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ATTACHED ARE THE COMMENTS OF MY COMPANY, VEHICLE SERVICES CONSULTING, INC.

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COMMENT – ON:
On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard, and Emergency Vehicle Emissions Regulations | California Air Resources Board
SEEKING TO MAKE *PERMANENT* CARB EMERGENCY REGULATIONS

Dear Sir or Madam:

Vehicle Services Consulting, Inc. (VSCI) files this comment in response to the California Air Resources Board's (CARB) Proposed Amendments to the On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard Regulations, and to ***Permanently*** Adopt the Emergency Vehicle Emissions Regulations-- **On-Road Heavy-Duty Engine and Vehicle Omnibus, Low Carbon Fuel Standard, and Emergency Vehicle Emissions Regulations | California Air Resources Board** (hereafter "Proposed Regulations" or "Final Regulations").

VSCI advises, and has advised for the last 30 years, *small volume vehicle manufacturers* (SVMs) on emissions and safety issues, and hereby makes the following points:

1. **VSCI supports California's long-standing right under the Clean Air Act (CAA) to promulgate its own vehicle emissions standards**. We further believe that the federal government's Congressional Review Act (CRA) Resolution of June 2025 --

seeking to rescind EPA's previously-granted CAA waiver allowing California to implement its ACC II regulations – was ill-advised.

2. **The status of LEV IV**: As a matter of law, however, once the President signs a CRA resolution passed by both Houses of Congress, the federal agency rules rescinded by such resolution become null and void, unless and until a court case is filed challenging the validity of CRA resolution, ***AND***:

- A court of competent jurisdiction issues a stay/preliminary injunction stopping the resolution from going into effect during the pendency of the litigation; or
- There is a final and unappealable decision of a court of competent jurisdiction finding the CRA resolution invalid.

In the matter at hand, Congress did pass the CRA resolution rescinding the CAA waiver granted to California to implement ACC II, and the President did sign this resolution. California then instituted litigation challenging the validity of the resolution. BUT, NEITHER OF THE ABOVE TWO events stated above under "a" and "b" has occurred. Accordingly, at the present time, the ACC II regulations do not exist.

3. **In such absence of ACC II regulations, which had been scheduled to go into effect starting with MY 26 (though SVMs have a delayed timetable for numerous requirements), the following question presents itself**:

- Exactly which vehicle certification regulations are in fact applicable in California during the pendency of the litigation (i.e. until either event "a" or event "b" as noted above occurs)?

CARB's response to this question has been to first publish Emergency Regulations (**Emergency Amendment and Adoption of Vehicle Emissions Regulations | California Air Resources Board** , and now publishing the Proposed Regulations seeking to make the Emergency Regulations permanent. From the point of view of light-duty *SVMs*, the key provisions in both the Emergency and Proposed Regulations are those that allow certification to the ACC I/ LEV III regulations (e.g., 13 CCR 1961.2.1 (exhaust), 13 CCR 1961.3.1 (GHG), 13 CCR 1962.2.1 (ZEV), 13 CCR 1962.3 (EV charging requirements), 13 CCR 1968.2.1 (OBD II)

Generally speaking, this approach does make sense – to follow the pre-existing ACC I/LEV III regulations at least until the validity of the new ACC II regulations is determined by the courts.

4. **But CARB's caveat language in both the Emergency Regulations and Proposed Regulations is impermissible.** *CARB has qualified the "opportunity" to certify to the ACC I /LEV III regulations with the impermissible caveat language, such as:*

"CARB staff is proposing to amend its regulations to clarify that the criteria pollution provisions of the LEV III regulation remain operative, with the caveat that CARB may enforce Advanced Clean Cars II, to the extent permitted by law, in the event a court of law holds invalid the resolution purporting to disapprove

that waiver. CARB staff is thus proposing to make permanent its Emergency Vehicle Emissions Regulations." See Notice of Public Hearing, Regulatory .and app_g.pdf, Appendix G: Supplement to Initial Statement of Reasons – Proposed Emergency Vehicle Emissions Regulations

And

"Here, CARB is proposing to make permanent the Emergency Vehicle Emissions Regulations. The amendments would confirm that, until a court resolves the uncertainty created by the federal government's actions, certain earlier regulations (displaced by Advanced Clean Cars II and Omnibus) remain operative (as previously adopted) with the caveat that CARB may 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 those waivers."
Id. [1]

In short, CARB is saying that for MY 26 and later a manufacturer can certify to LEV III regulations, **but** that if CARB wins in court, then such LEV III certification option may disappear *retroactively*, and that CARB reserves the right to nullify *retroactively* an OEM's LEV III certification.

