Res. 87 (119th Congress), H.J. Res. 88 (119th Congress), and H.J. Res. 89 (119th Congress) are invalid or that the waivers U.S. EPA granted California on April 6, 2023 (88 Federal Register 20688), and January 6, 2025, (90 Federal Register 642 and 90 Federal Register 643,), are in effect, the regulated parties are subject to the requirements of this section 95663 to the extent consistent with the court’s final ruling.”

At the same time, CARB has admitted in the CRA litigation that it has never submitted to U.S. EPA any preemption waiver application for the MHD “Phase 2” greenhouse gas (“GHG”) emissions standards. CARB likewise has never obtained a separate preemption waiver for its heavy-duty on-board diagnostic (“OBD”) standards at section 1971.1 since 2016, since the prior waiver only covered amendments to the OBD standards through 2013. See 81 Fed. Reg. 78,149 (Nov. 7, 2016). CARB subsequently amended the OBD standards in 2016 and 2019, but, again, has never sought a preemption waiver or “within the scope” determination in connection with either set of OBD amendments.

As a result, CARB’s MHD Phase 2 GHG and OBD standards are expressly preempted under federal law, and they will continue to be preempted even if a court issues a ruling that the CRA are invalid.

Adding retroactive enforcement language to MHD standards for which CARB has failed to secure any of the necessary preemption waivers makes no sense. CARB did not “lose” EPA waivers for the Phase 2 GHG emissions standards or the heavy-duty OBD standards because of the enactment of the CRA resolutions. Rather, CARB never obtained waivers for those MHD standards in the first instance. Accordingly, CARB’s attempt to add retroactive enforcement language for regulatory provisions not at issue in the CRA litigation is fundamentally flawed and should be withdrawn.

Resolution 26-3 Assertions

CARB also lacks any authority for two of the assertions included in its Resolution 26-3, dated March 26, 2026, purporting to adopt the Emergency Vehicle Emissions Regulations.

First, Resolution 26-3 states that “new vehicles and engines sold in California must obtain certification that they meet the Board’s emission standards and requirements.” But Section 209(a) of the Clean Air Act, 42 U.S.C. section 7543(a), expressly provides that “[n]o State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.” Absent a waiver of federal preemption from EPA for emissions

standards governing a particular class of motor vehicles or engines, California cannot require certification or any other conditions precedent to the initial retail sale of new motor vehicles and engines.

CARB has no certification authority for new MHD vehicles and engines, either because: (i) the waivers for CARB's regulations were directly revoked under the CRA resolutions enacted in June of 2025 (i.e., the CRA resolutions invalidating CARB's ACT and Omnibus Low-NOx regulations); (ii) CARB never applied for the requisite preemption waiver in the first place (i.e., CARB's GHG regulations); or (iii) CARB has sought to resurrect and amend MHD regulations that have previously lapsed and have no extant preemption waivers (i.e., CARB's "antecedent" MHD emission and OBD standards, and CARB's evaporative emission standards). As such, CARB cannot require any certification for any new MHD vehicles and engines unless and until EPA grants the requisite preemption waivers for CARB's "antecedent" standards, or CARB secures new waivers for any MHD emissions standards applicable to model year 2026 and subsequent vehicles and engines.

Second, Resolution 26-3 also states that "the Board hereby determines that the regulations adopted herein, in conjunction with other elements of California's motor vehicle or on-road engine emissions control program, will render California's motor vehicle or on-road engine emission standards, in the aggregate, to be at least as protective of public health and welfare as applicable federal standards."

That is not true. The Emergency Rulemaking adopts tailpipe emissions standards that are less protective than the corresponding federal standards. Compare Cal. Code Regs. tit. 13, § 1956.8.1 with 40 C.F.R. § 1036.104. (EMA)

Agency Response to Comment C.2: Changes were made in response to this comment regarding CARB's Phase 2 GHG emission standards, title 17, CCR, section 95663. The introductory language within this section is intended to inform the public of the uncertainty surrounding the CCR sections impacted by the congressional resolutions. This section was amended in the Omnibus rulemaking and is expressly cited in "California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The 'Omnibus' Low NOx Regulation; Waiver of Preemption; Notice of Decision" (90 Fed. Reg. 643 (January 6, 2025)) targeted by H.J. Res. 89 (119th Congress). However, for clarity, CARB issued the Second 15-day Notice, which proposed the following changes to the introductory text of section 95663:

"Under section 209(b) of the Federal Clean Air Act (42 U.S.C. § 7543(b)), California is required to receive a waiver from the Administrator of the U.S. EPA prior to enforcing an emission standard for new on-road vehicles and engines. Accordingly, CARB will not seek to enforce the Phase 2 GHG emission standards until such time as it receives a waiver from the U.S. EPA."

See responses to comments in subsection A.1 for all other aspects of the comment, incorporated by reference here. CARB's responses to comments A.1 through A.45, in subsections A.1.(a)-(d) responded to the comments contending CARB is adopting new standards that require a waiver, are not within the scope of a previous waiver, do not meet the criteria for a waiver, and impermissible seek to retroactively enforce requirements. No changes were made in response to these portions of the comment.

