

## WSPA (Sophie Ellinghouse)

Please see attached.



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## **RE: Comments on Proposed Amendments to Advanced Clean Fleets Regulation**

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB's) proposed amendments to the Advanced Clean Fleets (ACF) Regulation.<sup>1</sup> WSPA is a non-profit trade association that represents companies that import, export, produce, refine, transport, and market petroleum, petroleum products, natural gas, and other energy supplies in California and four other western states, and has been an active participant in air quality planning issues for over 30 years. WSPA members are both fuel providers and fleet operators subject to the current ACF regulation.

CARB proposes amendments to the ACF regulation that would repeal two subprograms that "apply to federal or private fleets: specifically the Drayage requirements . . . and the High Priority and Federal Fleet requirements."<sup>2</sup> CARB's stated reason for repealing those requirements at this time is that CARB withdrew its request for the required waiver and authorization of the requirements, and as a result, this repeal "provides greater certainty to entities that they are not required to demonstrate compliance with those requirements."<sup>3</sup>

While WSPA supports the proposed amendments to repeal certain subprograms of the ACF regulation, we respectfully urge CARB to also repeal the ACF requirements that manufacturers only manufacture for sale in California zero-emission vehicle (ZEV) trucks starting with the 2036 model year (the "2036 ZEV Sales Mandate") as part of this rulemaking process for the reasons discussed below.

As with the Drayage and High Priority and Federal Fleet requirements, there is no legal basis for CARB to retain the 2036 ZEV Sales Mandate in the absence of the necessary waiver or any indication that CARB will seek such a waiver in the near term. In fact, under state law, CARB is required to do so. Further, and akin to the Drayage and High Priority Fleet subprograms, given that CARB has stated that it will not seek to enforce the 2036 ZEV Sales Mandate, repealing it now will give entities greater certainty regarding their obligations to comply with those requirements, unless and until CARB is prepared to seek and receive a waiver.

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<sup>1</sup> CARB. Notice of Public Hearing to Consider Proposed Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations ("ACF Amendments Notice"). Available at:

[https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/acf\\_lcfs/notice.pdf](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/acf_lcfs/notice.pdf). Accessed: Sept. 3, 2025.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.* at 5.

In sum, in the proposed ACF amendments, CARB provides no rationale (or discussion whatsoever) for keeping the 2036 ZEV Sales Mandate in force; nor for treating the Mandate differently from the two subprograms it now seeks to repeal. And indeed, there is no such justification.

**1. Identical to the two subprograms being repealed, CARB lacks the requisite waiver for the 2036 ZEV Sales Mandate and does not intend to enforce the Mandate until a waiver is received.**

CARB commenced this rulemaking process to repeal certain elements of the ACF regulation, specifically the Drayage requirements and the High Priority and Federal Fleet requirements, to reflect its lack of authority and intent to enforce the regulation. Similarly, CARB lacks authority and intent to enforce the 2036 ZEV Sales Mandate, and those requirements should be similarly repealed.

As to authority, Section 209(a) of the Clean Air Act (CAA) prohibits states from “adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles.”<sup>4</sup> While California may apply for a waiver from the United States Environmental Protection Agency (EPA) allowing it to adopt such standards under CAA Section 209(b),<sup>5</sup> in the absence of such a waiver, the general prohibition applies.<sup>6</sup> EPA has made clear that ZEV standards such as a ZEV sales mandate, including the Mandate under the current ACF regulation, are subject to this waiver requirement.<sup>7</sup>

On November 15, 2023, CARB sought a 209(b) waiver and authorization for three subprograms within the ACF regulation: the High Priority and Federal Fleets Requirements, the Drayage Truck Requirements, and the 2036 ZEV Sales Mandate.<sup>8</sup> However, on January 13, 2025, CARB withdrew its waiver request for the ACF regulation in its entirety.<sup>9</sup>

Now these proposed amendments to repeal the subprograms follow, precisely because CARB acknowledges that it will not receive a waiver from EPA under the current presidential administration. CARB’s Initial Statement of Reasons for the proposed ACF regulation amendments (2025 ISOR) explains that “[t]he Trump administration had previously evidenced its opposition to California’s authority to establish GHG and zero emission standards for new motor

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<sup>4</sup> 42 U.S.C. § 7543(a).

<sup>5</sup> See 42 U.S.C. § 7543(b).

<sup>6</sup> See *Central Valley Chrysler-Jeep v. Witherspoon*, 456 F.Supp.2d 1160, 1174 (E.D. Cal. 2006) (emphasizing that “regulations are preempted unless the EPA issues a waiver under section 209(b)”).

