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Subject: Emergency Amendment and Adoption of Vehicle Emission Regulations

The Alliance for Automotive Innovation (Auto Innovators)¹ appreciates the opportunity to provide comments on the California Air Resources Board (CARB) proposed adoption of Emergency Amendment and Adoption of Vehicle Emissions Regulations (hereafter, “EVE regulations”).² Auto Innovators and our members have worked constructively and collaboratively with CARB and its staff for over 30 years, and to our knowledge, this is the first time CARB has attempted to adopt vehicle emission regulations via emergency rulemaking. While we agree that clarity is needed, the proposed EVE regulations do not provide this clarity. Moreover, the EVE regulations do not meet the statutory requirements for emergency rulemaking, nor do they meet Office of Administrative Law’s (OAL’s) requirements for regulatory clarity. As a result, we strongly recommend OAL disapprove the proposed EVE regulations.

On September 23, 2025, CARB provided notice that it is requesting to make these emergency regulations permanent. The notice establishes a comment period from September 26, 2025, through November 10, 2025, and a public hearing is scheduled for November 20, 2025. This normal rulemaking process further demonstrates there is no valid “emergency.” Regardless of the method of adoption, the proposed EVE regulations do not provide clarity and instead sow confusion and uncertainty into California’s certification process and its new vehicle market. In fact, the new text proposed by CARB appears to require manufacturers to guess as to what law is in place, with the threat of enforcement if the wrong choice is made. This confusion, compounded by various errors

¹ Auto Innovators represents the full auto industry, including the manufacturers producing most vehicles sold in the U.S., equipment suppliers, battery producers, semiconductor makers, technology companies, and autonomous vehicle developers. Our mission is to work with policymakers to realize a cleaner, safer, and smarter transportation future and to maintain U.S. competitiveness in cutting-edge automotive technology. Representing approximately 5 percent of the country’s GDP, responsible for supporting nearly 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation’s largest manufacturing sector. (www.autosinnovate.org).

² OAL File Number 2025-0922-01E, Office of Administrative Law. *Emergency regulations under review*. Retrieved September 25, 2025, from https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/, and California Air Resources Board. (2025, September 12). *Emergency amendment and adoption of vehicle emissions regulations*. <https://ww2.arb.ca.gov/rulemaking/2025/emergencyvehemissions>

and inconsistencies, could limit customer access to new motor vehicles, disrupt California dealership operations, and harm our automotive members.

Background and History

The following brief timeline provides a summary of the activities that have led us to the current situation:

1. On November 30, 2022, OAL approved CARB's ACC II regulations that included both an updated ZEV mandate and LEV IV criteria emission regulations beginning with the 2026 model year (MY).³
2. In April 2024, EPA finalized its Multi-Pollutant regulations that included Tier 4 criteria emission standards starting in 2027 MY that are generally as or more stringent than the Tier 3 or LEV III regulations.⁴
3. In January 2025, EPA granted California a waiver of federal preemption for the ACC II regulations.⁵
4. In February 2025, EPA submitted the ACC II waiver to the U.S. Congress for review.
5. In May 2025, CARB issued Manufacturers Advisory Correspondence (MAC) ECCD-2025-03 stating they would continue to process applications for certification to ACC II regulations, but eliminating the 2026 MY ZEV sales mandate.⁶
6. In June 2025, the U.S. Congress passed and the President signed a resolution disapproving the ACC II waiver under the Congressional Review Act (CRA), making the ACC II ZEV and LEV IV regulations unenforceable.⁷
7. In August of 2025, CARB issues MAC ECCD-2025-08, allowing manufacturers to certify to ACC II, ACC I, or U.S. EPA's Tier 3 (for 2026 MY) or Tier 4 (for 2027 and subsequent MYs) regulations.⁸
8. On September 22, 2025, CARB filed emergency regulations that are the subject of this letter.

³ California Air Resources Board. (2022, August 22). *Advanced Clean Cars II*.