2. Out-of-Scope Comments

Several stakeholders submitted out-of-scope comments during the first 15-day comment period. Table C-2 shows the information regarding these commenters.

Table C-2. Commenters that Submitted Out-of-Scope Comments During the First 15-Day Comment Period

Commenter	Date	Affiliation
Michelle Anderson	April 4, 2026	Private Citizen
Michael Thornton	April 9, 2026	San Elijo Joint Powers Authority
John Sanders	April 10, 2026	Private Citizen
Joseph Williams	April 15, 2026	Private Citizen
Dennis Case	April 18, 2026	Private Citizen

Since these comments are outside the scope of this rulemaking, no responses are provided in this FSOR.

D. Comments Received During the Second 15-Day Comment Period

1. Applicable Comments

Applicable comments here refer to the comments on the Second 15-Day Notice to the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. Table D-1 lists the commenters that submitted applicable comments. The table identifies the date on which the comments were submitted, commenter name, and affiliation. The comments and agency responses to the comments are listed below the table.

Table D-1. Commenters that Submitted Written Comments During the Second 15-Day Comment Period

Commenter	Date	Affiliation
Cory Bullis	July 15, 2026	AAI
Alissa Recker	July 15, 2026	DTNA
Timothy French	July 15, 2026	EMA
Michael Taylor	July 15, 2026	NAFA
John McDonald	July 15, 2026	Nissan North America, Inc. (Nissan)
Aaron Szabo	July 15, 2026	U.S. EPA

Heavy-Duty Related Comments

(a) CAA and Federal Waiver of Preemption

- 1. Comment:** The multiple iterations of this attempted rulemaking have become as convoluted as CARB's underlying rationales for trying to circumvent federal preemption. Accordingly, and as before, EMA opposes CARB's permanent adoption of the Emergency Regulations, including certain of the additional proposed 15-day changes. As EMA has explained previously, CARB's Emergency Regulations are preempted because there is no waiver in place for the "antecedent" emission standards that CARB proposes to resurrect, and no such preemption waiver can be obtained.... (EMA)
- 2. Comment:** Further, EMA is concerned that CARB's proposed concession does not go far enough. CARB's "non-enforcement" language does not cure all of the underlying preemption defects, because Section 209(a) of the Clean Air Act bars a State not only from attempting to enforce standards, but also from "adopting" any standard relating to the control of emissions absent an EPA waiver. 42 U.S.C. § 7543(a). CARB's commitment to refrain from enforcing the Phase 2 GHG standards "until such time as a waiver is granted" thus leaves those standards impermissibly adopted in the interim. That preemption violation is especially significant because CARB's stated practice is to enforce its standards retroactively to their date of adoption, and CARB notably has not disclaimed retroactive enforcement of the Phase 2 GHG standards. (EMA)
- 3. Comment:** CARB likewise has never obtained a separate preemption waiver for its current heavy-duty on-board diagnostic ("OBD") standards at section 1971.1, since the prior waiver only covered amendments to the OBD standards through 2013. See 81 Fed. Reg. 78, 149 (Nov. 7, 2016). CARB subsequently amended the OBD standards in 2016 and 2019, but, again, has never sought a preemption waiver or "within the scope" determination in connection with either set of superseding OBD amendments. Consequently, those current OBD standards are just as unenforceable as CARB's waiverless Phase 2 GHG standards. CARB's 15-day changes should be further revised to reflect that. (EMA)
- 4. Comment:** I write on behalf of the U.S. Environmental Protection Agency ("EPA" or "the Agency") in response to the California Air Resource Board's ("CARB") Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information on the Proposal to Permanently Adopt the Emergency Vehicle Emissions Regulation (the "Emergency Rulemaking").⁶⁸ The EPA has significant legal concerns regarding CARB's ability to adopt and implement this regulation. The EPA submits this letter for consideration during the emergency rulemaking voluntarily and without prejudice to any future determination, legal argument, or assertion of right.

The EPA reiterates the Agency's strong objection to CARB's approach on the grounds that Clean Air Act (CAA) section 209(a) broadly preempts any State or political subdivision thereof from adopting or attempting to enforce emission standards for new motor vehicles

⁶⁸ California Air Resources Board. Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information - Proposal to Permanently Adopt the Emergency Vehicle Emissions Regulations, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/orhdcfs/2nd15d_notice.pdf?utm_medium=email&utm_source=govdelivery. [Footnote in comment]

and engines absent a valid waiver of preemption from the Agency under CAA section 209(b).

For California to adopt or attempt to enforce any new motor vehicle or engine emission standard, therefore, it must first obtain a waiver under CAA section 209(b). Specifically, CAA section 209(b) authorizes the EPA to waive preemption if California determines that the relevant standard “will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.”⁶⁹ For the EPA to issue a waiver, the Administrator must find, after notice and an opportunity for a public hearing, that California’s determination is not “arbitrary and capricious,” that California needs such standard “to meet compelling and extraordinary conditions,” and that the standard and its enforcement procedures are “consistent with” CAA section 202(a).⁷⁰ (EPA)

- 5. Comment:** In June of 2025, pursuant to the Congressional Review Act, the federal government statutorily preempted California’s emissions standards governing heavy-duty vehicles and engines. California has continued to (1) demand compliance with its heavy-duty emissions standards and (2) require manufacturers to obtain certification to those standards as a condition precedent to retail sale, despite that Section 209(a) of the Clean Air Act provides that, absent a waiver, “No State ... shall adopt or attempt to enforce any standard relating to the control of emissions” from new vehicles or engines, and further mandates, “No State shall require certification ... as condition precedent to the initial retail sale” of those vehicles or engines. 42 U.S.C. § 7543(a).