<sup>7</sup> See EPA, *California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption*, at 29 n.73, EPA-420-R-24-023 (Dec. 17, 2024) (emphasizing that ZEV standards “require certain vehicles to have zero emissions for a range of pollutants, including criteria pollutants and GHGs” and are therefore subject to the CAA’s waiver requirement). Available at: <https://downloads.regulations.gov/EPA-HQ-OAR-2023-0292-0562/content.pdf>. Accessed: Sept. 3, 2025.

<sup>8</sup> See CARB, *Clean Air Act § 209(b) Waiver and § 209(e) Authorization Request Support Document*, EPA-HQ-OAR-2023-0589-0004 (Nov. 15, 2023), <https://downloads.regulations.gov/EPA-HQ-OAR-2023-0589-0004/content.pdf>. Accessed: Sept. 3, 2025.

<sup>9</sup> See CARB, *Withdrawal of California’s Request for a Waiver*, EPA-HQ-OAR-2023-0589-0470 (Jan. 13, 2025), <https://downloads.regulations.gov/EPA-HQ-OAR-2023-0589-0470/content.pdf>. Accessed: Sept. 3, 2025.

vehicles, and has also stated its continued opposition to that authority,” and that, accordingly, “the [Trump] administration would likely not approve CARB’s request.”<sup>10</sup> CARB made clear that it has no intention of reapplying for a waiver during the current presidential administration,<sup>11</sup> which would delay any new waiver application related to the ACF regulation until at least 2029.<sup>12</sup> Based on the timing of recent waiver grants, it is likely that the earliest a waiver would be granted is at least two years after CARB submits a request,<sup>13</sup> i.e., 2031, assuming a new administration takes office in 2029 that CARB believes will grant its waiver request.

There is no dispute that the 2036 ZEV Sales Mandate subprogram in the ACF regulation requires a waiver, same as the Drayage and High Priority Fleet subprograms. CARB expressly acknowledged that a waiver is necessary for the program to be enforceable.<sup>14</sup>

Relatedly, CARB’s second stated reason for repealing the two subprograms is that CARB does not intend to enforce those subprograms. After the withdrawal of its waiver request for the ACF regulations, CARB issued public statements that it would not enforce the Drayage and High Priority and Federal Fleets subprograms.<sup>15</sup> Again, similarly, CARB recently publicly committed that it will not take any enforcement action under the 2036 ZEV Sales Mandate until CARB obtains a CAA preemption waiver from EPA for that subprogram.<sup>16</sup>

Yet, despite CARB’s acknowledgement that it similarly lacks authority to enforce the 2036 ZEV Sales Mandate and has no intent to enforce the Mandate, CARB inexplicably retains this Mandate on the books in the absence of any CAA waiver.<sup>17</sup> CARB offers no explanation for why the 2036 ZEV Sales Mandate should be treated differently than the Drayage and High Priority Fleets subprograms, and there is no justification for such disparate treatment. CARB’s action in keeping

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<sup>10</sup> CARB. Initial Statement of Reasons: Public Hearing to Consider Proposed Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations, at 8–9, 34 (Aug. 1, 2025) (“2025 ISOR”). Available at: [https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/acf\\_lcfs/isor...pdf](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/acf_lcfs/isor...pdf). Accessed: Sept. 3, 2025.

<sup>11</sup> See, e.g., ACF Amendments Notice, at 3–4, n.2 (“[G]iven the incoming administration’s past and continued hostility to CARB’s emissions control program, CARB determined that withdrawing its request was appropriate.”); 2025 ISOR at 8–9, nn. 3–8; *id.* at 18; *id.* at 33–34; *id.* at nn. 236–240; *id.* at 152 (“U.S. EPA, under the current federal administration, would not likely grant CARB a waiver or an authorization.” And “[i]t therefore does not appear to be reasonable to resubmit the ACF regulation to U.S. EPA under the current circumstances, and doing so would likely increase the uncertainty this Proposed Repeal is designed to eliminate.”).

<sup>12</sup> In fact, if the determination to seek a waiver is made on an administration-by-administration basis, there is also no assurance or guarantee that CARB will elect to pursue a waiver in 2029.

<sup>13</sup> For example, on January 6, 2025, EPA published three notices of decision granting CARB’s waiver requests for the Heavy-Duty Vehicle and Engine “Omnibus” Low NO<sub>x</sub> regulations, the Small Off-Road Engine emission standards, and the Advanced Clean Cars II regulations. See 90 Fed. Reg. 640, 640–643 (Jan. 6, 2025). CARB had submitted the waiver requests for these regulations at least two years earlier on December 20, 2022; June 13, 2022; and December 26, 2023, respectively. See *id.*

<sup>14</sup> See Respondents’ Response to Order to Show Cause, *W. States Petroleum Assn. v. Cal. Air Resources Bd.*, No. 23CECG02976 (Cal. Super. Ct., Fresno Cnty.) (Aug. 4, 2025) (acknowledging that enforceability of CARB’s vehicle emission standards is dependent on whether “it receives a waiver from EPA of the Act’s express preemption”); see also Stipulation and Order in Response to Order to Show Cause, *W. States Trucking Assn. v. Cal. Air Resources Bd.*, No. 23CECG02964 (Cal. Super. Ct., Fresno Cnty.) (Aug. 11, 2025) (explaining that, “under section 209(b)(1) of the Clean Air Act, certain regulations governing vehicle emissions...must secure a waiver of preemption...before they can be enforced”).