<https://ww2.arb.ca.gov/rulemaking/2022/advanced-clean-cars-ii>

⁴ *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27842 (April 18, 2024).

⁵ *California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 642 (Jan. 6, 2025)

⁶ California Air Resources Board. (2025, May 23). *Manufacturers advisory correspondence (MAC) ECCD-2025-03: Regulatory guidance for Advanced Clean Cars II Regulation (ACCII), Zero-Emission Powertrain Certification Regulation, Advanced Clean Trucks Regulation (ACT), Heavy-Duty Engine and Vehicle Omnibus Regulation, Zero-Emission Airport Shuttle Regulation, and the Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions*.

⁷ *Providing congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to "California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision,"* H.J. Res. 88, 119th Cong. (2025) (enacted)

⁸ California Air Resources Board. (2025, August 25). *Manufacturers advisory correspondence (MAC) ECCD-2025-08: Regulatory guidance for engine and vehicle certification in California*. <https://ww2.arb.ca.gov/sites/default/files/2025-08/MAC%20ECCD-2025-08.pdf>

9. On September 23, 2025, CARB issued a normal rulemaking package to adopt the emergency regulations proposed here.
10. Today, manufacturers are left to wonder what specifically is required to obtain a CARB executive order to sell vehicles in California.

Even before Congress and the President's action to revoke California's waiver of federal preemption over three months ago, Auto Innovators had reached out to CARB staff in good faith to discuss a path forward that would provide certainty and clarity to vehicle manufacturers for certifying and bringing new vehicles into California given this new, complex environment. Unfortunately, we have not received a response. Rather than meeting with the impacted industry to discuss a clear and workable path forward, CARB issued MAC ECCD-2025-03, which was later superseded by MAC ECCD 2025-08.

Now, without mentioning either MAC, CARB proposes to adopt emergency regulations that attempt to address the very issue that it sought to address with the MACs. It remains unclear whether the proposed EVE regulations (emergency or non-emergency adoption) are intended to supersede MAC ECCD-2025-08 or whether these regulations will live alongside MAC ECCD-2025-08. Moreover, all these regulatory actions are layered with language warning automakers that any guidance or rulemaking can be undone pending the outcome of legal actions over an unknown timeline, with the potential for retroactive enforcement and associated risk.

The proposed EVE regulations are unworkable and unnecessary. They add to, rather than eliminate, the uncertainty in the process of certifying and selling new vehicles in California. All of this is in the guise of protecting the environment, even though equally or more stringent federal standards will ensure new vehicles continue to meet demanding emission standards.

Despite the confusion and errors in the EVE regulations, Auto Innovators believes the intention behind the proposal is, at least in part, to reinstate LEV III criteria emissions regulations to preserve a California-specific certification requirement for criteria emission controls considering the CRA revoking California's authority to enforce ACC II. While reinstating LEV III may be the intent of the proposed EVE regulations, they fail to accomplish that goal in a clear unambiguous manner. Auto Innovators and our members would like to work with CARB Staff in good faith to develop clear and concise regulations that automakers can confidently follow and that improve air quality.

Regardless of whether CARB reinstates LEV III via emergency rulemaking or non-emergency rulemaking, per the California Environmental Quality Act (CEQA), it must analyze the emissions impacts of adopting LEV III, instead of accepting manufacturer's certification to the U.S. EPA Tier 4 emission standards, since light-duty vehicles (LDVs) certified to Tier 4 standards will emit less than those vehicles certified to LEV III (or LEV IV for that matter).

Rather than adopting emergency regulations, Auto Innovators recommends CARB clearly state its intent, request and receive stakeholder feedback, and conduct a fully informed rulemaking to readopt the LEV III regulations. In the meantime, automakers would certify their vehicles to U.S. EPA Tier 3 (for 2026 MY) or U.S. EPA Tier 4 (2027 and subsequent MYs); as an alternative, and pursuant to MAC ECCD-2025-08, automakers may also optionally choose to certify to either ACC II or ACC I. All of these are modern stringent emission control requirements that protect human health, and all these options are allowed in MAC ECCD-2025-08.