With this latest round of proposed changes to the Emergency Regulation, CARB continues to attempt to promulgate new heavy-duty emissions standards stitched together from old and inapplicable standards. The end result is new preempted emissions standards in violation of Section 209(a) of the Clean Air Act. (DTNA)

- 6. Comment:** The proposed changes further demonstrate that the Emergency Regulation is a patchwork assortment of rules that have never been promulgated as a coherent regulatory program, and certainly have never received a waiver in aggregate. CARB purports to “restor[e]” the 2012 version of certain regulations as a replacement for 2015 rules originally “recodified” in the Emergency Regulation, based on CARB’s subsequent realization that the 2015 rules never received an EPA waiver at all. Aside from demonstrating that even CARB cannot reliably determine which iteration of its regulations received a waiver, this also shows that the Emergency Rulemaking stitches together rules from different eras—as relevant to DTNA, 2012 versions of evaporative and refueling emissions standards. Those provisions are added to an already fragmented regulatory scheme, including 2007 and subsequent model-year heavy-duty diesel engine NOx emissions standards; 2017 and subsequent model-year heavy-duty diesel engine CO2 emissions standards; and 2016 and subsequent model-year heavy-duty engine on-board diagnostic standards. The Emergency Regulation does not merely restore the pre-Omnibus regulatory regime. CARB is adopting entirely new regulatory sections with standards applicable to current and subsequent model years and inserting new language into provisions. (DTNA)

Agency Response to Comments D.1 through D.6: No changes were made in response to these comments.

⁶⁹ 42 U.S.C. § 7543(b)(1). [Footnote in comment]

⁷⁰ *Id.* § 7543(b)(1)(A)-(C). [Footnote in comment]

See responses to Comments i A.1 through A.53 in subsections A.1.(a) – (e) regarding CARB’s authority, need for a waiver, statements on enforcement, and clarity and consistency of the regulations, as well as its response to Comment C.2, incorporated by reference here.

As to the comment that CARB has neither sought nor obtained a waiver allowing for enforcement of the 2016 and 2019 amendments to OBD requirements, CARB disagrees. U.S. EPA waived preemption for OBD requirements as they existed after the Omnibus and ACCII rulemakings, and those authorized OBD requirements included earlier amendments. Regardless, CARB is not enforcing the later OBD requirements, unless or until the congressional resolutions targeting the Omnibus and ACCII waivers are invalidated, as noted in the preambulatory paragraphs. Although, manufacturers may opt to comply voluntarily as with other provisions established or amended by the ACCII and Omnibus rulemakings.

(b) Waiver for GHG Standard

- 7. Comment:** Most overtly, in this latest round of proposed changes, CARB concedes that it never applied for or received a federal preemption waiver for its Phase 2 Greenhouse Gas (GHG) emissions standards. CARB proposes to add language in several sections of the California Code of Regulations stating that CARB “will not seek to enforce the Phase 2 [GHG] emission standards until such time as it receives a waiver from the U.S. EPA.” See, e.g., § 1956.8, Appendix A-3.1, Proposed Second 15-Day Changes to Proposed Title 13 Regulation Order (“Second 15-Day Notice”) (June 30, 2026).

Further, CARB’s latest round of proposed changes is a clear attempt to preserve its truck certification authority, as CARB’s only authority to require certification of heavy-duty trucks comes through its GHG standards. But CARB cannot solve that problem by attempting to resurrect its Phase 1 GHG standards. CARB itself limited Phase 1’s applicability to pre-model year 2021 trucks when it adopted Phase 2. See, e.g., CARB, Final Regulation Order for Phase 2 Greenhouse Gas Regulations and Tractor-Trailer GHG Regulations (posted Feb. 7, 2019), at A-2. And any effort to resurrect Phase 1 now through the Emergency Regulation would simply add to the waiverless patchwork of superseded standards that has never been reviewed or approved as a coherent program. Whether CARB relies on its Phase 2 or tries to resurrect its Phase 1 to preserve its truck certification program, it is still conditioning truck sales on compliance with waiverless standards, which is precisely what Section 209(a) forbids. See *Conditions Precedent to the Sale, Titling, or Registration of New Motor Vehicles in California*, 50 Fed. Reg. 35,123 (Aug. 9, 1985). (DTNA)

8. Comment: EMA is further concerned that CARB’s proposed 15-day changes are designed to preserve CARB’s authority to require certification of heavy-duty and medium-duty (HMD) trucks and engines—an authority that now could only stem from CARB’s GHG standards. But there are no such standards in place that have an EPA preemption waiver. CARB cannot lawfully preserve any certification authority by attempting to resurrect its superseded Phase 1 GHG standards, since CARB itself expressly limited those standards to pre-2021 model year vehicles and engines when it subsequently adopted the Phase 2 standards. Attempting to revive the Phase 1 standards now without a new preemption waiver or “within the scope” determination would only serve to add another layer of waiverless standards to an already fragmented patchwork of CARB HMD standards that EPA has never reviewed or approved as a coherent regulatory program. Accordingly, regardless of whether CARB relies on its waiverless Phase 2 GHG standards or vainly attempts to resurrect its lapsed Phase 1 standards, conditioning the sale of HMD trucks and engines on compliance with waiverless emission standards is forbidden by CAA Section 209(a). (EMA)

Agency Response to Comments D.7 and D.8: No changes were made in response to these comments. See the responses to comments in subsection A.1.(a), incorporated by reference here.