Such a retroactive nullification is simply not permissible. It is so unfair as to be unlawful. If, for example, an OEM uses the ACC I/LEV III option in 13 CCR 1961.2.1 for a MY 2027 certification *prior to a final unappealable court decision in CARB's favor*, and then CARB later wins in court, CARB cannot lawfully say – after the fact -- that the previously-granted 1961.2.1 ACC I/LEV III certification for MY 27 is invalid. WHY? BECAUSE THE *ONLY* CALIFORNIA REGULATION THAT WOULD HAVE BEEN IN EFFECT AT THE TIME OF THE OEM'S MY 27 CERTIFICATION -- AND THE ONLY VALID CALIFORNIA REGULATION TO WHICH THE OEM COULD HAVE CERTIFIED -- WAS THE NEW ACC I/LEV III regulation 1962.2.1. (The LEV IV regulation being defunct by virtue of the CRA rescission of the underlying waiver.)

The caveat language renders the ACC I/LEV III "option" illusory.

[1] Note that this impermissible caveat also appears in the 5 Day Notice regarding the Emergency Regulations (Notice of Public Hearing, Regulatory) as well as in CARB MAC ECCD 2025-08, which states as follows: "Manufacturers choosing to certify to the [alternative LEV III or EPA certificate} pathways should be advised, **however, that CARB reserves the right to enforce the regulations covered by the waivers targeted by the congressional resolutions in the event a court of law holds those resolutions invalid, including with respect to model years that such manufacturers ask CARB to certify under these alternative pathways. Whether CARB opts to pursue such enforcement would be decided if and when that question becomes ripe**." This language makes perfectly clear CARB's belief that it can "pull the rug from under an OEM" and rescind a certification granted months or years before.

The inclusion of the caveat in both the Emergency and Proposed Regulations seems to be an attempt by CARB to compel OEMs to certify to the defunct ACC II/LEV IV regulations.

Indeed, CARB has misleadingly stated as follows:

> "CARB continues to accept and process certification applications for the LEV IV and Omnibus emission standards. Hence, both sets of standards will be present in the California Code of Regulations during this period of unprecedented uncertainty. 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. Regulated parties, however, assume the risk of non-compliance if they *choose* to certify only to the older provisions, and the congressional resolutions disapproving the waivers of federal preemption under the Clean Air Act are declared invalid." (Emphasis added.) **Notice of Public Hearing, Regulatory**

Notwithstanding CARB's characterization of both the Emergency and Proposed Regulations as offering a "choice", the fact is that both sets of Regulations DO NOT GIVE REGULATED PARTIES A CHOICE. By including the caveat language in these Regulations, CARB is really offering only ONE pathway -- certification to the now-defunct LEV IV rules. And this one pathway being offered is invalid because, until a court declares otherwise, the ACC II regulations do not exist. We repeat -- the caveat language makes the ACC I/LEV III "option" no more than an illusion..

A "choice" must involve at least two valid options. A regulatory option is an option only if OEMs can count on it, make important business plans based on it. Something labeled a regulatory "option" is not option if it is a mere "possibility", something that OEMs could 'take a chance on'. The caveat language renders the ACC I/LEV III pathway a mere "possibility" IT IS NOT AN OPTION; IT IS A GAMBLE. With the caveat, LEV III would be a certification pathway that could be relied on **only if CARB were to win the litigation** contesting the CRA resolution. This situation imposes such a risk on regulated parties so as to make the LEV III pathway meaningless.