Finally, since the proposed EVE regulations make significant and substantive changes to California's motor vehicle emission program, California is required to seek a waiver of federal preemption from the U.S. Environmental Protection Agency under Section 209(b) of the Clean Air Act or a determination that the amendments are within the scope of an existing waiver.

Current Situation Does Not Meet the Definition of an Emergency

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. While we still have several questions on the implementation of this MAC, we recognize and appreciate its attempt to clarify the certification process. With appropriate clarification, MAC ECCD-2025-08 could be used until CARB completes a regular, nonemergency rulemaking and provides sufficient time for stakeholders to inform the process.

Since CARB did not pursue an emergency rulemaking in a timely manner, automakers have received executive orders referencing, at least in part, regulations covered by the CRA disapproval. Now, three months later, CARB claims emergency rules are necessary to protect public health and stabilize the California vehicle market. Unfortunately, the proposed EVE regulations further complicate this situation.

CARB's notice on September 23, 2025, requesting that the "emergency" regulations (which have not even been approved) be made permanent demonstrates this is not an "emergency" situation.

Rather, 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.

Available Alternatives to Emergency Regulations Could Improve Air Quality

CARB justifies an emergency by stating in the Public Hearing Notice,⁹ “[e]very day that passes without clarity in this matter risks the health of millions of Californians...and the stability of the California vehicle market.” Then, in the same paragraph, CARB references the 29 million vehicles already on California roads and the emissions from those vehicles. Those 29 million vehicles are certified to California’s standards, so these proposed EVE regulations will not impact those vehicles or their emissions.

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. In the “Comparable Federal Regulations” section of the Notice of Public Hearing, CARB acknowledges that

U.S. EPA’s Tier 3 criteria pollutant standards are similar to the LEV III requirements for non-methane organic gas (NMOG) plus NOx, but not as stringent for particulate matter.

In fact, the Tier 3 LDV criteria pollutant standards are identical to LEV III apart from one element of the particulate matter (PM) standards. Starting in 2027 MY, automakers must meet U.S. EPA Tier 4 standards. According to CARB’s Notice of Public Hearing,

*U.S. EPA adopted their Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles Rule, that sets new Tier 4 standards to further reduce harmful air pollutant emissions from light-duty and medium-duty vehicles starting with model year 2027. Portions of this rule are identical to elements of the LEV IV requirements for those model years but are **more stringent once they are fully phased in by the 2033 model year than the LEV III requirements would be.** (emphasis added)*

Thus, CARB acknowledges 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. In addition, most 2026 MY

⁹ California Air Resources Board. (2025, September 15). *5-Day public notice and comment period emergency amendment and adoption of vehicle emissions regulations.*

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/emergencyvehemissions/notice.pdf>

vehicles have already received executive orders from CARB. As a result, the starting point of the proposed EVE Regulations is more aptly 2027 MY, when the more stringent EPA Tier 4 regulations begin.

Contrary to the CEQA requirements¹⁰, CARB has not completed any analysis to demonstrate how or when the proposed EVE 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.

Proposed Regulations Create Confusion and Uncertainty

Government Code section 11349.1(a) provides that OAL will review and determine whether all proposed regulations satisfy the required standards of necessity, authority, clarity, consistency, reference, and nonduplication. Leaving OAL to decide the other standards, Auto Innovators focuses on the lack of clarity of the proposed emergency regulations. Clarity means “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” Government Code section 11349(c). The EVE emergency regulations fail to provide clarity.

First, for automakers, the proposed EVE regulations offer a Hobson’s choice. The proposed regulations suggest that automakers have the option to certify to a regulation but must do so at their own peril because: (a) CARB may invalidate that certification pathway; and (b) CARB may do this retroactively. This indefiniteness creates confusion, doubt, and uncertainty – the very elements the proposed regulations claim to resolve.