(c) Retroactive Enforcement of Emission Standards

9. Comment: Through the other proposed 15-day changes, it appears that CARB is continuing to attempt to reserve the right to retroactively enforce its currently preempted regulations should it prevail in pending litigation that CARB has brought in federal court challenging the Congressional Review Act (“CRA”) legislation that vitiated CARB’s authority to adopt or implement medium- and heavy-duty (“HMD”) vehicle and engine emission standards (the “CRA litigation”). See *California v. United States*, Case No. 4:25-cv-04966 (N.D. Cal.).

Specifically, in sections 1956.8, 1971.1, 1971.5 and elsewhere, CARB’s proposed changes provide that “if a court of competent jurisdiction issues a final ruling that H.J. Res.87 (119th Congress), H.J. Res. 88 (119th Congress), and H.J. Res. 89 (119th Congress) are invalid or that the waivers U.S. EPA granted California on April 6, 2023 (88 Federal Register 20688), and January 6, 2025, (90 Federal Register 642, and 90 Federal Register 643,) are in effect, the regulated parties are subject to the requirements of this section 1956.8 [and others] to the extent consistent with the court’s final ruling.” (Emphasis added.) CARB claims that this language is necessary to clarify that the court-revived standards “would be the only compliance option left.” (CARB’s Second Notice, p. 4.) (EMA)

10. Comment: CARB also continues to threaten retroactive enforcement of Omnibus and ACT, which is an impermissible attempt to enforce the standards. (DTNA)

11. Comment: In these latest proposed changes, CARB continues to threaten retroactive enforcement of Omnibus, which is an impermissible attempt to enforce the standards. See Second 15-Day Notice at 4. Under the new rules, manufacturers can avoid potential penalties only if they follow the Omnibus regulation as opposed to the new proposed “Emergency Regulation” or “deem to comply,” the two alternatives for certification offered by CARB in the August MAC. Putting aside that CARB has no authority to certify heavy-duty trucks at this time, the “choice” presented by CARB is not a real choice. The potential for significant penalties coerces manufacturers to conform their conduct to CARB’s preempted rules before those rules can be tested in court, particularly where CARB insists on litigating to “final judgment,” which creates years of uncertainty for industry. All the while, the penalties would accrue, creating significant business risk for

companies that ask a court to clarify the law when two regulators disagree or presume that federal legislation is valid. As such, CARB's regulatory language stating that it will enforce Omnibus (without regard to court orders or enforcement discretion) violates Section 209's attempt to enforce clause (among other issues). And as described above, CARB has also not disclaimed retroactive enforcement of the Phase 2 GHG standards in the new proposed language despite not having a federal preemption waiver.

CARB should clarify that there will be no retroactive enforcement against any manufacturer that has utilized the alternative compliance pathways that CARB expressly provided in this rulemaking. (DTNA)

Agency Response to Comments D.9 through D.11: No changes were made in response to these comments. See responses to Comments in A.37 through 45 in subsection A.1.(d), incorporated by reference here.

(d) Compliance with the APA Requirements

- 12. Comment:** The EPA is also deeply troubled that CARB is attempting to reinstate the zero-emission vehicles ("ZEV") provisions from the "Advanced Clean Cars I" ("ACC I") regulation into the CCR through a "15-day change"—what should ostensibly be a minor amendment to the emergency rulemaking. Worse still, the contemplated action appears to reinstate ACC I's ZEV provisions indefinitely for all model years going forward, whereas the current regulation applies the ZEV provisions only through model year 2025. Even absent the general objections above, this emergency rulemaking would not be the appropriate mechanism through which to enact this substantial change with clear nationwide impacts. According to California's Office of Administrative Law ("OAL"), 15-day changes are only to be used for "sufficiently related" modifications to regulations. OAL states: "If a change is substantial, but not sufficiently related to the original proposal (i.e., not reasonably foreseeable based on the notice of proposed action), the Agency must then publish another 45-day notice in the California Regulatory Notice Register similar to the original notice of proposed action. These changes are uncommon."⁷¹ Thus, by California's admission, this amendment to the emergency regulation violates California's procedural requirements. (EPA)

Agency Response to Comment D.12: Changes were made that are responsive to this comment. The commenter is referring to an error in the Second 15-Day Notice that was corrected in the Third 15-Day Notice. See response to comments in subsection D.1.(f), incorporated by reference here.