<sup>15</sup> See, e.g., CARB. Advanced Clean Fleets. Available at: <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>. Accessed: Sept. 3, 2025.

<sup>16</sup> See Stipulation and Order in Response to Order to Show Cause, *W. States Trucking Assn. v. Cal. Air Resources Bd.*, No. 23CECG02964 (Cal. Super. Ct., Fresno Cnty.) (Aug. 11, 2025) (agreeing that CARB will not enforce the 2036 ZEV Sales Mandate “until CARB obtains a Clean Air Act preemption waiver from EPA for that regulatory requirement”).

<sup>17</sup> There is no argument that the 2036 ZEV Sales Mandate falls within the scope of any other valid waiver.

the 2036 ZEV Sales Mandate, while repealing the other two subprograms, is unjustified, unlawful, and arbitrary and capricious.

## **2. CARB is required to repeal defunct regulatory provisions.**

Under California law, CARB is required to repeal defunct regulations, in part because regulations lacking legal authority undermine the integrity of the regulatory process. Pursuant to Cal. Gov't Code § 11349.8(a), agencies have an ongoing obligation to ensure that existing regulations have a valid statutory basis. Under this provision, the Office of Administrative Law (OAL) is required to “order the adopting agency to show cause why the regulation should not be repealed for lack of statutory authority” if it becomes aware of an existing regulation for which the “statutory authority has been repealed or becomes ineffective or inoperative by its own terms.”

In the absence of any pending waiver application or any intention by CARB to apply for a waiver in the foreseeable future, CARB's statutory authority for the 2036 ZEV Sales Mandate is subject to federal preemption and is therefore “ineffective.” CARB is therefore required to repeal this provision under California law.

## **3. Failing to repeal the 2036 ZEV Sales Mandate now will cause significant regulatory uncertainty.**

Maintaining the 2036 ZEV Sales Mandate without a valid waiver not only contravenes federal preemption and state law, but also exposes regulated entities to substantial uncertainty and risk. As discussed above, CARB appears willing to keep the 2036 ZEV Sales Mandate on the books for years, without even seeking a 209(b) waiver from EPA. CARB has signaled that the earliest it would even seek a waiver is 2029, assuming that the next presidential administration is likely to grant its request. And while CARB now states that the Mandate will not be enforced until it receives a waiver, this does not mean that regulated entities are not impacted until that point. Just the opposite.

As CARB is aware, regulated entities must start making compliance decisions years ahead of a deadline for compliance, including by modifying procurement strategies and planning for significant infrastructure investments.<sup>18</sup> In fact, CARB's rulemaking materials for the ACF regulation anticipated that compliance efforts for the 2036 ZEV Sales Mandate would need to begin far in advance of the 2036 compliance deadline. For example, CARB's Final Environmental Analysis in support of the ACF regulation anticipated that manufacturers would “modify existing facilities to build ZEVs, open new facilities, repurpose or close facilities building ICE vehicles and components, or potentially reopen currently closed plants” in order to achieve compliance, which all require significant advanced planning.<sup>19</sup> CARB's August 30, 2022 Initial Statement of Reasons similarly projected increasing infrastructure costs in support of the ZEV-based requirements starting in 2026, indicating that CARB anticipated that infrastructure development to meet the

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<sup>18</sup> See CARB. Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response, at 264 (Apr. 2023) (discussing concerns raised by several commenters highlighting the “challenging ACF implementation timeline” with respect to the 2036 ZEV Sales Mandate). Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/ac/acffsor.pdf>. Accessed: Sept. 3, 2025. Generally speaking, vehicles sold for model year 2036 will be released for sale in August or September 2035; but the lead time for design and development, tooling, changes to the manufacturing process, etc. can take years.

<sup>19</sup> CARB. Final Environmental Analysis for the Proposed Advanced Clean Fleets Regulation, at 21 (Apr. 17 2023). Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/acffinalea.docx>. Accessed: Sept. 3, 2025.