Moreover, the masked threat of retroactivity is plainly exposed in Executive Order R-25-002, where the Executive Officer “has determined that: . . . 4. Regulated parties may choose to follow either the Advanced Clean Cars II or Omnibus standards or the older pre-ACC II and pre-Omnibus provisions. However, if a court . . . issues a final ruling that [the resolutions] are invalid or that the waivers . . . are in effect, **the regulated parties are subject to the requirements of the regulations targeted by these congressional resolutions.**” (emphasis added).

¹⁰ CARB asserts in its Notice and Executive Order R-25-002 that the proposed EVE regulations are exempt per CEQA Guidelines, sections 15061(b)(3), 15037, and 1538, as explained in Appendix B. In Appendix B, CARB alleges its emergency proposal is exempt per section 15061(b)(3)’s “common sense” exemption because there is no possibility there will be any significant adverse impact on the environment, and exempt under sections 15307 and 15308 as there will not be any significant adverse impacts on the physical environment or alter the use of existing structures or facilities. CARB provides conclusory statements that the exemptions apply but no supporting evidence. CARB has not satisfied the requirements of CEQA, including that any exemptions apply.

However, administrative law includes a strong presumption *against* retroactivity.¹¹ Moreover, 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.¹² Retroactive penalties from this reasonable reliance would be inherently unreasonable and unlawful.¹³ CARB’s threat of retroactive enforcement essentially is an unauthorized attempt to enforce invalidated regulations.

Finally, the proposed EVE regulations appear to contain a number of drafting errors and other sources of confusion. While there may be some vague understanding of CARB’s intent (i.e., to readopt LEV III), automakers will be bound by the actual regulatory text in the proposed EVE regulations, whether or not that text actually effectuates the CARB’s presumed intent.

For illustrative purposes, we have identified the following incidents of regulatory text that are confusing or unworkable. Note that this in no way is an exhaustive list of the problems manufacturers would face trying to implement the proposed EVE regulations, but only a few examples we have identified in the short period of time allowed under this emergency rulemaking process.

CARB Might Retroactively Enforce ACC II ZEV Regulations, or ACC I ZEV Regulations, or No ZEV Regulation

The updated 13 CCR 1962.2 adds two new paragraphs to the existing regulation. Figure 1 below contains those paragraphs.

The 2025 MY light-duty vehicles (LDVs) have already received EOs from CARB, and 13 CCR 1962.2 does not apply to 2026 MY LDVs. Why would a manufacturer use a non-applicable regulation to determine which regulations are applicable? Yet, that’s exactly what the EVE regulations do. They use non-applicable regulations (13 CCR 1962.2) as an entry point to direct manufacturers to applicable regulation options. Using this logic, CARB could put 2027 MY certification options in 13 CCR 1962 (which expired after 2008 MY) or 1962.1 (which expired after 2017).

¹¹ 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.”).

¹² *Nat’l Min. Ass’n v. Dep’t of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002) (per curiam)

¹³ Indeed, CARB has argued in comments related to an earlier EPA action that “[t]he presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact.” See October 26, 2018, Final CARB Detailed Comments on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, at 346 n. 747 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

Figure 1: Revised 13 CCR 1962.2

§ 1962.2. Zero-Emission Vehicle Standards for 2018 through 2025 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.

Unless and until a court of competent jurisdiction issues a final ruling that 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 January 6, 2025, 90 Federal Register 642 and 90 Federal Register 643, are in effect, regulated parties may choose to follow either this section 1962.2 or section 1962.2.1.

However, if a court of competent jurisdiction issues a final ruling that 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 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 1962.2 to the extent consistent with the court's final ruling. Notice of the court's ruling will be posted on CARB's website, <https://arb.ca.gov>.

The first paragraph allows the automaker the option of certifying to this section 1962.2 unless and until a court invalidates the CRA resolutions. However, this section currently has no requirements for 2026 and subsequent MY zero emission vehicles (ZEVs). Does this mean there are no certification requirements for 2026 and subsequent MY ZEVs?