(e) Miscellaneous

- 13. Comment:** In conclusion, DTNA believes CARB should work closely with industry and EPA to determine workable solutions that observe the principles of the Clean Air Act including the requirements for lead time and stability, the need for waivers, and the implementation of the Congressional Review Act. (DTNA)

⁷¹ California Office of Administrative Law, About the Regular Rulemaking Process, https://oal.ca.gov/rulemaking_participation. [Footnote in comment]

Agency Response to Comment D.13: No changes were made in response to this comment. See response to comments in subsections A.1.(a), and A.1.(h), response to comments A.64 through A.66, incorporated by reference here.

- 14. Comment:** NAFA supports the Second 15-Day modifications and does not seek to reopen the underlying policy decisions. Instead, NAFA focuses on ensuring the regulations can be implemented successfully and sustainably.

NAFA highlights the importance of regulatory certainty and implementation clarity to support long-term fleet planning, infrastructure investments, emergency preparedness, and uninterrupted public services.

NAFA recommends continued communication and stakeholder engagement through implementation guidance, technical advisories, frequently asked questions, and ongoing dialogue to resolve operational questions and improve statewide consistency.

NAFA urges CARB to consider operational realities and maintain implementation flexibility, recognizing challenges related to procurement, infrastructure, contractors, manufacturers, utilities, and supply chains.

NAFA argues that the long-term success of the regulations depends on effective implementation, including practical administrative guidance, continued collaboration with regulated fleets, and consistent application of the regulations while maintaining essential public services and achieving California's environmental objectives.

NAFA urges CARB to continue providing timely guidance, practical compliance tools, implementation certainty, and ongoing engagement to support successful implementation while maintaining essential public services and achieving California's environmental objectives. (NAFA)

Agency Response to Comment D.14: No changes were made in response to this comment. The comment pertains to implementation of the Advanced Clean Fleets (ACF) rule and hence is outside the scope of this 15-day package. However, CARB appreciates NAFA's willingness to work collaboratively with CARB during ACF public fleet rule implementation. See response to comment C.1 above, incorporated by reference here.

Light-Duty Related Comments

(f) Reinstatement of ZEV Sales Requirements in Alternative Section 1962.2.1

- 15. Comment:** Concern with revisions made to Alternative Section 1962.2.1 in the Second 15-Day Notice. The version of Alternative Section 1962.2.1 previously made available for public review contained no numeric Zero-Emission Vehicle ("ZEV") sales requirements, with subsections (b) through (g) designated as reserved. The Second 15-Day Notice replaces those reserved provisions with regulatory language establishing specific ZEV sales requirements, compliance obligations, deficit provisions, and associated penalty exposure.

To the extent CARB intends to remove these ZEV sales mandate provisions from the final regulatory text submitted for adoption, Nissan supports that correction. However, because the currently noticed language remains part of the official rulemaking record and is subject to public comment, Nissan submits these comments to ensure the administrative record

accurately reflects the significance of the changes contained in the Second 15-Day Notice and the concerns of regulated manufacturers.

Nissan is also concerned that the newly added provisions could be interpreted to apply to Model Year 2026 vehicles that have already been planned, certified, produced, and sold. Manufacturers made product planning, certification, production, and compliance decisions based on the regulatory framework in place during the current model year. Introducing new sales requirements after those decisions have been made creates substantial compliance uncertainty and potential enforcement exposure. (Nissan)

16. Comment: The EPA is also deeply troubled that CARB is attempting to reinstate the zero-emission vehicles (“ZEV”) provisions from the “Advanced Clean Cars I” (“ACC I”) regulation into the CCR through a “15-day change”—what should ostensibly be a minor amendment to the emergency rulemaking. Worse still, the contemplated action appears to reinstate ACC I’s ZEV provisions indefinitely for all model years going forward, whereas the current regulation applies the ZEV provisions only through model year 2025. Even absent the general objections above, this emergency rulemaking would not be the appropriate mechanism through which to enact this substantial change with clear nationwide impacts. (EPA)

17. Comment: This letter focuses on a single yet significant issue in the Second 15-Day Changes: the wholesale substitution of the Board approved text in Title 13, California Code of Regulations (13 CCR), Section 1962.2.1 with the December 31, 2012, version of former section 1962.2. That substitution takes a provision that, as approved by the Board, imposed no numeric Zero-Emission Vehicle (“ZEV”) sales-percentage obligation, and replaces it with a fully populated ZEV sales mandate reaching back to the beginning of the current 2026 model year (“MY”), which started over 7 months ago. (AAI)

Agency Response to Comments D.15 through D.17: Changes have been made that are responsive to these comments. These comments address an error in the Second 15-Day Notice which CARB corrected in the Third 15-Day Notice. In alternative Section 1962.2.1, the 45-Day Proposal reflected the reinstatement of the October 8, 2015, versions of Section 1962.2. However, to ensure that the LEV III regulations that are being recodified by this Emergency Vehicle Emissions Regulations rulemaking are the versions that are covered under a Section 209(b) waiver of preemption under the CAA, the Second 15-Day Changes replaced the proposed regulatory text of 1962.2.1 with the 2012 version of the regulatory text that is covered by a CAA waiver of preemption. In so doing, CARB unintentionally proposed the entirety of 1962.2 from 2012 which included the ZEV sales requirement that sunset for model years past 2025. To be clear, CARB did not intend to propose reinstating these ZEV requirements, as reflected in the section adopted on an emergency basis and as initially proposed in this rulemaking. To correct this unintentional error, the Third 15-Day Notice proposes only the 2012 versions of subsections (a) and (h), which limits Section 1962.2.1 to only the subsections that CARB is intending to recodify. Therefore, this mistake has been corrected. See response to comment D.12, in subsection D.1.(d) incorporated by reference here.