CARB cannot justify its caveat by relying on words like those below in *italics* -

- "CARB *may* enforce the more recent LEV IV requirements"
- "*to the extent permitted by law*…"

See e.g., app_g.pdf, Appendix G: Supplement to Initial Statement of Reasons – Proposed Emergency Vehicle Emissions Regulations. Simply put, these words – and similar ones that CARB has set forth -- do not remove the unacceptable risk and uncertainty presented by the caveat language. They do not provide an option that OEMs can count on and can plan with.

For the above reasons, the caveat language must not be included in the Final Regulations.[2]

[2] We further note that in the rulemaking proposal here, CARB is also seeking to insert in various existing ACC I/LEV III regulatory sections a "statement" -- as set forth in AttA-2.1 -- regarding how regulated

5. **The Final Regulations in this rulemaking should include BOTH of the two alternative certification pathways set forth in** CARB MAC ECCD 2025-08.[3] Neither the Emergency nor Proposed Regulations mention OPTION 2 set forth in MAC 25-08. Option 2 allows CARB certification for model year 2025 AND SUBSEQUENT MODEL YEARS based on "submission to CARB of U.S. EPA certification to its motor vehicle emission standards applicable to the vehicle in the relevant model year as those regulations are currently codified." We are not certain if the omission of Option 2 from the Emergency and Proposed Regulations was an oversight, or if CARB intended to retract this MAC 08-25 Option 2. Either way, we request that Option 2 be incorporated into the Final Regulations -- without the impermissible caveat (see note 1 above) -- by adding a provision stating that submission to CARB of an EPA certification as described in Option 2 shall *be deemed to comply* with the LEV III regulations made applicable by the Final Regulations (e.g. 13 CCR 1961.2.1).

6. **The Need for SVM LEV IV lead-time** – In addition, if CARB wins the current waiver rescission lawsuit – and LEV IV is resurrected -- SVMs need adequate lead-time to commence certifying to LEV IV. The "unprecedented uncertainty" has impeded the ability of SVMs to develop and implement emissions compliance plans as they historically have done in the normal course of business.

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

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parties may, for example, choose to follow *either* section 1961.2 [old LEV III which terminates at the end of MY 2025] *or* section 1961.2.1 [new LEV III which does not terminate at the end of MY 2025]. This "statement" is confusing, but If the impermissible caveat language does not appear in the Final Regulations, these "statements" are superfluous and should not be promulgated.

[3] In MAC 25-08, CARB stated as follows:

> "In recognition of the uncertainty caused by the recent federal actions, … CARB will also certify for model year 2025 AND SUBSEQUENT MODEL YEARS, **through either of the following pathways or combinations thereof** (Emphasis added.):
> 1. An approved application for CARB certification to the vehicle … emission regulations that immediately preceded those covered by the waivers that were targeted by the Congressional Resolutions. These include:
>
> a. The Low-Emission Vehicle (LEV) III regulations as adopted in 2012; …
>
> **2. Submission to CARB of U.S. EPA certification to its motor vehicle emission standards applicable to the vehicle in the relevant model year as those regulations are currently codified.** (Emphasis added.)

Significantly, under the original ACC II rulemaking, numerous LEV IV provisions had been set to become applicable to SVMs on a delayed basis. Thus, the above-requested SVM lead-time would mean, at most, a de minimis disruption of CARB's LEV IV SVM implementation plans and would have, at most, a de minimis environmental impact..

In conclusion:

- With the deletion of the impermissible caveat language, the Final Regulations' provisions allowing certification to ACC I/LEV III (2012) regulations during the pendency of the lawsuit would indeed be reasonable.
    - But if the caveat language were retained, and CARB offered an LEV III "option" that could be retroactively withdrawn by CARB, the offer would not only be a hollow, it would be inequitable, unreasonable and misleading. It would also fail to achieve the goal that CARB clearly states is behind the Emergency and Proposed Regulations – to ameliorate the current "unprecedented uncertainty" "created by the federal government's rescission of the ACC II waiver" The caveat language must therefore be withdrawn.
- The EPA certification pathway set forth in Option 2 in MAC 25-08, as described above, should also be incorporated into the Final Regulations via a "deemed to comply" provision, and without the impermissible caveat language.
- The requested SVM lead-time discussed above should be incorporated into the Final Regulations

Sincerely,

Lance Tunick

Lance Tunick
President