The manufacturer may also certify ZEVs to 1962.2.1, which is the ACC I ZEV regulation with all the ZEV sales requirements removed. However, this section 1962.2.1 references test procedures that contain the removed ZEV sales requirements and contain typos referring to itself as 1962.2 (rather than 1962.2.1) as shown in Figure 2 - 13 CCR 1962.2.1. It is unclear what test procedures or what part of those test procedures manufacturers should follow since the regulation in 1962.2.1 eliminates the ZEV sales mandate, but the test procedures referenced in the regulation contain the ZEV sales requirement. Also, the test procedures reference 1962.2 and make no mention of 1962.2.1.

Figure 2 - 13 CCR 1962.2.1

§ 1962.2.1 Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles Electric Vehicle Charging Requirements. (Alternative)

(a) *ZEV Emission Standard.* The Executive Officer shall certify new 2018 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles as ZEVs, vehicles that produce zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas, excluding emissions from air conditioning systems, under any possible operational modes or conditions.

(b) [Reserved.]

(c) [Reserved.]

(d) [Reserved.]

(e) [Reserved.]

(f) [Reserved.]

(g) [Reserved.]

(h) Test Procedures.

(1) *Determining Compliance.* The certification requirements and test procedures for determining compliance with this section 1962.2 are set forth in "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 September 3, 2015, which is incorporated herein by reference.

If a court invalidates the CRA resolution, manufacturers must certify to this section 1962.2. Does this mean if a court invalidates the CRA resolution, there are no certification requirements for 2026 and subsequent MY ZEVs? How does compliance with 1962.2 today, differ from compliance with 1962.2 under these emergency regulations before a court decision, and differ from compliance with 1962.2 after the court decision?

13 CCR 1962.4 contains the ACC II ZEV regulations with the ultimate ban on gasoline vehicles, but section 1962.4 is not addressed or even mentioned in the proposed EVE regulations. Is section 1962.4 still active? What triggers its implementation (if anything)? Could it apply retroactively?

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?

CARB Might Retroactively Enforce Certification to ACC II Criteria Emission Regulations, ACC I Criteria Emission Regulations, or No Criteria Emission Regulations

The updated 13 CCR 1961.2 adds two new paragraphs to the existing regulation. Figure 3 below contains those paragraphs. Again, 13 CCR 1961.2 no longer applies. Why would a manufacturer use this non-applicable regulation to determine which regulations are applicable?

Figure 3 – Revised 13 CCR 1921.2

§ 1961.2. Exhaust Emission Standards and Test Procedures--2015 through 2025 Model Year Passenger Cars and Light-Duty Trucks, and 2015 through 2028 Model Year Medium-Duty Vehicles.

Unless and until a court of competent jurisdiction issues a final ruling that 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 January 6, 2025, 90 Federal Register 642 and 90 Federal Register 643, are in effect, regulated parties may choose to follow either this section 1961.2 or section 1961.2.1.

However, if a court of competent jurisdiction issues a final ruling that 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 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 1961.2 to the extent consistent with the court's final ruling. Notice of the court's ruling will be posted on CARB's website, <https://arb.ca.gov>.

Just like with the ZEV regulations in 1962.2, the first paragraph allows the automaker the option of certifying to this section 1961.2 unless and until a court invalidates the CRA resolutions. However, this section has no requirements for 2026 and subsequent MY light duty vehicles. Currently, section 1961.2 of Title 13 in the California Code of Regulations “contains the California ‘LEV III’ exhaust emission standards for 2015 through 2025 model year passenger cars and light-duty trucks . . .” There are no standards past 2025 MY. Does this mean there are no certification requirements for 2026 and subsequent MY vehicles?

The manufacturer may also certify to 1961.2.1, which now “contains the California ‘LEV III’ exhaust emission standards for 2015 **and subsequent** model year passenger cars, light-duty trucks, and medium-duty vehicles.”

The new language also states that if a court invalidates the CRA resolutions, manufacturers must certify to this section 1961.2 (which, as discussed above, contains no requirements past 2025 MY). Does this mean if a court invalidates the CRA resolution, there are no certification requirements for 2026 and subsequent MY vehicles? How does compliance with 1961.2 today, differ from compliance with 1962.1 under these emergency regulations before a court decision, differ from compliance with 1961.2 after the court decision?