(g) Misuse of 15-Day Change Process for Substantive Changes

18. Comment: If CARB instead intends to retain numeric ZEV sales requirements within the alternative compliance pathway, Nissan believes those requirements should be advanced through a separate rulemaking process conducted in accordance with the California Administrative Procedure Act. Such a process should include appropriate notice,

supporting analysis, a meaningful opportunity for public comment, and sufficient prospective implementation lead time to allow manufacturers to evaluate and comply with any new requirements. (Nissan)

- 19. Comment:** According to California's Office of Administrative Law ("OAL"), 15-day changes are only to be used for "sufficiently related" modifications to regulations. OAL states: "If a change is substantial, but not sufficiently related to the original proposal (i.e., not reasonably foreseeable based on the notice of proposed action), the Agency must then publish another 45-day notice in the California Regulatory Notice Register similar to the original notice of proposed action. These changes are uncommon." Thus, by California's admission, this amendment to the emergency regulation violates California's procedural requirements. (EPA)
- 20. Comment:** Such a broad change (1) is not "sufficiently related" to the text previously noticed for comment, as required for modifications made available under a 15-day notice, and (2) would impose new compliance and penalty exposure on MY vehicles that have already been produced, certified, and sold – including the MY 2026 vehicles currently being sold in California – without the notice, supporting analysis, lead time, or Board approval that a ZEV mandate of this magnitude requires. (AAI)

Agency Response to Comments D.18 through D.20: Changes were made that are responsive to these comments. See responses to comments D.12. in subsection D.1.(d), and D.15 through D.17, in subsection D.1.(f) regarding the inadvertent inclusion of regulatory text that was not intended for adoption, which are incorporated in this response by reference.

(h) Absence of a Valid Waiver to Adopt New or Modified Emission Standards

- 21. Comment:** The EPA reiterates the Agency's strong objection to CARB's approach on the grounds that Clean Air Act (CAA) section 209(a) broadly preempts any State or political subdivision thereof from adopting or attempting to enforce emission standards for new motor vehicles and engines absent a valid waiver of preemption from the Agency under CAA section 209(b). For California to adopt or attempt to enforce any new motor vehicle or engine emission standard, therefore, it must first obtain a waiver under CAA section 209(b). Specifically, CAA section 209(b) authorizes the EPA to waive preemption if California determines that the relevant standard "will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."

For the EPA to issue a waiver, the Administrator must find, after notice and an opportunity for a public hearing, that California's determination is not "arbitrary and capricious," that California needs such standard "to meet compelling and extraordinary conditions," and that the standard and its enforcement procedures are "consistent with" CAA section 202(a).

If CARB wishes to adopt new or amended standards in this rulemaking that differ in any way from provisions already subject to an extant preemption waiver, CARB must submit a new waiver request and receive a waiver from the EPA under CAA section 209(b) before CARB can adopt or attempt to enforce any such standard. This includes adding standards in any new sections of the California Code of Regulations ("CCR"), combining standards in regulations that were previously separate, or applying standards to different model years. Any such regulation cannot be finalized or enforced, including by requiring certification, until after submission to, and review and approval by the EPA. (EPA)

Agency Response to Comment D.21: No changes were made in response to this comment. See the responses to Comment in subsections A.1.(a) and A.1.(k) , incorporated by reference here

(i) Claim of Complete Rewrite of Section 1961.2.1

22. Comment: Finally, while this letter focuses only on this discrete issue in 13 CCR 1962.2.1, we note that 13 CCR 1961.2.1 is likewise completely rewritten with 49 pages of text the public reviewed, and the Board approved, deleted and replaced by 43 pages of completely new text. In the short timeline of a 15-Day Notice, it is impossible to compare, contrast, understand, and develop comprehensive comments on the potential impact or appropriate recommendations from this massive change to a detailed technical regulation. (AAI)

Agency Response to Comment D.22: No changes were made in response to this comment. The replacement of the regulatory text in Section 1961.2.1 does not introduce any new requirements. Rather, it recodifies LEV III provisions from the 2015 version back to the exact text of 2012 version, which previously received an U.S. EPA waiver under CAA section 209(b) and fulfills the stated purpose of the rulemaking.

E. Comments Received During the Third 15-Day Comment Period

1. Applicable Comments

Applicable comments here refer to the comments on the Third 15-Day Notice to the proposal to permanently adopt the Emergency Vehicle Emissions Regulations. Table E-1 lists the commenter that submitted applicable comments. The table identifies the date on which the comments were submitted, commenter name, and affiliation. The comments and agency responses to the comments are listed below the table.

