

DAIMLER TRUCK

North America

November 10, 2025

Lauren Sanchez, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus and to Permanently Adopt the Emergency Vehicle Emissions Regulations

Daimler Truck North America (DTNA) appreciates the opportunity to comment on the California Air Resources Board (CARB) Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus (Omnibus) and to Permanently Adopt the Emergency Vehicle Emissions Regulations (“Emergency Regulation”). DTNA is the largest producer of Class 8 vehicles in North America and is committed to providing our customers with a diverse lineup of technologies to suit their needs and applications.

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.

1. 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.¹

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

¹ 5 U.S.C. § 801(b)(2).

DAIMLER TRUCK

North America

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.

2. 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.”

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.² Furthermore, CARB is certifying engines in breach of their commitments made in the CTP.

² See Cal. Code Regs. tit. 13, § 1963.3(b).

DAIMLER TRUCK

North America

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 of state and federal emissions standards. As explained above, however, 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.³ 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 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.

1) 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

³ 5 U.S.C. § 801(b)(2).

DAIMLER TRUCK

North America

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.⁴ In doing so, CARB creates something both new and newly applicable to current and future model year vehicles.⁵

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

⁴ Notice at 5 nn.7, 9.

⁵ 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.

DAIMLER TRUCK

North America

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).”⁶ 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.⁷ 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.⁸ 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

⁶ 44 Fed Reg. 61096 (Oct. 23, 1979).

⁷ 43 Fed. Reg 32183.

⁸ Rulemaking Appendix A-2-1 13 C.C.R. § 1965.8.1(b) *Test Procedures*.

DAIMLER TRUCK

North America

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, 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.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 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.¹⁰ 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

⁹ See Notice at 5 nn.7, 9.

¹⁰ See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a)(1)(C).

DAIMLER TRUCK

North America

Act.¹¹ 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.¹²

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 "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

¹¹ See 42 U.S.C. §§ 7543(b)(1)(C), 7521(a).

¹² See CARB, Initial Statement of Reasons, Proposed Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments (June 23, 2020) at III-10.

DAIMLER TRUCK

North America

for its certification program when it receives a waiver for emissions standards applicable to a particular class of regulated vehicles.¹³ 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.¹⁴

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.

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

¹³ See EPA, Conditions Precedent to the Sale, Titling, or Registration of New Motor Vehicles in California, 50 Fed. Reg. 35123 (Aug. 29, 1985).

¹⁴ 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.").

DAIMLER TRUCK

North America

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.

2) 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).¹⁵

3) 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.¹⁶ 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.

¹⁵ 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.").

¹⁶ 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).

DAIMLER TRUCK

North America

4) 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.”¹⁷ 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.¹⁸

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.

¹⁷ Notice at 3.

¹⁸ 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.”).

DAIMLER TRUCK

North America

5) 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).¹⁹ “Clarity” requires that the regulations “be easily understood by those persons directly affected by them.”²⁰ “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.”²¹

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.²² 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.²³ “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.”²⁴ 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.”²⁵ CARB's regulations involve emissions standards that are already addressed by

¹⁹ Cal. Gov. Code § 11349.1(a)(3)-(4); § 11349(c)-(d).

²⁰ Cal. Gov. Code § 11349(c).

²¹ Cal. Gov. Code § 11349(d).

²² 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>.

²³ Cal. Gov. Code § 11349.1(a)(2), (6).

²⁴ Cal. Gov. Code § 11349(b).

²⁵ Cal. Gov. Code § 11349(f).

DAIMLER TRUCK

North America

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.²⁶

6) 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."²⁷ 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 authority over, and assuming the existence of a federal credit bank that no longer exists²⁸.

7) 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

²⁶ Cf. *California Forestry Assn. v. California Fish & Game Commission*, 68 Cal. Rptr. 3d 391 (2007).

²⁷ Appendix B-12. 1037.101(3)(2). [app_b-12.pdf](#)

²⁸ 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+ \(Phase 1\)](#).

DAIMLER TRUCK

North America

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.