13 CCR 1961.4 contains the ACC II criteria emission regulations, but section 1961.4 is not addressed or even mentioned in the proposed EVE regulations. Is section 1961.4 still active? What triggers its implementation (if anything)?

Finally, 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).

Further complicating all of this is that 1961.2.1 and 1961.2 and 1961.4 all contain separate fleet average requirements and separate phase in requirements for different elements of the regulation. It is not the least bit clear what requirements apply to which vehicles.

All ZEV Charging Requirements in 1962.3 and 1962.3.1 are Out of Date

Another specific example of the type of ambiguity manufacturers would need to navigate if the EVE regulations are approved is related to how manufacturers comply with the charging requirements.

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.

Finally, we note that the ZEV Charging Section 1962.3 contains a typographical error in the second paragraph directing compliance to 13 CCR 1900 (the Definitions section of Title 13) for ZEV charging if a court invalidates the CRA.

OBD II Requirements in 1968.2.1 Are Incompatible with LEV III Exhaust Requirements in 1961.2.1

The proposed EVE regulation added OBD regulations as adopted in 2013 as a new section 13 CCR 1968.2.1. Presumably, CARB chose to adopt the OBD regulations operative 7-31-2013, because the OBD regulations that became operative on 7-25-2016, 10-3-2019, 4-1-2022, and 11-22-2022 never received a waiver.

Unfortunately, CARB adopted the 7-31-2013 OBD regulations before the LEV III requirements. Consequently, the OBD regulations in 1968.2.1 do not include any LEV III requirements contained in 1961.2.1 (or 1961.2 for that matter). For example, the OBD regulations in 1968.2.1 contain requirements for LEV I applications and for LEV II applications, but do not contain any LEV III requirements. Such incompatibility for LEV III vehicles would make it technically impossible to develop and certify an OBD system to meet both 13 CCR 1968.2.1 and 1961.2.1.

Nonetheless, as shown in Figure 4 below, the updated 13 CCR 1968.2 provides the option for manufacturers to certify to 1968.2.1. It's unclear how this option could be utilized given it does not and has not applied to any vehicles for over a decade (i.e., manufacturers have only applied for LEV III applications for the past decade). Because LEV III requirements started to be added in OBD regulations and became operative on 7-25-2016 and later, one approach is to allow OBD regulations adopted in 2016 and later, instead of asking manufacturers to choose between CCR 1968.2 and CCR 1968.2.1.

Figure 4 – Revised 13 CCR 1968.2

§ 1968.2 Malfunction and Diagnostic System Requirements--2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles and Engines.

Unless and until a court of competent jurisdiction issues a final ruling that 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 January 6, 2025, 90 Federal Register 642 and 90 Federal Register 643, are in effect, regulated parties may choose to follow either this section 1968.2 or section 1968.2.1.

However, if a court of competent jurisdiction issues a final ruling that 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 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 1968.2 to the extent consistent with the court's final ruling. Notice of the court's ruling will be posted on CARB's website, <https://arb.ca.gov>.

The examples above 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.

A related concern is that 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.”¹⁴ Here, the regulated parties are entitled to know what the proposed EVE regulations require so they can ensure their conduct satisfies such requirements. However, the significant lack of clarity of these proposed EVE regulations runs afoul of due process.

CARB Must Seek a Waiver or a Within-The-Scope Determination from EPA to Implement the Proposed EVE Regulations

The proposed amendments would make significant and substantive changes to California’s motor vehicle emission program. For instance, and as discussed above, the California Code of Regulations currently does not contain any light-duty criteria emission standards past 2025 MY; by its express terms, Section 1961.2 applies only to “2015 through 2025 model year passenger cars and light-duty trucks.” This EVE regulation would add a new section 1961.2.1 to the Code of Regulation that would extend criteria emissions regulations past 2025 MY. The EVE regulation would also add new language to dozens of regulations concerning the purported impact of a court decision concerning the CRA resolution—language which EPA has never reviewed or approved.