Table E-1. Commenter that Submitted Written Comments During the Third 15-Day Comment Period

Commenter	Date	Affiliation
Brandon Craighead	July 22, 2026	Private Citizen

1. Comment: In opposition to the permanent adoption of Emergency Vehicle Emissions Regulations.

I am writing as a member of the public in opposition to the permanent adoption of the Emergency Vehicle Emissions Regulations as currently drafted, and to urge the Board to withdraw or substantially revise this rulemaking before finalizing. My concerns are practical and economic, and I believe they reflect the interests of Californians who will ultimately bear the costs of this regulatory approach. (Brandon Craighead)

Agency Response to Comment E.1: No changes were made in response to this comment. The commenter’s concern pertains to the permanent adoption of the Emergency Vehicle Emissions Regulations rulemaking as a whole, rather than the specific changes in the Third 15-Day Notice. Commenter’s concerns regarding practical emission standards and economics are addressed in response to comment E.2, which CARB incorporates in this response by reference. As CARB noted in Appendix G to the ISOR, CARB does not anticipate any cost impacts from its proposal to make permanent its Emergency Vehicle Emissions Regulations because the compliance pathways available to manufacturers have

already been understood for years; were previously implemented; and manufacturers have either already achieved or planned to achieve one or more of the compliance pathways. The concerns raised by the commenter do not require CARB to make changes to this rulemaking.

2. Comment: Concerns regarding the two separate emissions standards and economic impact.

This regulation would keep two separate emissions regimes simultaneously intact: the pre-2022 standards, and the Advanced Clean Cars II/Omnibus standards that CARB may still enforce later depending on the outcome of pending federal litigation. Rather than giving manufacturers, dealers, and fleet operators a single, stable standard to design and plan around, this approach asks industry to prepare for two possible regulatory futures at once. That is not a minor inconvenience. Vehicle design, certification, and supply chain planning operate on multi-year cycles; asking businesses to hedge against two divergent outcomes drastically contributes to compliance and operational costs rather than reducing them.

Manufacturers and dealers do not absorb increased compliance, testing, and legal costs themselves. Historically, these costs are priced into the vehicles Californians purchase, whether it's vehicles for personal use or commercial vehicles. A regulation whose central feature is prolonged legal and regulatory ambiguity should expect to raise, not lower, the price of conducting business in this state. Unfortunately for the consumer, those increases will land on everyday customers and businesses who operate vehicles or fleets, not just on the manufacturers.

Companies that manufacture, certify, and/or sell vehicles and engines need predictability to justify continued investment in this state. A regulation whose ultimate reach depends on the outcome of ongoing, unresolved litigation gives companies a strong incentive to locate new investment for testing and job creation elsewhere in states that have clearer, more stable and business-friendly regulatory environments. The Board must not underestimate how regulatory unpredictability alone can push economic activity elsewhere.

This rulemaking began as an emergency action and has now proceeded through three separate rounds of 15-day changes rather than a standard notice-and-comment rulemaking with a complete economic impact analysis. Given the significant compliance and cost implications described above, I do not believe the record reflects a rigorous, independent assessment of the costs this dual-track approach will impose on manufacturers, dealers, fleets, and ultimately consumers of goods provided by those fleets. Before finalizing this regulation, CARB needs to commission and publish a full economic impact analysis specific to the costs of maintaining two parallel emissions standards, rather than relying on the "emergency" rulemaking record from September 2025.

If the Board proceeds with the permanent adoption, despite concerns from the public and industry, as well as legal legitimacy, I urge the Board to add a clear, binding mechanism, such as automatic sunset or expedited review trigger tied to a specific court ruling so that businesses and consumers are not left indefinitely uncertain which standard ultimately will govern. Open-ended dual applicability with no defined end point imposes exactly the kind of prolonged uncertainty this comment describes.

The Board is a public entity consisting of public servants, and this regulation should be judged first and foremost by whether it serves the public's interest. As explained above, this regulation's central effect is to prolong regulatory uncertainty rather than resolve it, and that uncertainty carries real costs that will be passed through to consumers in the form of higher

vehicle prices. Contributing to inflationary pressure on the cost of vehicles, at a time when Californians are already burdened by high costs of living, is not in the best interest of the public the Board is charged with serving. I urge the Board to weigh this public interest heavily and to choose the path that provides clarity and cost stability over one that preserves ambiguity and risk. (Brandon Craighead)

Agency Response to Comment E.2: No changes were made in response to this comment. The commenter's concern pertains to the permanent adoption of the Emergency Vehicle Emissions Regulations rulemaking as a whole, rather than the specific changes proposed in the Third 15-Day Notice.

CARB disagrees with the assertion that "this rulemaking began as an emergency action and has now proceeded through three separate rounds of 15-day changes rather than a standard notice-and-comment rulemaking with a complete economic impact analysis." To clarify, this is the APA rulemaking process for the permanent adoption of the Emergency Vehicle Emissions Regulations. This process follows a prescribed notice-and-comment procedure, which began with a 45-day notice, includes a public hearing and also the issuance of 15-day changes and comment periods, as is typical in the APA rulemaking process.

The Emergency Vehicle Emissions Regulations do not create ambiguity or impose any double standards regarding manufacturers' compliance obligations. See response to comments in subsection A.1.(a).