2036 ZEV Sales Mandate would require at least ten years of lead time.<sup>20</sup> CARB also projected that additional ZEV purchases would take place starting in 2024 and that internal combustion vehicle availability would begin to decline following a linear trajectory, further demonstrating that compliance responses would begin immediately.<sup>21</sup>

Companies require a sufficient degree of certainty to plan future operations, ensure regulatory compliance, and make informed procurement, investment, and long-term strategic decisions. CARB is fully aware that, absent a waiver and an intent to enforce, the current ACF regulation requirements will cause confusion and may force regulated entities to undertake unjustified compliance expenses. In its 2025 ISOR, CARB stated that retaining the Drayage and the High Priority and Federal Fleet requirements of the ACF program in the absence of a current or pending waiver “may cause confusion and uncertainty for entities that are currently subject to those requirements because they will be unsure if they must comply with those requirements now or in the future.”<sup>22</sup> Despite this explicit acknowledgement, CARB declines to address or justify the 2036 ZEV Sales Mandate in the proposed amendments to the ACF regulation, which would likewise cause confusion and uncertainty for vehicle manufacturers subject to these requirements and for fuel providers impacted by the Mandate. CARB should therefore repeal the 2036 ZEV Sales Mandate now to provide greater certainty.

Lack of a sufficient lead time is one basis that EPA can deny a future waiver request, precisely because the waiver inquiry is intended to prevent CARB from attempting to impose this kind of backdoor implementation before it has authority to obtain a waiver. Specifically, CAA Section 209(b) requires EPA to consider whether California’s standards are consistent with Section 202(a),<sup>23</sup> which EPA interprets to require sufficient “lead time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that time frame.”<sup>24</sup> As a result, CARB must demonstrate that affected entities will have access to the necessary technology and infrastructure, and that the cost of compliance will not be excessive within the available lead time. CARB cannot meet this requirement by leaving the 2036 ZEV Sales Mandate on the books based on the **possibility** that CARB may apply for and obtain a waiver at some future time.

Finally, even if CARB sought a waiver for the 2036 ZEV Sales Mandate at some future date, there is no guarantee that it would be granted. In fact, EPA previously rejected waivers where “the cost of compliance within the lead time remaining is excessive,” tying lead time to the approval date of the waiver.<sup>25</sup> As noted above, CARB has made clear that it has no intention of applying for a

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<sup>20</sup> See CARB. Initial Statement of Reasons: Public Hearing to Consider the Proposed Advanced Clean Fleets Regulation, at 3 (Figure 2) (Aug. 30, 2022) (“2022 ISOR”). Available at: <https://www2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/isor2.pdf>. Accessed: Sept. 3, 2025.

<sup>21</sup> See 2022 ISOR at 18 (Figure 7).

<sup>22</sup> See 2025 ISOR at 14–15.

<sup>23</sup> 42 U.S.C. 7543(a).

<sup>24</sup> 43 Fed. Reg. 998, 999 (Jan. 5, 1978). See also 38 Fed. Reg. 30,136 (Nov. 1, 1973).

<sup>25</sup> 38 Fed. Reg. 30,136 (Nov. 1, 1973) (denial of waiver for MY 1975 HC and CO standards) (“This finding is based on testimony by some manufacturers that lack of adequate lead time would force their abandoning the California market for light duty trucks in model year 1975. Adequate lead time does exist to achieve those standards without excessive cost in 1976.”). See also EPA, *Hearing for Reconsideration of the California Air Resources Board’s Request for a Clean Air Act Waiver of Preemption for Its New Motor Vehicle Greenhouse Gas Standard*, at 115 (Mar. 5, 2009) (expressing concern regarding the remaining lead time if waiver granted because “California officials have expressed their intention to make their standards take effect 45 days after the granting of the waiver for the 2009 model year”). Available at: <https://www.regulations.gov/document/EPA-HQ-OAR-2006-0173-7176>. Accessed: Sept. 3, 2025.

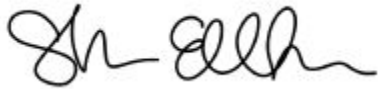
waiver until 2029 at the earliest, which would reduce the lead time for the manufacturer sales mandate from 12 years to under 5 years at best. This lead time is inadequate under CARB's own analysis, which projects a 10-year timeline for fleet turnover and infrastructure development.<sup>26</sup> In reality, manufacturers will likely start compliance efforts now given the great uncertainty.

Given these significant and immediate impacts, CARB should rescind the 2036 ZEV Sales Mandate unless and until it is prepared to submit a waiver.

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WSPA appreciates the opportunity to provide these comments and urges CARB to repeal the 2036 ZEV Sales Mandate, consistent with CARB's proposed repeal of other vehicle emission standards under the current ACF regulation.

Sincerely,



Sophie Ellinghouse  
Vice President, General Counsel

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<sup>26</sup> See, e.g., 2022 ISOR at 18 (Figure 7).