California must therefore seek from the U.S. EPA either a new waiver of preemption under Section 209(b) of the Clean Air Act, or a determination that the amendments are within the scope of an existing waiver (a “within the scope determination”).¹⁵ As EPA has long recognized:

[T]he possibility that CARB may revise its standards is always present. Such a revision would be considered by EPA in a future waiver proceeding. EPA would then determine whether those changes are within-the-scope of its prior waiver or if a new, full waiver

¹⁴ *Landgraf*, 511 U.S. at 265; see *Sessions v. Dimaya*, 138 S. Ct. 1204, 1225 (2018) (Gorsuch, J., concurring)(“Perhaps the most basic of due process’s customary protections is the demand of fair notice.”).

¹⁵ It is questionable whether these amendments could fall within the scope of the waiver EPA granted to California in 2013 for the ACC I regulations, since that application and waiver were for just MY 2015 through 2025 vehicles. See California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California’s Advanced Clean Car Program and a Within the Scope Confirmation for California’s Zero Emission Vehicle Amendments for 2017 and Earlier Model Years, 78 Fed. Reg. 2112 (Jan. 9, 2013) (“Today, as Assistant Administrator of the EPA’s Office of Air and Radiation, I am granting California’s request for a waiver of Clean Air Act preemption for California’s ACC that combines the control of smog and soot causing pollutants and GHG emissions into a single coordinated package of requirements for MY 2015 through 2025 passenger cars (PCs), light-duty trucks (LDTs), medium-duty passenger vehicles (MDPVs), and limited requirements related to heavy-duty vehicles (HDVs).”) (emphasis added).

determination would need to be made, as would be required if California decided to increase the stringency of [the relevant] standards.¹⁶

EPA has articulated the following analytic framework for instances where California amends its regulations in a way that the state believes falls within the scope of an existing waiver:

If California amends regulations that were previously granted a waiver, EPA can confirm that the amended regulations are within the scope of the previously granted waiver. Such within-the-scope amendments are permissible without a full waiver review if EPA determines three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any “new issues” affecting EPA's prior waivers.¹⁷

Notably, the decision as to whether a regulatory amendment falls within the scope of an existing waiver lies with EPA and not with CARB. In light of this framework, California has consistently—and with only one exception we know of¹⁸—requested either a new waiver or a within-the-scope determination from EPA when it amends its emissions regulations in any way. Here are but a few examples:

- California State Motor Vehicle Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment, 87 Fed Reg. 35,760, (June 13, 2022) (“By letter dated October 22, 2021, CARB submitted a request that EPA determine that the 2018 HD Warranty Amendments are within the scope of the previously-granted waiver for

¹⁶ California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, 74 Fed. Reg. 32,744, 32,753 (July 8, 2009).

¹⁷ California State Motor Vehicle Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment, 87 Fed. Reg. 35,760, 35,762 (June 13, 2022).

¹⁸ That one exception was when California amended its regulations in September 2018 to remove the “deemed to comply” provision from its previously waived greenhouse gas emission standards. California’s failure to seek a new waiver or a within-the-scope determination was clearly erroneous in light of the fact that California sought and obtained a within-the-scope determination when it *added* the deemed to comply provision to its regulations. See 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. 34,693 (June 14, 2011) (noting that “CARB submitted a request to EPA seeking confirmation that these two sets of amendments [pooling and deemed-to-comply provisions] are within the scope of the waiver of preemption issued by EPA under section 209(b) of the Clean Air Act”).

California's emission standards and associated test procedures for 2007 and subsequent model year heavy-duty diesel vehicles and engines.”)