For information regarding cost and economic impacts, CARB adequately conducted the costs and economic impacts assessment during the rulemaking process. Please refer to ISOR Appendix D: Costs and Economic Impacts Assessment of the Emergency Vehicle Emissions Regulations.⁷²

3. Comment: Concerns regarding CARB's authority to enforce Emergency Vehicle Emissions Rulemaking, pending federal litigation, Congress' June 2025 Congressional Review Act and waivers.

The Board's authority to enforce the underlying standards is solely disputed, pending federal litigation. Congress' June 2025 Congressional Review Act resolutions purported to nullify the EPA waivers that has authorized CARB to enforce the ACT II, Omnibus, and ACT regulations as if those waivers have never taken effect. The U.S. Department of Justice has since sued CARB directly, seeking a permanent injunction barring CARB from enforcing or adopting these standards, and has separately taken the position that CARB's zero-emission vehicle mandates are independently preempted by the Energy Policy and Conservation Act regardless of any Clean Air Act waiver. California disputes this and has its own suit pending, arguing the CRA resolutions themselves were invalid, but that litigation remains unresolved.

Given this, the Board should not finalize a regulation premised on authority that federal courts have not yet confirmed. By reserving the right to enforce the newer standards retroactively if pending litigation is resolved in the Board's favor, this regulation asks manufacturers, dealers, and ultimately consumers to bear the financial risk of an

⁷² California Air Resources Board. [Appendix D Costs and Economic Impacts Assessment for the Proposed Amendments](#). September 23, 2025.

unresolved legal question that only a federal court can answer. DOJ has already taken the position, including through a formal cease-and-desist letter to leading manufacturers, that continued compliance with the disputed standards is itself unlawful. Codifying the threat of retroactive enforcement while that dispute remains unresolved does not provide the regulatory clarity the public and the regulated community deserve, and risks placing businesses in an impossible position between conflicting state and federal directives. (Brandon Craighead)

Agency Response to Comment E.3: No changes were made in response to this comment. The commenter’s concern pertains to the permanent adoption of the Emergency Vehicle Emissions Regulations rulemaking as a whole, rather than the specific changes in the Third 15-Day Notice. For the commenter’s concerns related to CARB’s authority to enforce the Emergency Vehicle Emissions Regulations and pending litigation, see responses to Comments A.1 through A.31 and A. 74 in subsections A.1.(a)-(c) and A.1.(k), incorporated by reference here.

2. Out-of-Scope Comments

Several stakeholders submitted out-of-scope comments or made phone calls during the third 15-day comment period. Table E-2 shows the information regarding these commenters.

Table E-2. Commenters that Submitted Out-of-Scope Comments During the Third 15-Day Comment Period

Commenter	Date	Affiliation
Michael Taylor*	July 22, 2026	NAFA
Kevin Walsh	July 27, 2026	Private Citizen
Janet Chapman	July 27, 2026	Private Citizen
Michael Taylor	August 4, 2026	NAFA

*Voicemail.

- 4. Comment:** Please keep emissions low! (Kevin Walsh)
- 5. Comment:** all vehicles were subject to lead free gas law to eliminate poison [sic] to citizens. this should be looked at to determine other effects of emissions. Thanks (Janet Chapman)
- 6. Comment:** Asked whether the third 15-day changes would have any impact on emergency vehicles or fleet operations. (NAFA Voicemail)
- 7. Comment:** While these modifications are primarily technical and conforming in nature, they underscore an important reality: successful implementation of California's vehicle and fleet regulatory framework is an ongoing administrative process that will continue to evolve as operational experience accumulates.

NAFA is not requesting that the Board reopen or reconsider the underlying policy decisions reflected in the Advanced Clean Fleets regulation. Rather, we respectfully request that CARB continue strengthening the long-term administration of the program by:

1. Providing consistent, consolidated written implementation guidance as recurring compliance and operational questions arise.
2. Maintaining a transparent process for communicating administrative interpretations, implementation updates, and technical clarifications so that similarly situated regulated entities receive consistent guidance.
3. Preserving institutional knowledge and administrative consistency throughout future staff, leadership, and organizational transitions.
4. Maintaining a regular, structured mechanism for engagement with regulated fleet organizations to identify implementation challenges, share operational experience, and improve administrative practices as implementation matures.

NAFA believes these administrative practices will strengthen regulatory consistency, improve long-term implementation, increase planning certainty for regulated fleet organizations, and support California's environmental objectives without reopening the policy decisions previously adopted by the Board. (NAFA Email)

Agency Response to Comments E.4 through E.7: No changes were made in response to these comments because these comments are outside the scope of this rulemaking. No agency response is required for out-of-scope comments. Note that the NAFA comments were made in relation to Advanced Clean Fleets, a separate rulemaking that is outside of the scope of the permanent adoption of the Emergency Vehicle Emissions Regulations, and therefore no response is required.

VI. Peer Review

Health and Safety Code section 57004 sets forth requirements for peer review of identified portions of rulemakings proposed by entities within the California Environmental Protection Agency, including CARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process. In this rulemaking, CARB determined that the proposal to permanently adopt the Emergency Vehicle Emissions Regulations does not contain a scientific basis or scientific portion subject to peer review, and thus no peer review as set forth in HSC section 57004 would need to be performed.