- California State Nonroad Engine Pollution Control Standards; In-Use Diesel-Fueled Transport Refrigeration Units (TRUs) and TRU Generator Sets and Facilities Where TRUs Operate; Notice of Decision, 82 Fed. Reg. 6,525, 6,526 (January 19, 2017) (“CARB requested an EPA determination that certain provisions of the 2011 amendments are within the scope of the prior authorizations, or in the alternative, merit full authorization (‘Within-the-Scope Amendments’).”)
- California State Motor Vehicle Pollution Control Standards; Amendments to On-Highway Heavy-Duty Vehicle In-Use Compliance Program, Amendments to 2007 and Subsequent Model Year On-Highway Heavy-Duty Engines and Vehicles, and Amendments to Truck Requirements; Notice of Decision, 82 Fed. Reg. 4,867, 4,868 (January 17, 2017) (“CARB's request also sought confirmation that its 2007 Amendments and the Truck Idling Amendments are within the scope of waivers of preemption previously granted by EPA.”)
- California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engines; Notice of Decision, 81 Fed. Reg. 78,149, 78,150 (November 7, 2016) (“By letter dated February 12, 2014, CARB submitted to EPA a request for a determination that the 2013 HD OBD Amendments are within the scope of the previous HD OBD waiver or, alternatively, that EPA grant California a waiver of preemption for the 2013 HD OBD Amendments.”)
- California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition (LSI) Engines; New Emission Standards and In-Use Fleet Requirements; Notice of Decision, 80 Fed. Reg. 76,468 (December 9, 2015) (“CARB also submitted its 2010 LSI Fleet Amendments for confirmation from EPA that such amendments are within the scope of a previous EPA authorization.”)
- California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years, 78 Fed. Reg. 2,112 (January 9, 2013) (“CARB also sought confirmation that the amendments to the ZEV program are within the scope of prior waiver decisions issued by EPA, or in the alternative requested a waiver for these revisions.”)
- California State Motor Vehicle Pollution Control Standards; Within the Scope Requests; Opportunity for Public Hearing and Comment, 69 Fed. Reg. 5,542 (February 5, 2004) (“CARB

submitted an October 30, 2003, letter to the Administrator notifying EPA that it had adopted additional amendments to its OBD II program and requesting that EPA confirm that its amendments are within the scope of the previously granted OBD II waiver.”)

- California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waiver of Federal Preemption, 46 Fed. Reg. 36,742 (July 15, 1981) (“In its letter, CARB stated its belief that the changes caused by the amendment were included within the scope of a waiver of Federal preemption that EPA already granted to California.”)

There are many more such instances. This long course of conduct by both CARB and the U.S. EPA fully supports the conclusion that if CARB were to finalize and seek to enforce these EVE regulations amending the provisions in the California Code of Regulations, it must first seek and obtain either a new waiver or a within-the-scope determination from EPA.

Conclusion

First, the current situation does not constitute an emergency under California statute. For this reason alone, OAL should reject CARB’s proposed EVE regulations. For over three months, CARB has issued MACs and manufacturers have certified vehicles. This will continue to be the case as 2027 MY certification begins late this year and throughout next year. CARB must allow manufacturers to certify to the U.S. EPA Tier 4 (for 2027 MY), which are as or more stringent than the LEV III options this emergency regulation would require. Furthermore, CARB should provide clear and immediate procedural direction to certification staff as to how the certification to Federal standards in MAC ECCD-2025-08 will be executed by CARB.

Second, the EVE regulations would introduce an unprecedented degree of uncertainty and chaos into vehicle certification and the California new vehicle market. This is not uncertainty created by the federal government, but rather uncertainty created by CARB’s EVE regulations whether adopted via emergency or non-emergency rulemaking. The EVE regulations cannot be followed with any degree of clarity or certainty. They rely on manufacturers guessing at what CARB means by the regulatory text, following regulations that no longer apply, and then threaten to retroactively enforce regulations that CARB currently has no authority to enforce.

We urge OAL to reject these emergency regulations. To prevent further uncertainty in the California new vehicle market, CARB should work in good faith with stakeholders to develop clear regulatory paths as they have successfully done for more than 30 years.

Sincerely,



Charles Haake
Chief Legal Officer and General Counsel
Alliance for Automotive Innovation